

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AUDIT COMMITTEE

10 JUNE 2013

1. **MONITORING POLICIES ON RAISING CONCERNS AT WORK –
WHISTLE BLOWING STANDING ORDER 2/20 AND
REGULATION OF INVESTIGATORY POWERS ACT 2000**

Joint report of the Chief Fire Officer and the Clerk & Monitoring Officer

RECOMMENDED

- 1.1 THAT the Audit Committee notes that there has been one incident of whistle blowing reported and no requests to enact the Regulation of Investigatory Powers Act 2000 in West Midlands Fire Service in the last year up to 30 April 2013.
- 1.2 THAT the Audit Committee approve changing the reporting period of the above two policies, to be in line with each Financial Year.
- 1.3 THAT the Audit Committee notes the content of the Whistle Blowing Standing Order 2/20 (attached as Appendix 1) and the Data Protection Policy 1998 Standing Order 2/16(attached as Appendix 2).

2. **PURPOSE OF REPORT**

This report is submitted to inform the Committee of the monitoring of the referrals under the Whistle Blowing Standing Order and the use of the Regulation of Investigatory Powers Act under the Data Protection Standing Order.

3. **BACKGROUND**

- 3.1 The Whistle Blowing Standing Order was consulted on and amended in April 2011 in line with the West Midlands Fire Service's policy to review Standing Orders every three years.
- 3.2 The Data Protection Act 1998 was consulted on and amended to include a policy on surveillance in May 2012.

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework for control and supervision of investigatory powers exercised by public bodies, including local authorities, in order to balance the need to protect privacy of individuals with the need to protect others, particularly in light of the Human Rights Act 1998.

- 3.3 Standing Orders are visible electronically to all personnel, using the Important News section of the West Midlands Fire Service intranet and are also kept in the electronic Library for reference. This makes sure that all employees are aware of any new or amended Standing Orders.
- 3.4 Our Standing Orders are also referred to in both employee and contractor inductions.
- 3.5 The Committee should note that there has been one issue of Whistleblowing raised by employees over the last twelve months using the Whistle Blowing Policy up to 30 April 2013. This complaint related to a number of employees allegedly posting Twitter messages whilst driving WMFS vehicles during bad weather. The A/ACFO Operations established the facts and did not consider that the matter warranted further action. A discussion did however take place with the employees in relation to how Twitter comments can be taken out of context.
- 3.6 The Committee should note that the organisation has not approved any surveillance under RIPA legislation in the last twelve months up to 30 April 2013.
- 3.7 The Committee should approve the creation of a yearly report that details any complaints made under the Whistleblowing Policy and any approvals enacting RIPA legislation (as contained with Data Protection Act 1998 Standing Order). This report will have a reporting period in line with each financial year. For example, the next report will cover from 1st April 2013 to 31st March 2014.
- 3.8 The West Midlands Fire and Rescue Service will continue to raise awareness of the Whistle Blowing policy and the Data Protection Policy to all employees.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is required and has been carried out.

The initial Equality Impact Assessment did not raise issues which required a full Equality Impact Assessment to be completed.

5. **LEGAL IMPLICATIONS**

- 5.1 In relation to Whistleblowing; in May 1996 the Committee on Standards in Public Life stated that “All organisations face the risk of things going wrong or of unknowingly harbouring malpractice. Encouraging a culture of openness within an organisation will help: prevention is better than cure.”
- 5.2 The Public Interest Disclosure Act 1998 sets out a framework for public interest whistleblowing, which protects workers from reprisal because they have raised concern about malpractice. Only a disclosure that relates to one of the broad categories of malpractice can qualify for protection under the Act. These include concerns about actual or apprehended breaches of civil, criminal, regulatory or administrative law; miscarriages of justice; dangers to health, safety and the environment; and the cover up of any such malpractice. Case law continues to develop this area of law.
- 5.3 In addition to employees the Act covers workers, contractors, trainees, agency staff, etc.
- 5.4 To be protected disclosures must be made in good faith, i.e. disclosure is made honestly so that the concern can be addressed. Good faith can be negated where the disclosure is made for some other dominant and improper motive.
- 5.5 As part of good governance and internal control it is necessary to review the Authority’s policies and procedures from time to time to ensure that they conform to current standards and remain effective in practice.

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- 5.6 It is likely that the law relating to whistleblowing will be changed in the foreseeable future. The Enterprise and Regulatory Reform Bill proposes to amend the law so that individuals who blow the whistle on their employer will be protected from bullying or harassment by their fellow workers. The employer will be automatically responsible for any detrimental treatment of a whistleblower by their co-workers, unless the employer can show that it took all reasonable steps to prevent that detrimental treatment from occurring. Currently, the law only protects a worker from harassment or bullying by their employer.

Further, as the law stands at present, a worker must be acting in “good faith” to be able to rely on legal protection against dismissal for blowing the whistle. This requirement is to be removed and, in its place, an Employment Tribunal will have the power to reduce the compensation award by up to 25% if it finds that a disclosure was not made in good faith.

An employee could claim whistleblowing protection if they complained, in good faith, about a breach of a term in their own contract of employment. One contractual term is that an employer must not act in a way to damage trust and confidence. Potentially employees who had resigned with less than two years service could make a claim of constructive unfair dismissal based on breach of trust and confidence.

It is likely to be a requirement in the future that any whistleblowing has to be in the public interest, with the result that personal grievances relating to an individual’s contractual terms are highly unlikely to qualify for whistleblowing protection.

Due to the changes the policies and procedures will be reviewed. It will remain important to recognise when workers and employees have blown the whistle. Investigations will need to be thorough. It will be essential that staff are trained in whistleblowing in the workplace - a failure to do so could make it difficult to then show that steps have been taken to prevent detrimental treatment from occurring.

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- 5.7 In relation to RIPA; The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework for control and supervision of investigatory powers exercised by public bodies, including local authorities, in order to balance the need to protect privacy of individuals with the need to protect others, particularly in light of the Human Rights Act 1998. RIPA provides a statutory basis for the authorisation and use by the security and intelligence agencies, law enforcement and other public authorities, of covert surveillance, agents, informants and undercover officers. It regulates the use of these techniques and safeguards the public from unnecessary invasions of their privacy.

6. **FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

7. **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications arising from this report.

BACKGROUND PAPERS

The Public Interest Disclosure Act 1998 (PIDA)

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CHIEF FIRE OFFICER

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