



LONDON FIRE BRIGADE

LFC – 012

# Review of Historical Cases

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**Report to:** London Fire Commissioner

**Date:** 27 January 2023

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**Report by:**

Kate Bonham Assistant Director, People Services

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**Report classification:** For decision

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**For publication**

I agree the recommended decision below.

A handwritten signature in black ink, appearing to read 'Andy Roe'.

**Andy Roe**

**London Fire Commissioner**

**Date** This decision was remotely signed on 27 January 2023

## Recommended decisions

1. That the London Fire Commissioner agrees to the framework attached as Appendix A for the review of bullying, harassment, and discrimination complaints from the last five years, implementation of Recommendation 3 of the independent Culture Review of the London Fire Brigade by Nazir Afzal.
2. That the London Fire Commissioner delegates the decisions on the re-opening and re-investigation of cases, and the closure of cases as set out in Appendix A to the Assistant Director People Services and the Director for People Services.

## 1 Introduction and background

- 1.1 The independent Culture Review of the London Fire Brigade (LFB), led by Nazir Afzal was published on 25 November 2022. Nazir spoke to over 2000 LFB employees, and describes attitudes, behaviours and prejudices totally opposed to the Brigade's values, primarily over the last five years. This includes 'horrendous racial abuse', homophobia and 'countless accounts of women being subject to abuse from colleagues on a day-to-day basis, pointing to a deep-rooted culture of misogyny'.
- 1.2 The report also provides evidence of a lack of trust in LFB processes, notably related to People Services (HR) and managers, with staff citing examples of where they have raised concerns and they have not been dealt with.
- 1.3 The LFB accepts the testimony of the staff that came forward to share their experiences and has accepted the 23 recommendations put forward by Nazir and his team. Recommendation 3 in the report asks the LFB to '*Consider a historic review of complaints about bullying, racism and misogyny over the last five years. This would establish a team to determine whether further action is necessary in cases where justice has been denied*'.
- 1.4 In response to the report, the LFB has confirmed its zero-tolerance approach to discrimination, bullying and harassment as set out in extant policies and procedures and has set up an External Complaints Service with CMP Solutions where staff and managers can seek advice on such matters and raise complaints. This service will also carry out independent investigations. The procurement of this service also included the review of discrimination, bullying and harassment complaints from the last five years, enabling the implementation of Recommendation 3.
- 1.5 The historic case review is expected to take up to 23 weeks and cover around 50 cases. **Appendix A** sets out a framework for this review, which will act as the standard Terms of Reference for the reviews.

## 2 Objectives and expected outcomes

- 2.1 The completion of the historic case review ensures implementation of Recommendation 3 and Outcome 4 in the Review of LFB Culture. Outcome 4 states: '*Review past cases and ensure all complaints over the past five years have been managed appropriately and the correct sanctions applied and where not, an appropriate remedy has been introduced*'.

## 3 Equality comments

- 3.1 The LFC and the Deputy Mayor for Fire and Resilience are required to have due regard to the Public Sector Equality Duty (section 149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on different people, taking this into account and then evidencing how decisions were reached.

- 3.2** It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
- 3.3** The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), race (ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, and sexual orientation.
- 3.4** The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
  - advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
  - foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 3.5** Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic.
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
  - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.6** The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include steps to take account of disabled persons' disabilities.
- 3.7** Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- tackle prejudice
  - promote understanding
- 3.8** The aim of the reviews are to ensure that Brigade policies and processes have been followed as they were intended to, and that appropriate decision making has taken place in respect of those cases. Where it is deemed that this has not been the case further action will be considered, which will include improvements to areas of policy and process, their application, and professional capability of managers with responsibility in these areas. This will have a positive impact on employees who share a protected characteristic based on the findings of the culture review and based on the profile of complainants highlighted in the attached EIA.

## **4 Workforce comments**

4.1 The historic case review is a specific recommendation in the Culture Review and the LFB's intention to carry this out has been communicated to all staff, Trade Unions and Equality Support Groups.

4.2 Individuals to whom review cases relate will be contacted and kept informed of progress in the manner set out in the framework attached as Appendix A.

## 5. Sustainability comments

5.1 There are no sustainability comments.

## 6. Procurement comments

6.1 The historic case review will be carried out by CMP Solutions, as part of the External Complaints Service (Decision LFC-0780). A Single Tender Action has been signed with CMP Solutions, within an existing framework.

## 7. Communications comments

7.1 Details about the historic case review will be included in all communication products as part of the Culture Review communications plan.

## 8. Financial comments

8.1 There are no immediate finance implications arising from the recommendation to adopt the framework attached as Appendix A

## 9. Legal comments

9.1 Section 1 of the Fire and Rescue Services Act 2004 states that the London Fire Commissioner is the fire and rescue authority for Greater London. Section 327A (5) of the Greater London Authority Act 1999 requires the Commissioner to secure that the London Fire and Rescue Service is efficient and effective. This means the personnel, services and equipment secured by the London Fire Commissioner for the purposes of carrying out the Commissioner's functions.

9.2 In accordance with Section 5A Fire and Rescue Services Act 2004 (FRSA 2004), the London Fire Commissioner, being a 'relevant authority', may do 'anything it considers appropriate for the purposes of the carrying out of any of its functions'. This is a matter coming within that power.

9.3 Under section 327D of the GLA Act 1999, as amended by the Policing and Crime Act 2017, the Mayor may issue to the Commissioner specific or general directions as to the manner in which the holder of that office is to exercise his or her functions. By direction dated 1 April 2018, the Mayor set out those matters, for which the Commissioner would require the prior approval of, or consultation with, either the Mayor or the Deputy Mayor for Fire and Resilience (the "Deputy Mayor"). Paragraph 3.1 c provides the Deputy Mayor be consulted on '*Any other decision that can be reasonably considered to be novel, contentious or repercussive in nature, irrespective of the monetary value of the decision involved (which may be nil)*'. It is advised that this proposed decision to respond to the independent Culture Review recommendation to review historic cases falls within paragraph 3.1 c.

9.4 The report recommends that the LFC respond to the independent Culture Review recommendation 3 by reviewing historic cases conducted during the past 5 years relating to bullying, harassment and discrimination, the scope and approach of which is set out in Appendix A. The LFC is advised that in the context of the independent Culture Review it is lawful and reasonable to undertake the desk top review and to receive recommendations as to the course of action on individual cases in the manner set out in the Framework. Such review outcomes may lead to a proposed decision to reopen some or all matters and potentially for different decisions or outcomes to be reached. Those cases will each be considered on their individual merits and legal advice will be provided on a case by case basis, but provisional advice is that in principle it would be lawful to take action where

necessary and fair in all the circumstances to give effect to the recommendations of the Culture Review.

## **Part two confidentiality**

Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part Two form, together with the legal rationale for non-publication.

**Is there a Part Two form:** NO

## **Framework Document: Historical Case Review**

### **Background**

The External Review of LFB Culture, led by Nazir Afzal was published on 25 November 2022. Nazir spoke to over 2000 LFB employees, and describes attitudes, behaviours and prejudices totally opposed to the Brigade's values, primarily over the last five years. The report also provides evidence of a lack of trust in LFB processes, notably related to People Services (HR) and managers, with staff citing examples of where they have raised concerns and they have not been dealt with.

The LFB accepts the testimony of the staff that came forward to share their experiences and has accepted the 23 recommendations put forward by Nazir and his team. In response to the report publication, the LFB has confirmed its zero-tolerance approach to Discrimination, Bullying and Harassment. In addition, the LFB set up an External Complaints Service with CMP Solutions for a period of six months to provide a trusted independent mechanism for staff to raise complaints regarding bullying, harassment and discrimination.

Recommendation 3 in the report asks the LFB to *'Consider a historic review of complaints about bullying, racism and misogyny over the last five years. This would establish a team to determine whether further action is necessary in cases where justice has been denied'*. This recommendation relates to Outcome 4 in the Review of LFB Culture. Outcome 4 states: *'Review past cases and ensure all complaints over the past five years have been managed appropriately and the correct sanctions applied and where not, an appropriate remedy has been introduced'*.

The External Complaints Service will also carry out independent investigations, where necessary. The procurement of this service also included the review of discrimination, bullying and harassment complaints from the last five years.

### **Zero Tolerance**

1. In response to the publication of the report the LFB has set out a clear message that it does not tolerate bullying, harassment or discrimination. Specifically, communications have stated that staff have no place in London Fire Brigade if they do any of the following:
  - a. discriminate against anyone, on the basis of any difference, including but not limited to protected characteristics such as their sex, age, race, disability, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity or religion or belief. This includes:
  - b. Use 'banter' that is misogynistic, homophobic or racist or otherwise discriminatory
  - c. Use discriminatory language as abuse
  - d. Direct abuse or negative attitudes to anyone
  - e. Stand by if they see any of this behaviour, without taking action
2. The above statements are not a change in policy. The Culture Review found that there is a need to examine historic cases to examine whether there were failures to recognise that the threshold was met.

### **Suspension**

1. Suspension may be considered whilst the desktop review and any subsequent re-investigation are carried out. A suspension Risk Assessment will be completed by People Services and sent to a Director for approval. Suspension will be reviewed regularly and following the completion of the desktop review.

This framework document will act as the Terms of Reference for each of the case reviews.

## **Historical Case review**

### **Cases in scope**

1. All complaints relating to bullying, harassment and discrimination (recorded as such by People Services Employee Relations team) that were raised during the period 25 November 2017 to 25 November 2022.
2. This includes cases dealt with under the Harassment Complaints Procedure, and those for example that began as a bullying or harassment complaint but proceeded directly to disciplinary proceedings (and hence under the Disciplinary Procedure).
3. The LFB recognises that there may be gaps in our current systems for reporting complaints, and hence there may be additional complaints reviewed which may not have been recorded as such. These will be considered on a case-by-case basis by the Brigade to identify whether they meet the criteria of being related to bullying, harassment or discrimination
4. Complaints that have already been reviewed / investigated by an external company such as CMP , will be reviewed by a different practitioner.

### **Cases not in scope**

1. Cases that have been subject of Employment Tribunal proceedings that have concluded will not be reviewed. These cases have been independently reviewed and decided upon.
2. Cases that are related to live Employment Tribunal cases will ordinarily not form part of the review. These may, at the discretion of AD People Services in consultation with the General Counsel's Department, be referred for a review. A relevant consideration may be the length of time before the tribunal hearing is due to start. For example, where proceedings are due to start shortly an independent evaluation of the facts and reasonableness of the decision-making will be afforded by the employment tribunal and so a review would not be necessary.
3. Cases that have been settled by way of a Settlement Agreement or COT3 will not be reviewed unless AD People Services, in consultation with the General Counsel's Department, consider that there are exceptional circumstances which merit a review.
4. Any other type of complaint not related to bullying, harassment or discrimination, such as a whistleblowing complaint, due to service complaints, grievances, sick pay grievances, or disciplinary matters will not be reviewed.
5. Cases currently going through the disciplinary or complaints processes will not be treated as a historical case review. These will be dealt with by the relevant managers / CMP in light of the findings of the Culture Review.



## **Managing the review**

1. The External Complaints Service (CMP) will undertake all desktop reviews.
2. CMP will be supported by the following team:
  - a. Strategic Organisational Development Manager, People Services. This person will co-ordinate the progress of reviews, sign off Terms of Reference for reviews and co-ordinate any related suspensions;
  - b. An HR Advisor, and a Business Support Officer, People Services. The HR Advisor role will source and share and record documents relating to cases;
  - c. The Business Support Officer will provide administrative support.

## **Timeframe and prioritisation of cases**

1. The review is expected to take up to 23 weeks and will cover around 50 cases. Cases will be prioritised for review as follows:
  - a. Cases that went to Stage 3 of the disciplinary process (action short of dismissal) where the person against whom a complaint was made is still in employment and where the allegations relate to misogyny, harassment or discrimination. Employees who have been suspended since 25 November 2022 will be considered as a matter of priority;
  - b. Matters relating to the support provided to Jaden Matthew Francois-Esprit;
  - c. Other cases where the person against whom a complaint was made is still in employment;
  - d. Cases where the person against whom the complaint was made is no longer in employment.

## **Review: Terms of Reference**

1. All cases will be reviewed via a desktop exercise based upon consideration of existing documents. In order for CMP to conduct this review, LFB will share all information and evidence considered within the original investigations. This would include but is not limited to:
  - a. All paperwork relating to the case;
  - b. All correspondence via email / internal messaging relating to the case.
2. CMP will review each case and consider whether the conclusion reached by LFB was one which a reasonable person could have reached, bearing in mind the following:
  - a. Whether relevant LFB policies and procedures were followed and applied;
  - b. Whether the investigation conducted appropriate searches for evidence and witnesses;
  - c. Whether the decision-maker took into account all relevant material and left out of account all irrelevant material;
  - d. Whether the managers applied the correct burden of proof (the balance of probabilities) when taking decisions.
3. In disciplinary proceedings cases related to discrimination, harassment or bullying, CMP will consider whether, in all the circumstances, the sanction imposed was one which a reasonable person could have imposed.

4. No new information which was not made available to the original investigation or decision maker will be considered within the review process. Any such information may be considered if LFB decides that further action should be taken.
5. The scope of time to conduct each review is estimated at three to five working days.

### **Potential outcomes**

1. Following the desktop review CMP may conclude that the matter was dealt with appropriately and that there are no lessons to be learned.
2. Where CMP considers that the procedure or conclusions of either the investigatory or disciplinary managers were not within the range of reasonable responses, CMP may recommend that:
  - a. There are lessons to be learned, but that no further action is required;
  - b. There are lessons to be learned but further action, with reference to a specific policy or procedure (such as a re-investigation of the disciplinary proceedings), should be undertaken.

### **Further Action**

1. Where CMP recommends that further action should be taken the decision as to what further action, if any, to take, sits with the LFC or delegated officer (not the original manager). Both CMP's recommendation and LFC's decision will be recorded in writing with reasons. However, the recommendation from CMP will ordinarily be accepted by the LFC unless there is good reason to depart from it.
2. Before deciding whether to take further action, the individual who made the complaint and the individual(s) who have had the complaint made against them will be provided the opportunity to make representations on whether further action should be taken.
3. Where LFC decides that further action is required, such further action will be taken in accordance with LFB's policies and procedures, but will have regard to the conclusions of any review conducted by CMP. For the avoidance of doubt further action may result in disciplinary proceedings, with sanctions up to and including dismissal.
4. For cases leading to a re-hearing under the Brigade's disciplinary, grievance or HCP, the re-hearing may be conducted by a Panel that includes a representative from CMP. The final decision will be taken by a Presiding Manager within the Brigade.

### **No Further Action**

1. Where CMP recommends that no further action is required, the decision as to whether to close the matter sits with the LFC or delegated officer. Both CMP's recommendation and LFC's decision will be recorded in writing with reasons.

### **Communication with parties**

1. Individuals who have raised a complaint or had a complaint raised against them will be contacted via email when their case is about to be reviewed, informing them about how the review will work. Individuals will be updated regularly on the progress of the of the case up to its conclusion.



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## Equality Impact Assessment (EIA) Form

The **purpose** of an EIA is to give **as much information as possible** about potential equality impacts, to demonstrate we meet our **legal duties** under the Equality Act 2010.

Please read the EIA Guidance [on Hotwire](#) before completing this form.

Once you open the template please save it on your OneDrive or SharePoint site. Do not open the template, fill it in and then click Save as this will override the template on Hotwire.

### 1. What is the name of the policy, project, decision or activity?

External and Independent Review of Historic Bullying, Harassment and Discrimination Cases

Overall Equality Impact of this policy, project, decision or activity (*see instructions at end of EIA to complete*):

High		Medium		Low	X
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### 2. Contact details

Name of EIA author	Kate Bonham
Department and Team	Assistant Director, People Services
Date of EIA	10 January 2023

### 3. Aim and Purpose

What is the aim and purpose of the policy, project, decision or activity?	Following the Independent Culture Review, there will be an independent review of historic bullying, harassment and discrimination cases.
Who is affected by this work (all staff, specific department, wider communities?)	Specific staff who in the past have (a) submitted bullying, harassment and discrimination claims and (b) specific staff who were alleged to have bullied, harassed or discriminated against people. These are all cases that have been concluded with outcomes prior to the publication of the Culture Review.

**4. Equality considerations:** the EIA must be based on evidence and information.

What consultation has taken place to support you to predict the equality impacts of this work?

All cases relating to discrimination, harassment and bullying, completed in the last five years, will be reviewed as part of the historic case review. This will be a desktop review of the documentation relating to cases undertaken by independent investigators. If they identify if any further action should be taken, which could include a re-investigation or re-hearing, this will depend on the individual case, the complainant and respondent will be informed on the next steps.

The historic case review is being carried out to do two things  
1) to learn lessons from the past experiences of our staff and 2)  
to make sure cases were dealt with correctly.

5. Assessing Equality Impacts			
Protected Characteristic	Impact: positive, neutral or adverse	Reason for the impact	What information have you used to come to this conclusion?
<i>Example: Age</i>	<i>Adverse</i>	<i>Moving this service online will adversely affect older people, who are least likely to have access to a computer or smart phone and may not be able to use the new service.</i>	<i>GLA Datastore: X% of the London community are aged 70 or over. GLA data shows that only 10% of those over the age of 70 have regular access to a computer or smart phone.</i>
<b>Age</b> (younger, older or particular age group)	NEUTRAL		To 9 January 2023, no data was captured in the age category.
<b>Disability</b> (physical, sensory, mental health, learning disability, long term illness, hidden)	POSITIVE	<i>18.75% of cases within the historic case review are from staff who identify as having a disability within the meaning of the EQA compared to a workforce population of 8%, this demonstrates an over-representation of 11% . The historic case review relates to cases raised under the harassment complaints procedure (including discrimination), therefore will include this group of staff.</i>	To 9 January 2023, 18.75% of those involved in the historic cases submitted for review by the CMP service identify as having a disability within the meaning of the EQA compared to a workforce population of 8%.
<b>Gender reassignment</b> (someone proposing to/undergoing/ undergone a transition from one gender to another)	NEUTRAL		To 9 January 2023, no data was captured in the gender reassignment category.
<b>Marriage / Civil Partnership</b> (married as well as same-sex couples)	NEUTRAL		To 9 January 2023, no data was captured in the marriage and civil partnership category.
<b>Pregnancy and Maternity</b>	NEUTRAL		To 9 January 2023, no data was captured in the pregnancy and maternity category.
<b>Race</b> (including nationality, colour,	POSITIVE	<i>35% of cases within the historic case review are from staff who are Black, Asian or from other Ethnic Minorities staff compared</i>	To 9 January 2023, 35% of those involved in the historic cases submitted for review by the CMP service were



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national and/or ethnic origins)		<i>to a workforce population of 17%, this demonstrates an over-representation of 18% Black, Asian or from other Ethnic Minorities staff. The historic case review relates to cases raised under the harassment complaints procedure (including discrimination), therefore will include this group of staff.</i>	from a Black, Asian or Ethnic Minority Background compared to a workforce population of 17%.
<b>Religion or Belief</b> (people of any religion, or no religion, or people who follow a particular belief (not political))	NEUTRAL		To 9 January 2023, no data was captured in the religion or belief category
<b>Sex</b> (men and women)	POSITIVE	<i>35% of cases within the historic case review are from staff who are women compared to a workforce population of 18%, this demonstrates an over-representation of 17% of staff who are women. The historic case review relates to cases raised under the harassment complaints procedure (including discrimination), therefore will include this group of staff.</i>	To 9 January 2023, 35% of those involved in the historic cases submitted for review by the CMP service were women compared to a workforce population of 18%.
<b>Sexual Orientation</b> (straight, bi, gay and lesbian people)	POSITIVE	<i>14.6% of cases within the historic case review are from staff who are Lesbian, Gay or Bisexual staff compared to a workforce population of 6%, this demonstrates an over-representation of 8% of Lesbian, Gay or Bisexual staff. The historic case review relates to cases raised under the harassment complaints procedure (including discrimination), therefore will include this group of staff.</i>	To 9 January 2023, 14.6% of those involved in the historic cases submitted for review by the CMP service were Lesbian, Gay or Bisexual compared to a workforce population of 6%.

<b>6. Impacts outside the Equality Act 2010</b>
<b>What other groups might be affected by this policy, project, decision or activity?</b>
Consider the impact on: carers, parents, non-binary people, care leavers, ex-offenders, people living in areas of disadvantage, homeless people, people on low income / in poverty.

<b>7. Legal duties under the Public Sector Equality Duty (s149 Equality Act 2010)</b>	
How does this work help LFB to:	
<b>Eliminate discrimination?</b>	This work is integral for demonstrating how we eliminate discrimination. Historic review learning – eliminate issues with policies, learn from them building trust with staff in protected characteristic groups and giving confidence they can raise concerns and be treated fairly in line with policies.
<b>Advance equality of opportunity between different groups?</b>	Eliminating any bias in our processes to ensure all staff receive fair treatment
<b>Foster good relations between different groups?</b>	This independent review of cases, lessons learnt and changes made to current practices and policies, will address issues raised in the Culture Review, in relation to a lack of trust and confidence in how cases have been managed

<b>8. Mitigating and justifying impacts</b>
Where an <b>adverse</b> impact has been identified, what steps are being taken to <b>mitigate</b> it? If you're unable to mitigate it, is it <b>justified</b> ?



Characteristic with potential adverse impact (e.g. age, disability)	Action being taken to mitigate or justify	Lead person responsible for action
The review of historic cases will provide assessments on how harassment cases have been managed and impacts will then be able to be assessed.		Tim Powell

**Now complete the RAG rating at the top of page 1:**

**High:** as a result of this EIA there is evidence of significant adverse impact. This activity should be stopped until further work is done to mitigate the impact.

**Medium:** as a result of this EIA there is potential adverse impact against one or more groups. The risk of impact may be removed or reduced by implementing the actions identified in box 8 above.

**Low:** as a result of this EIA there are no adverse impacts predicted. No further actions are recommended at this stage.

## Document Control

Signed (lead for EIA / action plan)	Kate Bonham	Date	9 January 2023
Sign off by Inclusion Team	Lewis Coakley	Date	11 January 2023
Stored by			
Links			
External publication	Are you happy for this EIA to be published externally?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>