

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

SCRUTINY COMMITTEE

4TH DECEMBER 2023

1. **DISPUTE RESOLUTION REPORT**

Report of the Chief Fire Officer RECOMMENDED

- 1.1 THAT the contents of the Dispute Resolution Report for the below period are agreed:

- 01/07/2023 – 30/09/2023 (3-month reporting period)

2. **PURPOSE OF REPORT**

For members of the Scrutiny Committee to agree the Dispute Resolution Report regarding the number, type and outcomes of discipline and grievance hearings and other dispute resolution including Employment Tribunal activity that have occurred during the period listed above.

3. **BACKGROUND**

- 3.1 This report provides a summary of the number, type and outcomes of disciplinary, grievance, debriefs, collective grievances and any reported failure to agree or failure to consult. This report will also provide detail around the Employment Tribunals that are lodged within the reporting time.
- 3.2 Within this report we will identify any lessons learned from the application of our then current practices but also a full and comprehensive review and stakeholder engagement in relation to the disciplinary and grievance policies.

4. **SUMMARY OF CASES**

4.1 **Grievances**

During this 3-month reporting period we have had 6 grievances that were lodged.

- 4 - Grievances from individuals
- 2 - Collective grievances.

1: Grievance G15 – Disability Discrimination

This individual raised a grievance regarding working upstairs in HQ. The environment was not suitable for their neurodiverse needs, and these were not addressed. There were also allegations of bullying by the individual's line manager, which were investigated under a different process.

The outcome: The bullying aspect from the line management was taken out and investigated separately.

The outcome of this grievance was not upheld, support measures were offered and put in place to satisfy the elements of this grievance.

Appeal: No appeal lodged

Length: 53 days, this duration was due to the individual being off sick.

2: Grievance G16 – Bullying, Intimidation, Harassment & Breach of flexi-time policy

This individual raised a grievance around the way they were spoken to by another member of their team and their general behaviours, which they deemed as being bullying.

This grievance alleged that there were performance related issues which had an impact on the department.

There were allegations that this individual spoke in a derogatory manner towards other colleagues.

The clockings did not reflect the work activity, there were too many manual clockings working from home which resulted to having a lot of time away from work.

The outcome: The grievance was upheld and the case is now being

managed under the disciplinary policy.

Appeal: N/A

Length: 115 days, this length is due to the employee who raised the grievance having time off sick. The individual who the grievance was against did not engage fully and has also been off sick.

3: Grievance G17 (Collective) – Victimisation

This was a collective grievance received from a group email account. It was alleging victimisation and bullying behaviours from the manager of the team. This case was managed under the disciplinary process.

The outcome: This was managed under disciplinary.

Appeal: N/A

Length: 2 days

4: Grievance G18 (Collective) – Work Relations

This was a collective grievance regarding the amendment to out-of-hours shift patterns, where the individuals felt that this should have been managed under negotiation and not consultation.

The outcome: Grievance not Upheld.

Appeal: Still in process

Length: 113 days

5: Grievance G19 – Discrimination

This grievance was raised alleging that an organisational recruitment process did not cater for an individual's neuro-diverse needs with no reasonable adjustments made.

The outcome: Grievance Fully Upheld

Appeal: N/A

Length: 53 days

6: Grievance G20 – Work Practices

This grievance was raised concerning the work practices of two individuals

within their team. It was alleged that they were not undertaking their duties fully and were fraudulently clocking in and out. There were also allegations of bullying behaviour towards other team members.

The outcome: Upheld and notified that the findings were being investigated under the disciplinary process.

Appeal: None

Length: 78 days, this was due to other team members being interviewed, the individual was off sick. This grievance was regarding 2 colleagues who also were off work sick during the interview process.

Age	Gender	Ethnicity	Sexual Orientation	Disability	Religion
43	Male	White British - English/Welsh/Northern Irish/British	Prefer not to state	Yes	Christian
48	Female	White British - English/Welsh/Northern Irish/British	Heterosexual	No	None
		Collective			
		Collective			
45	Male	White British - English/Welsh/Northern Irish/British	Heterosexual	No	Christian
57	Female	White - Irish	Heterosexual	No	Christian

Following analysis of the equality data there has been no impact on any specific group. The above table will confirm a full breakdown of the equality data for each case.

4.2 **Disciplinary Cases**

There were 16 disciplinary cases in total for this 3-month reporting period. 11 were gross misconduct and 5 were misconduct.

4.2.1 **Gross Misconduct 11 cases:**

Disciplinary 1 (D10-23) – Potential Criminal Charges

Investigation into allegations of criminal charges following a dispute with their neighbour. Throughout the investigation, the individual has given their version of events but due to the relevant court hearing taking place in 2024, we have not yet been able to gain a full understanding of the event.

The Service has decided to pause on this investigation and not go to a hearing due to the Court date being in March 2024.

Outcome: Currently the Service has paused on this process to allow legal proceedings to take place. Due to go to court March 2024.

Length: On hold

Discipline 2 (D23-23) Stalking, Harassment & Secondary Employment

Investigation as a result of WMP informing the service of the arrest and bail of an employee in relation to stalking and harassment offences. The employee had not declared his arrest to WMFS. In addition to this the investigation revealed the individual failed to declare his secondary employment to WMFS.

Position: The individual was dismissed and has not appealed the decision.

Length: 114 days. This is due to delays in obtaining information from WMP and video footage.

Discipline 3 (D24-23) Illegally Sharing of images

Investigation as a result of WMP informing the service of the sharing of sensitive images taken at Fire Service incidents. An individual had taken photographs whilst at incidents and had shared these images via WhatsApp with non-Fire Service employees.

Position: The individual was dismissed and has not appealed the decision.

Length: 44 days.

Discipline 4 (D25-23) Sex Discrimination

Investigation as a result of an individual admitting making unwanted sexual advances toward a member of their team during activities deemed to be an extension of the workplace.

Position: Dismissal without notice

Length: 68 days

Appeal: No appeal lodged

Discipline 5 (D27-23) Fraudulent Clocking Time

Investigation as a result of a grievance raised where another employee allegedly witnesses fraudulently clocking in and out of work, which is a breach of the Flexi-Time Guidance.

Position: 18 month final written warning

Length: 75 days

Appeal: No appeal lodged

Discipline 6 (D28-23) Fraudulent Clocking Time

Investigation as a result of a grievance raised where another employee allegedly witnesses fraudulently clocking in and out of work, which is a breach of the Flexi-Time Guidance.

Position: 18 month final written warning

Length: 75 days

Appeal: No appeal lodged yet

Discipline 7 (D32-23) Sexual Harassment

Investigation of an individual for criminal conduct (sexual offences) against another member of their team during a night out which is deemed as an extension of a workplace.

Due to individual mental health issues and relying on external services to view CCTV footage, this investigation has taken longer than anticipated.

Position: Ongoing

Length: 76 days

Discipline 8 (D33-23) Fraudulent Clocking Time

Investigation as a result of a grievance raised where another employee allegedly witnesses fraudulently clocking in and out of work, which is a breach of the Flexi-Time Guidance.

Position: 18 month final written warning

Length: 64 days

Appeal: No appeal lodged yet

Discipline 9 (D34-23) Theft

Investigation as a result of intelligence received from WMP regarding a member of staff repeatedly stealing items from a shop. There was video evidence to support this allegation.

Outcome: Dismissal without notice

Length: 59 days

Appeal: TBC

Discipline 10 (D35-23) Breach of Policy

Investigation into an individual undertaking activity whilst booked sick from work, with the individual had posting such activities on social media platform Facebook. This individual then proceeded to try and change their sickness booking to annual leave when questioned.

Position: Ongoing

Length: 55 days

Discipline 11 (D36-23) Usage of drugs

This individual reported to work under the influence of drugs (cocaine) and alcohol, which was proven by a with-cause test.

Outcome: Dismissal without notice

Length: 40 days

Appeal: Appeal lodged, awaiting to confirm hearing date

4.2.2 **Misconduct 5 cases:**

Discipline 1 (D15-23) Misconduct – Bullying & Harassment

Alleged inappropriate conduct of a middle manager involving potential bullying towards team colleagues over several years.

There were 2 accounts of confidential reporting to suggest that there had been some potential bullying and harassment and general concerns.

The investigation found that there was no evidence of bullying, there was some evidence of inappropriate behaviour which then determined the award.

Outcome: 6 month first written warning

Length: 159 days

Appeal: Lodged, hearing date 27th November 2023

Discipline 2 (D17-23) Misconduct - Performance & Capability

Investigation looking into the alleged conduct and behaviours of

an employee in relation to their development plan, not taking direction from their line manager and demonstrating poor performance.

On the 6th November 2023 following the completion of the investigation, the Hearing Manager wrote to the employee to confirm that we are aware that the individual has submitted their resignation to take place 1st December 2023 and in light of this action, no benefit in scheduling a hearing at misconduct level and therefore will place on their record that had the employee remained in employment with WMFS, an outcome of the misconduct hearing would have been awarded.

Position: Employee submitted retirement

Length: 99 days

Discipline 3 (D22-23) Misconduct - Bullying & Harassment

This investigation was regarding bullying and harassment of a colleague including calling station phones, turning up at the individual's house and sending abusive messages.

Position: 6 month first written warning

Length: 105 days

Appeal: No appeal lodged

Discipline 4 (D26-23) Misconduct - Bullying & Harassment

This investigation was the result of a collective grievance fact-find alleging bullying and harassment from a supervisory manager to various team members within the same department.

Position: 6 month first written warning

Length: 71 days

Appeal: No appeal lodged

Discipline 5 (D29-23) Misconduct - Inappropriate Text Messages

This investigation is the result of an individual who has sent text

messages to another employee about other members of staff. The content of these messages potentially do not align to our core values or policies.

Position: Paused, whilst the 7 grievances are being investigated.

Length: 84 days

Age	Gender	Ethnicity	Sexual Orientation	Disability	Religion
D10-23	Male	White British - English/Welsh/Northern Irish/British	Heterosexual	No	Christian
D15-23	Female	White British - English/Welsh/Northern Irish/British	Heterosexual	No	Christian
D17-23	Male	White British - English/Welsh/Northern Irish/British	Heterosexual	No	None
D22-23	Female	White British - English/Welsh/Northern Irish/British	Gay/Lesbian	Not stated	Not stated
D23-23	Male	Asian or Asian British - Pakistani	Heterosexual	No	Muslim
D25-23	Male	Asian or Asian British - Indian	Heterosexual	No	Sikh
D26-23	Female	White British - English/Welsh/Northern Irish/British	Heterosexual	No	Christian
D27-23	Female	White British - English/Welsh/Northern Irish/British	Not stated	Not stated	Not stated
D28-23	Female	White British - English/Welsh/Northern Irish/British	Heterosexual	Prefer not to state	Christian
D29-23	Female	Mixed - White and Asian	Gay/Lesbian	No	Buddhist
D30-23	Male	White - Irish	Not stated	No	Not stated
D32-23	Male	White - Irish	Heterosexual	No	None
D33-23	Female	White - Irish	Heterosexual	No	Christian
D34-23	Female	Prefer not to state	Not stated	Not stated	None
D35-23	Female	White British - English/Welsh/Northern Irish/British	Bisexual	No	None
D36-23	Male	White British - English/Welsh/Northern Irish/British	Heterosexual	No	None

Following analysis of the equality data, unlike previous reporting periods there is evidence that higher proportion of females than males have undergone disciplinary proceedings.

Females make up 26% of the workforce and 56% of all disciplinaries. Therefore, this could be perceived as a significant proportion in comparison to male employees.

Of the females identified within this reporting period, approximately one third fall under a sexual orientation other than heterosexual.

5. EMPLOYMENT TRIBUNALS

5.1 Three employment tribunals submitted in the previous reporting period:

- (1) An Employment Tribunal claim has been submitted under unfair dismissal and race discrimination. The Tribunal hearing was listed from 23rd to 26th May 2023. All claims were dismissed by the Tribunal Judge.
- (2) An Employment Tribunal case has been received under constructive dismissal and age discrimination. Tribunal hearing listed from 16th to 20th October 2023. However, due to a lack of judicial resources, this hearing has been postponed to 2024.
- (3) An employee has submitted three ETs, the first submitted 15th July 2022 and a further 2 on 17th April 2023, which have been consolidated and will be heard in one hearing. The Tribunal Hearing is listed from 8th to 16th January 2024 and if required, a remedy hearing date of 7th May 2024. Claims are for sex discrimination, disability discrimination and harassment & victimisation.

5.2 Five new employment tribunals and two ACAS conciliation submitted within this reporting period:

- (4) (As above) One employee has submitted three ETs, the first submitted 15th July 2022 and a further 2, which fall under this reporting period, on 17th April 2023, which have been consolidated and will be heard in one hearing. The Tribunal Hearing is listed from 8th to 16th January 2024 and if required, a remedy hearing date of 7th May 2024. Claims are for sex discrimination, disability discrimination and harassment & victimisation.

- (5) An Employment Tribunal case was submitted under Constructive Dismissal, Disability, Age & Sex Discrimination. The claimant has since withdrawn from the ET process.
- (6) An Employment Tribunal case was submitted under unfair dismissal. Tribunal hearing was held, originally listed from 5th to 6th October 2023. However, during the first day of the hearing, 5th October, the judge dismissed the case citing that the claimant submitted his claim after the deadline date, therefore under the law the judge did not have jurisdiction to hear the case.
- (7) An Employment Tribunal case has been submitted under race discrimination and discrimination under the grounds of religion/belief. A preliminary hearing took place on 16th November 2023 where the judge confirmed that the hearing would be listed for November 2024.
- (8) An ACAS conciliation submission was made; however, it was settled under the internal grievance procedure, this case was linked to KIT payments within the Maternity Policy.
- (9) An ACAS conciliation submission was made for unfair dismissal. A preliminary hearing is scheduled for 5th December 2023 for the judge to confirm if this will go to an ET Hearing.

6. **DEBRIEFS**

PSS Management and Organisational Intelligence will manage the debrief process following the conclusion of disciplinary and grievance case. If there is a requirement for a structured debrief, this will be arranged and managed by Organisational Intelligence and PSS Management. In this period, we have sent out debrief requests for six cases and have received 19 responses.

7. **POLICIES AND PROCEDURES**

The Disciplinary and Grievance policies are available for all employees on MESH. The disciplinary policy has been reviewed, amended and the latest version has been published following consultation.

Grievance policy is currently in consultation with the view of publication towards the end of 2023.

8. **CONFIDENTIAL REPORTING LINE**

Between 01/07/2023 – 30/09/2023 we have received 14 complaints via the confidential reporting line, each case has been looked into and a response has been provided of the progress and current status.

9. **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.

10. **LEGAL IMPLICATIONS**

There are no direct legal implications arising from this report.

11. **FINANCIAL IMPLICATIONS**

There are no direct financial implications to this report.

BACKGROUND PAPERS

- Disciplinary Policy 2/1
- Grievance Policy 2/2

The contact officer for this report is Richard Stanton, Assistant Chief Fire Officer 07973 810054.

WAYNE BROWN
CHIEF FIRE OFFICER