

**DESKTOP REVIEW OF EMPLOYMENT CASES
FOR AVON FIRE AND RESCUE SERVICE –
Executive Summary**

July 2023

ONE
legal



EXECUTIVE SUMMARY

In February 2023 One Legal was asked by the Chief Fire Officer (“the CFO”) at Avon Fire and Rescue Service (“the Service”) to undertake a desktop review¹ (“the Review”) in respect of historic disciplinary cases that had been considered by the Service primarily in the last 2 years.

This early decision by the CFO to commission a review of historic discipline cases seeks to proactively address the concerns and recommendations that have been specifically made in the 'Independent Culture Review of London Fire Brigade' (“the IC Review”) in 2022. The CFO should be commended for this proactive approach.

The review means that the Service is well placed to consider what further actions it needs to implement following the subsequent Spotlight report by His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (“the Inspectorate”). The action plan that has been formulated in response to this report is also being considered as part of this meeting’s agenda and Members will see that the Service has already considered what is necessary in order to promote the highest standards in terms of culture and behaviour based on the values of the Service.

The Review looked at cases to:

- Consider if the cases had been managed appropriately (including suspension) and the correct sanctions applied
- Identify any cases where there appears to have been serious inappropriate behaviour which was not fully addressed
- Identify appropriate action/s (including any legal risks in respect of any actions) in respect of any individual cases included within the scope of the Review
- Identify any patterns/trends in poor behaviour by personnel within the Service which do not align with AF&RS' new Zero-Tolerance Statement
- Identify any 'lessons learned' in terms of AF&RS' practices and procedures for complaints/grievances/bullying & harassment/dignity & respect and discipline cases
- Recommend how cases may be dealt with differently in future to achieve the best outcome for all involved and to reduce organisational risk
- Make recommendations regarding the delegation levels for cases, to ensure that cases are determined at the correct level and by appropriately trained personnel, able to make difficult decisions

¹ The desktop review consisted of 'paper based' review of the disciplinary investigation files. We did not interview any of those persons who were subject to or involved in the investigation. The focus of the desktop review was the process of the disciplinary procedure. The desktop review was limited to cases involving values and behaviours.

- Identify the types of cases where an HR advisor either must be involved in the process or advice from HR must be obtained
- Make recommendations in relation to the AF&RS' future complaints / grievance / discipline / bullying & harassment/dignity & respect policies and any identified training needs

EXECUTIVE SUMMARY FINDINGS AND RECOMMENDATIONS

The review of historic cases did find in several cases that issues were investigated and considered in accordance with good practice and the outcomes and sanctions applied were within the scope of what a reasonable employer would do.

There were 'learnings' identified across all but one of the cases. There were however 5 cases where there were examples of behaviour such as bullying, harassment and discrimination that were insufficiently investigated and/or not subject to a full and robust disciplinary hearing. This leaves those decisions and/or sanctions reached in those cases at risk of challenge and/or have a potential impact on cultural improvements going forward if lessons not learnt.

This Review provides a number of strategic recommendations for the Authority to consider as detailed below and these should be considered in tandem with the Service's Spotlight Action Log produced following the Inspectorate's Spotlight review (reported later in this meeting's agenda) which reflects many of the recommendations that we make below.

A further set of operational recommendations based on specific cases has been provided to the Chief Fire Officer, in accordance with his Operational Independence under the Scheme of Delegation (SD8) for consideration and are not the subject of this summary.

We have grouped our first set of findings and recommendations under four headings, as follows: -

Raising Concerns

In several of the cases reviewed, concerns were expressed about raising matters and the consequences and repercussions of doing this on the person making or witnessing the complaint. In some cases, these concerns did not appear to be fully explored by investigators or panels.

There appears to be no confidential process for raising concerns or providing evidence or if there is that people are unaware of this process.

It is also unclear, from the information that we provided, as to what support is provided to those people raising concerns and/or providing evidence in relation to complaints.

Recommendation 1

The Service should ensure that they implement and continue to take steps to secure there is a confidential way for staff to raise concerns. Steps should also be taken to ensure that staff are aware of whistleblowing processes.

Recommendation 2

The Service should ensure that they continue to implement measures to review the support available for those who have raised concerns and take any action needed to make sure these provisions are suitable, whilst balancing this against the rights of those that are the subject of the complaint.

Recommendation 3

The Service should review and consider, where appropriate, the engagement of independent persons so that staff can, if appropriate, raise concerns outside the Service. This would then ensure that all staff have access to an independent reporting line that can be used as a confidential way to raise concerns outside the Service.

Recommendation 4

To increase confidence, following the implementation of Recommendations 1 to 3, the Service should ensure and continue to provide information to all staff and members of the public on how they can raise concerns and access confidential support (including through external agencies). The Service should also make sure information is provided on how concerns and allegations will be investigated including support and maintaining confidentiality to those raising concerns and witnesses.

Complaint and Investigation handling

As detailed at the start of this summary we found in some cases that the investigations and/or hearings did not fully meet the standards detailed in guidance such as that provided by ACAS².

The investigations did not fully address the complaints being made and potentially matters that should have been investigated (and potentially if proven sanctions applied) were not. This meant that some allegations were not considered by the disciplinary panel.

The matters that did appear before disciplinary panels, were on occasion, not fully considered by the Panel and therefore found to be not proven.

The training on offer, to investigators and panel members is ad-hoc. It needs to be recognised that operational experience does not transfer across to the bespoke skills that are required of an investigator and/or panel members and specialist training should be provided to managers in line with the HR business partner model that empowers managers to deal with operational issues.

A failure to deal with concerns that are raised in an appropriate way is likely to undermine confidence in the Service's values and the desire to address conduct that does not meet those values.

² ([Acas Code of Practice on disciplinary and grievance procedures | Acas](#))

Recommendation 5

The Service should undertake a review of the guidance given on how the Service handles staff disclosures, complaints and grievances. Any review of the guidance needs to address how the Service should handle all future allegations that are capable of falling within the scope of the Zero-Tolerance Statement. This should include, but need not be limited to: -

- Consideration as to whether the incident requires urgent action, and if it does what this could involve i.e suspension
- Consideration about how the Service treats incidents/behaviours that are subject to a police investigation or are currently under police investigation but not subject to a police charge or conviction
- Conducting and completing investigations, where the staff member under investigation leaves

The review will need to also consider any guidance issued by the Fire Standards Board (in liaison with the National Fire Chief's Council) following Recommendations 11 and 13 of the report of the Inspectorate.

Recommendation 6

The Service needs to review whether the framework under which it conducts investigations and disciplinary hearings is fit for purpose. This should include, but need not be limited to: -

- Who is appointed as an investigator including looking at whether there should be a role description and skills matrix for investigators
- Who undertakes investigations, including whether there should be two investigators (one operational and one corporate) to ensure independence and impartiality
- Who is appointed as a Panel member including looking at whether there should be a role description and skills matrix for Panel members
- What support is provided and is available (in all matters but especially in cases that fall under the Zero-Tolerance Statement) to investigators and/or Panel members from HR
- Whether in certain complex cases, including where allegations are made against senior officers, independent investigators and/or panel members should be appointed
- The procedures and processes for investigations and hearings including how to deal with irregularities/error in procedures that are raised at hearings
- Providing guidance to all parties (whether they are people raising concerns, the person who is the subject of the investigation, a witness, an investigator or panel member) about the processes and procedures
- How appeals are conducted. This may need to consider any guidance or provisions made by the Home Office following Recommendation 19 of the report of the Inspectorate

Recommendation 7

The Service should develop and implement a training programme for investigators and panel members. The training should cover: -

- How to identify issues and frame matters (including the drafting of Terms of Reference) that will be the subject of investigation.
- Collecting, reviewing, applying the evidence in employment cases and the drafting of investigation reports.
- How to conduct a panel hearing including reviewing the evidence, decision making (including how to deal with any mitigation and/or previous disciplinary investigations and/or charges) and the drafting of outcome letters.
- Ensuring the diversity/neutrality of the investigator and the Panel.
- An understanding of behaviours that could illustrate misogynistic, homophobic, racist or otherwise discriminatory views or actions.

Organisational Development

The recommendations we have made so far will involve changes to the approach, processes and procedures relating to how the Service deals with behaviours and disciplinary matters. All employees will need to be aware of any changes and how changes will impact on them.

Recommendation 8

The Service should undertake a review of the disciplinary, grievance and corporate policies that address conduct, behaviours and values to ensure policies clearly set out what are the expectations of the Service in relation to the conduct, behaviours and values of its staff and organisation. The review should consider re-drafting the Discipline Policy to include the Zero-Tolerance Statement within the policy and to ensure that any intelligence received as result of Recommendations 7, 9 & 10 of the Inspectorate's report can be dealt with as gross misconduct if appropriate.

Recommendation 9

Training should be implemented and made mandatory for new starters and existing staff that addresses service values and expectations on behaviours and conduct (for example, the difference between 'banter' and bullying and when one becomes the other). This training and information should also cover the points raised in Recommendations 1 to 4.

Recommendation 10

Training should be implemented and made mandatory for managers to enable them to proactively manage or challenge inappropriate behaviours, such as bullying, harassment and discrimination, even if they do not themselves witness the behaviours alleged.

Governance

An absence of corporate reporting and therefore understanding about issues relating to behaviours and values of the Service (including those that are raised and perhaps more importantly are not being raised) might prevent the organisation from identifying and remedying problems.

Recommendation 11

That a process is implemented to monitor allegations being made, investigations and outcomes. This will include reporting on the location of where issues arise, managers of those locations, nature of the complaint etc. This will enable the Service to then assess where further intervention and training might be required. Reporting to the Senior Leadership Team and Members of key findings and actions will assist the Service in maintaining a corporate oversight.

This will also assist the Service in providing the data that is required in accordance with Recommendation 17 of the Inspectorate's report.

Recommendation 12

The Service should seek regular feedback from staff about values, culture, fairness and diversity. The Service should then show how they act on this feedback. This may include processes to monitor, including through the gathering and analysis of staff feedback, the Watch and team cultures and provide prompt remedial action for any issues they identify.

Recommendation 13

Given the recommendations within this report and the actions arising from the Spotlight report the Service should ensure appropriate resourcing and training in HR.