

**WEST MIDLANDS FIRE AND RESCUE AUTHORITY**

**SCRUTINY COMMITTEE**

**16 SEPTEMBER 2013**

**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 January 2013 to 30 June 2013 are noted.
- 1.2 THAT it is agreed that the dispute resolution report is submitted to the Joint Consultative Panel.

**2. PURPOSE OF REPORT**

To inform the Members of 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 January 2013 to 30 June 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 January 2013 to 30 June 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 January 2013 to 30 June 2013.

**A total of 7 grievances were lodged during the reporting period**, 4 by Grey Book employees and 3 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 30 June 2013.
- 4.1.2 The total number of formal grievances lodged compared with the previous period has reduced by 10 from the last reporting period, (*17 in the last period, and 7 in this period*).
- 4.1.3 There was only one collective grievance lodged during this reporting period. This is reported in paragraph 4.9.

##### 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 January 2013 to 30 June 2013.

- 4.2.1 There were **8 investigations in this reporting period**, 5 were undertaken at Gross Misconduct level; 2 at Misconduct level and 1 investigation was undertaken under the Dignity at Work Policy 2/17.

Of the 8 disciplinary investigations, 5 concerned Grey Book employees and 2 concerned Green Book employees. In relation to the 1 investigation undertaken under the Dignity at Work Policy, it concerned both a Grey Book and a Green Book employee.

7 of the employees who were subject to investigations were male, 2 were female.

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

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

7 of the hearings were managed as gross misconduct resulting in **5 dismissals in this period**. Of these 5 dismissal decisions there was only one appeal this resulted in the appeal been rejected (this individual has not to date lodged an ET claim).

4.2.3 The remaining 2 hearings, resulted in 1 final written warning been issued and 1 hearing resulted in no formal disciplinary action been taken. The employees have not appealed the outcomes of these hearings.

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.

**Table 1**

	SEX			DISABILITY				RACE			
	M	F	TG	YES	NO	PTNS	NS	WB	BBC	MIXED WBC	OTHER
<b>Grievance X 8 *</b>	7	0	0	0	3	0	4	5	1	0	1
<b>Discipline X 8</b>	7	1	0	0	5	0	3	6	0	1	1
<b>ET X 5</b>	4	1	0	0	2	0	3	3	0	0	2

**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.

**Table 2**

	RELIGION AND BELIEF		SEXUAL ORIENTATION		AGE			
	NS	PNTS	NOT STATED	HETERO SEXUAL	20-29	30-39	40-49	50-59
<b>Grievance X 8*</b>	7	0	7	0	0	3	3	1
<b>Discipline X 8</b>	8	0	8	0	1	3	1	3
<b>ET X 5</b>	4	1	4	1	0	0	4	1

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

NS – Not stated;

CHR'N – Christian

NO REL – No religion

O'R – Other

PNTS – Preferred not to say

Table 3 summaries the data into 3 protected characteristics: Married/Civil Partnership, Pregnancy/Maternity and Gender Re-assignment.

**Table 3**

	MARRIED/ CIVIL PARTNERSHIP				PREGNANCY/ MATERNITY	GENDER RE- ASSIGNMENT
	MARRIED	SINGLE	DIV'D	DOM P'NER		
<b>Grievance X 8*</b>	4	3	0	0	NONE	NONE
<b>Discipline X 8</b>	1	3	3	1	NONE	NONE
<b>E.T X 5</b>	3	2	0	0	NONE	NONE

**Key for Table 3**

**Married/Civil Partnership:**

DIV'D – Divorced

DOM P'NER – Domestic Partner

**4.3 Issues Raised by the Trade Unions/Representative Bodies**

There have been no issues raised by the Trade Unions in this reporting period.

**4.4 Issues Raised by Management**

There have been no issues raised by Management in this reporting period.

**4.5 Employment Tribunal Activity**

At the close of the reporting period (30 June) there were **4 outstanding claims** against WMFS lodged with the Employment Tribunals Service. **1 claim** was resolved in January 2013.

- Two claims from current (male) Grey Book employees alleging race discrimination; one case has yet to be scheduled and one case is scheduled for September 2013.

- One claim from a male former Grey Book employee who was dismissed for gross misconduct and who is citing unfair dismissal.
- One claim from a current (male) Grey Book employee citing disability discrimination relating to a promotion process.

#### 4.6 **Lessons Learned**

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.

There were three disciplinary investigations relating to a breach of the Drugs and Alcohol Policy, a briefing paper went to Corporate Board which identified a number of actions for the Service including training for managers and also looking at the support provided for employees who are having issues with Drugs and Alcohol. This is currently being actioned by the HR Service Support Team.

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 October 2013.

Collaborative working between managers, HR and Trade Unions/Representative Bodies continues to be ongoing leading to further improvement in practice.

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

During meetings with the Trade Unions/Representative Bodies the following issues were raised for consideration and action:

The Trade Unions/Representative Bodies indicated that they would like to have 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.

It was raised that at times the letters sent to both the subject of the investigation and any witnesses were not in a consistent format – 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 also raised the issue of how as a Service we share learning outcomes from disciplinary investigations Service wide or where appropriate that we seek to ensure that we do not have situations where we miss learning opportunities as a Service.

The Trade Unions/Representative Bodies have also requested that should managers be included in an investigation team as part of their development that this is discussed prior to the investigation commencing to ensure that roles are understood during the process. This is a reciprocal arrangement should the Trade Union/ Representative Bodies need to develop their representatives.

#### **4.7 Grievance and Discipline Training Updates**

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.

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

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.

Work is continuing in collaboration with internal stakeholders to provide a 'toolkit' for managers.

#### 4.8 Dispute Resolution

There is 1 dispute that has been referred to a Technical Advisory Panel, the Service and the Trade Unions/ Representative Bodies have jointly requested the support of the Joint Secretaries in respect of the revised Flexi Duty System. Whilst this has been through the internal consultation and negotiation process an agreement has not been reached. The Technical Advisory Panel is scheduled for 16 August 2013.

#### 4.9 Collective Grievances

There was 1 collective grievance submitted in this reporting period, this was citing organisational change and changes to work patterns. The grievance was heard and the decision was appealed. The internal process has been completed and to date this has not led to a tribunal claim been submitted.

#### 4.10 Failure to Consult/Agree

There have been no formal failures to consult or failures to agree issued by the Trade Unions/Representative Bodies. There have been issues raised during our internal consultative meetings which have been 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 There is a standing item that features on the Joint Working Party (JWP) and Joint Consultative Committee (JCC) entitled 'Discipline and Grievance' and comments have been 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 April 2013.

## **BACKGROUND PAPERS**

Disciplinary Standing Order 2/1, Grievance Standing Order 2/2  
Previous JCP reports '01' to '04'

The contact name for this report is David Johnson, on 0121 380 6914.

VIJ RANDENIYA  
CHIEF FIRE OFFICER

## APPENDIX 1

### Report # 05

*Reporting Period 1 January 2013- 30 June 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 <b>Grey Book</b> employees	<b>5 raised</b> <i>4 heard</i> <i>1 outstanding at 30 June 2013</i>	<b>4</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
No. of Grievances raised by <b>Green Book</b> employees	<b>2 raised</b> <i>1 heard</i> <i>0 outstanding</i>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>

### Further details (including E&D information)

- The subject nature of the 7grievances included: Work Practices x 2, Bullying/Harassment/Discrimination x 2, Terms and Conditions x 0 and Organisational Change x 3

*Reporting Period 1 January 2013 – 30 June 2013*

## **Section B: Investigation Activity**

<b>Description</b>	<b>Total no. Investigations</b>	<b>Investigation result was no formal action</b>	<b>Outcome not yet confirmed</b>	<b>Formal disciplinary hearing</b>
No. of Investigations into <b>Grey Book</b> employees	<b>5</b>	<b>0</b>	<b>2</b>	<b>3</b>
No. of Investigations into <b>Green Book</b> employees	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>
No. of investigations into allegations of bullying/harassment	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
Total	<b>8</b>	<b>1</b>	<b>3</b>	<b>4</b>

### **Further details**

- There have been 8 disciplinary investigations which have commenced during the reporting period January – June 2013.
- There are 3 investigations ongoing (outcome of investigation outstanding) as at 30 June 2013.

*Reporting Period 1 January 2013-30 June 2013*

### **Section C: Discipline Hearings & Appeal Cases**

<b>Discipline Description</b>	<b>No. of Hearings</b>	Outcome: <i>no formal action</i>	Outcome: <i>1<sup>st</sup> WW</i>	Outcome: <i>Final WW</i>	Outcome: <i>Dismissal</i>	<b>No. outcomes appealed</b>	<b>No. overturned at appeal</b>
No. of misconduct cases	1	0	1	0	0	0	0
No. of <b>gross misconduct</b> cases	<b>7</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>1</b>
<b>Totals</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>2</b>	<b>1</b>

#### **Further details**

- Three grey book employees and Two Green Book Employees were dismissed at gross misconduct hearings within the reporting period.
- Only one dismissed employee appealed against their dismissal, their appeal was not upheld

*Reporting Period January 1<sup>st</sup> January 2013-30 June 2013*

**Section D: Claims at the Employment Tribunals Service** (as at 30 June 2013)

<b>Employment status of claimant</b>	<b>Terms and Conditions of claimant</b>	<b>Gender of claimant</b>	<b>Subject of claim</b>	<b>Case Update</b> (at 30 <sup>th</sup> June 2013)
Current Employee	Grey Book	Male	Race Discrimination	ET1 Claim submitted and ET3 response prepared.
Former employee	Green Book	Female	Unfair dismissal and Disability Discrimination	ET hearing held in January 2013, ET found the majority of claims were unfounded and there were small elements of the claim that was awarded in favour of the former employee.
Former employee	Grey Book	Male	Unfair dismissal	ET1 Claim Submitted and ET3 response prepared. ET Hearing scheduled for July 2013
Current Employee	Grey Book	Male	Race Discrimination	ET1 Claim submitted and ET3 response prepared. 3 week ET hearing scheduled for September 2013

Current Employee	Grey Book	Male	Disability Discrimination	ET1 Claim submitted and ET3 response prepared.
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