

THE HIGHLAND AND ISLANDS FIRE BOARD

29 January 2010

**PUBLIC INTEREST DISCLOSURE (“WHISTLEBLOWING”)
POLICY**

Report by Chief Fire Officer

Agenda Item	
Report No	

Summary

This report provides Fire Board Members with a revised copy of the ‘Policy on Public Interest Disclosure (“Whistleblowing”)’.

Background

This policy is the revised “POLICY ON PUBLIC INTEREST DISCLOSURE” and is appropriate to all HIFRS employees and contractors. The original draft policy was approved by the Board in August 2004.

Based on local government best practice, the policy aims to:

- provide ways for employees/workers to raise concerns and receive feedback
- inform employees/workers on how to take the matter further if they are dissatisfied with the response; and
- reassure employees/workers that provided the concern is made in good faith, and the “whistleblower” has a reasonable suspicion that the alleged malpractice has occurred, is occurring, or is likely to occur will be protected from detrimental treatment for "Public Interest Disclosure" in good faith.

There are existing procedures in place to enable employees to lodge grievances or concerns relating to their employment and it is recognised that some employees/workers are bound by Codes of Conduct from their professional institutions.

The Service’s Complaints Procedure is available to employees as members of the public if in that capacity they have a complaint about service delivery

This policy covers any concerns of employees/workers as to malpractice or wrongdoing. A concern of malpractice or wrongdoing may be about something that:

- is unlawful; and/or
- a criminal offence has been committed, is being committed or is likely to be committed; and which may involve reference to the Police and/or
- there has been a failure or likely to be a failure to comply with any legal obligation; and/or

- is against the Service's Policies, Financial or Contract Regulations, or policies; and/or
- is otherwise improper conduct; and/or
- a miscarriage of justice has occurred or is likely; and/or
- that health or safety of any individual has been or is likely to be endangered; and/or
- that the environment is being or is likely to be damaged; and/or
- that information on the above is being or is likely to be deliberately concealed.

Conclusion

There have been minor alterations to the policy to reflect changes in Service structure and titles, but the objective of the review was to clearly re-brand the policy as "whistleblowing" (there was confusion over the meaning of the previous title), and to ensure that the policy was communicated appropriately to staff and managers. All staff have been informed of the new policy, and it is now available on the Service's policy drive.

Recommendation

HIFRS asks that the Board NOTES the updated Whistleblowing Policy.

DAVID WYNNE
CHIEF FIRE OFFICER
18 January 2010



Highlands and Islands Fire and Rescue Service

POLICY ON PUBLIC INTEREST DISCLOSURE (“WHISTLEBLOWING”)

AUTHOR: HR
DATE APPROVED: 9/9/2009
APPROVED BY: SLT
REVIEW DATE: 9/9/2011
RESPONSIBILITY: HR
EIA COMPLETED

1. Introduction

- 1.1 Employees and those people, who work closely with the Service, are often the first to realise that there may be something seriously wrong within the Service. However, they may not express their concerns because they feel that speaking up would be disloyal to the Service or to their colleagues. They may fear harassment or that their job may be at risk. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.2 The Service is committed to openness, probity and accountability. It expects employees and others with serious concerns about any aspect of the Service's work to come forward and voice those concerns. The Service, its employees and those who work closely for the Service, such as fire-fighters, support staff, agency staff, sub-contractors, (hereafter called "workers") and as defined in the Public Interest Disclosure Act 1998 have mutual responsibilities of fidelity, support, confidence and trust. This policy lets employees/workers raise serious concerns within the Service rather than overlooking or ignoring a problem or immediately "blowing the whistle" to the media or other external bodies.
- 1.3 This Policy is intended to build upon the rights/requirements and protections of the Public Interest Disclosure Act 1998, and the Employment Rights Act 1996 and to which reference will be made in the publication of this policy. It does not remove any rights or protection provided by the Acts.

2. Aims and Scope of the Policy

- 2.1 This policy aims to:
 - provide ways for employees/workers to raise concerns and receive feedback
 - inform employees/workers on how to take the matter further if they are dissatisfied with the response; and
 - reassure employees/workers that provided the concern is made in good faith, and the "whistleblower" has a reasonable suspicion that the alleged malpractice has occurred, is occurring, or is likely to occur will be protected from detrimental treatment for "Public Interest Disclosure" in good faith.
- 2.2 There are existing procedures in place to enable employees to lodge grievances or concerns relating to their employment and it is recognised that some employees/workers are bound by Codes of Conduct from their professional institutions.
- 2.3 The Service's Complaints Procedure is available to employees as members of the public if in that capacity they have a complaint about service delivery.

2.4 This policy covers any concerns of employees/workers as to malpractice or wrongdoing. A concern of malpractice or wrongdoing may be about something that:

- is unlawful; and/or
- a criminal offence has been committed, is being committed or is likely to be committed; and which may involve reference to the Police and/or
- there has been a failure or likely to be a failure to comply with any legal obligation; and/or
- is against the Service's Policies, Financial or Contract Regulations, or policies; and/or
- is otherwise improper conduct; and/or
- a miscarriage of justice has occurred or is likely; and/or
- that health or safety of any individual has been or is likely to be endangered; and/or
- that the environment is being or is likely to be damaged; and/or
- that information on the above is being or is likely to be deliberately concealed.

3. How to raise a concern

3.1 Issues that are considered to be relatively minor should be raised with the employees/workers immediate line manager, or another manager or equivalent seniority. For more serious issues such as fraud, corruption or unlawful acts etc, then this should be brought to the immediate attention of the appropriate Head of Department or the Deputy Chief Fire Officer. In the event either is the subject of the complaint the Chief Fire Officer should be informed. Whenever any matter arises which involves, or is thought to involve irregularities concerning finance, assets or property in the exercise of the function of the Service, the Head of Corporate Services will immediately notify the Head of Audit. The Convenor, the Vice-Convenor, or the Deputy Chief Fire Officer are appropriate persons to receive complaints under this Policy either against or which involve the Chief Fire Officer.

3.2 This Policy does not preclude disclosure to prescribed regulators or bodies or persons for example Health & Safety Executive and the Scottish Environment Protection Agency or the Local Government Ombudsman in appropriate cases.

3.3 It is easier to act on concerns regarding wrong doings/malpractice when they are in writing, as this provides a historical account of the concern, giving names, dates and places where possible, as well as providing the opportunity to state why the individual is particularly concerned about the situation. Alternatively, those who do not feel able to put their concern in writing, can telephone the "appropriate manager" to provide a verbal account of the information that is sought.

- 3.4 The earlier the concern is expressed, the easier it is to take action.
- 3.5 Although employees/workers are not expected to prove the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for concern i.e. they have an honest and reliable suspicion or belief that malpractice or wrongdoing has happened, is happening, or is likely happen.
- 3.6 An individual may invite his/her trade union representative or another person to raise a matter on their behalf, again preferably in writing.

4. How the Concern will be dealt with

- 4.1 The action taken by the Service will depend on the nature of the concern. There will be a range of actions, including:
- be investigated internally;
 - be referred to Internal Audit;
 - be referred to the Police;
 - be referred to the External Auditor;
 - form the subject of an independent inquiry.
- 4.2 Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of other, existing, procedures (for example child protection or discrimination or harassment issues) will normally be referred for consideration under those other procedures.
- 4.3 Some concerns may be resolved by agreed action without the need for investigation.
- 4.4 Within ten working days of the employer being notified, the Service will write to the employee/worker (at his/her home address) who raised the issue:
- acknowledging that the concern has been received;
 - indicating how it proposes to deal with the matter;
 - giving an estimate of how long it will take to provide a final response;
 - saying whether any initial enquiries have been made; and
 - whether further investigations will take place, and if not, why not.
- 4.5 The amount of contact between the body or person considering the issues and the individual raising the concern, 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 the individual.

- 4.6 When any meeting is arranged the employee will have the right, if they so wish, to be accompanied by a trade union or professional association representative or a colleague.
- 4.7 The Service accepts that employees need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, they will receive information about the outcomes of any investigations.

5. Alternative methods of taking forward a complaint

- 5.1 This policy is intended to provide employees/workers with a way to raise concerns about the Service, within the Service. The Service hopes this will satisfy employees/workers. However if the individual feels it is right to take the matter outside this process, by disclosure to other persons, the following are possible contact points:

If employees/workers do take the matter outside the Service, they need to ensure that in making a disclosure, they do not commit an offence under law. The Legislature may prescribe bodies e.g. Audit Scotland, or persons to receive disclosures of concerns of malpractice or wrongdoing. Such a disclosure will be protected provided if it is made in good faith; the individual reasonably believes that the information disclosed and any allegations contained therein to the prescribed body or person is substantially true; and the relevant "failure" falls as a matter for which the person or body has been prescribed.

Disclosures in other cases may be protected if made in good faith with reasonable suspicion that the alleged malpractice has occurred, is occurring, or is likely to occur, not made for personal gain, and if the worker believed he/she would be subject to detriment for disclosure or believed that the evidence would be destroyed or he/she had made a disclosure of substantially the same information to the employer or prescribed person.

Exceptionally serious malpractice may mean bypassing other means of disclosure if in all the circumstances it is reasonable to make the disclosure, in good faith, for no personal gain, in belief that the substance/allegations are substantially true.

6. Safeguards & Protection

6.1 **Detrimental Treatment**

The 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 malpractice. The Service will not tolerate harassment or victimisation e.g. by colleagues, managers or other workers under the Service's control and will take action to protect employees/workers when they raise a concern in good faith; either during its investigation; and/or subsequent to the investigation.

If an employee/worker is already the subject of disciplinary or redundancy procedures or is using the grievance or harassment or pensions disputes procedure, then those procedures will not necessarily be halted as a result of the "Public Disclosure".

6.2 **Confidentiality**

The Service recognises the sensitivities, and the potential awkwardness and embarrassment caused by employees/workers raising concerns, particularly if these might have an impact on colleagues, managers or on the organisation itself. Where the discloser does not want their identity to be revealed, their wish for confidentiality will be respected until such time as there is an overriding reason why their identity should be disclosed. This may be as a requirement for legal or disciplinary proceedings to progress. It is important to note that knowing the identity of the 'whistleblower' facilitates feedback that the concern is being investigated and dealt with.

6.3 **Anonymous Allegations**

This policy encourages employees/workers to put their names to allegations. Concerns expressed anonymously are much less powerful, but whether they will be followed up is at the discretion of the Service. In exercising this discretion the factors to be taken into account will include:

- the seriousness of the issue raised;
- whether the allegation/expression of concern is worthy of belief; and
- the likelihood of confirming the allegation from attributable sources.

7. Contractors

- 7.1 Certain categories of contractors as identified by the legislation will be informed of this policy and its availability for use by their staff.

8. The Responsible Officer

- 8.1 The Chief Fire Officer has overall responsibility for the maintenance and operation of this policy and will maintain a record of concerns raised and the outcomes (but in a form which does not breach confidentiality) and will report as necessary to the Fire Board through the Audit Working Group.

9. Review

This policy will be subject to periodic review to ensure continued relevance and consistency in application.