

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AUDIT COMMITTEE

12 JUNE 2017

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 Monitoring Officer.

RECOMMENDED

- 1.1 THAT the Audit Committee notes that there has been one allegation of whistle blowing reported through the Whistle Blowing Policy (Standing Order 2/20).
- 1.2 THAT the Audit Committee notes that there have not been any requests to enact the Regulation of Investigatory Powers Act 2000 in West Midlands Fire Service in the last year up to 31 March 2017.
- 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 which is Appendix 4 of Standing Order Management of Information 01/05 (attached as Appendix 2).

2. PURPOSE OF REPORT

- 2.1 A complaint was received by the Service which is currently in the early stages of investigation and relates to an allegation made towards a number of our employees about an incident which happened away from our premises. The Investigation Manager has had a conversation with the individual (employee of another Brigade) who raised the issue.
- 2.2 This report is submitted to inform the Committee of the monitoring of referrals under the Whistle Blowing Standing Order and the use of the Regulation of Investigatory Powers Act under the Data Protection Standing Order. Revision of the Data Protection Framework 2/16 are currently being consulted in line with the Employment Relations Framework.

[IL1: PROTECT]

3. **BACKGROUND**

Whistle Blowing

- 3.1 The Whistle Blowing Standing Order was consulted on 4th June 2014 and published on 27th November 2014. Minor amendments were made to include names of new personnel who have responsibilities under Whistle Blowing. Standing Order 20/20 has been scheduled to be reviewed at the end of this year.
- 3.2 In relation to Whistle Blowing; 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.”
- 3.3 The Public Interest Disclosure Act 1998 sets out a framework for public interest whistle blowing 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.
- 3.4 In addition to employees, the Act covers for example, workers, contractors, trainees, agency staff. This list is not exhaustive.
- 3.5 To be protected, the person blowing the whistle must believe that their disclosure is “in the public interest”, i.e. disclosure is made in the reasonable belief that there is an issue such as wrongdoing in public office or something that presents a risk to the public that warrants disclosure.
- 3.6 The Committee should note that there has been one allegation of Whistleblowing which was raised by an external Brigade employee. This allegation was received by our employee over the last twelve month period, using the Whistle Blowing Policy, to 31 March 2017.

Data Protection

- 3.7 The Data Protection Act 1998 was consulted on and amended to include a policy on surveillance in May 2012. The Data Protection Act 1998 has now been added into Standing Order 01/05 Management of Information as (Appendix 4) which is attached as Appendix 2.

Regulation of Investigatory Powers

- 3.8 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.
- 3.9 The Committee should note that the Service has not approved any surveillance under RIPA legislation in the twelve month period up to 31 March 2017.
- 3.10 West Midlands Fire Service will continue to raise awareness through training on the Whistle Blowing Policy, Data Protection Policy and RIPA to all of our partners.

4. EQUALITY IMPACT ASSESSMENT

In preparing this report an Equality Impact Assessment is not required, as all our policies have Equality Impact Assessments carried out when updating and amending.

5. LEGAL IMPLICATIONS

- 5.1 Data Protection: depending on the level and or seriousness of a breach of the Data Protection Act 1998; there are various levels of prosecution ranging from enforcement notices, financial penalties and in extreme cases custodial sentences.
- 5.2 RIPA: if surveillance operations are not carried out in accordance with the safeguards as laid down in RIPA, the evidence obtained may not be admissible in legal proceedings and the Service may be

subject of a claim on infringing the human rights of the person under surveillance.

6. **FINANCIAL IMPLICATIONS**

Monetary Penalty notices: fines of up to £500,000 could be imposed for serious breaches of the DPA.

7. **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications arising from this report.

BACKGROUND PAPERS

The Public Interest Disclosure Act 1998 (PIDA)

The contact name for this report is Phil Hales, Deputy Chief Fire Officer, telephone number 0121 380 6907.

PHIL LOACH
CHIEF FIRE OFFICER

SATINDER SAHOTA
MONITORING OFFICER

APPENDIX 1

Standing Order 2/20 – Whistle Blowing Policy

APPENDIX 2

Standing Order 1/05, Appendix 4 – Data Protection Act 1998