



LFC-24-018x

LONDON FIRE BRIGADE

## Lease Cars Report Benefits in Kind

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Report to:

Investment & Finance Board  
Commissioner's Board  
Fire and Resilience Board

Date:

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Report by:

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Decision

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For publication

# PART ONE

## Non-confidential facts and advice to the decision-maker

### Executive Summary

The London Fire Commissioner (LFC) currently provides over 180 lease cars to its staff with a current annual LFC subsidy of up to £5,265 per car for 2022/23 / £6,213 for 2023/24. These lease cars are primarily provided to operational staff. Some staff in Control as well as FRS also have access to lease cars due to specific circumstances of their role.

These lease cars include a taxable benefit that is calculated on an annual basis and reported to HM Revenue & Customs (HMRC). Procurement Department (VAMS Team) provides key details on all lease vehicles and Finance Department (Payroll) then uses this information to calculate the taxable benefit. This taxable benefit is reported to HMRC on Form P11D, and these P11Ds are then provided to staff to support their personal tax returns to HMRC.

LFC has historically prepared the taxable benefit calculations in-house but for the 2022/23 tax year the LFC's independent external tax consultants, Public Sector Tax experts (PS TAX) were engaged to do this due to changes in P11D reporting format. The taxable benefit calculations were prepared by PSTAX, and as part of this process it was identified that errors had been made by LFC officers in the previous years' taxable benefit calculations. Therefore, action was necessary to address the errors and update impacted staff.

The lease cars are used by officers as part of their incident response and are therefore effectively emergency vehicles, and as such are fitted with blue lights and two-tone sirens. The issues identified with the additional tax liabilities had caused significant concern with officers and the affordability of the vehicles, therefore it has been essential to provide reassurance to the officers that they will not be financially impacted by addressing the error identified. This reassurance to officers means that the financial impact of the error will be addressed by the LFC, and this report seeks approval for expenditure to do so.

Whilst addressing current and prior year tax issues is the priority, we have also started considering our current and future arrangements for provision of cars for officers. The aim is that whilst continuing to meet operational requirements, we move to arrangements that are more cost effective for the LFC and officers, provide more tax certainty and have regard to our commitments on reducing carbon emissions. Advice on future options will follow at a later stage.

## **For the London Fire Commissioner**

That the LFC authorises the Director for Corporate Services to commit revenue expenditure of up to £855,294.76, to be met by a draw from the Budget Flexibility reserve, to meet the costs for the payment of additional tax liability to address the calculation error on P11D for Leased Cars Benefit in Kind (BIK).

### **1 Introduction and background**

- 1.1 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 LFC officers, over 180, have lease cars. These cars are essential to fire 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.
- 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 have not surprisingly caused considerable concern for fire 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, therefore 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 This report therefore provides the current estimated cost to meet the additional tax liability and seeks LFC approval for expenditure to meet this cost.

## 2 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. There are four key stages in the BIK calculation as follows:

- Calculate vehicle cost – this is the higher of the annual lease cost for the vehicle and the vehicle's market value x 20% - this was an area where there had been errors in the process and further work was required in particular to differentiate between list price and market value of the vehicles.
- Add all running costs (car tax, servicing, IWT (insurance, windscreens, tyres)) – this was another area of error and had failed to reflect the full running costs as arrangements for these developed.
- Calculate total vehicle available days and deduct any unavailable days.
- Deduct employee contribution from total benefit.

- 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. These actions have included:

- Fire officers were notified of the error in the BIK calculations and the plan to engage further with PSTAX to recalculate the charges.
- Hosting a Teams meeting for impacted staff to discuss various issues in relation to the BIK calculations for the lease cars and provide reassurance on support with additional costs.
- Putting in place a hardship loan arrangement for those officers experience particularly significant financial pressure as a result of the changes in the BIK calculations.
- Facilitating the cancellation and return of lease vehicles for those officers now wishing to move to alternative arrangements for the provision of a vehicle, as well as extending

existing leases as appropriate.

- Working with PSTAX to prepare revised BIK calculations for 2022/23 and provide these to fire officers.
- Working with PSTAX, and through them with HMRC, on the methodology and settlement of the prior year's tax issues.
- Reviewing arrangements for BIK calculations, and issue of P11Ds, for 2023/24, noting that this will be with an external supplier until the LFC is able to implement its new HR and payroll system, iTrent.
- The LFC is to commence a review of arrangements for the provision of cars from 2024/25.

2.4 The Director for Corporate Services is also asking the LFC's internal auditors, MOPAC, to commence a review of the circumstances leading up to the errors in the calculations and identify lessons.

### 3 Tax Charges

3.1 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.

#### 3.2 Additional tax charges 2022/23

- 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.
- 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%, and national insurance, at 2%. The LFC will also be liable for employers' national insurance on the payments, at 13.8%. This means that total costs of £128,823.69 will be incurred to address the additional tax charges in 2022/23.

#### 3.3 Additional tax charges for prior years – 2019/20 to 2021/22

- 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.
- 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.

#### 3.4 Additional tax charges for future years – 2023/24 and 2024/25

- 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.

### 3.5 Tax adviser charges

- 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.
- 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.

### 3.6 Total costs

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.

	<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>

## 4 Review of the Arrangements for the Provision of Cars

4.1 The LFC is commencing work on a review of the arrangements for the future provision of cars to fire officers. This review will include:

- Review of arrangements in place at other FRSs.
- Engage with staff, and Representative Bodies, on possible alternative arrangements.
- Simplification of the arrangements with the aim of eliminating the requirements for BIK calculations and P11D reporting, if possible.
- Maintaining flexibility in the arrangements to meet operational requirements.
- Consider the cost effectiveness of any new proposals (the current lease car scheme involves an annual subsidy cost to the LFC of £5,265 per car).
- Have regards to our commitments on reducing carbon emissions.

4.2 The key options being investigated for the future provision include:

- Essential Car User Scheme (ECUS) – this is a scheme currently in place as an alternative to the lease cars, under ECUS officers own the cars and the LFC provides a loan facility to support purchase of the car, an annual taxable allowance to help meet running costs, and a mileage allowance for actual use of the car.
- Provided Car Scheme – this would be a potential new scheme with the LFC owning the cars, and would build on an existing arrangement for pool cars which are available to junior officers and have much greater restrictions on use than the current lease cars.

- Leased Car Option – this would develop from the current arrangements, with the cost expected to reduce by providing standardised options, the BIK reduced or eliminated, and possibly much more restricted vehicle options and personal use.

- 4.3 Whilst this review is completed the existing arrangements will have to continue in order to maintain the operational response. This means that the financial support for the additional tax charges will be required until the revised arrangements can be implemented.
- 4.4 It is expected that the revised arrangements for the provision of vehicles will be at a lower overall cost to the LFC than the existing arrangements. The existing lease car arrangements have become more expensive over the last few years and, therefore, the review provides an opportunity to consider the reasons for this and opportunities to address them. The potential for savings will be considered further as the review is conducted and any savings identified included in the budget process for future years.

## **5 Finance comments**

- 5.1 This report is prepared by the Assistant Director - Finance and as such Finance comments have been incorporated into the report.

## **6 Workforce comments**

- 6.1 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.

## **7 Sustainability comments**

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

## **8 . Legal comments**

- 8.1 Under section 9 of the Policing and Crime Act 2017, the London Fire Commissioner (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.
- 8.2 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").

- 8.3 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...".
- 8.4 The Deputy Mayor's approval is accordingly required for the LFC to incur the expenditure as set out in this report.
- 8.5 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.
- 8.6 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.

## 9 Equalities impact

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
- a. eliminate discrimination, harassment and victimisation and other prohibited conduct.
  - b. advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
  - c. foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 9.5 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:



- a. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic.
- b. 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;
- c. 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.

9.6 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.

9.7 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:

- a. tackle prejudice, and
- b. promote understanding.

9.8 This report is not considered to have any equalities impact.

## List of appendices

Appendix	Title	Open or confidential*
	None	

## **Part two confidentiality**

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

Is there a Part Two form:        NO