

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

SCRUTINY COMMITTEE

31 March 2014

1. DISPUTE RESOLUTION REPORT

Report of the Chief Fire Officer

RECOMMENDED

- 1.1 THAT the contents of the dispute resolution report for the period 1 July 2013 to 31 December 2013 are noted.
- 1.2 THAT the dispute resolution report is submitted to the Joint Consultative Panel.

2. PURPOSE OF REPORT

To inform the Scrutiny Committee about the number, type and outcomes of discipline and grievance hearings and other dispute resolution including Employment Tribunal activity which have occurred during the period of 1 July 2013 to 31 December 2013.

3. BACKGROUND

- 3.1 This report provides a summary of the number, type and outcomes of disciplinary and grievance cases. The report also details any Collective Grievances and any reported failure to agree or consult. The reporting period for this report is 1 July 2013 to 31 December 2013.
- 3.2 The report also provides a summary of lessons learned taking into account issues raised by Representative Bodies, line managers and HR practitioners.

4. **SUMMARY OF CASES:**

4.1 **Grievance Cases**

Appendix 1 Section A provides details of **grievance cases** during 1 July 2013 to 31 December 2013.

A total of 7 grievances were lodged during the reporting period, 5 by Grey Book employees and 2 by Green Book employees.

- 4.1.1 None of the above grievances led to a complaint being filed with the Employment Tribunal Service as at 31 December 2013.
- 4.1.2 The total number of formal grievances lodged compared with the previous period has stayed the same as the last reporting period.
- 4.1.3 There were no collective grievances lodged during this reporting period.

4.2 **Investigations and Disciplinary Hearings**

Appendix 1 Section B provides details of investigations into conduct and gross misconduct, Section C provides details of **disciplinary hearings** for the period 1 July 2013 to 31 December 2013.

- 4.2.1 There were **15 investigations commenced in this reporting period**, 14 were undertaken at Gross Misconduct level and 1 at Misconduct level.

Of the 15 disciplinary investigations, 11 concerned Grey Book employees and 4 concerned Green Book employees. 11 of the employees who were subject to investigations were male, 4 were female.

- 4.2.2 There were **4 disciplinary hearings in this period** (compared to 8 hearings in the previous six month reporting period):

- 2 disciplinary hearings were scheduled during the same period; and
- 2 disciplinary hearings have taken place following investigations in the previous reporting period.

3 of the hearings were managed as gross misconduct resulting in **1 dismissal in this period**. Of this 1 dismissal decision there was no appeal raised.

4.2.3 The remaining 2 hearings, resulted in 1 extension to an existing final written warning being issued and 1 hearing resulted in a final written warning action been taken. One employee has appealed the decision to issue the final written warning and this hearing is scheduled for January 2014. There was one appeal hearing relating to dismissal in the previous reporting period – the decision was taken to uphold the dismissal.

4.2.4 Analysis of the discipline case figures suggests that managers continue to give due consideration to individual circumstances when deciding the appropriate outcome for each case.

4.2.5 In Gross Misconduct cases, alternatives to dismissal continue to be sought and considered where appropriate. Such alternatives would include Final Written Warning or a Final Written Warning and other sanction such as demotion or compulsory transfer. If an additional sanction was applied and the employee did not accept the sanction (demotion) then the dismissal would take effect.

4.2.6 **Analysis of the data by the 9 protected characteristics:**

Table 1 summarises the data into 3 protected characteristics: Sex; Disability and Race. A key to the abbreviations is at table 1.1.

Table 1

	SEX			DISABILITY				RACE		
	M	F	TG	YES	NO	PTNS	NS	WB	BBC	AB
Grievance X 7	6	1	0	0	7	0	0	7	0	0
Discipline X 15	11	4	0	0	11	1	3	12	2	1

Table 1.1 Key for table 1**Sex**

F – Female

M – Male

TG – Transgender

Disability

PTNS – Preferred not to say

NS – Not stated

Race

WB – White British

AB – Asian British

BBC – Black/British Caribbean

Mixed WBA – White/Black African

Table 2 summaries the data into 3 protected characteristics: Religion and Belief, Sexual Orientation and Age. A key to the abbreviations is at table 2.1.

Table 2

	RELIGION AND BELIEF			SEXUAL ORIENTATION		AGE			
	NS	OR	PNTS	NOT STATED	HETERO SEXUAL	20-29	30-39	40-49	50-59
Grievance X 7	6		1	6	1	0	2	3	2
Discipline X 15	13	1	1	12	3	1	4	7	3

Table 2.1 Key for table 2**Religion and Belief:**

NS – Not stated;

CHRN – Christian

NO REL – No religion

OR – Other

PNTS – Preferred not to say

Table 3 summarises the data into 3 protected characteristics: Married/Civil Partnership, Pregnancy/Maternity and Gender Re-assignment. A key to the abbreviations in at table 3.1.

Table 3

	MARRIED/ CIVIL PARTNERSHIP				PREGNANCY/ MATERNITY	GENDER RE- ASSIGNMENT
	MARRIED	SINGLE	DIVD	LIVING TOGETHER		
Grievance X 7	5	1	0	1	NONE	NONE
Discipline X 15	9	3	2	1	NONE	NONE

Table 3.1 Key for table 3
Married/Civil Partnership:
 DIVD – Divorced

4.3 **Employment Tribunal Activity**

At the close of the reporting period (31 December) there were **no outstanding claims** against WMFS lodged with the Employment Tribunals Service. **2 claims** were resolved in this report's period and 2 claims were withdrawn.

- Both the claims resolved resulted in the tribunal not upholding the claims. There has been no appeal to these in this reporting period.

4.4 **Lessons Learned**

4.4.1 Key lessons concerning the implementation of the Discipline and Grievance policies continue to be learned through regular communication. Policies provide guidance based upon the ACAS Code of Practice, as well as employment legislation regarding fair dismissal and avoiding unlawful discrimination in the workplace.

4.4.2 There have been a number of cases relating to the non-completion of operational checks in relation to BA sets. This has been raised corporately and is currently being addressed through the line management within the Operations directorate.

- 4.4.3 Both WMFS Disciplinary Procedure and Grievance Procedure are presently being reviewed by HR Employee Relations team which incorporate consultation with trade unions/ representative bodies and stakeholders under the provisions of the Employee Relations Framework. This review will be completed by March 2014.
- 4.4.4 Collaborative working between managers, HR and Trade Unions/Representative Bodies including meeting regularly at the Joint Working Party to consider any issues that are raised, continues to be ongoing leading to further improvement in practice.
- 4.4.5 In preparing this report, the views of the Trade Unions/ Representative Bodies were explicitly sought in connection with the data given in the Appendices and to offer observations on general issues arising. These observations from the Trade Unions/Representative Bodies were collected on a routine basis at Joint Working Party and Joint Consultative Committee meetings throughout the reporting period.
- Specific areas raised by the Trade Unions/Representative Bodies
- 4.4.6 During meetings with the Trade Unions/Representative Bodies the following issues were raised for consideration and action.
- 4.4.7 In the previous report the Trade Unions/Representative Bodies indicated that they would still like to be a regular invite to all debriefs (this will be considered on a case by case basis) this approach has provided valuable learning opportunities for the Service. A revised approach is currently being developed by HR Service Support and this will form part of any future structured debrief.
- 4.4.8 The HR Service Support team are currently working on a toolkit for managers including template letters, this toolkit will be discussed on with the Trade Unions/ Representative Bodies. The Trade Unions/Representative Bodies have welcomed this approach to ensure consistency within the process.

4.4.9 In the last report the Trade Unions/Representative Bodies raised the issue of how as a Service we share learning outcomes from disciplinary investigations Service wide or where appropriate to ensure that we seek to ensure that we do not have situations where we miss learning opportunities as a Service. The HR Service Support team has regular meetings with managers to feedback on common themes relating to disciplinary/grievance.

4.4.10 There have been no other/new areas raised by the Trade Unions/Representative Bodies.

4.5 **Grievance and Discipline Training Updates**

4.5.1 HR Advisors continue to give advice to managers, who receive informal and formal grievances, as and when grievances are received and to address minor misconduct issues before formal action is required.

4.5.2 Case debriefs and lessons learnt sessions continue to be utilised following complex cases from a disciplinary/grievance and Employment Tribunal perspective.

4.5.3 HR Service Support is currently sourcing a training provider to refresh the training given to managers across the organisation on a range of management issues including Discipline and Grievance, Capability and Attendance Management.

4.6 **Dispute Resolution**

In the last report there was 1 dispute that has been referred to a Technical Advisory Panel. The Technical Advisory Panel was scheduled for 16 August 2013, however, prior to attendance at the Technical Advisory Panel, management and Trade Unions/Representative Bodies met to resolve the issue locally.

4.7 **Collective Grievances**

There were no collective grievances submitted in this reporting period.

4.8 Failure to Consult/Agree

There have been 2 formal failures to consult or failures to agree issued by the Trade Unions/Representative Bodies. One relates to a Failure to consult over a promotion process and the other Failure to Agree over acting up arrangements. Both have been locally resolved and have not needed to be raised at JCP. There continues to be other issues raised during our internal consultative meetings which are managed and satisfactorily resolved. This continues to indicate that employee engagement initiatives across the Service are working and the Employee Relations Framework is embedded within the Fire Service.

5. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required and has not been carried out. The matters contained in this report will not lead to a policy change.

6. **LEGAL IMPLICATIONS**

There are no direct legal implications arising from this report.

7. **FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

8. **TRADE UNION CONSULTATION**

8.1 In preparing this report, Trade Union Representatives views on general issues concerning grievance handling and disciplinary procedure handling were sought in addition to being given sight of the data in the Appendices and monthly case updates.

8.2 A Standing Item features on the Joint Working Party (JWP) and Joint Consultative Committee (JCC) 'Discipline and Grievance' and comments received from the Trade Union and Representative Bodies on these occasions.

- 8.3 Further exchanges of comments and observations took place before the submission of the final report for the Joint Consultative Panel to take place on 15 January 2014.

BACKGROUND PAPERS

Disciplinary Standing Order 2/1, Grievance Standing Order 2/2
Previous JCP reports '01' to '05'

The contact name for this report is David Johnson 0121 380 6906.

PHIL LOACH
CHIEF FIRE OFFICER

APPENDIX 1

Report # 06

Reporting Period 1 July 2013-31 December 2013

Section A: WMFS Formal Grievance & Appeal Cases

Grievance Description	Total no. Grievances	No. Grievances Resolved	No. Grievances Rejected	No. Grievances Appealed	No. Appealed Grievances Upheld	No. Appealed Grievances Rejected	No. Grievances leading to ET claim
No. of Grievances raised by Grey Book employees	5 raised <i>2 heard</i> <i>3 outstanding at 31 December 2014</i>	2	0	0	0	0	0
No. of Grievances raised by Green Book employees	2 raised <i>1 heard</i> <i>1 outstanding at 31 December 2014</i>	1	0	0	0	0	0

Further details (including E&D information)

- The subject nature of the 7 grievances included: Terms and Conditions x 1 and Organisational Change x 6

Reporting Period 1 July 2013–31 December 2013

Section B: Investigation Activity

Description	Total no. Investigations	Investigation result was no formal action	Outcome not yet confirmed	Formal disciplinary hearing
No. of Investigations into Grey Book employees	11	2	8	1
No. of Investigations into Green Book employees	4	1	2	1
No. of investigations into allegations of bullying/harassment	0	0	0	0
Total	15	3	10	2

Further details

- There have been 15 disciplinary investigations which have commenced during the reporting period July-December 2013.
- There are 10 investigations ongoing (outcome of investigation outstanding) as at 31 December 2013.

Reporting Period 1 July 2013-31 December 2013

Section C: Discipline Hearings & Appeal Cases

Discipline Description	No. of Hearings	Outcome: <i>no formal action</i>	Outcome: <i>1st WW</i>	Outcome: <i>Final WW</i>	Outcome: <i>Dismissal</i>	No. outcomes appealed	No. overturned at appeal
No. of misconduct cases	1	0	1	0	0	0	0
No. of gross misconduct cases	3	0	0	2	1	0	0
Totals	4	0	1	2	1	0	0

Further details

- One Green Book Employee was dismissed at gross misconduct hearings within the reporting period.