

Internal Audit Report

ESFRS - Compliance with Disciplinary, Grievance, Harassment and Bullying Procedures 2019/20

FINAL

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Prepared for: East Sussex Fire & Rescue Service

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Internal Audit Report – ESFRS - Compliance with Disciplinary, Grievance, Harassment and Bullying Procedures 2019/20

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1. Introduction

- 1.1. East Sussex Fire and Rescue Service (ESFRS) has in place policies for managing issues relating to harassment, bullying, inappropriate behaviour, raising and managing grievances and undertaking disciplinary action.
- 1.2. Failure to establish robust HR policies based upon relevant employment legislation and to comply with these could increase the likelihood of inappropriate behaviour where policies are not in place, with ensuing claims and legal action against the Authority, as well as financial loss through fines imposed by employment tribunals.
- 1.3. This review is part of the agreed Internal Audit Plan for 2018/19.
- 1.4. This report has been issued on an exception basis whereby only weaknesses in the control environment have been highlighted within the main body of the report.

2. Scope

- 2.1. The purpose of the audit was to review and assess compliance with the above policies.
- 2.2. The control objectives for this review were as follows:
 - HR Policies for managing grievances, disciplinary action, harassment and bullying are reviewed periodically to ensure they are compliant with legislation and codes of practice and are accessible to all staff.
 - There is a process for capturing lessons learned from previous cases and, where appropriate, for updating relevant policies.
 - The system for managing cases of disciplinary action, grievance, harassment and bullying is effective.
 - HR policies for managing grievances, disciplinary action, harassment and bullying are complied with and this is monitored.

3. Staff Survey

- 3.1. During the review, we undertook a staff survey on the Harassment, Bullying and Inappropriate Behaviour Guidance and the Grievance Procedures. This was requested by management to support the audit and to help understand general awareness of these policies amongst employees. There were 109 responses to the survey although a significant number of those who completed the survey chose not to answer every question.
- 3.2. The survey results showed that 50% of those who responded had been subjected to either bullying, harassment or inappropriate behaviour at work or, had cause to raise a grievance. In addition, a few employees were unaware of the existence of one or both of the procedures and, of those who were, some chose not to report their concerns to management.
- 3.3. The results are attached as Appendix B to this report.

4. Audit Opinion

Partial Assurance is provided in respect of compliance with Disciplinary, Grievance, Harassment and Bullying Procedures. This opinion means that there are weaknesses in the system of control and/or the level of non-compliance is such as to put the achievement of the system or service objectives at risk.

Appendix A provides a summary of the opinions and what they mean and sets out management responsibilities.

5. Basis of Opinion

- 5.1. We have provided Partial Assurance over the controls operating within this area because:
- 5.2. We found that the Grievance Procedure and the Harassment, Bullying and Inappropriate Behaviour Guidance were both out of date at the time of our review. The Grievance Procedure was last updated in June 2013 and was due to be reviewed in October 2015 and the Harassment, Bullying and Inappropriate Behaviour Guidance was last updated in April 2011 and was due for review in March 2013. Neither of these documents have been updated since. The Grievance Procedure was in the process of being reviewed during the audit.
- 5.3. Whilst the policies were found to be broadly compliant with the Advisory, Conciliation and Arbitration Service (ACAS) code of practice, there were several areas within the Harassment, Bullying and Inappropriate Behaviour policy and the Disciplinary Procedure where compliance could be improved.
- 5.4. We found that there is no systematic process in place to capture lessons learned from previous cases (disciplinary, grievance etc.) which means there is a greater risk of repeating poor practice where this has occurred.
- 5.5. The Firewatch system is used to record all cases referred to HR. Whilst this ensures that there is a central record and that all key documentation is held securely, there is no case management process within Firewatch to ensure that timescales are adhered to and evidence of slippage was identified.
- 5.6. We reviewed thirteen recently completed cases and identified six where there was evidence of non-compliance with policies.

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6. Action Summary

| Risk Priority | Definition | No | Ref |
|---------------------------------------|--|----|-------|
| High | Major control weakness requiring immediate implementation | 0 | |
| Medium | Existing procedures have a negative impact on internal control or the efficient use of resources | 3 | 1,3,5 |
| Low | Represents good practice but its implementation is not fundamental to internal control | 3 | 2,4,6 |
| Total number of agreed actions | | 6 | |

- 6.1. As part of our quarterly progress reports to Audit Committee we track and report progress made in implementing all high priority actions agreed. Medium and low priority actions will be monitored and re-assessed by Internal Audit at the next audit review or through random sample checks.

7. Acknowledgements

- 7.1. We would like to thank all staff that provided assistance during the course of this audit.

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| Ref | Finding | Potential Risk Implication | Priority | Agreed Action |
|----------------------|---|--|-----------------------------|--|
| 1 | <p>HR Policies</p> <p>We found that two of the three policies were out of date at the beginning of this review.</p> <p>The Harassment, Bullying and Inappropriate Behaviour Guidance should have been reviewed in March 2013 and the Grievance Procedure should have been reviewed in May 2015. We understand that the latter policy is in the process of being reviewed. The Disciplinary policy is now due for review and we understand that this is planned to be completed by the end of 2019.</p> | <p>Unless HR procedures and guidance are reviewed and updated periodically, current practice may not fully comply with the latest ACAS guidance.</p> <p>Employment tribunals will take the ACAS code into account when considering relevant cases and may adjust awards made by up to 25 percent for employers who unreasonably fail to follow the guidance set out in the code.</p> | Medium | <ul style="list-style-type: none"> • The Grievance policy has been re-written, consulted upon and was issued in November 2019 • The Harassment, Bullying and Inappropriate Behaviour Manual note is being review by the Orbis Policy Development team – likely to be renamed/updated and reissued as a Dignity at Work policy • The Disciplinary Policy is being reviewed and updated by the Orbis Policy Development Team • Training will also be developed to support these policies and embed the key behaviours required to resolve workplace conflict |
| Responsible Officer: | | Lucy Birch, HR & OD Manager | Target Implementation Date: | Policies – May 2020 Training commencement - September 2020 |

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| Ref | Finding | Potential Risk Implication | Priority | Agreed Action |
|-----|--|---|----------|--|
| 2 | <p>Compliance with ACAS Codes and Guidance</p> <p>The three HR policies were reviewed and except for the points listed below, were broadly in line with ACAS guidance and codes of practice.</p> <p>Harassment Bullying and Inappropriate Behaviour Guidance</p> <ul style="list-style-type: none"> • The guidance doesn't specify that it applies both on and off premises. • There is no coverage of the investigation procedures, including timescales for action. • Details of training available for managers should be included. • The guidance should specify how it is to be implemented, reviewed and monitored. • The guidance could be clearer about not tolerating bullying or harassment of staff by visitors to the organisation. | <p>In the event of a case being referred to an employment tribunal, non-compliance with ACAS codes and guidance could lead to fines and negative publicity.</p> | Low | <p>The highlighted policy issues will be incorporated into the policy reviews outlined in Ref 1.</p> |

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| Ref | Finding | Potential Risk Implication | Priority | Agreed Action |
|-----------------------------|---|-----------------------------|------------------------------------|--|
| | <p>Disciplinary Policy</p> <ul style="list-style-type: none"> • Written notification of a disciplinary meeting should give details of the time and venue for the meeting and advise the employee of their right to be accompanied at the meeting. We understand that this is happening in practice, however, it is not reflected in the policy. • Written warnings should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). We understand that this does happen in practice, however, the policy doesn't specify what should be included in warning letters. | | | <p>The highlighted policy issues will be incorporated into the policy reviews outlined in Ref 1.</p> |
| Responsible Officer: | | Lucy Birch, HR & OD Manager | Target Implementation Date: | May 2020 |

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| Ref | Finding | Potential Risk Implication | Priority | Agreed Action |
|------------------------------------|--|---|---|---|
| 3 | <p>Lessons Learned from Previous Cases</p> <p>There is no process in place to capture any learning points from previous cases (disciplinary, grievance etc.).</p> | <p>Unless lessons from previous cases are learned and incorporated into current practice, there is a risk of repeating poor practice. This could result in avoidable fines being imposed by Employment Tribunals.</p> | Medium | <p>A standing item will be added on the agenda for monthly HR team meetings and collating lessons learned for consideration at the recently initiated 'Complex Case Management' meetings.</p> |
| <p>Responsible Officer:</p> | | <p>Lucy Birch HR & OD Manager</p> | <p>Target Implementation Date:</p> | <p>March 2020</p> |

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| Ref | Finding | Potential Risk Implication | Priority | Agreed Action |
|-----------------------------|--|--|------------------------------------|---|
| 4 | <p>System for Managing Cases</p> <p>The cases referred to HR are recorded in the Firewatch system. This ensures that there is a central record and that all key documentation is held securely. However, the Firewatch system does not provide case management functionality and we understand there is no way to monitor cases to ensure key deadlines are met, apart from manually reviewing each case.</p> | <p>Cases could be escalated if key deadlines are missed. This could lead to unfavourable decisions and fines in the event that cases are referred to an employment tribunal.</p> | Low | <p>We will investigate whether Firewatch has any capability to be used to monitor and report upon process timelines.</p> <p>In the event a system solution is not available, we will implement a manual system on existing casework tracker spreadsheets.</p> |
| Responsible Officer: | | Lucy Birch, HR & OD Manager | Target Implementation Date: | Initial investigation of options 31 March 2020 |

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| Ref | Finding | Potential Risk Implication | Priority | Agreed Action |
|-----|--|--|----------|---|
| 5 | <p>Compliance with Policies</p> <p>Thirteen recently completed cases were reviewed to check if they complied with policies and guidance.</p> <p>We found that six out of thirteen cases did not fully comply with policies. The areas of non-compliance included the following:</p> <ul style="list-style-type: none"> • The same HR officer gave advice at both the informal and formal stages of a grievance in breach of section 3.3.2 of the Grievance Procedure. • In two cases, hearings were not offered within 14 days of form PD21 being submitted. This is in breach of section 3.6.1 of the grievance policy. In one case, the hearing didn't take place for four months and in the other case, the matter was resolved informally seventeen days after form PD21 had been submitted. • In one case, the line manager didn't consult with HR, in compliance with section 3.3 of the disciplinary policy. HR believe that the decision to put a note | <p>Unless cases are managed strictly in compliance with HR policies, there is a risk that areas of non-compliance could result in fines being made against the service in the event that cases are referred to an employment tribunal.</p> | Medium | <p>In addition to the actions agreed above, we will undertake some work to scope the feasibility of outsourcing case work where capacity, sensitivity of the case, or objectivity might justify using an external provider. In reaching such an agreement with an external provider, we can ensure timescales are agreed in advance.</p> <p>We will also work with the representative bodies to try and agree some flexibility in the timescales within the policy. However, this will involve formal consultation to move outside of the nationally agreed terms and conditions of service and as such, will take time to implement.</p> |

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| | <p>on the employees file was rushed and had they been informed at an earlier stage, there may have been a different outcome. HR wrote to the line manager and arranged a meeting to provide some feedback should a similar situation arise in the future.</p> <ul style="list-style-type: none"> In one case, there was a delay in appointing an independent Group Manager to undertake the investigation. In this case, the Incident occurred in January 2018, but the investigating manager was not appointed until March 2018. Appendix A of the Disciplinary Procedure (section 2.1) states that the investigation should proceed as quickly as is reasonably practicable. It was HR's view that the delay was unreasonable. | | | |
| Responsible Officer: | | Lucy Birch, HR & OD Manager | Target Implementation Date: | Initial investigations and scoping – 31 March 2020 |

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| Ref | Finding | Potential Risk Implication | Priority | Agreed Action |
|------------------------------------|--|---|---|---|
| 6 | <p>Retention of Evidence</p> <p>In addition to the examples of non-compliance identified during this review, we found that in one case, the HR officer had saved evidence in an Egress email that could no longer be opened due to the fact that the individual had since left the service.</p> | <p>Unless all evidence is saved on Firewatch and can be accessed by relevant officers, cases may be delayed, and key deadlines may be missed.</p> | Low | <p>We will seek advice on the best way to store evidence. We will build processes which ensure we are keeping data in relation to discipline/grievance matters in accordance with GDPR regulations and retention schedules.</p> |
| <p>Responsible Officer:</p> | | <p>Lucy Birch, HR & OD Manager / Business Process Engineer</p> | <p>Target Implementation Date:</p> | <p>June 2020</p> |

Appendix A

Audit Opinions and Definitions

| Opinion | Definition |
|------------------------------|---|
| Substantial Assurance | Controls are in place and are operating as expected to manage key risks to the achievement of system or service objectives. |
| Reasonable Assurance | Most controls are in place and are operating as expected to manage key risks to the achievement of system or service objectives. |
| Partial Assurance | There are weaknesses in the system of control and/or the level of non-compliance is such as to put the achievement of the system or service objectives at risk. |
| Minimal Assurance | Controls are generally weak or non-existent, leaving the system open to the risk of significant error or fraud. There is a high risk to the ability of the system/service to meet its objectives. |

Management Responsibilities

The matters raised in this report are only those which came to our attention during our internal audit work and are not necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

Internal control systems, no matter how well designed and operated, are affected by inherent limitations. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

This report, and our work, should not be taken as a substitute for management's responsibilities for the application of sound business practices. We emphasise that it is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal Audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.

Appendix B

HR Policies Survey Results



HR Policies Survey
October 2019 - Final.xlsx