

EXECUTIVE SUMMARY

For many years, Test Valley Borough Council has fulfilled its legal responsibilities under Health and Safety legislation by producing Violence Against Staff Lists, advising staff of individuals who may be aggressive or abusive. Over time the lists have become unwieldy and unusable for easy reference. In addition, through these lists, the Council holds personal information without notifying the person that they are to go on the lists, there is no mechanism for removing persons from the lists and there is no right of appeal.

In order that the Council could fulfil its statutory responsibilities under the Health and Safety at Work etc Act, 1974, the Human Rights Act 1998, the Freedom of Information Act 2000 and the Data Protection Act 1998, a new Violence Against Staff Policy was adopted. The key elements are notifying individuals of unacceptable behaviour, a mechanism for determining who goes on the lists, how long they remain on the list and providing a right of appeal.

This was considered by the Council's Executive on 14th February, 2007 and the Committee raised the position of elected members who could also be threatened. Councillors often visit residents' homes and may be at risk. This innovative suggestion was adopted and the lists are available on the Council's Intranet and will be password protected. The password will only be provided on a need to know basis as it is confidential and potentially sensitive.

The Policy was approved and was reported in the local press and radio stations. Although it is too early to provide extensive evidence of impact of this initiative, the first step of rationalisation of the lists has been completed which has provided an easier reference point for staff. This novel and innovative approach will reduce the need to rely on the Police for regular updates and ultimately free up Police resource. Since the approval of the policy there have been no abusive and/or threatening incidents towards our staff. Hopefully this is due to the introduction of the policy and the press attention it received. Conclusive evidence of impact is that the Council is confident that it is complying with its legal and moral responsibility for the safety of the staff whilst adhering to the Human Right Act, Freedom of Information Act and Data Protection Act.

Introduction

As employers, Test Valley Borough Council has a legal responsibility to protect the health, safety and welfare of its employees whilst they are at work. This responsibility includes protecting them, as far as is reasonably practicable, from persons who may be abusive to them whilst carrying out their duties. This abusive behaviour can be either verbal or physical and results in the employee feeling threatened and/or abused.

Current Approach

To date there are 223 individuals who are known to have been abusive to Council employees and of these, 36 have to be visited by two officers because of their behaviour. In 2006, there were a total of 11 incidents – 2 physical assaults, 1 with a missile being thrown at an employee, 1 where the employee was threatened with a knife and 7 where there was general abusive or aggressive behaviour including an employee being driven at by an irate motorist.

For many years the Council had fulfilled its legal responsibility by producing what were known as the Violence to Staff Lists. Two lists existed, firstly, premises where the occupant has been violent and/or verbal abuse to staff has occurred and, secondly, persons known to have been violent/abusive towards staff on Council property.

These lists were updated following notification of an incident and then circulated to Heads of Service to be cascaded to those employees whose role required them to deal with the public. However, over time the lists have become unwieldy and unusable for easy reference. In addition there is no mechanism for removing persons from the list and being on the list does not serve as a deterrent as the individuals are not notified.

Improving Our System – working with others

In order to improve the situation, a review of the lists was carried out checking that named individuals still lived at the addresses given, whether individuals still lived in the Test Valley area or whether an offender no longer presented a risk.

Testway Housing Association and Hampshire Police were consulted and they advised on any amendments or additions which were required.

A survey was undertaken on how other local authorities in Hampshire tackled this issue. This work identified that some authorities did notify those individuals who had been abusive but that some did not. There did not appear to be any general approach to having a Policy endorsed by an Executive Committee. Given this information, our proposal was innovative and a positive development on local approach. Internally, the Council's Health, Safety and Welfare Group which includes Unison representatives were also consulted and contributed to the development of the new policy. Subsequent consultation with the Council's Audit and Legal Services identified that this approach would be acceptable in that it would satisfy the legal requirements of Data Protections Act 1998, the Human Rights Act 1998 and the Freedom of Information Act 2000 without compromising the Council's responsibilities under the Health and Safety at Work etc Act, 1974.

Reasons for change

There were three main reasons for change, firstly, the Lists were provided to protect staff from violent/abusive behaviour. However, as the lists were difficult to reference and unwieldy, it was questionable whether they were providing the necessary protection.

Secondly, the current system appeared to be in breach of the Human Rights Act 1998 and the Freedom of Information Act 2000 in that we were holding personal information without advising the individual and we did not provide that individual with the opportunity to appeal.

Thirdly, if the current system was retained, regular reviews would need to be carried out which are time consuming and involve repeated co-operation of the Hampshire Police and the Testway Housing Association. The list would still become too long and out of date and individuals would stay on the list for long periods as there was not an agreed policy for their removal.

The new policy will allow the Council to adopt an approach where those on the list are notified and a time scale given for remaining on the list will rationalise the system. In addition, it was anticipated that notification and knowledge of the existence of the list could act as a deterrent to some individuals.

The Updated Policy: The Potential Violent Marker Lists

The Policy will be applied to all persons, over 18 years, who display aggression including physical attacks that may or may not result in pain or injury, verbal abuse or threats either face to face or over the telephone, threatening behaviour or any action that causes anxiety, fear or concern and physical attacks on property.

Within the terms of the Borough Council's Violence Against Staff policy, Violence is defined as "Any incident, in which an employee is verbally abused, threatened or assaulted by a member of the public in circumstances arising out of the course of his or her employment."

The New Process

A flow chart was produced that details the new process. Following initial notification of an incident, the Safety Officer and Senior Officer call a decision panel which includes a Corporate Director.

If it is decided that the offender should be placed on a Potentially Violent Marker List, the offender will be placed on the list immediately. They will be advised by letter of the incident which led to their being identified and offered the opportunity to explain their behaviour and provide reasons, in writing, why they should not be included on the list. If, after consideration, it is decided by the Panel that the offender will not remain on the list, a letter will be sent confirming this and the entry removed. If the offender is to remain on the list, a further letter will be sent referring to the incident which led to their being identified, to whom this information may be passed and when the decision to identify them as potentially violent will be removed or examined with a view to removal. Offenders will remain on the list for a period of up to 3 years depending on the seriousness of the incident, with a proviso that further incidents will result in them remaining on the list and the time extended. A letter will be sent to the offender advising removal from the list.

The Council has a Corporate Complaints Procedure copies of which are available from the Council Offices or on the Council's website which allows a formal appeal to be made to the inclusion on the list.

The impact of partnership and innovation continues as in cases of aggressive behaviour by members of the public, for instance, vehicle drivers who are violent against parking attendants, the name and address of the offender is not obvious. The Police do not always prosecute, and therefore the Police will provide details of the vehicle driver to the Council to enable a letter to be sent. Uniquely, it will also be permissible for the Council to interrogate the DVLA database for details of vehicle keepers. Testway Housing will also advise the Council of any violent incident against their staff and vice versa to ensure common knowledge between the organisations.

It should be noted that there may be some exemptions such as offenders who the Police recommend should not be visited without being accompanied by them or the mentally unstable who will remain on the list. Any incidents where firearms are involved will remain on the list indefinitely. In these cases, informing the individual that a violent marker has been added to his record might, of itself, produce a violent reaction and therefore the Data Protection Act, section 29(1) might be appropriate. The Panel will have to be able to substantiate this to comply with the Act.

Once the offender is placed on the Potentially Violent Marker List, Heads of Service will be advised and will cascade this information on a need to know basis only via the Intranet. Unauthorised access to this information will be prevented as it will be password protected.

The Potentially Violent Marker List will be reviewed regularly and at least annually. Testway Housing will be contacted annually to ensure that the information is kept up to date. The Police do not have the resource to update annually, however, this new process will effectively keep the lists up to date and reduce the likelihood of this requirement and therefore positively impact on Police resource.

Potential Impact of the New Procedure

From the initial result, it is clear this detailed approach to a sensitive and delicate issue is innovative amongst our peers. The immediate impact is an increased security in identifying individuals of concern. Due to partnership working, coupled with press coverage, potentially violent individuals are aware that they may be placed on the list and this can be fully justified.