

Lancashire Combined Fire Authority

Meeting to be held on Monday 24 June 2024

Policy on Dealing with Habitual and Vexatious Complaints

(Appendix 1 refers)

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Executive Summary

At its meeting held 20 June 2016 the Authority adopted a formal Policy on Dealing with Habitual and Vexatious Complaints (resolution 13/16 refers) which is fair and proportionate, yet which does not prevent genuine complaints from being properly investigated and fair and equitable outcomes promulgated (attached as appendix 1).

On an annual basis the Clerk and Chief Fire Officer review the status of complainants judged to be unreasonably persistent or vexatious and reports this to the Authority.

In addition, each year the Clerk reviews the Policy. This year's review concludes that the effectiveness of the Policy is demonstrable, accordingly the Policy remains appropriate, proportionate and effective to the needs of Members, Officers and staff.

Recommendation(s)

The Authority is asked to note and endorse the report.

Information

The Policy on Dealing with Habitual and Vexatious Complaints identifies situations where a complainant, either individually or as part of a group, or a group of complainants might be considered to be habitual or vexatious. It sets out the definitions of habitual or vexatious complainants and the process that the Authority follows.

During the previous 12 months there have been no complainants judged to be unreasonably persistent or vexatious which suggests that it is a useful means of controlling and managing resources and bullying.

However, there are currently matters under investigation which may devolve into circumstances where the application of this Policy may be deemed fair, equitable and proportionate in the circumstances and the Authority will be informed within the next 12 month cycle as to the propensity with which the Policy has been applied.

In line with the Policy, the Clerk has reviewed it to ensure that it remains appropriate, proportionate and effective to the needs of Members, Officers and staff.

Business Risk

The policy will be used to defend the Authority's position in refusing to engage with "vexatious" complainants who may pursue perceived entitlement to make applications to the Authority under, e.g.: Freedom of Information or Data Protection Act legislation, there is a risk that such complaints will be elevated outside the Authority's internal processes. The Authority may therefore be required to defend its position externally in processes governed by, for example; the Information Commissioner's Office ("ICO") or Local Authority Ombudsman. The exposure to risk can be minimised by virtue of the fact that in such cases the Authority will be given an opportunity by the external arbiter to provide comment with any supporting documentation and ultimately to review or even change its decision. At this point there should be a further assessment of the business and financial risk to the Authority of maintaining its position regarding a decision to declare the relevant complaint as vexatious. Such an assessment should also involve a review of the evidence which has given rise to the conclusion that such complaints are habitual or vexatious in accordance with the criteria set out in the policy.

Environmental Impact

None.

Equality and Diversity Implications

There is a minor risk that any habitual or vexatious complaints could be driven by mental impairment, with a correspondingly low risk that such impairment amounts to a disability, for which the Authority would be culpable, only if the complainant was an existing employee. In those circumstances the existence and application of the Policy would, in all likelihood consist of a proportionate means of achieving a legitimate aim, which would therefore be capable of rebuttal. Otherwise it is highly unlikely to conflict with the Authority's public sector Equality Duty.

HR Implications

The policy must not conflict with the Authority's obligations under its own Whistle Blowing Policy, as this may cast doubt on the Authority's compliance with a whistle blowing policy and obligations. However, given that such disclosures are to be made in good faith, not for personal gain and in the genuine public interest, there should in reality be no conflict or overlap, provided the complaints have been properly evaluated under the criteria outlined in the Habitual and Vexatious Complaints Policy.

Financial Implications

The index example above involving the ICO could, in theory, give rise to a situation where the ICO makes a determination holding the Authority culpable. It has the power to impose fines, should the ICO apply to a court for certification that the Authority has failed to comply with a decision notice, an information notice or an enforcement notice. The matter would be dealt with thereafter as a civil contempt. It is highly unlikely that given the provision for review and conciliation that the Authority would be placed in such a situation and that any risk of such an outcome would occur in no more than 2-5% of any cases and such action could be militated whatever the circumstances if necessary.

Legal Implications

In respect of any repeated subject access requests or requests made under the Freedom of Information Act 2000 there is a potential risk of liability if the matter is then reported to

the Information Commissioner's Office. In the event that the person(s) to whom the Policy is applied make such applications then these should be reviewed by the Chief Fire Officer and the Clerk to the Authority, notwithstanding the application of the Policy, to ensure that there is any compliance failure or in the event that there is, that one of the relevant exemptions applies or the risk has been militated and relevant explanations are recorded along with the documents relating to the decision.

Local Government (Access to Information) Act 1985

List of background papers

Paper:

Date:

Contact:

Reason for inclusion in Part 2 if appropriate: N/A