

**WEST MIDLANDS FIRE AND RESCUE AUTHORITY**

**SCRUTINY COMMITTEE**

**7<sup>th</sup> NOVEMBER 2022**

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 is noted:

- 01/01/2022 – 30/06/2022 (6-month reporting period)

2. **PURPOSE OF REPORT**

To inform the Scrutiny Panel regarding the number, type and outcomes from discipline and grievance hearings and other dispute resolution activity, including Employment Tribunals that have occurred during the period outlined above.

3. **BACKGROUND**

3.1 This report provides a summary of the number, type and outcomes of disciplinary, grievance alongside any reported failures to agree or failures to consult. The report also provides detail around Employment Tribunals that are lodged or progressed within the reporting time.

3.2 The report also identifies lessons learned from relevant cases alongside improvements made as a result.

3.3 Ongoing discussions and feedback are encouraged at Joint Consultative Committee and Joint Working Party meetings around the application of the policies relevant to this report.

## 4. **SUMMARY OF CASES**

### 4.1 **Grievances**

During the 6-month reporting period the service has received 5 grievances. Out of the 5 grievances, there was 1 collective grievance which involved 3 employees.

#### 4.1.1 **1: Grievance G1 Bullying and Victimisation:**

The employee made allegations to the Brigade doctor and a Group Commander, of experiencing bullying and discrimination. During the investigation the individual refused to disclose any specific information or provide any details to confirm these allegations. The individual was advised without any information, the Service would be unable to fully investigate.

The individual refused to disclose any further details and the grievance was closed.

**The grievance** was not upheld due to no further evidence provided to support the allegations.

**Length:** 53 days

#### 4.1.2 **2: Grievance G10 Bullying, Victimisation and Sexual Harassment:**

The employee alleged being subjected to bullying and treated unfavourably by some colleagues following a disciplinary case.

There was a thorough investigation into all aspects of the grievance however, the allegations regarding bullying, victimisation and sexual harassment could not be further investigated, due to the individual not being prepared to share any names or specific information about the events. The investigation team attempted to seek further information on several occasions.

Due to not providing names, locations, dates or any further details the investigation team were unable to investigate further.

**The outcome:** the Service was satisfied that all policies and procedures were followed and had fulfilled our duty of care; without additional information we were unable to fully investigate.

**Length:** 68 days

#### 4.1.3 **3: Grievance G11 Extension to temporary contract during resignation period:**

An employee resigned but during the resignation period changed position and felt that commitments were made to find alternative employment. There were no further roles for the individual to apply for, which had been explained during the notice period. The individual was also aggrieved due to inaccurate leave payment for the previous financial year.

**Outcome:**

- Part upheld: Leave payment was given as goodwill gesture
- Not upheld: extension of contract
- Appeal outcome: not upheld
- Employment Tribunal has been submitted

**Length:** 45 days

#### 4.1.4 **4: Collective Grievance G14 bullying, harassment, disability discrimination by line manager:**

3 employees raised concerns around the behaviours of their line manager. It was alleged that comments were made which were discriminatory in nature relating to disability. They felt they were treated less favourably compared to other departments in terms of working hours and application of the agile working policy.

**Outcome:** Part upheld:

- Adjustment to working hours and recommendations were made to work in line with Service policy.
- Development plan and ongoing monitoring of the line manager to understand how her behaviour has impacted others.

**Length:** 55 days

#### 4.1.5 **5: Grievance G15 Terms and conditions of employment:**

A grievance around leave entitlement following return from a career break. The individual was returning sooner than planned and believed an entitlement existed for long service leave. However, this was not the case as there was a break in service as outlined within the policy that supports this.

**Outcome:** Not upheld as the Service applied the policy correctly.

**Appeal:** Not upheld

**Length:** 56 days

	Position	Green or grey book	Gender reassignment	age	ethnicity/Race	Disability	Sexual Orientation	Marital Status	Religion or belief
Grievance	FF	Grey	Male	36	Asian - Pakistani	No	Heterosexual	Single	Islam
Grievance	FF	Grey	Female	33	White British	No	Heterosexual	Married	None
Grievance	Manager 1C	Green	Male	56	Prefer not to say	Prefer not to say	Prefer not to say	Divorced	Not Stated
Collective Grievance	Admin 2C	Green	Female	55	White British	No	Heterosexual	Married	Christianity
	Admin 2C	Green	Female	55	White British	No	Prefer not to say	Married	None
	Admin 2C	Green	Female	63	White British	No	Heterosexual	Married	None
Grievance	FF	Grey	Male	35	White British	No	Heterosexual	Married	None

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

#### 4.2 **Disciplinary Cases**

There were 9 disciplinary cases in total for this 6-month reporting period.

7 cases were at the level of Gross Misconduct and 2 were Misconduct

##### 4.2.1 **Gross Misconduct cases:**

1. **Disciplinary 1 (D2-22)** Inappropriate and offensive language used by an employee in the workplace. There was acknowledgment of the inappropriate nature of the language during the investigation. Due to mitigating factors presented by the individual it was decided that this case would not proceed to a hearing and an informal outcome was appropriate.

**Outcome:** No formal action

**Length:** 31 days

2. **Disciplinary 2 (D3-22)** Criminal charges/safeguarding. Employee was arrested as a result of allegations of domestic violence. The Service began the investigation immediately alongside considering the progress of the criminal case. Following attendance at Magistrates Court the individual pleaded guilty, and the case has been submitted to Crown Court. The individual remains suspended from work.

**Position:** Hearing scheduled for 8<sup>th</sup> September 2022

**Length:** Ongoing

3. **Disciplinary 3 (D4-44)** Employee made a rude hand gesture to a member of the public whilst riding on an appliance. The employee accepted responsibility for their actions and offered a full apology.

**Outcome:** demotion to a firefighter with a 12-month development plan

**Length:** 37 days

4. **Disciplinary 4 (D5-22)** Bullying and inappropriate behaviour by an employee. Following investigation, the Commissioning Manager downgraded the level to misconduct. The hearing was postponed twice at the Fire Brigades' Union request due to unexpected circumstances (funeral of a retired employee and death of a trainee Firefighter).

**Outcome:** Final Written warning 18 months alongside a development plan

**Length:** 86 days

5. **Discipline 5 (D6-22)** Employee arrested and charged for drink driving whilst off duty, the employee informed their line manager immediately. The employee was removed from driving duties for the Service whilst the police completed their investigation, and this continues for the period of the driving ban received from court.

**Outcome:** 18 months final written warning

**Length:** 58 days

6. **Discipline 6 (D8-22)** An employee is alleged to have demonstrated inappropriate behaviours, some of which could be deemed as sexual in nature towards another employee. Investigation is currently ongoing.

**Outcome:** Hearing 26<sup>th</sup> August 2022

**Length:** Ongoing

7. **Discipline 7 (D9-22)** An employee charged with dangerous driving whilst away from work duties. This case went to court and the outcome was a 15-month driving ban and a fine. The individual was removed from all driving activities for the Service which will continue whilst the ban is in place.

**Outcome:** Investigation report has been submitted; hearing decision being considered by Commissioning Manager.

**Length:** Ongoing

#### 4.2.2 **Misconduct Cases:**

1. **Discipline 1 (D1-22)** Damage to brigade vehicle the employee drove the van into the station gate but did not inform the Service and instead it was identified through CCTV footage. The investigation found that the employee had admitted liability.

**Outcome:** 12-month written warning

**Length:** 52 days

2. **Discipline 2 (D7-22)** Employee left work 1 hour early to attend a religious meeting without permission from their line manager.

**Position:** Employee remains off sick with impact on timescales

**Length:** Ongoing

GROSS MISCONDUCT	Position	Green or grey book	Gender reassignment	age	ethnicity/Race	Disability	Sexual Orientation	Marital Status	Religion or belief
	Tech 2B	Green	Male	56	White British	No	Heterosexual	Single	Not Stated
	WCdr B	Grey	Male	35	White British	No	Heterosexual	Married	None
	CCdr	Grey	Male	48	White British	No	Heterosexual	Married	None
	FF	Grey	Male	38	Black Caribbean	No	Heterosexual	Single	None
	TFF	Grey	Female	41	Prefer not to say	Prefer not to say	Prefer not to say	Prefer not to say	Prefer not to say
	FF	Grey	Male	44	White British	Not Stated	Heterosexual	Married	Not Stated
FF	Grey	Male	39	Black Caribbean	No	Heterosexual	Single	Christianity	
MISCONDUCT	Position	Green or grey book	Gender reassignment	age	ethnicity/Race	Disability	Sexual Orientation	Marital Status	Religion or belief
	FF	Grey	Female	32	Mixed - White an	No	Heterosexual	Single	Not Stated
Technical 1C	Green	Male	54	White British	No	Not stated	Married	Christianity	

Following analysis of the equality data there has no adverse impact on any specific group. The table above provides the full breakdown of equality data.

## 5. **EMPLOYMENT TRIBUNALS**

### 5.1 2 new employment tribunals submitted within the reporting period:

- March 2022 Constructive Dismissal & Age Discrimination (Claimant failed to secure promotion and claims being asked when they'd retire.)
- June 2022 Wrongful dismissal and discrimination. (Linked to the grievance outlined above regarding an individual not being reappointed following resignation.)

1 employment tribunal was settled within this reporting period.

3 employment tribunals previously updated on have been given dates of hearing over the next 12 months:

- Unfair Dismissal/age discrimination (starts November 2022)
- Unfair Dismissal/Disability Discrimination (awaiting exact dates but will be in 2023)
- Unfair Dismissal/Race Discrimination (starts 2023)

## 6. **DEBRIEFS AND LEARNING OUTCOMES**

Organisational Intelligence 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 People Support Services.

During the reporting period Organisational Intelligence has debriefed 5 cases (3 Disciplinary cases and 2 Grievance Cases).

A structured debrief was held following a Gross Misconduct case that took 7 months to conclude, the purpose of this meeting was to identify and capture learning and areas of good practice:

- The investigation identified there was a requirement for an ICT specialist to explain the context/timelines of these images being uploaded which was provided at the hearing. The debrief feedback suggested that this technical support could have been provided earlier and avoid entering a formal process.
- The debrief identified that better engagement could have been maintained with the employee throughout the disciplinary process to help support health, well-being and mental status.
- The debrief identified that the process took 7 months and 22 individuals were interviewed. However, the technical data identified evidence that could have been established during the fact-finding stage

Organisational learning:

1. Early engagement with key stakeholders to identify timescales, resources and expectations. These changes have been proposed within the policy that is currently being consulted on.
2. The employee 'Welfare Officer role' is defined in the Disciplinary policy and toolkit and needs to be applied consistently.
3. Clarity of individual roles and responsibilities should be set out in the Terms of Reference and communicated at the start of the process.
4. The investigation should be managed proportionately, and this will be monitored more directly by People Support Services in future.



## 7. **POLICIES AND PROCEDURES**

The Disciplinary and Grievance policies are available for all employees on MESH. These policies are reviewed every 3 years unless there are any changes that could require an earlier review.

Following feedback, the Service plans to proactively propose some changes to the disciplinary process around:

- the level of investigation (eg. Misconduct or Gross Misconduct)
- agreeing timelines at the commissioning phase
- introducing target dates for completion
- exploring an 'agreed outcomes' approach to some disciplinary cases

These proposals for changes to policy are currently under consultation through JCC members, which includes all recognised Trade Unions.

## 8. **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.

## 9. **LEGAL IMPLICATIONS**

There are no direct legal implications arising from this report.

## 10. **FINANCIAL IMPLICATIONS**

There are no financial implications to this report.

## **BACKGROUND PAPERS**

Disciplinary Policy 2/1

Grievance Policy 2/2

Previous Scrutiny reports Dispute Resolution Reports 0-19 and Review of Case Management Debriefs.

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