



AGENDA ITEM

4.4

PEOPLE & CULTURE COMMITTEE

EMPLOYMENT RELATIONS UPDATE

Date of meeting	08/02/23
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FOI Status	Open/Public
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If closed please indicate reason	Choose an item.
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Prepared by	Helen Hoskins and Tony Charles, People Services Leaders
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Presented by	Karen Wright, Assistant Director of Policy, Governance and Compliance
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Approving Executive Sponsor	Executive Director for People
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Report purpose	FOR DISCUSSION / REVIEW
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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 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 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 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 2022 – 31 December 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 31 December 2022

- 3.1 There are currently 31 formal live ER cases* ongoing across the Health Board, compared with 32 cases on 30 September 2022. This represents a significant decrease in the total number of live ER cases when compared with the 56 reported on the 30 June 2022.

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

- 3.2 In the third quarter of 2022 / 2023, the Health Board closed 18 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 if they are less than five. However, the following trends are noted:
- The number of staff suspensions / exclusions from work for the third quarter of 2022/2023 continues to remain at a very low level, as the Health Board continues to use this option as a last resort. The Health Board acknowledges suspension / exclusion 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 / exclusion 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. During the last quarter, the Health Board undertook and concluded 10 fast track cases. On 31 December 2022, there were 6 outstanding cases. This mirrors the numbers of fast-track cases completed in the second quarter and an increase from the six cases conducted in the first quarter of 2022/2023.

- At the end of September 2022, the Health Board had 19 live ER investigations ongoing. By the 31 December 2022, 7 of these cases had been concluded, leaving 12 open cases.
- On 31 December 2022, the Health Board had a very small number of UPSW cases. The figure remained unchanged from quarter two.
- This period has again also seen a significant decrease in the number of Police and Safeguarding cases, which frequently requires the Health Board to undertake its own concurrent internal investigation or following the end of legal proceedings. From October to December 2023, 8 cases were closed, leaving 5 live cases.
- During the third quarter of 2022 / 2023 there continued to be a downward trend in the number of Respect and Resolution cases. At the end of October 2022, there were 12 live cases, which decreased to 7 on the 31 December 2022.
- 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 impacted 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 third quarter of 2022 / 2023, the Health Board completed 5 formal investigations (including disciplinary, UPSW and respect and resolution). There were 11 formal ongoing investigations on 31 December 2023.

The timescales to conduct and complete investigations vary from 12 months plus, at one extreme to less than three months at the other. However, good progress continues to be made to close the Health Board's historical investigation cases. The standard summary has

not been presented in this report due to the low number of cases, which may make these individuals identifiable.

- The Health Board currently has a very low number of formal Counter Fraud cases 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 December 2022, the Health Board had a very low number of 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 Officers, Investigation Officers, employees and trade union representatives to bring several cases to a close and to explore informal or fast track routes (where appropriate) 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, to review the live cases to agree actions to discuss with the relevant parties i.e., Investigating and Disciplinary Officers, Meeting Chairs etc.;
- The People Coaches will continue to hold regular meetings with managers to discuss their ER cases, including progress, barriers, support which may be required where cases have become stuck;
- The People Coaches support managers 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 Care Group Directors of Nursing for awareness and support where required;
- The Heads of People hold monthly Professional concerns meetings with the Assistant Medical Directors to discuss UPSW cases and ensure consistency of Policy application;
- The Heads of People hold monthly Professional concerns meetings with their Group Directors, to discuss all informal and formal medic and professional concerns cases.



**PROFESSIONAL REGISTRATION FITNESS TO PRACTICE
REFERRALS**

- 3.7 The People and Culture Committee has requested this information is presented on an ongoing basis as part of the Employment Relations Activity Report.
- 3.8 It is a requirement for most healthcare professionals to register with a professional body, to enable them to practice their profession. Professional registration is a means of demonstrating an individual’s professionalism and a mechanism to hold them to account in respect of their abilities and adherence to ethical standards, within their profession.
- 3.9 There may be occasion when the employer believes a healthcare professional may not be fit to carry out their work because of their behaviour / conduct, professional skills or health. In these circumstances, the employer may be required to refer a registered healthcare professional to their professional body, to assess their fitness to practice.
- 3.10 In broad terms, there are three types of concerns, which employers are required to raise with a professional body:
 - 1) Those that pose a serious risk to people who use the service and would be difficult to put right;
 - 2) Concerns that pose a serious risk to people who use the service and would be difficult to put right; and
 - 3) Concerns where local action cannot effectively manage any ongoing risks to people who use services.
- 3.11 Set out below is the referral activity to professional bodies across the Health Board, including the number of cases closed and the outcomes. Noting some data cannot be reported due to the low number of referrals, which may make these individuals identifiable.

General Medical Council (GMC)

No. of Active / Closed Cases	At 31 Jan 2023
No. of Active Cases	Due to low level activity numbers cannot be reported
No. Current Employees	0
No. Ex-Employees	0
No. Agency Workers	0
Cases Closed since October 2022	0
Closed Case Outcomes	Not applicable



Health and Care Professions Council (HCPC)

No. of Active / Closed Cases	At 31 Jan 2023
No. of Active Cases	Due to low level activity numbers cannot be reported
No. Current Employees	Due to low level activity numbers cannot be reported
No. Ex-Employees	Due to low level activity numbers cannot be reported
No. Agency Workers	0
Cases Closed since October 2022	Due to low level activity numbers cannot be reported

Nursing and Midwifery Council (NMC)

No. of Active / Closed Cases	At 31 Jan 2023
No. of Active Cases	23
No. Current Employees	10
No. Ex-Employees	8
No. Agency Workers	Due to low numbers, the figure cannot be reported
Cases Closed since October 2022	9
Closed Case Outcomes	Due to small numbers and therefore the potential for identification, we are unable to provide details. However these cases included findings of no case to answer as well as others where monitoring, support and learning was required.



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 Goal	Inspiring People

5. RECOMMENDATION

- 5.1 The People and Culture Committee are asked to **NOTE** the content of the ER report and progress being made to reduce and close these cases.
- 5.2 People and Culture Committee are asked to **NOTE** the professional referral activity across the Health Board and the progress being made to have these cases closed.