



Report to: Professional Standards Committee

Agenda item: 7

Date: 16 May 2012

Subject: Employment Tribunal and Grievance (Dispute Resolution) Update

Sponsor: Director of Corporate Resources. Presented by Kerry McCafferty HR Corporate Services Manager

For: Information

1. PURPOSE OF PAPER

1.1 This paper is presented to update the Professional Standards Committee on the latest position in respect of Employment Tribunal (ET) and Grievance (Dispute Resolution) cases.

2 EMPLOYMENT TRIBUNALS

2.1 From 1 April 2011 to 31 March 2012 there have been 18 ET claims submitted. This compares with 21 submitted during the 12 month period April 2010 to March 2011. The Tribunals Service has published quarterly statistics for 1 October to 31 December 2011 showing that compared to the same quarter in 2010 there has been a 40% increase in claims to Employment Tribunals nationally. Therefore our reduction in the number of claims submitted against us is better than that being experienced externally. We are attributing this to thorough investigations at grievance stage and robust management of ET cases.

2.2 The table below shows the current Employment Tribunal status for the last quarter to 31 March 2012.

ET STATUS	
No. of Live ET's (at end of quarter)	11
No. of New ET's (during quarter)	3
No. of Closed ET's (during quarter)	2
No. of Live ET Appeals (at end of quarter)	0



No. of New ET Appeals (during quarter)	0
No. of Closed ET Appeals (during quarter)	0

2.3 The table below shows the claim reasons for the 11 current live employment tribunals

REASON FOR CLAIM	NUMBER
Sex (including pay) discrimination	5
Disability discrimination	0
Sexual orientation discrimination	1
Race discrimination	4
Religion or belief discrimination	0
Age discrimination	2
Unfair dismissal (including constructive dismissal)	3
Whistleblowing	3
Other payments owed	0
Other complaints	2

N.B. This total will not equal the total number of ET's as some individuals have more than one reason for claim.

2.4. There has been a 100% success rate in ET's that have proceeded to hearing in the period 01 April 2011 to 31 March 2012 (2 cases).

In relation to the remaining claims the outcomes were:

- 8 withdrawn
- 7 settled
- 1 struck out

(These numbers will not equal the total number of ET's as some individuals have more than one reason for claim and some may have been received in the previous year).

2.5 In the period since 1 April 2012 and the writing of this report we have proceeded to two further ET hearings.

The first case of race discrimination which was scheduled for a 10 day hearing was withdrawn by the claimant on the first day. Although this had involved lengthy preparation, it was a good outcome as we had robustly resisted requests for settlement. Early in May we successfully defended an age discrimination case and were unusually awarded costs.

Although this does not cover our total cost this is a very positive outcome for BTP because it will not only be a disincentive for the officer to bring future claims, but will also send a clear message to others that frivolous claims will be met with a robust response from the organisation.

- 2.6 Forthcoming hearings include a three day sex and sexual orientation discrimination claim in June 2012 and two unfair dismissal/whistle blowing cases yet to be listed.

3 GRIEVANCES

- 3.1 Recording of grievances moved to the HR Business Centre (HRBC) using Centurion from 1 April 2011.

We are now able to present data for a full year's recording in line with the performance year 2011/12. We are still however unable to compare with any historical position in detail due to the revised recording methods still being relatively new. This key information gap (due to BTP recording) means we cannot yet look in-depth at historical patterns for grievances. This is hindering knowledge and understanding of the changing nature and scale of the current picture. This will obviously improve over time.

For the period 1 April 2011 to 31 March 2012, 106 grievances have been recorded. Of these 91 have been finalised and 15 remain live. At quarter two and three we reported 50 and 31 live grievances respectively. A reduction to just 15 continues the positive trend to focus on resolution of disputes and improved recording.

- 3.2 For full year comparison, in the period :



- 1 April 2009 to 31 March 2010; 75 grievances were recorded
- 1 April 2010 to 31 March 2011; 94 grievances were recorded.

This shows a slight although not significant increase.

3.3 Grievance Analysis

Analysis has been undertaken on the grievances recorded for the period April 2011 to March 2012.

When considering this analysis the small actual numbers of some of the datasets reduces the statistical significance and hence the conclusions which can reasonably be drawn. (Actual case numbers are shown in brackets next to percentages)

In addition where Areas are referred to, these relate to the Area where the aggrieved works. It does not always reflect the Area where grievance management has taken place as often, especially at appeal (Stage 3), grievances will be allocated off Area for resolution to ensure independence.

3.3.1 Stage of Resolution

The following table shows the stages at which the 91 grievances were finalised.

	Stage One	Stage Two	Stage Three
Force Headquarters	26.3% (5)	57.9% (11)	15.8% (3)
London North Area	26.7%(4)	53.3% (8)	20.0% (3)
London South Area	30.0% (3)	40.0% (4)	30.0% (3)
London Underground Area	30.8% (4)	46.2% (6)	23.1% (3)
North East Area	6.7% (1)	86.7% (13)	6.7% (1)
North West Area	40.0%(2)	60.0% (3)	0.0%
Scotland Area	0.0%	100.0% (1)	0.0%
Western Area	23.1%(3)	53.8% (7)	23.1% (3)
Average	24.2% (22)	58.2% (53)	17.6% (16)

- Nearly two-thirds (58.2%) of grievances are finalised at Stage 2. This is a slight increase from the previous report (50%).



- Excluding Scotland (which only had 1 case), NE has the highest proportion of cases finalised at Stage Two (86.7%) followed by NW (60%). Both these Areas have seen significant increases in the proportion finalised at Stage Two compared to the last report (NE – 55.6%, NW – 0.0%). This is likely to be due to better recording of the grievances rather than anything the Area is doing differently in the last period.
- NW Area is resolving a higher proportion of grievances at Stage One (40.0%) than may be expected from the average (24.2%).
- NE Area is resolving a higher proportion of grievances at Stage Two (86.7%) than the average (58.2%).

3.3.2 Average Time to Resolve

The following table shows the time taken to resolve the finalised grievances.

It should be noted that grievances are sometimes allocated off Area for resolution.

	<40 days	40-70days	>70 days
Force Headquarters	52.6% (10)	15.8% (3)	31.6% (6)
London North Area	6.7% (1)	26.7% (4)	66.7% (10)
London South Area	60.0% (6)	0.0%	40.0% (4)
London Underground Area	53.8% (7)	0.0%	46.2% (6)
North East Area	53.3% (8)	20.0%(3)	26.7% (4)
North West Area	60.0% (3)	0.0%	40.0% (2)
Scotland Area	100.0% (1)	0.0%	0.0%
Western Area	23.1% (3)	30.8% (4)	46.2% (6)
Grand Total	42.9% (39)	15.4% (14)	41.8% (38)

- Two fifths of grievances (42.9%) are resolved within 40 days with a similar proportion (41.8%) taking more than 70 days. This is on a par with the last report (43% in 40 days and 41% over 70 days).



- Notably, LN still has the highest proportion of cases which take more than 70 days (66.7% in this report and 67% in the previous). This was also, again, the single highest volume of cases (10). However, many of these cases are allocated outside London North Area to resolve. Four of these cases also were from two officers who then progressed matters to Employment Tribunal, one losing his case at ET and the other being withdrawn on the first day of hearing. In such circumstances the grievances can involve extensive and therefore lengthy investigation which will affect the recorded timescales.
- Excluding Scotland, three Areas (LS, LU and NW) have no cases resolved in the mid range. This was also the case in the last report and may be indicative of a different approach to grievance management or a variation in process in these Areas. We will explore this further and report on findings.

3.3.4 Grievances by Area Compared to Staff Levels

For all the 106 grievances recorded the following table shows calculated grievance rates per 100 employees, by employee type.

Grievances per 100 employees	PCSOs	Police Officers	Police Staff	Special Constables	Total
Force Headquarters	N/A	1.20 (4)	2.24 (17)	0.00	1.92
London North Area	2.91 (3)	2.20 (10)	4.17 (4)	0.00	2.46
London South Area	9.80 (5)	1.73 (7)	1.15 (1)	0.00	2.17
London Underground Area	0.00	1.63 (11)	0.94 (2)	3.33(2)	1.47
North East Area	0.00	5.88 (16)	1.39 (1)	0.00	4.29
North West Area	3.13 (1)	1.56 (4)	0.00	0.00	1.33
Scotland Area	0.00	0.46 (1)	0.00	0.00	0.36
Western Area	2.08 (1)	5.93 (15)	1.47 (1)	0.00	4.35



Grand Total	3.06 (10)	2.37 (68)	1.85 (26)	0.80 (2)	2.19 (106)
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- On average we received 2.19 grievances per 100 employees in period (compared to 1.66 grievances per 100 employees in the last report).
- WW still the highest overall level of grievances with 4.35 per 100 employees (3.86 in the last period).
- LS also has the highest level per specific employee type with 9.8 per 100 PCSOs compared to 6.12 in the last report (it should be noted that this is based on five grievances raised by three PCSO's from a pool of 51 PCSOs).
- Officers in WW are the next highest group with 5.93 grievances per 100 officers, closely followed by NE officers (5.88).
- PCSOs are the most likely group to raise grievances (3.06 per 100 employees), although where this accounts for 10 total grievances from eight staff, it is not statistically significant.
- Scotland (1 case) and North West (5) cases have the lowest level of grievances. For Scotland this is attributed to a very transparent management style, particularly on postings and movement of officers, plus good local engagement. North West also considers that the collaborative approach adopted with the Federation and TSSA has helped reduce the number of potential grievances on Area.

As requested we have researched overall comparative data with some other Forces. This data is not easy to come by, but that which has been found is shown below.

Force	2009/10			2010/11		
	Number of Grievances	Total Headcount (Officers & Staff)	Per 1,000 Headcount	Number of Grievances	Total Headcount (Officers & Staff)	Per 1,000 Headcount
GMP	128	13436	9.53	133	12731	10.45
West Yorks	70	10484	6.68	25	9985	2.50
South Yorks	55	6321	8.70	29	6232	4.65
Northumbria	19	6836	2.78	13	6682	1.95

Herts	33	3943	8.37	65	3758	17.30
West Mercia	16	4460	3.59	17	4270	3.98
Leics	15	3837	3.91	17	3614	4.70
South Wales	36	5212	6.91	38	5218	7.28
BTP	75	4801	15.62	94	4757	19.76

Whilst some Forces are showing a decrease over the two year comparison (west and South Yorks) , some are showing an increase (Herts and GMP). There is no clear pattern across Home Office Forces.

For 2011/2012 BTP has 21.9 grievances per 1,000 headcount. Full year data was not yet available from other Forces.

There does appear to be a significant difference and we have explored this further.

Many Forces adopt a different approach to recording grievances, where the stage 1 resolutions will be excluded from the recorded data as they are classed as informal resolutions.

There are also different schools of thought on high or low grievances. In some cases high grievances can demonstrate an unhappy workforce. However it can also demonstrate a confidence in management and the organisation to deal responsibly with grievances without fear of retribution. In some organisations staff may be aggrieved, but fear for the repercussions and will not raise a formal grievance.

3.3.5 Grievances by Category (Finalised and Live)

	Bullying/ Harassment	Discrimina- tion	Other	Other - Data Protection Breach	Pay, Condition, Contract
Force Headquarters	26.3% (6)	36.8% (8)	5.3% (1)	0.0%	31.6% (6)
London North Area	35.7% (7)	35.7% (6)	0.0%	0.0%	28.6% (4)
London South Area	50.0%(7)	10.0% (2)	20.0% (2)	0.0%	20.0%(2)
London Underground Area	15.4%(3)	7.7% (1)	7.7% (1)	0.0%	69.2% (10)



North East Area	40.0% (6)	6.7% (2)	6.7% (1)	6.7% (1)	40.0% (7)
North West Area	20.0% (1)	20.0% (1)	20.0% (1)	0.0%	40.0% (2)
Scotland Area	100.0% (1)	0.0%	0.0%	0.0%	0.0%
Western Area	41.7% (7)	0.0%	16.7% (2)	0.0%	41.7% (8)
Grand Total	33.7% (38)	18.0% (20)	9.0% (8)	1.1% (1)	38.2% (39)

- The highest proportion of grievances fall into the category 'Pay Conditions and Contract' (38.2%), a similar proportion to the last report (37.5%). Several of these are associated with police staff cases where dissatisfaction is expressed over the lack of pay rises for "Red Book" and PSG staff.
- LU has the highest proportion of grievances in the 'Pay, Conditions and Contract' category (69.2%) and this was also the case in the last report (57.1%).
- LN still is running at twice the expected average (18.0%) of 'Discrimination' cases with 35.7% of grievances in this category although this is down from last period (53.8%). As already reported four of these grievances progressed to Employment Tribunal by way of two claims. One was won and one was withdrawn on the first day of hearing. At internal grievance stage no evidence of discrimination was found through the internal grievance investigations.
- Again, excluding the single case in Scotland, LS has the highest proportion of cases arising due to 'Bullying and Harassment' (50.0%) and in excess of the overall average (33.7%). This is an increase from last period (40.0%). When these individual cases have been explored they have been raised by four staff. None of the allegations have been pursued through external ET claims, and there does not appear to be a theme to be concerned about.

3.3.6 Conclusion/ Future work

- The Chief Constable has commissioned a review of the grievance process.
- We will be moving to a Disputes Resolution Procedure. This will ensure a streamlined and coordinated approach between BTP values and the SOP.



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- It is anticipated that a smarter and efficient approach in resolving matters of concern more speedily and close to the point of origin as possible, supported by BTP values will ultimately prevent unnecessary escalation through more formal routes of action such as Employment Tribunals.
 - BTP seek a collaborative approach in resolving work based disputes. One way in which this can be achieved is by moving away from grievance resolution to disputes resolution, which equates to a collaborative approach. The collaborative approach is supportive and inclusive and works towards a fully engaged workforce. This approach is commendable and far more palatable than grievance resolution. To ensure BTP incorporate ACAS best practice, it is imperative the Organisation retains the three step statutory process.
 - The GR1 Written Statement of Grievance form will include a section which requires that individuals raising a dispute to explain what actions had been undertaken to resolve the complaint informally prior to submitting a dispute. Therefore in future at the point a grievance is formally submitted there will be two stages for formal resolution. This will affect our recorded statistics and will bring us more in line with reported comparative data.
 - It is anticipated that the proposed changes to the SOP will mostly be achievable by 30 June 2012.

4 FINANCIAL IMPLICATIONS

4.1 There is a significant financial implication to the time spent by managers resolving grievances. This is not captured or measured through the current processes and would be difficult to quantify.

4.2 There are varying figures in the public domain for the cost of Employment Tribunals. The British Chambers of Commerce (BCC) state that the average cost for an employer to defend themselves at a tribunal is £8,500. The CIPD in it's recent conflict management research reported HR as saying that the average cost was £15,000 and that the median cost of a compromise agreement including lawyers fees, management time and the compensation was £11,000.



The 'accepted' figure i.e. that which most commentators feel is realistic is the BCC figure at £8,500. However, as we know costs can vary enormously depending upon the type of claim, with some going onto the hundreds of thousands of pounds.

4.3 As has already been demonstrated where we believe the claims at ET to be of little substance/vexatious, we will take a robust approach including claims for costs where appropriate.

5 DIVERSITY ISSUES

5.1 Ethnicity

Of the 106 grievances recorded in 2011/12, 16 of these are from BME employees.

This represents 15.09% of grievances recorded.

Overall 11% of our employees are BME, broken down as follows

PCSO	16.20%
Police Staff	18.00%
Officers	6.80%
Specials	11.60%

	Proportion of grievances raised by BME staff
PCSO	40.00% (4 cases)
Police Staff	23.08% (6 cases)
Officers	8.82% (6 cases)
Specials	0%
Overall	15.09%

- The highest proportion of grievances has been raised by BME PCSOs at 40.0% of PCSO grievances. Whilst this is a high percentage it is actually two PCSO both from London South who have raised two grievances each in the last twelve months. Neither of these PCSO's has pursued matters through ET.



- There are also slightly more grievances from BME police staff (23.08%) than may have been expected proportionally (18.0%)
- At a recent meeting with the Chief Constable, SAME raised no concerns of disproportionality.

5.2 Gender

EMPLOYEE TYPE	Proportion Female	Proportion of grievances raised by Females
PCSO	24.50%	0%
Police Staff	52.40%	38.46% (10)
Officer	16.00%	22.05% (15)
Special	11.60%	0%
Overall	26.80%	23.58% (25)

- The highest proportion of grievances have been raised by female police staff (38.45%) but this is not disproportionate with their proportion overall. It is also a decrease from the previous report (45.5%).
- Some disproportionality may be evident for female police officers with 22% of officer grievances being raised compared to the expected 16.0%. This is almost identical to the situation in the last report.
- Of note is the indication that all (100%) PCSO grievances have been raised by males when the expectation should be in the region of 75.5%. Again, this was also the case in the last report.

6 RECOMMENDATIONS

- 6.1 It is recommended the Committee note the content of this report, and raise any issues for further research/future reports.