

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AUDIT COMMITTEE

6TH JULY 2009

1. MONITORING POLICIES ON RAISING CONCERNS AT WORK – WHISTLE BLOWING STANDING ORDER 02/20

Joint report of the Chief Fire Officer and the Monitoring Officer

RECOMMENDED

- 1.1 THAT the Audit Committee notes that there has been two incidents of whistle blowing in West Midlands Fire Service in the last year up to 31st May 2009
- 1.2 THAT the Audit Committee notes the content of the Whistle Blowing Standing Order 02/20 (attached as Appendix 1).

2. PURPOSE OF REPORT

This report is submitted to inform the Committee of the monitoring and review of the Whistle Blowing Standing Order.

3. BACKGROUND

- 3.1 The Whistle Blowing Standing Order was last reviewed in June 2006 and was updated, consulted on and amended in March 2008. The revised Standing Order was issued in March 2008.
- 3.2 Standing Orders are distributed throughout the Service, in paper format to Stations and 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 ensures that all staff are aware of any new or amended Standing Orders.
- 3.3 The Whistle Blowing Standing Order is also referred to in both employee and contractor inductions.

- 3.4 The Committee will note that there have only been two incidents of concern raised by employees over the last twelve months using the Whistle Blowing policy up to 31st May 2009. The first was in relation to alleged financial irregularities in relation to the awarding of consultancy contracts and breaches of the Code of Conduct. This was investigated and resolved by the Director of Human Resources and Sandwell Internal Audit. The findings were that there were no irregularities or breaches of conduct and therefore no case to answer. The second was in relation to alleged inappropriate attendance at a Charity Dinner and Dance. This was investigated by the Director of Finance and Procurement. The findings were that attendance of the event was in support of partner organisations, there had been no breach of Financial Regulations and, therefore, there was no case to answer.
- 3.5 The West Midlands Fire and Rescue Service will continue to raise awareness of the whistle blowing policy to all staff.

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 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 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.
- 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 Where a whistle blower is victimised or dismissed in breach of the Act he/she can bring a claim to any employment tribunal for compensation. Awards are uncapped and based on losses suffered.
- 5.6 The Committee on Standards in Public Life has recommended that a whistle blowing policy should make the following points clear:
- a) the organisation takes malpractice seriously, giving examples of the type of concerns to be raised, therefore distinguishing a whistle blowing concern from a grievance;
 - b) employees can choose to raise concerns outside of line management;
 - c) employees are enabled to access confidential advice from an independent body;
 - d) the organisation will, when requested, respect the confidentiality of an employee raising a concern;
 - e) when and how concerns may properly be raised outside the organisation (eg with a regulator); and
 - f) it is a disciplinary matter both to victimise a bona fide whistle blower and for someone to maliciously make a false allegation.
- 5.7 In addition the Committee agreed that organisations should:
- ensure that staff are aware of and trust the whistle blowing avenues;
 - make provision for realistic advice about what the whistle blowing process means for openness, confidentiality and anonymity;
 - continually review how the procedures work in practice;
 - regularly communicate to employees about the avenues open to them.

- 5.8 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.

6. **FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

BACKGROUND PAPERS

The Public Interest Disclosure Act 1998 (PIDA)

V RANDENIYA
CHIEF FIRE OFFICER

N SHARMA
MONITORING OFFICER

WEST MIDLANDS FIRE SERVICE WHISTLE BLOWING POLICY

1. STRATEGY

Following the Public Interest Disclosure Act 1998 (PIDA), which came into force in July 1999, legal protection is now provided to employees who raise concerns about suspected dangerous or illegal activity that they are aware of through their work. The common term for voicing such concerns is 'whistle blowing'. The West Midlands Fire Service (WMFS) wishes to create an open and honest culture by being compliant with its statutory obligations, detailed in the Act, and ethical standards, detailed in its Core Values.

Employees are often the first to realise that there may be something seriously wrong with the organisation that employs them. They may be able to alert the organisation early on to things like fraud, negligence, bribery and health and safety risks. However, they may not express their concerns, because they feel that speaking up would be disloyal to their colleagues or to the organisation. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may be no more than a suspicion of malpractice.

The procedures in this order give ways for individuals to raise concerns and receive feedback on any action taken. It makes sure that individuals receive a response and know how to pursue concerns if they are not happy with the response. It gives reassurance that individuals will be protected from possible reprisals or victimisation if they believe they have made a disclosure in good faith.

2. PROCEDURE

2.1 What the policy covers

The Public Interest Disclosure Act 1998 makes sure that employees, contractors providing services, most agency workers, home workers and trainees on vocational and work experience schemes are legally protected in raising concerns responsibly.

External contractors may encounter wrongdoing that affects WMFS. Therefore, this whistle blowing policy is also open to employees of our contractors.

The subject of concern may be something unlawful, against the Service's policies, below established standards of practice, or that amounts to improper conduct. The overriding concern should be that it would be in the public interest for the alleged malpractice to be corrected.

This procedure will apply in cases where you genuinely believe that one of the following sets of circumstances is occurring, has occurred or may occur within the organisation.

- A criminal offence has been committed, is being committed or is likely to be committed. (If this should be of a fraudulent or corrupt nature, see Standing Order 1/22.)
- A person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject.
- A miscarriage of justice has occurred, is occurring or is likely to occur.
- The health and safety of any individual has been, is being or is likely to be endangered, including members of the public.

- The environment has been, is being or is likely to be damaged.
- Discrimination, harassment or physical abuse of employees or members of the public (see Workplace Harassment and Bullying, Standing Order 2/17).
- Information tending to show any matter falling within any one of the preceding paragraphs has been, is being, or is likely to be deliberately concealed.

2.1.1. Distinction between grievance and whistle blowing

Whistle blowing occurs when an employee raises a concern about danger or illegality that affects others, not themselves personally. When someone raises a concern through the Service's grievance procedure, they are saying that they have personally been poorly treated and they are seeking redress or justice for themselves. The whistle blowing policy is intended to cover concerns that fall outside the scope of grievance or other existing Service procedures.

2.2 How to raise a concern

If the matter relates to any fraudulent or corrupt activity, concerns should be raised in accordance with procedures detailed in paragraph 2.3 of Standing Order 1/22, Anti-Fraud and Corruption Policy.

If you wish to raise or discuss any issues which might fall into the above category you should contact a member of the Corporate Board, the Treasurer or the Clerk to the Fire Authority who will be required by WMFS to treat the matter in confidence.

Concerns are better raised in writing. You should set out the background and history of the concern giving names, dates and places where possible and the reason why you are particularly concerned about the situation. If you do not feel able to put your concern in writing, you can discuss your concern verbally with a member of the Corporate Board, or the Treasurer or the Clerk to the Fire Authority.

The earlier you express the concern and the more detail you provide, the easier it will be for the Service to take appropriate and necessary action. Remember:

- you must disclose the information in good faith
- you must believe it to be substantially true
- you must not act maliciously or make false allegations
- you must not seek any personal gain

At this stage you will not be expected to prove the allegation, but you will need to demonstrate to the person contacted that there are sufficient grounds for your reasonable suspicion or concern.

You may invite your trade union representative or a work colleague to be present during any meetings or interviews in connection with the concerns you have raised.

Where a concern relates to a Director, then either the Director, Human Resources (as Responsible Officer), or Deputy Chief Fire Officer or Chief Fire Officer, as appropriate, should be contacted in the first instance. It should also be noted that the Head of Legal at Sandwell MBC has the Authority's Monitoring Officer role.

The Treasurer to the Fire Authority may be contacted on 0121 569 3504. The Clerk to the Fire Authority may be contacted on 0121 569 3172. Concerns are better raised in writing and may be sent for the attention of either person at: Sandwell Council House,

2.3 Confidentiality

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. However, it is likely that further investigation will be necessary and you may be required to attend a disciplinary or investigative hearing as a witness at the appropriate time. An employee raises a concern confidentially if they give their name only on condition that it is not revealed without their consent. A concern is raised anonymously if the employee does not give their name.

2.4 How the Service will respond

The action taken by the organisation will depend on the nature of the concern. The matters raised may be investigated internally by an appropriately experienced officer knowledgeable in the area concerned, for example, audit or personnel. Alternatively through the disciplinary process, the matter may be referred to the police, the external auditor or may be the subject of an independent enquiry.

In order to protect individuals and the Service, and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations that fall within the scope of specific procedures, for example, unfair discrimination issues, will normally be referred for consideration under those procedures. Some concerns may be resolved by agreed action without the need for investigation. Members of the Corporate Board can seek guidance from the Director, Human Resources at any stage in the investigation.

Within 10 working days of a concern being raised, the individual with whom the concern was raised will write to you:

- acknowledging that the concern has been received;
- indicating how the matter is to be dealt with;
- giving an estimate of how long it will take to provide a final response;
- telling you whether any initial enquiries have been made;
- supplying you with information on staff support mechanisms; and
- telling you whether further investigations will take place and if not why not.

The amount of contact between the officer(s) considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from you in a discreet manner.

When any meeting is arranged, you have the right to be accompanied by a Trade Union representative or a work colleague. The meeting can be held off site if requested.

The West Midlands Fire Service will take steps to minimise any difficulties, which you may experience as a result of raising a concern and provide any appropriate support. For instance if you are required to give evidence in disciplinary or criminal proceedings, the Service will advise you of the procedure and give you reasonable support. Subject to legal constraints, you will receive information about the outcomes of investigations.

Upon completion of the investigation, **all** documents will be forwarded to the Director, Human Resources.

2.5 Responsible officer

The Director, Human Resources has overall responsibility for the maintenance and operation of this policy. This officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and will report as necessary to the Service.

2.6 Harassment or victimisation

The West Midlands Fire Service recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the alleged malpractice. The Service will not tolerate harassment or victimisation and will take action to protect you when you raise a concern in good faith.

2.7 Untrue allegations

If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If however you make an allegation which, upon full investigation, is found to have been malicious or vexatious, disciplinary action will be considered and the protection of the PIDA will be lost.

2.8 Anonymous allegations

This policy encourages you to put your name to your concerns. Concerns expressed anonymously are much less powerful, but will be considered at the discretion of the Director, Human Resources.

In exercising this discretion the factors to be taken into account would include the:

- seriousness of the issues raised;
- credibility of the concern; and
- likelihood of confirming the allegation from attributable sources and information provided.

2.9 How the matter can be taken further

This policy is intended to provide you with an avenue to raise concerns within the West Midlands Fire Service. We hope you will be satisfied with the response. If you are not, you must indicate this to the Director, Human Resources or the Treasurer or Clerk to the Fire Authority.

You may seek legal advice on any concerns about malpractice. If you feel it is right to take the matter outside the organisation, the following are possible contacts:

- Your recognised trade union
- Citizens Advice Bureau
- A solicitor
- The Police
- Relevant professional bodies or regulatory organisations, such as Ombudsmen.

Public Concern at Work (www.pcaw.co.uk) is a charity that offers free advice to people concerned about danger or malpractice in the workplace, but who are unsure whether, or how, to raise the matter.

3. CROSS REFERENCES

This Standing Order makes reference to and complements issues contained in other Orders, namely:

Standing Order No. 1/22	Anti-Fraud and Corruption Policy
Standing Order No. 2/1	Discipline Procedure
Standing Order No. 2/17	Workplace Harassment and Bullying

4. KEY CONSULTEES

Minor changes only have been made to this Order and consultation was not necessary.

5. EQUALITY AND DIVERSITY

The initial Equality Impact Assessment raised no issues so a full impact assessment was not required.

6. OWNERSHIP

This Standing Order did not require Authority or Corporate Board approval.

7. RESPONSIBILITY AND REVIEW/AMENDMENT

7.1 Responsible Corporate Board Member/Department

This Standing Order is the responsibility of the Director, Human Resources and the Personnel Planning and Policy Team

7.2 Created/fully reviewed/amended

This order was amended by the Senior HR Advisor, Personnel Planning and Policy Team in April 2008.