

8 April 2019

Notes of the Joint Consultative Panel

Attendees:

Councillor Greg Brackenridge
Councillor Nicolas Barlow
Councillor John Edwards
Councillor Catherine Miks
Councillor Zafar Iqbal

Sarah Warnes
Wendy Browning Sampson
Helen Sherlock

Satinder Sahota, Monitoring Officer
Karen Gowreesunker, Clerk to the Authority
Steve Price-Hunt, Fire Brigades Union
Maurice Carter, Unison

4/19 **Apologies for Absence**

Sasha Hitchins, Fire Brigades Union

5/19 **Declarations of Interest**

None.

6/19 **Notes of Joint Consultative Panel held on 4 February 2019**

The notes of the Joint Consultative Panel held on 4 February 2019 were received.

17/19 **Dispute Resolution Report**

Helen Sherlock provided an overview of the Dispute Resolution Report, as presented to the Scrutiny Committee on 27 March 2019, the purpose of which was to inform members of the Joint Consultative Panel about the number, type and outcomes of discipline resolutions including Employment Tribunal Activity which had occurred during the period of 1 July 2018 and 31 December 2018.

Grievances

9 new Grievances had been received, 5 were received from Green Book staff and 4 from Grey Book staff.

The grievances related to a variety of allegations, some were still ongoing. Some were appealed but not upheld. 2 members of staff had left the Service.

All 9 cases went to a formal meeting and there hadn't been any associated Employment Tribunal claims.

A discussion took place relating to the Service's approach to return to work from maternity leave. Helen Sherlock confirmed that alternate arrangements were made for returning to work and keeping in touch days and Business Partners had been made aware of the case for future returns to work.

The Chair was pleased that the issue was raised and resolved and suggested that the Policy should be looked at for future occasions. Councillor Barlow suggested that officers could identify any training requirements and that Keeping in Touch days were very important. Steve Price- Hunt felt the problem had occurred through lack of training and the wrong application of the policy by the manager not malice. It was confirmed that some areas of the Policy need addressing, the Keeping in Touch section was ambiguous and would be strengthened in the future.

Helen Sherlock confirmed that a Joint stakeholder group had been set up on the Maternity policy and Sarah Warnes stated that over the last two years a lot of work had been undertaken to strengthen the Policy. The Policy was being reviewed again and the experiences of those people who had used the Policy would be taken into account. The document would assist Manager's understanding of the issues and enable them to support individuals in right way when returning to work.

In response to Councillor Miks, Helen Sherlock didn't anticipate any issues in the future with more female firefighters joining the Service.

It was noted that managers were kept informed and trained when there are changes to legislation regarding maternity issues.

Councillor Miks suggested that there could be long term issues as experienced in the Police when a large number of female Sergeants were placed on restricted duties due to their confinement which in turn had put pressure on others.

Helen Sherlock confirmed that a number of male firefighters were taking Paternity leave and sharing the maternity provision.

An understanding of the legislation was helping. Some members of staff had been placed on restricted duties through health and protected duties for maternity and were supported through the Safety, Health and Environment team.

Councillor Brackenridge was pleased to hear that the work was being undertaken and looked forward to the number of females joining the Fire Service increasing in the future.

Sarah Warnes confirmed that maternity and paternity leave is factored into the ridership factor when undertaking the workforce planning analysis.

No associated Employment Tribunal Claims had been received relating to the grievances.

Disciplinary

There had been 21 disciplinary cases (16 at Gross Misconduct and 5 Misconduct), these related to 20 Grey Book employees and 1 Green Book employee. Details of the cases were provided to Members of the panel.

A single incident and related issues from an initial investigation at one station resulted in 14 disciplinary investigations. One significant investigation would be reported to the Panel following a wider debrief to consider the impact of this case on the Service, Individuals, Resources and Organisational Learning.

10 cases were managed at Gross Misconduct and 4 managed at Misconduct. 7 progressed to a formal hearing as the allegations related to a breach of the Service's Core Values. The remaining 7 were not progressed to formal hearings but were managed through local performance management.

There were no significant trends to report and no associated Employment Tribunals had been received by the Service relating to any of the disciplinary cases from any employees.

3 Employment Tribunals had been lodged in this reporting period, but one had subsequently been withdrawn. The 2 Employment Tribunals related to Grievances reported in the previous reporting period and progress would be reported at a future meeting.

Steve Price-Hunt stated that again during this reporting period, there had been high levels of disciplinary cases with 16 at Gross Misconduct. He stated this was becoming the norm for West Midlands Fire Service but was not proportionate with other Services. He re-iterated that there were 7 cases resulting in 1 Final Written Warning, 4 first Written Warnings and 1 no case to answer and one case pending hearing and

he was concerned that a charge of Gross Misconduct was being used regularly.

The Chair welcomed the wider debrief on the specific case.

The Fire Brigades Union asked the Fire Authority to undertake research to establish the financial costs of disciplinary cases including overtime, cover, people undertaking investigations, sickness, Occupational Health referral and suggested that the figures would be staggering.

The Fire Brigades Union continued that a large case resulting in 14 disciplinary investigations had taken over a year and felt that the number of resources used to carry out the investigations would create a substantial cost, possibly six figure number on the organisation.

Secondly, in respect of cases of dismissal, the Fire Brigades Union requested that the Constitution be amended to ensure that the Appeals Panels were heard by Members of the Fire Authority in a similar manner to some other Fire Authorities.

Sarah Warnes stated that the numbers were disappointing, but one case involved a large group of people and was a complex case. It had taken some time to get to the latest position. Outside of this case, there were 7 cases which was a proportionate level of case management and aligned with previous periods.

The large case is reported as individual investigations separately to provide transparency which then translate in to high number of overall cases. The learning from this case will be provided through the debrief process.

It was confirmed that the issue of Fire Authority Members hearing Appeals for disciplinary issues had been previously addressed through the Joint Consultative Panel in 2017 and could not be revisited. Additionally, the request had not been through the Joint Consultative Committee.

The Clerk stated that the FBU would need to go through the Employees Relations Framework (ERF). The Monitoring Officer concurred with the Clerk.

A question related to the role of the Appeals Committee was asked and It was confirmed that the Appeals Committee's role is to hear Pensions Appeals.

Councillor Edwards felt that the latest figures were not typical and had been distorted by one case and following the debrief the Members of the JCP would receive details of the learning and any follow up action on this significant episode.

It was confirmed that all Councils had moved away from Elected Members hearing Disciplinary Appeals because of the legal complexities and it was considered that Tribunals were the best way forward to make a judgement.

Steve Price-Hunt understood the role of the ERF and JCC, but felt that the Fire Authority were the Employer with delegated responsibility to the CFO, but also felt that the Fire Authority had a responsibility to understand the cost of disciplinary cases which are unusually high.

The FBU had raised this issue on two previous occasions and although management training had been provided to nip disciplinary issues in the bud, the numbers were still high and the Panel appeared to be accepting the high numbers. Steve Price-Hunt reiterated his request for the Fire Authority to cost out the full financial implications of the disciplinary investigation.

He highlighted one case that had lasted one year but the conclusion was that for one individual there was no case to answer.

Satinder Sahota stated the figure for this period was a unique spike and was not representative of the number of cases during his time as Monitoring Officer.

From an Employment Law perspective, it was considered better to start with Gross Misconduct and then to reduce to Misconduct when matters become clear and to ensure that there isn't a disproportionate sanction. It would be difficult to justify uprating a case from Misconduct to Gross Misconduct and Members were asked to bear this in mind and that review work was being undertaken with the Representative Bodies.

The Chair stated that he took on board the issues raised by both sides and understood the legal definitions and the problems that could be caused at Employment Tribunals by changing the charge. He accepted that the issue had been discussed at every meeting of the Panel and asked if the joint work was being discussed with the Representative Bodies.

Helen Sherlock confirmed that the specific debrief process was well embedded and Officers were working with the FBU. Work was also being undertaken with Organisational Intelligence on the time taken and the length of sickness absence. Following the initial three months of wider organisational learning, the Representative Bodies are now being included.

Sarah Warnes stated that the focus should be further upstream as these issues detract from the question as to why people feel appropriate to act outside of core values and the culture of behaviours should be looked at as quickly as possible.

Wendy Browning-Sampson confirmed that the forum to thrash out the detail was the Joint Working Panel and would be picked up there.

The Chair thanked Officers for the information which was helpful to Members and was satisfied that the figures were in proportion. He went on to say that everybody associated with the Fire Service demands the highest standards and the Unions also demand the highest levels of behaviour and the standards were there to protect the staff and reputation of the Fire Service.

Cllr Edwards stated he had no opposition to the cost of process being looked at but was not sure what would be gained by this. He felt that there would always be a cost to managing a process for the time that the Service and the Trade Unions spent on discipline cases.

He stated that if the main aim was to reduce costs this could impact or deviate from good practice and ACAS guidelines. Cllr Edwards felt this could have an impact on behaviours.

The FBU agreed that if someone displayed unacceptable behaviours they should be disciplined, but felt that a review of the costs and time involved would sharpen minds and bring focus to the extent of time being taken on disciplinary hearing. Steve Price-Hunt disagreed with Satinder Sahota in regarding to starting at a charge of Gross Misconduct and stated that a lesser charge can be used if it could stand up in court.

However, he repeated that the process was taking too long, and that disciplinary hearing should take place but more quickly and robustly as the current situation was having a detrimental effect on morale and the organisation.

It was agreed that following further work at the Joint Working Party a report would be represented at a future Joint Consultative Panel to give Members further insight. It was felt that cost should not be the overriding factor.

The outcome of debrief process would also be fed back to the JCP and It was hoped that there would be a learning outcome from the process and the learning would then become embedded.