

AGENDA ITEM

4.3

PEOPLE & CULTURE COMMITTEE
EMPLOYMENT RELATIONS UPDATE

Date of meeting	10/08/2022	
FOI Status	Open/Public	
If closed please indicate reason	Choose an item.	
Prepared by	Karen Wright, Assistant Director of Policy, Governance and Compliance	
Presented by	Karen Wright, Assistant Director of Policy, Governance and Compliance	
Approving Executive Sponsor	Executive Director for People	
Report purpose	FOR DISCUSSION / REVIEW	
Engagement (internal/external) undertaken to date (including receipt/consideration at Committee/group)		
Committee/Group/Individuals	Date	Outcome
(Insert Name)	(DD/MM/YYYY)	Choose an item.
ACRONYMS		
CPD	Continued Professional Development	
ER	Employee Relations	
ET	Employment Tribunal	
ILG	Integrated Locality Group	
UPSW	Upholding Professional Standard Wales.	

1. SITUATION/BACKGROUND

- 1.1 Employee relations (ER) is about how the employer engages with its workforce, to foster good workplace relations, which enhances the psychological contract between them. The term psychological contract refers to an employee's expectations, beliefs, ambitions and obligations, as perceived by them and their employer.
- 1.2 To develop and maintain good ER in workplace, the employer and its employees, including trade union colleagues must engage constructively with each other, to resolve such matters. The management of the engagement is via the range of Workforce Policies and Procedures.
- 1.3 These Workforce Policies and procedures are developed to:-
- inform employees of their responsibilities and the organisation's expectations;
 - provide guidance to managers and employees on how a range of HR issues will be managed by the organisation;
 - provide structure, control, consistence, fairness and reasonableness of approach and action, within the workplace; and
 - comply with employment legislation.
- 1.4 Where an employee fails to meet their workplace role and or responsibilities, or is involved in an act or display of conduct etc. that is outside of the organisation's expectations, this may result in the matter being addressed and managed in accordance with the appropriate formal Workforce Policy and Procedure.
- 1.5 An ER case is an employment related issue, managed in accordance with an appropriate Workforce Policy and Procedure.
- 1.6 It is consider best practice for organisations to record and monitor ER activity as it provides a mechanism to review and examine current processes, to learn lessons and continually improve efficiency in the organisation's ER caseload. For example, quicker completion times reduced associated costs (suspension / exclusion, sickness absence, reduced Employment Tribunal Claims etc.).



2. SPECIFIC MATTERS FOR CONSIDERATION BY THIS MEETING (ASSESSMENT)

- 2.1 This report provides a formal update in respect of ongoing ER cases and trends within the Health Board. The activity figures relate to the period 1 April – 30 June 2022.
- 2.2 ER activity numbers change on a daily basis, as cases are closed and new cases opened. Therefore, the figures are constantly changing in respect of this activity.

3. KEY RISKS/MATTERS FOR ESCALATION TO COMMITTEE

Current ER Cases – As at 30 June 2022

- 3.1 There are currently 56 formal live ER cases* ongoing across the Health Board compared with 79 cases at 31 March 2021, a reduction of 37%. This represents a significant decrease in the total number of live ER cases when compared with the previous 6-month reporting period.

*These figures include ongoing Counter Fraud and Police / Safeguarding investigations

- 3.2 In the first quarter of 2022 / 2023, the Health Board closed 41 historic and new ER cases.
- 3.3 The current live ER cases are broken down into the following categories:
- Upholding Professional Standard Wales (UPSW) (Medical Staff Disciplinary Policy) cases;
 - Fast Track Disciplinary Hearings;
 - Formal Disciplinary Hearings;
 - Formal Respect and Resolution Meetings (previously referred to as Grievances and Dignity at Work cases);
 - Formal Respect and Resolution Investigations;
 - Appeals Hearings;
 - Police / Safeguarding Investigations; and
 - Counter Fraud Cases.
- 3.4 Due to the low number of cases in some categories, the actual case numbers have not been included within the report. However, the following trends are noted:

- The number of staff suspensions / exclusions from work continues to remain at a very low level, as increasingly the Health Board's approach is to use this option as a last resort. The Health Board acknowledges suspension / exclusions from work is not a neutral act and can have a negative impact on the staff member's health and wellbeing. The ongoing approach to suspension / exclusions helps to keep staff in work, working in some capacity, providing them with some normality and allowing them to continue to contribute to service delivery.
- Prior to a formal investigation being commissioned managers are required to consider the appropriateness of the disciplinary fast-track option (non-medical staff only). The Health Board, supported by trade union colleagues, are proactively encouraging managers and employees to use of the fast-track procedure, when appropriate to do so. During the past three-month period, the Health Board undertook and concluded six fast track cases. As at 30 June 2022, there were no ongoing fast track cases.
- At the end of March 2022, the Health Board had 41 live investigations ongoing. By the 30 June 2022, 20 (49%) of these cases had been closed.
- At the May 2022 People and Culture Committee it was reported the Health Board had seen an increase in UPSW cases, with the number of cases reaching double figures for the first time. In the first quarter of 2022 / 2023, the Health Board closed 40% of these cases.
- This period has also seen a significant decrease in the number of Police and Safeguarding cases, which frequently requires the Health Board to undertake its own internal investigation concurrently or following the end of legal proceedings. During the first quarter of 2022 / 2023, 7 of the Health Board's historical cases (those which had been live for 3 – 12 months plus) were closed. There are currently 10 live cases, four of which are historical and been live for 6 – 12 months plus.
- During the first quarter of 2022 / 2023 there were 19 Respect and Resolution Formal Meeting cases, of which 9 were concluded. All of these have meeting dates have either been set up or in the process of being set up.
- The time to complete an investigation will vary depending on the nature and complexity of the case. A simple case with few witnesses may take a few weeks, while cases that are more complicated can take several months. Investigation timescales are also influenced by factors such as the release time of the Investigating Officer, the

availability of the individual being investigated (should they are off work on sick leave), availability of witnesses, Police / Safeguarding and Counter Fraud involvement etc. The Health Board therefore does not have any agreed investigation timescales, but it does expect the Disciplining Officer or chair of the case, to manage and review the process on a regular basis, to ensure the process is completed, as soon as is reasonable possible.

- During the first quarter of 2022 / 2023, the Health Board completed 23 formal investigations (including disciplinary, UPSW and respect and resolution). There are currently 20 ongoing formal investigations.
- The timescales to conduct and complete investigations vary from 12 months plus, at one extreme to less than three months at the other. At the 30 June 2022:
 - There was four disciplinary and four external police / safeguarding investigations, which were still live **12 or more months** since their instigation;
Noting: During the prior three month period, two disciplinary, one external police / safeguarding and 2 respect and resolutions investigations were brought to a close;
 - There was four disciplinary, two external police / safeguarding and one respect and resolution investigations, which were still live **6 - 12 months** since their instigation;
 - **Noting:** During the prior three month period and 11 disciplinary, four external police / safeguarding investigations were brought to a close;
 - There was two disciplinary and four respect and resolution investigations, which were still live **3 – 6 months** since their instigation;
Noting: During the prior three month period, two disciplinary, two external police / safeguarding and two respect and resolutions investigations were brought to a close; and
 - There were 11 disciplinary, two external police / safeguarding and 4 respect and resolution investigations, which were still live **less than three months** since their instigation;
Noting: During the prior three-month period, 19 disciplinary, five external police / safeguarding and two respect and resolutions investigations were brought to a close.
- Good progress has been made to close the Health Board's historical investigation cases, as demonstrated by the above data.

- It is evident from the above data the completion rate of investigations within the 3 months and less and 3 – 6 months' timescale are increasing. The data demonstrates that good progress is being made to bring down the time taken to manage and deal with investigations across the Health Board.
 - The Health Board currently has no Counter Fraud cases, as all have been resolved over the past three-month period.
 - The Health Board continues to experience an increase in the number of Employment Tribunal Claims. This is in keeping with national trends, with the Government reporting Employment Tribunal claim levels being at their highest since 2013. As at the end of June 2022, the Health Board had eight live cases.
- 3.5 There are no patterns in the types or number of ER cases dealt with by the Health Board each year. During the first quarter of 2022 / 2022, the HR Team has worked proactively with Disciplinary, Investigation Officers, employees and trade union representatives to bring a number of historical cases, delayed due to the pandemic etc. to a close.
- 3.6 The following actions are being taken to ensure all cases are managed within process, dealt with and closed as quickly as possible:
- The advice and support to managers etc. places an emphasis on ER cases being dealt with informally / at the lowest policy stage, unless the case warrants formal action;
 - Each ILG Business Partner is holding weekly ER case meetings with their HR Teams to review cases and progress and agree actions to discuss with relevant parties (Investigating, Disciplinary Officer, Meeting Chairs etc.);
 - The HR Team are holding monthly meetings with managers to discuss their ER cases, including progress, barrier, support which may be required where cases have become stuck;
 - The HR Team are supporting manager to ensure the scope and matters to be investigated are clear from the outset and timescale for completion of the case by the Investigating and Disciplinary Officer are outlined at the start of the process;
 - All nursing ER cases are escalated monthly to the Locality Director of Nursing for awareness and support where required;
 - The HR Team received UPSW training by the Legal and Risk Services to increase their knowledge in this policy area and ensure they are able to provide robust support and advice.
 - The Health Board's Case Investigator attended a UPSW reflective practice session, provided internally by Dr. Paul Davies, a very



experienced Case Investigator. The session also explored best practice and role of the Case Investigator.

- The Heads of Workforce and OD are holding monthly Professional concerns meetings with the Assistant Medical Directors to discuss UPSW cases and ensure consistency of Policy application.
- The Heads of Workforce and OD are holding monthly Professional concerns meeting with their Group Director, to discuss all informal and formal medic and professional concerns cases.

4. IMPACT ASSESSMENT

Quality/Safety/Patient Experience implications	There are no specific quality and safety implications related to the activity outlined in this report.
Related Health and Care standard(s)	Staff and Resources
	If more than one Healthcare Standard applies please list below:
Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.	No (Include further detail below)
	If yes, please provide a hyperlink to the location of the completed EIA or who it would be available from in the box below.
	If no, please provide reasons why an EIA was not considered to be required in the box below.
Legal implications / impact	There is no requirement to EQIA the information contained within this paper.
	Yes (Include further detail below)
Resource (Capital/Revenue £/Workforce) implications / Impact	The Health Board is required to manage the identified cases in accordance with the legislative requirements and ACAS best practice.
	Yes (Include further detail below)
Link to Strategic Goals	The cost of releasing staff to be involved in the investigation / management of these cases. There are also potential ET and settlement costs should ER cases not be managed appropriately.
	Sustaining our Future

5. RECOMMENDATION

- 5.1 The People and Culture Committee is asked to **DISCUSS** and **NOTE** the content of the ER report and progress being made to reduce and close cases.