

Freedom of Information Request: Our Reference CTHB_478_18

You asked:

My request relates to sexual harassment in the work place.

Please provide a total figure across the financial years 2015-16, 2016-17, and 2017-18 for the following information:

1. In total, how many accusations of sexual harassment were made by members of staff against other members of staff?
 - Of these in 1, how many complainants were women?
 - Of these in 1, how many of those accused were men?
2. How many members of staff were subject to disciplinary proceedings due to accusations of sexual harassment in the work place?
3. How many members of staff were dismissed due to sexual harassment in the work place?
4. How much money has the authority paid out in damages/compensation or in settlement agreements to individuals as a result of sexual misconduct proceedings? The answer should include cases where an out of court financial settlement was reached after a claim had been filed, even when the authority does not accept the claim/liability; and it should also include cases where court proceedings were not initiated but the authority paid damages/compensation or entered an agreement without itself necessarily accepting liability.
 - What was the largest single sum paid out for such purposes? (If finding this information would tip the request over the threshold for costs of compliance, please disregard this question)
5. What is the authority's policy for entering non-disclosure agreements (NDAs)?
6. In how many cases in the years specified above has the authority used NDAs to resolve sexual harassment cases? (If finding this information would tip the request over the threshold for costs of compliance, please disregard this question)

Our response:

1. – 3. I can confirm that the Health Board does hold the information requested for questions 1 - 3. However, the Health Board will not provide specific numbers or details for the time period requested, due to the small number of staff involved.

It is our view that the information you have requested constitutes the personal information of staff and consider that disclosure of such low instances would allow the potential for the individuals to be identified from the information provided.

The data is classed as personal data as defined under the General Data Protection Regulation (GDPR) and Data Protection Act 2018 and its disclosure would be contrary to the data protection principles and constitute as unfair and unlawful processing in regard to Articles 5, 6, and 9 of GDPR. We are therefore withholding this detail under Section 40(2) of the Freedom of Information Act 2000. This exemption is absolute and therefore there is no requirement to apply the public interest test.

However, in order to fulfil our obligation under Section 16 of the Act to provide advice and assistance, I can confirm that there have been less than 5 accusations of sexual harassment within the Health Board over the time period requested.

4. No payments have been made by Cwm Taf University Health Board (CTUHB) for damages/compensation or in settlement agreements to individuals as a result of sexual misconduct proceedings.

5. CTUHB use non-disclosure agreements, also known as confidentiality clauses in settlement agreements and in COT3 (A COT3 is an agreement which records the terms of settlement of an employment tribunal claim (or potential claim) which has been agreed between the member of staff and employer with the assistance of a conciliation officer employed by ACAS) agreements.

The standard clause is : *“The Claimant and Respondent shall keep the existence and terms of this COT3 Agreement confidential except where disclosure is to HM Revenue and Customs, required by law or to their legal or professional advisers or immediate family (provided that they agree to keep the information confidential).”*

However, there is also the standard clause in agreements now which expressly makes clear that nothing in the agreement is intended to prevent someone from making a protected disclosure (whistleblowing): *“For the avoidance of doubt, nothing in this COT3 Agreement shall prejudice any rights the Claimant has or may have under the PIDA 1998 and/or any obligations that the Claimant has or may have to raise concerns about patient safety and care with regulatory or other appropriate statutory bodies pursuant to her professional and ethical obligations including those obligations set out in guidance issued by regulatory or other appropriate statutory bodies from time to time. Nothing in this COT3 Agreement shall prevent the Claimant from making a protected disclosure under s43B of ERA 1996 and nothing in this Agreement shall prevent the Respondent from making such disclosure as it is or they are required to make.”*

6. I can confirm that CTUHB has not used NDAs to resolve any sexual harassment cases, during the time period requested.