

AGENDA ITEM

4.4

PEOPLE & CULTURE COMMITTEE
EMPLOYMENT RELATIONS UPDATE

Date of meeting	09/11/22	
FOI Status	Open/Public	
If closed please indicate reason	Not Applicable - Public Report	
Prepared by	Helen Hoskins and Tony Charles, People Services Leaders	
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		
ER	Employee Relations	
ET	Employment Tribunal	

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 people related 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 considered 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 MTTERS 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 July – 30 September 2022.

- 2.2 ER activity numbers change daily, 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 of 30 September 2022

- 3.1 There are currently 32 formal live ER cases* ongoing across the Health Board, compared with 56 cases on 30 June 2022, a reduction of 42%. 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 second quarter of 2022 / 2023, the Health Board closed 27 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 and hearings;
 - Fast Track Disciplinary cases and hearings;
 - Formal Disciplinary cases and hearings;
 - Formal Respect and Resolution cases and meetings;
 - Formal Respect and Resolution Investigations;
 - Appeals hearings;
 - Police / Safeguarding cases investigations; and
 - Counter Fraud cases and investigations.
- 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 for the second quarter of 2022/2023 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 at 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 the fast-track procedure, when appropriate to do so. An increase in the use of this option is evident during the period 1 July – 30 September 2022, when the Health Board undertook and concluded ten fast track cases. There were six outstanding cases to be concluded on 30 September 2022. This demonstrates a 40% increase from the six cases conducted in the first quarter of 2022/2023.
- At the end of June 2022, the Health Board had 56 live ER investigations ongoing. By the 30 September 2022, 27 (48%) of these cases had been concluded and closed.
- In May 2022, it was reported to the People and Culture Committee that there had been a significant increase in the number of 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. At the end of September 2022, there were less than 5 formal cases ongoing.
- 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. At the end of September 2022, eight cases were ongoing, a reduction from 10 cases in June 2022.
- During the first quarter of 2022 / 2023 there were 19 Respect and Resolution Formal Meeting cases, of which nine were concluded. The Health Board has also seen a reduction in the number of these formal cases during the second quarter, reporting 12 cases, seven of which concluded during this period.
- 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 to complete. Investigation timescales are affected by factors such as the release time of the Investigating Officer, the availability of the individual being investigated (should they be off work on sick leave), availability of witnesses, Police / Safeguarding and Counter Fraud involvement. The Health Board does not therefore 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 reasonably 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. In line with the trend seen earlier within the report, this quarter has seen a reduction in the number of investigations, with 17 Investigations concluded with 14 ongoing at the end of September 2022.
 - The timescales to conduct and complete investigations vary from 12 months plus, at one extreme to less than three months at the other. The position as at the 30 September 2022 is available upon request and has not been captured in this report due to low numbers.
 - Good progress continues to be made to close the Health Board's historical investigation cases, as demonstrated by the above data.
 - The Health Board currently has one formal Counter Fraud case ongoing.
 - 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 September 2022, the Health Board had three 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 two quarters of 2022 / 2023, the People Team has worked proactively with Disciplinary, Investigation Officers, employees, and trade union representatives to bring a number of cases to a close and to explore informal or fast track routes to achieve resolution of these outstanding ER matters
- 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;
 - The People Services Leaders are holding regular ER case meetings with the Senior People Coaches and People Coaches People to review cases and progress and agree actions to discuss with relevant parties, (Investigating, Disciplinary Officer, Meeting Chairs etc.);

- The People Coaches will continue to hold regular meetings with managers to discuss their ER cases, including progress, barrier, support which may be required where cases have become stuck;
- The People Coaches are supporting managers to ensure the scope and matters to be investigated are clear from the outset and the 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 Care Group Directors of Nursing for awareness and support where required;
- The Heads of People are holding monthly Professional concerns meetings with the Assistant Medical Directors to discuss UPSW cases and ensure consistency of Policy application;
- The Heads of People are holding monthly Professional concerns meeting with their Group Directors, 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 completed	No (Include further detail below)
	There if no requirement to EQIA the information contained within this paper.
Legal implications / impact	Yes (Include further detail below)
	The Health Board is required to manage the identified cases in accordance with the legislative requirements and ACAS best practice.
Resource (Capital/Revenue £/Workforce) implications / Impact	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 should ER cases not be managed appropriately.
Link to Strategic Goals	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 ER cases.