

# GREATER LONDON AUTHORITY

## REQUEST FOR DEPUTY MAYOR FOR FIRE AND RESILIENCE DECISION – DMFD233

**Title: Lease cars benefits in kind**

### **Executive summary:**

This report requests the approval of the Deputy Mayor for Fire and Resilience to authorise the London Fire Commissioner (LFC) to commit expenditure of up to £855,294.76 for the purposes of addressing the additional tax payable in addressing the error in the calculation of the benefit in kind for lease cars used by London Fire Brigade (LFB) officers.

The LFC's arrangements for leased vehicles allow officers to use them for personal and operational use. Therefore, an annual benefit in kind (BIK) calculation has to be undertaken, which is then reported to HM Revenue & Customs (HMRC) on Form P11D. This P11D information allows the officers to complete their annual tax return and HMRC to collect the tax due. In 2022 -23 the LFC's tax advisers, PSTAX, were engaged to calculate the BIK amounts, and this identified errors in the LFC process applied in previous years. There had been changes in the HMRC requirements coupled with changes to the LFC's arrangements relating to lease cars and the BIK methodology used by LFC officers had not fully reflected these changes, over a number of years.

Therefore, the LFC seeks approval to commit expenditure to meet the additional tax burden.

The London Fire Commissioner Governance Direction 2018 sets out a requirement for the London Fire Commissioner to seek the prior approval of the Deputy Mayor before "[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices...".

### **Decision:**

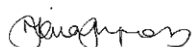
That the Deputy Mayor for Fire and Resilience authorises the London Fire Commissioner to commit expenditure of up to £855,294.76 for the purposes of addressing the additional tax payable in addressing the error in the calculation of the benefit in kind for lease cars provided to fire officers.

### **Deputy Mayor for Fire and Resilience**

I confirm that I do not have any disclosable pecuniary interests in the proposed decision.

The above request has my approval.

**Signature:**



**Date:**

04/03/2024

## **PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE DEPUTY MAYOR**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1 Report LFC-24-018x to the London Fire Commissioner (LFC) explains that the London Fire Commissioner (LFC), in common with other Fire and Rescue Services (FRSs), has arrangements in place to support fire officers to meet their responsibility to provide a vehicle to meet their operational duties. As part of this a significant number of London Fire Brigade (LFB) officers, over 180, have lease cars with a current annual LFC subsidy of up to £5,265 per car for 2022 -23 and £6,213 for 2023 -24. These lease cars are primarily provided to operational staff. Some staff in Control as well as non-operational staff also have access to lease cars due to specific circumstances of their role. These cars are essential to LFB officers in the performance of their duties and are used, amongst other things, to respond to emergency incidents, with fire officers usually attending the larger and more complex incidents. The vehicles are fitted with blue lights and two-tone sirens and are therefore effectively emergency response vehicles.
- 1.2 The arrangements for the lease vehicles include allowing personal use, and therefore an annual benefit in kind (BIK) calculation has to be undertaken, which is then reported to HM Revenue & Customs (HMRC) on Form P11D. This P11D information allows the officers to complete their annual tax return and HMRC to collect the tax due.
- 1.3 As part of the arrangements for the P11Ds for 2022 -23 the LFC's tax advisers, PSTAX, were engaged to calculate the BIK amounts, and this identified errors in the LFC process applied in previous years. There had been changes in the HMRC requirements coupled with changes to the LFC's arrangements relating to lease cars and the BIK methodology used by LFC officers had failed to fully reflect these changes, over a number of years.
- 1.4 Work has now been undertaken between LFC officers and PSTAX to review the BIK calculations and identify actions to address the past error and update processes going forward. The result of this further work is that the BIK on lease cars had been understated and, therefore, additional tax is due to HMRC.
- 1.5 PSTAX is working with HMRC to address the tax issues over a period of four years as per proposed voluntary settlement agreement requirement, and so figures are required back to 2019 -20. Advice from PSTAX is that LFC should expect to be able to conclude the process with HMRC by March 2024 to agree a settlement for the prior years. Revised and final P11D figures have also now been prepared by PSTAX for 2022 -23, and these were provided to officers to allow tax returns to be completed by the 31 January deadline.
- 1.6 The additional tax charges has caused considerable concern for LFB officers. The officers entered into the contracts for their lease cars on the basis that the tax liability would be consistent with that experienced previously. The increased tax liability, and the financial hardship that could result, put a strain on relations with the officer cadre, and therefore could have put at risk the operational response, hence a commitment was required to meet any additional tax burden on the officers resulting from addressing the error in the BIK calculations, subject to formal governance approval.
- 1.7 The tax underpayment issue arose from higher tax charge due to change in Benefit in Kind calculation methodology, hence, the options available to mitigate the issue were either for officers to pay due to no fault of their own or the LFC meet the costs as it was a corporate error. There are no other options open to the LFC and as this was a corporate error the LFC deemed it fairer for LFC to meet the costs.
- 1.8 This report therefore provides the current estimated cost to meet the additional tax liability and seeks the Deputy Mayor's approval for the LFC to commit the expenditure to meet this cost.

## 2. Objectives and expected outcomes

### *Taxable Benefit Calculation 2022 -23*

- 2.1 PSTAX were contracted to prepare the BIK calculations for the LFC for 2022 -23. PSTAX calculated the taxable benefits for all lease vehicles, based on figures provided by LFC, and during this process it became apparent that the methodology for the calculation of the BIK had not kept pace with changes to HMRC rules and in the lease car arrangements in place.
- 2.2 The lease cars are treated as emergency vehicles and therefore have tax arrangements that differ from those for company cars. Officers had been applying the correct overall arrangements for the calculation of the BIK, however the specific details under some elements of the calculation were not completed appropriately.
- 2.3 Significant work has been undertaken by LFC officers with PSTAX to review all lease car valuations and prepare amended BIK calculations for 2022 -23. This process is now complete and updated figures provided to lease car holders. However, the error in the calculations and the challenges working through the process to prepared revised calculations has caused significant concern and anxiety across the fire officer cadre, as well as financial hardship in some cases. LFC has therefore worked with this officer group and with their staff Representative bodies to address the situation. The LFC's Director for Corporate Services has also asked the LFC's internal auditors, the Mayor's Office for Policing and Crime, to commence a review of the circumstances leading up to the errors in the calculations and identify lessons.

### *Tax Charges*

- 2.4 Further to the update on the lease car arrangements and the error identified in the methodology used to calculate the benefit in kind resulting in an under payment of tax to HMRC, set out below are estimates of the cost of settling the additional tax charges.

### *Additional tax charges 2022 -23*

- 2.5 Detailed calculations have now been completed for all lease cars in use during 2022 -23. These calculations have been prepared by PSTAX using lease car details provided by LFC officers. A schedule of all these costs has been prepared and provided to individual officers to allow them to complete their tax returns. As stated in paragraph 1.7, as this was a corporate error LFC will meet all the tax liability costs arising from the change to the methodology of the benefit in kind calculation. The forecast costs also include the LFC meeting the tax liability arising from officers receiving the benefit in kind.
- 2.6 The total additional tax charges for 2022 -23 is £128,823.69. This amount is required by officers to meet the additional tax charges incurred following correction of the error. In order that officers receive this amount the payments have to be grossed up to cover the cost of tax, at 40 per cent, and national insurance, at 2 per cent. The LFC will also be liable for employers' national insurance on the payments, at 13.8 per cent. This means that total costs of £128,823.69 will be incurred to address the additional tax charges in 2022 -23.

### *Additional tax charges for prior years – 2019 -20 to 2021 -22*

- 2.7 PSTAX, on behalf of the LFC, is currently in discussion with HMRC to allow a settlement to cover the three prior years. Work is ongoing to support these discussions and prepare vehicle information. An initial estimate of the cost for these three years can be based on the cost in 2022 -23, and using this basis would lead to an estimate at £386,471.07.
- 2.8 There have been charges in the arrangements for lease cars over the total four-year period, and it is therefore expected that the cost for the prior years will be lower than the figure suggested above. However, at this time a significantly better figure is not available.

### *Additional tax charges for future years – 2023 -24 and 2024 -25*

2.9 A review is now commencing to identify alternative arrangements for the provision of cars. However additional tax charges will continue to be incurred until these revised arrangements can be implemented. If it is assumed that these new arrangements can be in place from 1 October 2024, additional tax charges will have to be met for 2023 -24 and half of 2024 -25. The tax charges for 2022 -23 can be used as an estimate for these costs and taking into account increase in costs of cars and maintenance, we have allowed for an estimated total cost for future years of £300,000.

*Tax adviser charges*

2.10 The LFC has contracted with PSTAX for tax advice and additional costs have been incurred under this contract to address the error in the lease cars BIK calculations. These costs are met based on an hourly rate and no current estimate is available for the total costs. A current estimate of these cost is £25,000.

2.11 There is the possibility that some officers may have incurred additional charges with their tax advisers, with a key issue raised being additional fees for the late calculation of tax returns. No information is yet available on potential costs, but an early estimate is £15,000.

*Total costs*

2.12 The costs below are to be met by a draw from the Budget Flexibility Reserve. This additional tax liability and the draw from the Budget Flexibility Reserve to meet this are reflected in the LFC’s Q3 Financial Position Report 2023 -24.

Table 1 – Totals costs

	<b>Additional costs</b>
2022 -23	£128,823.69
Prior years	£386,471.07
Future years	£300,000.00
Tax adviser	£40,000.00
<b>Total</b>	<b>£855,294.76</b>

### **3. Equality comments**

3.1 The London Fire Commissioner and the Greater London Authority are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on those with protected characteristics taking this into account and then evidencing how decisions were reached.

3.2 It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.

3.3 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), race (ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, and sexual orientation.

3.4 The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:

- eliminate discrimination, harassment and victimisation and other prohibited conduct.
- advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.

- foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 3.5 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic.
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.6 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include steps to take account of disabled persons' disabilities.
- 3.7 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- tackle prejudice, and
  - promote understanding.
- 3.8 This report is not considered to have any equalities impact.

#### **4. Other considerations**

##### *Conflicts of interest*

- 4.1 There are no conflicts of interest to declare from those involved in the drafting or clearance of this decision.

##### *Workforce comments*

- 4.2 Informal engagement has taken place with LFB officers affected by this issue. As set out in the paper, the proposed decision will in part help to maintain positive relationships with LFB officers, following concerns about the financial implications for individual officers. As this issue does not affect LFB staff more widely, no formal consultation has been carried out.

##### *Sustainability comments*

- 4.3 There are no sustainability implications arising from this report.

#### **5. Financial comments**

- 5.1 The report seeks approval for the LFC to incur expenditure of £855,294.76 for the purposes of addressing the additional tax payable in addressing the error in the calculation of the benefit in kind for emergency vehicles provided to fire officers.
- 5.2 The total costs set of £855,294.76 are to be met by a draw from LFB's Budget Flexibility Reserve. This additional tax liability and the draw from the Budget Flexibility Reserve to meet this are reflected in the LFC's Quarter 3 Financial Position Report 2023-24, which forecasts the Budget Flexibility Reserve at £14,165,000.
- 5.3 There are no additional costs to the GLA.

## **6. Legal comments**

- 6.1 Under section 9 of the Policing and Crime Act 2017, the LFC is established as a corporation sole with the Mayor appointing the occupant of that office. Under section 327D of the GLA Act 1999, as amended by the Policing and Crime Act 2017, the Mayor may issue to the LFC specific or general directions as to the manner in which the holder of that office is to exercise his or her functions.
- 6.2 By direction dated 1 April 2018, the Mayor set out those matters, for which the LFC would require the prior approval of either the Mayor or the Deputy Mayor for Fire and Resilience (the "Deputy Mayor").
- 6.3 Paragraph (b) of Part 2 of the said direction requires the LFC to seek the prior approval of the Deputy Mayor before "[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices...".
- 6.4 The Deputy Mayor's approval is accordingly required for the LFC to incur the expenditure as set out in this report.
- 6.5 The statutory basis for the actions proposed in this report is provided by Sections 7 and 8 of the Fire and Rescue Services Act 2004, which states that fire and rescue authorities must make provision for the purpose of firefighting and rescuing people in the event of road traffic accidents. In making this provision a fire and rescue authority must, amongst other things, secure the provision of the equipment necessary efficiently to meet all normal requirements, including providing vehicles for staff to attend these incidents.
- 6.6 Additionally, the LFC as a public body is subject to tax and is accountable to the HMRC in respect of the payment of tax. This report sets out that issues have arisen in regard to the payment of tax by the LFC which now require correction in negotiation with the HMRC.
- 6.7 These comments have been adopted from those provided by the LFC's General Counsel Department in report LFC-24-018 to the LFC.

### **Appendices and supporting papers:**

Appendix 1 – Report LFC-24-018x - Lease Cars Report Benefits in Kind

**Public access to information**

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

**Part 1 Deferral:**

**Is the publication of Part 1 of this approval to be deferred? NO**

**Part 2 Confidentiality:** Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

**Is there a part 2 form – NO**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to confirm the following (✓)

**Drafting officer**

Richard Berry has drafted this report with input from the LFC and in accordance with GLA procedures and confirms the following:

✓

**Assistant Director/ Head of Service**

Niran Mothada has reviewed the documentation and is satisfied for it to be referred to the Deputy Mayor for Fire and Resilience for approval.

✓

**Advice**

The Finance and Legal teams have commented on this proposal.

✓

**Corporate Investment Board**

A summary of this decision was reviewed by the Corporate Investment Board on 4 March 2024.

✓

**INTERIM CHIEF FINANCE OFFICER:**

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

**Signature:**

**Date:**

04/03/2024