

**AGENDA ITEM**

3.2.2

**PEOPLE & CULTURE COMMITTEE**
**EMPLOYMENT RELATIONS UPDATE**

<b>Date of meeting</b>	(11/05/2022)	
<b>FOI Status</b>	Open/Public	
<b>If closed please indicate reason</b>	Choose an item.	
<b>Prepared by</b>	Karen Wright, Assistant Director of Policy, Governance and Compliance	
<b>Presented by</b>	Karen Wright, Assistant Director of Policy, Governance and Compliance	
<b>Approving Executive Sponsor</b>	Executive Director for People	
<b>Report purpose</b>	FOR DISCUSSION / REVIEW	
<b>Engagement (internal/external) undertaken to date (including receipt/consideration at Committee/group)</b>		
<b>Committee/Group/Individuals</b>	<b>Date</b>	<b>Outcome</b>
(Insert Name)	(DD/MM/YYYY)	Choose an item.
<b>ACRONYMS</b>		
CPD	Continued Professional Development	
ER	Employee Relations	
ET	Employment Tribunal	
HR	Human Resources	

## 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
  - ensure compliance 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 October 2021 – 31 March 2022. ER data was last reported to the People and Culture Committee on the 20 October 2021.
- 2.2 This report provides an update, in respect of the plan to commence developing and embedding a listening, learning and improvement culture (Just and Learning Culture) within the Health Board over the next few years.

## **3. KEY RISKS/MATTERS FOR ESCALATION TO BOARD/COMMITTEE**

### **3.1 Current ER Cases – As at 31 March 2022**

There are currently 79 formal live ER cases ongoing across the Health Board compare with 63 cases at September 2021. The total number of live ER cases has therefore increased very significantly, when compared with the previous 6-month reporting period. These figures also includes ongoing Counter Fraud and Police / Safeguarding investigations. In addition to these 79 live cases, the Health Board concluded and closed 27 ER cases from 1 October 2021 – 31 March 2022.

The current live ER cases are broken down into the following categories:

- Upholding Professional Standard Wales (UPSW) (Medical Staff Disciplinary Policy) cases;
- Informal Disciplinary Discussions;
- Fast Track Disciplinary Hearings;
- Formal Disciplinary Hearings;
- Informal Respect and Resolution Approaches (previously referred to as Dignity at Work cases);
- Formal Respect and Resolution Meetings (previously referred to as Grievances and Dignity at Work cases);
- Appeals Hearings;
- Police / Safeguarding Investigations; and
- Counter Fraud Cases;

Due to 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 continue to remain at a very low level, as increasingly the Health Board's approach is to use this option as a last resort. It is acknowledged, suspension / exclusions from work is not a neutral act and can have a negative impact on the staff member's health and wellbeing. This approach 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 fast-track option (non-medical staff only). The Health Board, supported by trade union colleagues are proactively encouraging the use of the fast-track procedure, when appropriate to do so.

Over the past 6-month period, over a third of all non-medical disciplinary cases have been dealt with via the fast-track procedure. The fast-track approach is being utilised by managers, in conjunction with the Workforce & OD Teams and trade union colleagues to manage appropriately low-level ER cases within the Health Board, in a timely manner.

- The number of formal ongoing investigations increased significantly from 23 to 41 cases, since the last reported position in October 2021. An increase in the number of UPSW cases has contributed significantly to this increase. Over the past 6-month period, the number of UPSW cases have increased, with the Health Board having ten cases.
- This period has also seen an increase 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.
- The new NHS Wales Respect and Resolution Policy, implemented during June 2022, replaced the former Grievance and Dignity at Work Policy. The policy aim is to ensure that all employees have access to a process to help deal with any requests for resolution relating to their employment, including bullying, harassment and any form of unacceptable behavior in the workplace. Therefore, reporting now uses the heading "Respect and Resolution" to report on these cases.
- Since the introduction of the new Policy, the number of formal respect and resolution cases across the Health Board has remains static, as increasingly staff are opting to engage in the available informal resolution approaches.

- 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 this period, the Health Board has completed 25 formal investigations (including disciplinary, UPSW, grievance and respect and resolution) with a further 16 ongoing. This is a reduction of 16 cases, compared with the previous 6-month period.
- The timescales to conduct and complete investigations vary from 12 months plus, at one extreme to less than three months at the other. During the past 12 months:
  - An external investigation took in excess of 12 months to complete;
  - 11 investigations took between 6 – 12 months to complete;
  - 8 investigations took 3 – 6 months to completed;
  - 5 investigations took less than 3 months to complete; and
  - 16 investigations are still ongoing.

The timescales to undertake and conclude investigations has not decreased significantly over the last 6-month period, with the majority of cases still taking between 6 – 12 months to complete.

There are no particular patterns in the types or number of ER cases dealt with by the Health Board each year. The Heads of Workforce and OD and the Executive Director for people regularly review new and ongoing cases. These reviews seek assurance that these cases are being proactively and appropriately managed to a satisfactory and timely conclusion, limiting the risk of future Employment Tribunal claims.

#### **4. DEVELOPING AND EMBEDDING A LISTENING, LEARNING AND IMPROVEMENT CULTURE**

- 4.1 It is estimated over 6,000 workers are currently suspended in the public sector, at a cost upwards of £50 million. This may be because of bullying / harassment, disciplinary or clinical incidents etc., which are dealt with in retributive rather than a restorative way, which sadly can result in people suffering long term health and wellbeing issues.

4.2 Restorative just culture practises recognise the important role played by dealing with adverse events and incidents by asking:

- What has not gone as expected?
- Who is hurt?
- What do they need? and
- Whose obligation is it to meet those needs?

The success of restorative responses hinges on getting the wider team(s) involved in collaboratively resolving those questions and arriving at a solution that is respectful to all parties, such as, patients, families, caregivers, trade union representatives, regulators and legal and union representatives.

4.3 A restorative just culture considers accountability in a forward-looking, rather than a punitive, backwards-looking manner, asking who needs to do what now, given their role and the expectations that come with it.

4.4 The Health Board has received funding from the Welsh Government to run a restorative and just culture course for senior managers and trade union colleagues, who are involved in the management and wellbeing of a range of stakeholders, including employees, patients, family members etc.

4.5 The Health Board has commissioned Mersey Care NHS Foundation, in partnership with Northumbria University, to run a four day CPD Principles and Practises of Restorative Just Culture Course, for 30 Health Board staff.

4.6 The course will run over a three week period commencing 7 June 2022, with a post-programme action learning set, which takes place six weeks (4 August 22) after the programme concludes.

4.7 The course learning objectives are to help individuals, through practitioner and academic insights to learn how to develop, implement and evaluate a restorative just culture in the Health Board. The learning is based on the journey of Mersey Care NHS Foundation Trust, who share their experiences of implementing a restorative just culture. Their approach has resulted in a 75% reduction in disciplinary investigations since 2016, and a significant reduction in dismissals and suspensions, which has not only reduced unnecessary employment relation activity but also lead to a substantial reduction in costs, despite the organisation more than doubling in size in 2019.



- 4.8 Participants on the course will learn how to manage disciplinary, respect and resolution, adverse incidents / events etc. in a restorative way, which helps to minimise the negative impacts and maximise the learning to develop an organisational culture, where people feel safe and one built on trust.
- 4.9 The course will offer the participants, the opportunity to explore and critically analyse the concepts of the Restorative Just Culture approach and in addition, how these can be applied within the Health Board environment and context. The course will cover a range of techniques, approaches; review the underpinning theories, making connections to their application to practice in the workplace. The course will also provide participants with a wider range of knowledge to draw from, when working and dealing with adverse events and incidents, within the context of their professional role.
- 4.10 Following the completion of the course, the learning will be used to develop an in-house training course for managers and trade union colleagues. This will be further underpinned by the development of a range of training materials and HR and OD resources and interventions, which will align to the Health Boards Values and wider organisational objectives.
- 4.11 To assist our managers and staff to make and understand the connection between a restorative just culture and our values and behaviours, the Health Board will brand this cultural change approach as developing and embedding a **Listening, Learning and Improvement Culture**.

## 5. IMPACT ASSESSMENT

<b>Quality/Safety/Patient Experience implications</b>	There are no specific quality and safety implications related to the activity outlined in this report.
<b>Related Health and Care standard(s)</b>	Staff and Resources
	If more than one Healthcare Standard applies please list below:
<b>Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.</b>	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.



	There is no requirement to EQIA the information contained within this paper.
<b>Legal implications / impact</b>	There are no specific legal implications related to the activity outlined in this report.
<b>Resource (Capital/Revenue £/Workforce) implications / Impact</b>	Yes (Include further detail below)  The cost of releasing staff to be involved in the investigation / management of these cases. There are also potential ET and settlement costs when ER cases are not appropriately managed. The cost of the restorative and just culture training is being fully funded by the Welsh Government.
<b>Link to Strategic Goals</b>	Sustaining our Future

## 6. RECOMMENDATION

- 6.1 The People and Culture Committee is asked to **DISCUSS** and **NOTE** the content of this report.