

Title: Whistleblowing Policy and Procedure

Summary: This policy and procedure is to help staff and contractors and suppliers for Bedfordshire Fire and Rescue Service report malpractice and ensure concerns are dealt with quickly

Further Information: Employment Rights Act 1996, Public Interest Disclosure Act 1998 and Enterprise and Regulatory Reform Act 2013.
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1 Policy Statement

Bedfordshire Fire and Rescue Service is committed to ensuring open communications in order to support the observance of ethical standards and good working practices, and to prevent unprofessional behaviour. The Service wants its employees to feel confident about raising serious concerns of unacceptable behaviour, corruption, malpractice and fraud.

This policy and procedure will help employees and workers understand the framework within which individuals are encouraged to report malpractice and to ensure that any such concerns are dealt with quickly. It also aims to reassure employees and workers that they will be protected from possible reprisals or victimisation.

Bedfordshire Fire and Rescue Service views it as the duty of all employees to report any acts of misconduct, dishonesty, breach of organisation rules or any other relevant rules or codes of conduct committed, contemplated or discussed by any other employees or any third party. Failure to do so may be regarded as very serious or gross misconduct depending on the circumstances.

An employee or worker will not be penalised for whistleblowing as long as they have a reasonable belief that the information disclosed is a qualifying disclosure. The belief does not need to be correct – it might be discovered subsequently that the employee or worker was wrong – but the employee or worker must show that they held the belief, and that it was a reasonable belief in the circumstances at the time of disclosure.

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This policy and procedure takes account of the requirements of the Employment Rights Act 1996, the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013, which provide a framework of protection against detrimental treatment or dismissal to workers who 'blow the whistle' on criminal behaviour or other defined wrongdoing.

The policy will be reviewed periodically to ensure that it continues to meet the requirements of the Act and the needs of Bedfordshire Fire and Rescue Service.



Signed:
Chief Fire Officer

Date: 27 October 2022

2 Organisational Responsibility

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|-----|---|---------------------------|
| 2.1 | The Assistant Chief Officer is the Principal Officer with the responsibility needed to be the designated manager responsible for ensuring this policy is effectively implemented. | ACO |
| 2.2 | Adequate resources, including finance, will be made available to enable this policy to be effectively implemented. | Corporate Management Team |

3 Policy Text

3.1 What is Whistleblowing?

'Whistleblowing is the popular term used when someone who works in or for an organisation (referred to in this document as an 'employee') raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, the public or the organisation's own reputation'¹.

As an early warning system, whistleblowing can help alert employers to risks such as:

- a danger in the workplace;
- fraud in, on or by the organisation;
- offering, taking or soliciting bribes;
- dumping damaging material in the environment; or
- misreporting performance data.

To clarify any confusion between whistleblowing and a grievance: whistleblowing is the raising of a concern about a danger or risk so that it may be investigated, while a

¹ PAS 1998:2008 – Whistleblowing Arrangements Code of Practice – British Standards Institute 2008

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grievance is a concern, problem or complaint about an individual's work, working conditions or relationships with colleagues that employees wish to raise with their employers. Grievances are dealt with under V10 06/01.

This policy applies to all employees and those contractors working for Bedfordshire Fire and Rescue Service on its premises, for example, agency staff, builders and drivers. It covers suppliers and those providing services under a contract with the Service in their own premises. It also protects trainees on vocational or work experience schemes.

3.2 Protection of Whistleblowers

If you are dismissed or victimised for whistleblowing, the protection you are offered is different depending on what type of worker you are.

Employees: There is employment protection available for workers. If you raise a genuine concern, you will not be at risk of losing your job or suffering any form of detriment / retribution. The Legislation makes it unlawful for the Service to dismiss anyone or allow them to suffer a detriment on the basis that they have made a protected disclosure. A worker should not be victimised for invoking this Policy even if the reported breach is not substantiated, proven or you were mistaken. The Service will not tolerate any harassment or victimisation (including informal pressures) because you have raised a concern and will consider taking action under its Bullying and Harassment Policy or Disciplinary Policy and Procedure deemed necessary to protect you when you raise a concern in the public interest. The Service will not apply pressure on you to withdraw a concern.

Note: Colleagues must not mistreat a fellow worker for reporting a whistleblowing concern. If an employee is involved in such conduct, they may be subject to disciplinary action, including dismissal under the Service's Disciplinary Policy and Procedure. In some cases, the whistleblower has the right to sue someone who has done this to them personally (in an Employment Tribunal), if they can show they were subjected to a detriment from that person because of the protected disclosure.

If, however, someone makes an untrue allegation maliciously or for personal gain, consideration may be given to taking disciplinary action. Disciplinary matters are for managers to consider but they will discuss the matter with the Monitoring Officer and Human Resources.

Workers that are 'non-employees': If you are not an employee and your contract has been terminated or you have been victimised you should be able to take your case to an Employment Tribunal and claim that you have suffered 'detrimental treatment'.

Members: Members are obviously not employees or non-employees under the above definitions. They cannot be dismissed for raising a protected disclosure as they are ultimately accountable to the electorate and subject to an election process.

3.3 Confidentiality

It is in the public interest that the law protects whistleblowers so that they can speak out if they find malpractice in an organisation. Blowing the whistle is more formally known as 'making a disclosure in the public interest' so it is important you can do so

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knowing that you are protected from losing your job and/or being victimised as a result of what you have uncovered and made public.

The Service hopes that the protection it offers will encourage you to raise your concerns openly, but you can ask that your identity is not disclosed when the matter is being investigated. If you ask for confidentiality, the Business Support Manager will advise you about whether your concern can be investigated if your identity is withheld. If so, the Service will make every effort to keep your identity confidential. In some cases, it may be necessary to disclose details of your allegation to the Police or the Service's auditors or the Shared Anti-Fraud Service, for example where the matter is likely to result in criminal proceedings or where the Service has a statutory obligation such as a requirement to report.

You should understand that if your personal evidence is necessary to prove your claim you might need to consider revealing your identity. The Business Support Manager can discuss this with you.

In terms of data protection, the relevant legislation does not impose an exact timeframe for retention of a whistleblower's personal data. Storage periods may vary significantly, and it is difficult to know exactly how long any complaint information will be required; however, to provide some certainty the Service shall retain personal data for six years or until the case is closed and the issue is resolved (whichever is the later date).

3.4 What is a Qualifying Disclosure?

Only certain types of 'whistleblowing' (or disclosures) qualify for protection and these are known as 'qualifying disclosures'. A "qualifying disclosure" means any disclosure of information which, in the reasonable belief of an employee or worker making the disclosure, is made in the public interest ["is made in the public interest" was inserted into this section by the Enterprise and Regulatory Reform Act 2013 and applies to disclosures made on or after 25 June 2013] and tends to show one or more of the following:-

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of any individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged; or
- (f) that 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.

An employee or worker will not be penalised for whistleblowing as long as they have a reasonable belief that the information disclosed indicates one or more of the offences above. The belief does not need to be correct, might be discovered subsequently that the employee or worker was wrong but the employee or worker

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must show that they held the belief, and that it was a reasonable belief in the circumstances at the time of disclosure. Further, the employee or worker must not be acting for personal gain.

Concerns regarding malpractice that do not fit in one or more of the categories above should be raised through the Grievance Procedure.

From 25 June 2013, a consequence of the new “public interest” requirement is that employees will generally be precluded from being able to “blow the whistle” about breaches of their own employment contract. An employee making such a complaint can use the Service’s Grievance Procedure.

A disclosure of information by an employee or worker is not a qualifying disclosure if in making it, they commit an offence (e.g. if the disclosure is prohibited under the Official Secrets Act 1989), or is in contravention of their written statement of terms and conditions.

Employees who make a ‘qualifying disclosure’ have the right not to suffer any detriment (such as straightforward dismissal, dismissal under cover of redundancy, bullying or harassment, demotion or failure to receive promotion) because of the disclosure.

3.5 Internal and External Procedures for Disclosure

3.5.1 Internal Procedure

Where an employee or worker raises a concern, the organisation will:

- ensure that such concerns are taken seriously;
- investigate properly and make an objective assessment of the allegation;
- keep the employee or worker advised of progress; and
- ensure that any action necessary is taken to resolve the allegation.

Where appropriate, the matter raised may:

- be investigated by management, internal audit, or through the disciplinary process;
- be referred to the Police;
- be referred to the external auditor; or
- form the subject of an independent inquiry.

An employee or worker should raise issues with their immediate Line Manager.

Employee to
Line Manager

If this is not appropriate because the matter is sensitive or if the individual believes that their Line Manager is involved, they should make direct contact with the Corporate Management Team (CMT) Member. If this level is still regarded as inappropriate, the individual should either go to the Chief Fire Officer or as a final option, directly to the Monitoring Officer. The chosen contact will be referred to as the 'Designated Officer'.

CMT Member/
Chief Fire
Officer/
Monitoring
Officer

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Employees or workers may ask for their concerns to be treated in confidence and their wishes will be respected.

Employees

The employee can raise the matter verbally or in writing. For written reports, the following format is recommended:

- the background and history of the concern (stating relevant dates); and
- the reason why they are concerned about the situation.

Employees are encouraged to discuss any concerns with a colleague first as they may find it easier to raise the matter if there are two (or more) people who have had the same experience or concerns.

If at any stage in the procedure employees or workers are unsure about what to do and would like confidential independent advice they may like to discuss their concerns with someone at Public Concern at Work (PcaW). PcaW is an independent charity staffed by lawyers which offers confidential free legal advice on whistleblowing, including other contacts and what legal protection may be available. PcaW's legal helpline can be contacted on 020 7404 6609 or by email at: helpline@pcaw.co.uk

The employee may wish to involve their trade union representative for advice, guidance and representation.

Trade Union Representative

The designated officer should respond within seven days and will arrange an initial interview to take place within fourteen calendar days. It may be appropriate to arrange the meeting off site.

Designated Officer

During the interview, the designated officer will reassure the individual that they will be protected from possible victimisation, and would ask if they wanted confidentiality and/or wanted to make a written or verbal statement. In either case, the Manager will write a brief summary of the interview within ten working days which would be agreed by both parties. This summary will:

Designated Officer

- acknowledge that the concern has been received;
- indicate how it is proposed to deal with the matter;
- inform the individual of whether further investigations will take place and if not, why not;
- give an estimated time scale for providing a final response;
- informing of any initial enquiries that have been made; and
- supply the individual with information on staff support mechanisms.

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The Designated Officer will report details of the meeting to the Chief Fire Officer, who would set up any further necessary investigations. Designated Officer/
Chief Fire Officer

3.5.2 External Procedure

Where an employee or worker reasonably believes one or more of the following:

- they would be victimised if they raised the matter internally;
- the concern had previously been raised with the Service;
- that evidence is likely to be concealed or destroyed; or
- the concern is of an 'exceptionally serious' nature.

they may make a qualifying disclosure to the appropriate and relevant regulatory body including:

- the Controller and Auditor General National Audit Office (NAO) – 020 7798 7999;
- External Auditors – Mick West Director of Ernst & Young;
- Internal Auditors – RSM;
- relevant professional bodies or regulatory organisations;
- the Environment Agency;
- the Police (if it is potentially a criminal matter); or
- the Health and Safety Executive.

Regulatory disclosures can be made whilst receiving full protection.

3.5.3 Regulatory Disclosures

The Public Interest Disclosure Act 1998 makes special provision for disclosures to prescribed persons. These are likely to be regulators such as the Health and Safety Executive or the Inland Revenue. Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and additionally, honestly and reasonably believes that the information and any allegation in it are substantially true. Prescribed regulators are prescribed by the Secretary of State under section 43G of the Public Interest Disclosure Act 1998.

3.5.4 Wider Disclosures

Wider disclosures, such as those to the Police, the media, MPs, and non-prescribed regulators are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they are not made for personal gain.

However, these preconditions do not apply where the malpractice is of an exceptionally serious nature.

Before taking matters to an external body, the Authority would advise the whistleblower to seek independent legal advice.

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If the whistleblower decides to take the matter outside the Authority, they should ensure that they do not disclose information about a third party, e.g. a company or a private individual which may be covered by a duty of confidentiality. Independent legal advice should address this matter.

3.6 Protection for Whistleblowers

3.6.1 Internal Disclosure

The Service will not tolerate any harassment or victimisation of any employee and will take appropriate action to protect individuals who raise a concern in good faith.

A qualifying disclosure will be a protected disclosure where it is made through the Service's internal procedures or to another person whom the worker reasonably believes to be solely or mainly responsible for the relevant failure.

The Service will not retaliate against individuals or treat workers less favourably because of whistleblowing.

Any investigation into allegations of potential malpractice will not influence or be influenced by any Service procedures that may already affect a member of staff.

Where a whistleblower is victimised or dismissed in breach of the Act, they can bring a claim to an employment tribunal for compensation.

3.6.2 External Disclosure (through prescribed regulators or wider disclosures)

If a worker makes a qualifying disclosure to a prescribed person, it will be a protected disclosure provided that the worker:

- makes the disclosure in good faith;
- reasonably believes that the information and allegations it contains are substantially true; and
- reasonably believes that the matter falls within the description of matters for which the person or body has been prescribed (e.g. breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive or appropriate local authority).

As to all external disclosures, they must show a factual basis for their belief; and as to wider public disclosures (unless there is some good reason why not) the concern should have been raised internally or with a prescribed regulator first.

3.7 Detrimental Treatment

Any allegation of detrimental treatment will be fully investigated. Where an allegation is found to be substantive, this will be viewed as a serious matter within the context of the Disciplinary Policy and Procedure and action will be taken accordingly.

Employees protected by the Employment Rights Act 1996 and the Public Interest Disclosure Act 1998 are entitled to complain to an Employment Tribunal that they

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have been subjected to detriment or have been unfairly dismissed by their employer for making a protected disclosure.

3.8 Trade Union Advice

Employees/workers wanting to raise concerns can seek help, advice and representation from their trade union representative.

3.9 False or Malicious Allegations

Any allegation will be fully investigated. Where an allegation is found to be false or malicious, this will be viewed as a serious matter within the context of the Disciplinary Policy and Procedure and action will be taken accordingly.

Where appropriate, the Organisation will seek to claim costs against the employee in circumstances where false or malicious allegations are made.

4 People Impact Assessment

There is no potential or actual differential impact on individuals. The policy is in line with the NFCC Core Code of Ethics for Fire and Rescue Services. Translation services are available upon request.

5 Review

5.1 This Service Order will be subject to review at 2 yearly intervals or following significant change to organisational structure, personnel, procedures or legislation, etc.



Bedfordshire
Fire & Rescue Service

Service Information System Policies and Procedures

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