

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

SCRUTINY COMMITTEE

23 MARCH 2015

1. **DISPUTE RESOLUTION REPORT**

Report of the Chief Fire Officer

RECOMMENDED

- 1.1 THAT the contents of the dispute resolution report for the period 1st July 2014 to 31st December 2014 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 2014 to 31 December 2014.

3. **BACKGROUND**

- 3.1 This report provides a summary of the number, type and outcome of disciplinary and grievance cases. The report also details any Collective Grievances and any reported failure to agree or consult.
- 3.2 The report also provides a summary of lessons learned, taking into account issues raised by Trade Unions/Representative Bodies, line managers and People Support Services Business Partners, specifically issues raised during the discussions of the previous Joint Consultative Committees and People Support Joint Working Parties.

4. **SUMMARY OF CASES:**

4.1 **Grievance Cases**

Appendix 1 Section A provides details of grievance cases during 1 July 2014 to 31 December 2014.

A total of 8 grievances were lodged during the reporting period, 7 by Grey Book employees and 1 by a Green Book employee.

4.1.1 None of the above grievances led to a complaint being filed with the Employment Tribunal Service as at 31 December 2014.

4.1.2 The total number of formal grievances lodged compared with the previous period has decreased by 5 in comparison to 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 2014 to 31 December 2014:-

4.2.1 There were 13 investigations commenced in this reporting period, 13 were undertaken at Gross Misconduct level. There is also 1 Gross Misconduct investigation that is still ongoing from the previous reporting period.

4.2.2 Of the 13 disciplinary investigations, 12 concerned Grey Book employees and 1 concerned a Green Book employee. 12 of the employees who were subject to investigations were male, 1 was female.

4.2.3 There were 15 disciplinary hearings in this period (compared to 9 hearings in the previous six month reporting period):

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

4.2.4 14 of the hearings were managed as gross misconduct resulting in 4 dismissals in this period. Of these 4 dismissal decisions there was 1 appeal raised.

4.2.5 Of the remaining 11 (1 been a misconduct) hearings, 4 hearings resulted in a Final Written Warning being issued and 3 hearings resulted in written warnings and in 4 cases there was no formal action.

Where a Final Written Warning, Written Warning and in some cases where there is No Formal Action, a development plan for the individual to identify areas for improvement are issued.

There was 1 appeal hearing relating to a Final Written Warning in the previous reporting period – the decision was taken to uphold the Final Written Warning.

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

4.2.7 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.

4.2.8 Analysis of the data by the 9 protected characteristics

Analysis of the data can be found in Appendix 2 of the report. Having analysed the data, there are no trends to report and the data is proportionally reflective of the Service.

4.3 Employment Tribunal Activity

At the close of the reporting period 31 December 2014 there are 2 outstanding claims against WMFS lodged with the Employment Tribunals Service.

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 between stakeholders. 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 The Disciplinary Procedure and Grievance Procedure are now embedded within the Service. Following the recent reviews and the People Support Services and the development of the business partner approach teams are spending more of their time on stations and with departments to ensure managers fully understand their roles in managing cases at the earliest opportunity. The business partners are providing support and guidance to managers to enable them to make assertive, safe and effective decisions in managing and supporting their staff.
- 4.4.4 The People Support Services team are currently working on a toolkit for managers including template

letters. This toolkit will be discussed with the Trade Unions/Representative Bodies. The Trade Unions/Representative Bodies have welcomed this approach to ensure consistency within the process.

4.4.5 Following on from the discussions at the JCP, with effect from 1 January 2015 the People Support Services team have identified and are recording against a range of local performance indicators that will be used to provide more comprehensive information within this report. The local performance indicators will be used to measure our performance as a team but also highlight any areas for concern or improvements. These local performance indicators will be shared with the Trade Unions/Representative Bodies as part of our ongoing communication.

4.4.6 Below are the local performance indicators that we will be reporting on from 1 January 2015:-

Discipline
No of cases at Gross Misconduct (GM)
No of GM Investigations
No of GM Hearings
No of GM Appeal
No of GM Appeals Upheld
No of cases at Misconduct
No of Misconduct (Mis) Investigations
No of Mis Hearings
No of Mis Appeal
No of Mis Appeals Upheld
No of Dismissals
No of Cases managed informally
Time taken from Terms of Reference to Report
Time taken from Report to Hearing
Time taken from Hearing to Appeal

Grievance
No of Formal Grievance Trackers received
No of informal Grievance cases
Time taken from tracking form to Meeting
Time taken from meeting to outcome letter
Time taken to outcome letter to appeal
No of allegations relating to Bullying and Harassment
No of allegations relating to Organisational Change
No of allegations relating to Terms and Conditions

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- 4.4.7 Collaborative working between managers, People Support Services 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.
- 4.4.8 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. These issues are reported below:-

Specific areas raised by the Trade Unions/Representative Bodies

- 4.4.9 During meetings with the Trade Unions/Representative Bodies the following issues were raised for consideration and action.
- 4.4.10 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 People Support Services and this will form part of any future structured debrief. Whilst there have not been any formal debriefs to report on for this period, the People Support Team are now scheduling them in a part of the process to ensure that all relevant learning outcomes can be shared.
- 4.4.11 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 People Support Services team has regular meetings

with managers to feedback on common themes relating to disciplinary/grievance. These themes are also included in our People Support Services Newsletter to ensure all employees are informed.

- 4.4.12 The Trade Unions/Representative Bodies raised a new issue specifically in the previous reporting period. The concern was that disciplinary cases they perceive could be dealt with managerially are being escalated to Formal Investigation. The People Support Services Team are continuing to proactively working with managers to provide the necessary guidance and support to enable the manager to be proactive in their approach in preventing any escalation of issues. There has been a significant reduction in Formal cases in this reporting period; however this needs to be kept under constant review.
- 4.4.13 As well as the ongoing discussions relating to the appropriate management of the discipline cases we are also discussing and working proactively to manage the concerns of the Trade Unions/Representative Bodies in relation to the progression of cases to Gross Misconduct hearings and whether the appropriate consideration to the level of hearing is being applied by the Commissioning Managers. This concern is raised in relation to the number of Gross Misconduct cases that resulted in a sanction of Written Warning or less. This is being monitored by the Service Support Team and discussions are ongoing with the Trade Unions/Representative Bodies.
- 4.4.14 The People Support Services Team regularly meet with the Trade Unions/Representative Bodies and will continue to discuss these concerns at the Joint Working Party which will ensure that regular updates are available for members of the Joint Consultative Panel.
- 4.4.15 There have been no other/new areas raised by the Trade Unions/Representative Bodies.

4.5 **Grievance and Discipline Training Updates**

- 4.5.1 People Support Services 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 There is currently a training programme 'The Effective Managers Series' which is being provided to managers to refresh the development given to managers across the organisation on a range of management issues including Discipline and Grievance, Capability and Attendance Management. The purpose of these sessions is to encourage managers to deal with issues at the earliest opportunity and give them the confidence to manage in an assertive, safe and effective way. These sessions are also being attended by the Trade Unions/Representative Bodies.

4.6 **Dispute Resolution**

Whilst there are no Failure to Consult or Agree that have been identified, the FBU did submit a cause for concern relating to issues around Health and Safety specifically relating to the Safety Critical checking of BA sets by operational crews during periods of resilience cover. Whilst this matter was still outstanding as at the 31 December 2014, this matter was resolved in March 2015.

4.7 **Collective Grievances**

There were no collective grievances submitted in this reporting period.

4.8 **Failure to Consult/Agree**

There have been no formal failures to consult or failures to agree issued by the Trade Unions/Representative Bodies. 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 Service's Policies that are applied in all case management have been subject to full Equality Impact Assessments. The matters contained in this report will not lead to a policy change. Equality data is analysed as part of this report and details can be found in paragraph 4.2.6 and Appendix 2.

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 during the regular JWP.

BACKGROUND PAPERS

Disciplinary Standing Order 2/1, Grievance Standing Order 2/2
Previous JCP reports '01' to '07'

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PHIL LOACH
CHIEF FIRE OFFICER

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APPENDIX 1

Report # 08

Reporting Period 1st Jul 2014 to 31st Dec 2014

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	7 raised	7	0	3 <i>1 outstanding appeal at 31 Dec 2014</i>	0	2	0
No. of Grievances raised by Green Book employees	1 raised	1	0	0	0	0	0

Further details (including E&D information)

- The subject nature of the 8 grievances included:

Terms and Conditions and Organisational Change x5
Bullying and Harassment x 3

Reporting Period 1 July 2014 to 31st Dec 2014

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	12	3	1	8
No. of Investigations into Green Book employees	1	0	0	1
No. of investigations into allegations of bullying/harassment	0	0	0	0
Total	13	3	1	9

Further details

- There have been 13 disciplinary investigations which have commenced during the reporting period July 2014 – December 2014.
- There is 1 investigation ongoing (outcome of investigation outstanding) as at 31 Dec 2014.

Reporting Period 1 July 2014 to 31 Dec 2014

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	0	1	0	1	0
No. of gross misconduct cases	14	4	3	3	4	1	0
Totals	15	4	3	4	4	2	0

Further details

- Two Grey Book Employees and Two Green Book Employees were dismissed at gross misconduct hearings within the reporting period.

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APPENDIX 2

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

Grievance X 8 Discipline X 13	SEX			DISABILITY					RACE				
	M	F	TG		YES	NO	PTNS	NS	WB	BBC	WIr	BBr	Wh/BI Car
	6	2	0		0	4	1	2	5	2	1	0	0
	12	1	0		0	8	0	5	9	0	0	3	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

Wh-BI Car – White and Black Caribbean

WIr – White Irish

BBC – Black/British Caribbean

BBr – Black British

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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	CHRN	SIKH	NOT STATED	HETERO SEXUAL	20-29	30-39	40-49	50-59
Grievance X 8	5	2	1	7	1	0	1	4	3
Discipline X 13	11	1	1	11	2	2	4	5	2

Table 2.1 Key for table 2

Religion and Belief:

NS – Not stated;

CHRN – Christian

NO REL – No religion

SIKH – Sikh

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.

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Table 3

	MARRIED/ CIVIL PARTNERSHIP					PREGNANCY/ MATERNITY	GENDER RE- ASSIGNMENT
	MARRIED	SINGLE	LIVING TOGETHER	LIVING SEPARATELY	PREFER NOT TO SAY		
Grievance X 8	3	3	0	0	2	NONE	NONE
Discipline X 13	7	6	0	0	0	NONE	NONE

**Table 3.1
Key for table 3**

Married/Civil Partnership:
DIVD – Divorced

APPENDIX 3**Dispute Resolution Summary**

			Types of Grievance					Level				Outcomes			
Report No.	Date of Report	No of Grievances	Work Practice	Bullying/ Harassment	Org Change	Other	No of Discipline Investigations	Gross Mis-conduct	Mis-conduct	Other	No of Discipline Hearings	Dismissal	Final Written Warning	Written Warning	No Formal
1	Mar-11	4	na	na	na	na	na	na	na		12	3	3	4	2
2	Oct-11	14	6	3	5	na	11	6	5	0	10	2	4	3	1
3	Mar-12	6	na	1	na	5	14	8	6	0	5	1	3	0	1
4	Sep-12	9	2	4	3	na	5	4	1	0	5	2	2	0	1
5	Apr-13	17	2	4	6	5	12	8	1	3	4	2	2	0	0
6	Sep-13	7	2	2	3	0	8	5	2	1	8	5	1	0	1
7	Apr-14	7	0	0	6	1	15	14	1	0	4	1	2	1	0
8	Sep-14	13	0	9	4	0	21	20	1	0	9	2	5	2	0
9	Mar 15	8	0	3	5	0	13	13	0	0	15	4	4	3	4

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