

PWYLLGOR DIWYLLIANT, POBL A DATBLYGU SEFYDLIADOL PEOPLE, ORGANISATIONAL DEVELOPMENT & CULTURE COMMITTEE

DYDDIAD Y CYFARFOD: DATE OF MEETING:	03 February 2022
TEITL YR ADRODDIAD: TITLE OF REPORT:	Black, Asian and Minority Ethnic (BAME) Staff – Review of Dismissals over a 10 year Period
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Lisa Gostling, Director of Workforce & Organisational Development (OD)
SWYDDOG ADRODD: REPORTING OFFICERS:	Dr Hashim Samir, Consultant Radiologist and Vice Chair of the BAME Advisory Board & Annmarie Thomas, Assistant Director of Workforce (Resourcing and Utilisation)

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Er Sicrwydd/For Assurance

ADRODDIAD SCAA SBAR REPORT

Sefyllfa / Situation

A purpose of the People, Organisational Development & Culture Committee (PODCC) is to provide assurance to the Board on the organisation's ability to create and manage strong, high performance, organisational culture arrangements.

This report is presented to update PODCC on the work commissioned by the Black, Asian and Minority Ethnic Advisory Group (Advisory Group) for all dismissals relating to a member of the workforce from a BAME staff group to be reviewed over a 10 year period.

Cefndir / Background

In response to evidence of the disproportionate impact of COVID-19 on BAME staff, Hywel Dda University Health Board (HDdUHB) established a Black, Asian and Minority Ethnic Advisory Group in June 2020. This demonstrated Board level leadership and commitment to addressing inequalities experienced by HDdUHB staff.

The aim of the Advisory Group is to advise HDdUHB on mainstreaming equality, diversity and inclusion for its workforce and to provide a forum to raise concerns in a safe and confidential environment.

The Advisory Group commissioned a review, which was co-led by Dr Hashim Samir, Consultant Radiologist and Vice Chair of the Group and Annmarie Thomas, Assistant Director of Workforce & OD (W&OD) (Resourcing and Utilisation).

The purpose of the review was to:

- Identify whether there was any indication of disproportionate impact;
- Provide confidence to the Advisory Board of the commitment to give serious consideration to any evidence of disproportionate impact; and

- Give confidence to the wider staff cohort that work had been commissioned by the Advisory Group for a review which is co-led by the Vice Chair of the Advisory Group and member of the W&OD Directorate.

Asesiad / Assessment

A copy of the report is included as an attachment. The report has been shared at a meeting of the Advisory Board for discussion and support for the conclusions and recommendations presented.

It was also presented for information only to the BAME Bullying and Harassment Task and Finish Group to ensure members of the Group were:

- 1) Aware that the review had been commissioned and completed;
- 2) Assured that the review was co led by the Vice Chair of the Advisory Board;
- 3) Assured of the conclusions and recommendations.

The BAME Advisory Board was assured there was no evidence of disproportionate impact based on the quantitative review of data, however a number of recommendations were made to ensure more positive action can be taken to support staff going through the disciplinary process.

Argymhelliad / Recommendation

The People, Organisational Development & Culture Committee is asked to receive assurance from the report and the recommendations which have been supported by the BAME Advisory Group.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor:	2.3 To provide assurance to the Board on the organisation's ability to create and manage strong, high performance, organisational culture arrangements.
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	Not applicable.
Safon(au) Gofal ac Iechyd: Health and Care Standard(s):	3.2 Communicating Effectively 7.1 Workforce 6.3 Listening and Learning from Feedback
Amcanion Strategol y BIP: UHB Strategic Objectives:	1. Putting people at the heart of everything we do 3. Striving to deliver and develop excellent services 4. The best health and wellbeing for our individuals, families and communities
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report	2. Develop a skilled and flexible workforce to meet the changing needs of the modern NHS

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	Equality Act 2010.
Rhestr Termau: Glossary of Terms:	Included within the body of the report.
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Diwylliant, Pobl a Datblygu Sefydliadol: Parties / Committees consulted prior to People, Organisational Development & Culture Committee:	BAME Advisory Group. BAME Bullying and Harassment Task and Finish Group.

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	Not applicable.
Ansawdd / Gofal Claf: Quality / Patient Care:	Not applicable.
Gweithlu: Workforce:	All staff have a role to play in implementing the Public Sector Equality Duty.
Risg: Risk:	Not applicable.
Cyfreithiol: Legal:	Equality Act 2010.
Enw Da: Reputational:	Not applicable.
Gyfrinachedd: Privacy:	Not applicable.
Cydraddoldeb: Equality:	An Equality Impact Assessment has not been undertaken as this is an update report.

Review of dismissals over a 10-year period in the Black and Minority Ethnic staff groups

Background

At a meeting of the Black and Minority Ethnic (BAME) Advisory Group, a request was made for all dismissals relating to a member of the workforce from a BAME staff group to be reviewed. The review was co-led by Dr Hashim Samir, Consultant Radiologist, and Annmarie Thomas, Assistant Director of Workforce & Organisational Development (W&OD) (Resourcing and Utilisation).

The purpose of the review is to:

- identify whether there is any indication of disproportionate impact;
- provide confidence to the Advisory Board of our commitment to give serious consideration to any evidence of disproportionate impact; and
- give confidence to the wider staff cohort that work has been commissioned by the Advisory Group for a review which is co-led by the Vice Chair of the Advisory Group and member of the W&OD Directorate.

There are two key limitations to the validity of the review:

- 1) The % of unrecorded ethnicity records on ESR (Electronic Staff Record). It is important to stress this factor from the outset as it limits our ability to draw accurate conclusions on the dataset in relation to any disproportionate impact on the grounds of ethnicity;
- 2) In light of the size of the organisation (10,000+ employees) 301 terminations over a 10-year period would not necessarily indicate a cause for concern. 20 of these were from the BAME group. Our ability to draw reliable conclusions on such low numbers over a 10-year period is limited.

Findings

Table 1 represents the data held in Hywel Dda University Health Board's (HDdUHB) ESR as at 31st March 2021 in relation to the workforce profile by ethnic group (data published in Workforce Annual Equality Report):

Table 1

Ethnic Group	Number	%	BAME
White	11,110	88.70%	
Black or Black British	123	0.98%	0.98%
Asian or Asian British	460	3.67%	3.67%
Mixed	83	0.66%	0.66%
Any other Ethnic Group	170	1.36%	1.46%
Not recorded on ESR/Prefer not to declare	580	4.63%	
Total	12,526	100%	6.77%

Table 2 represents the data held in HDdUHB’s ESR since January 2011 on the number and reasons for dismissal by ethnic group:

Table 2

Ethnicity	Dismissal – Capability (ill health or performance)	Dismissal - Conduct	Dismissal - Some Other Substantial Reason	Dismissal - Statutory Reason	Total	%
White	128	73	38	10	249	82.7%
BAME	5	10	4	1	20	6.6%
Not recorded on ESR/Prefer not to declare	19	9	3	1	32	10.6%
Grand Total	152	92	45	12	301	100%

There have been 301 dismissals during the 10-year period reviewed.

- Of the 301 dismissals, 249 (82.7%) related to staff who identify themselves in the White ethnicity category. This compares to 88.7% of the workforce profile in HDdUHB who identify themselves in the White ethnicity category.
- Of the 301 dismissals, 20 (6.7%) related to staff who identify themselves in the BAME ethnicity category. This compares to 6.8% of the workforce profile in HDdUHB who identify themselves in the BAME ethnicity category.
- Of the 301 dismissals, 32 (10.6%) related to staff who prefer not to declare their ethnicity category on ESR. This compares to 4.63% of the workforce profile in HDdUHB who prefer not to declare their ethnicity category on ESR. It is this dataset which limits our ability to draw accurate conclusions in relation to any evidence of disproportionate impact on the grounds of ethnicity.

The following points should be noted in relation to the data presented in Table 2.

- We are reliant on managers recording an accurate reason for termination of employment on Termination Forms.
- Dismissal recorded as ‘Capability’ can mean one of two things:
 - Employees terminated on the grounds of frequent short-term absence or long-term absence; or
 - Employees terminated on the grounds of poor performance.
- Dismissal for ‘some other substantial reason’ should only be used in cases which align to the definition used in employment law. It is a reason that should feature rarely. In this connection, that dataset above should be considered with caution in respect of this description as it is likely to be a data entry error of reason in the majority of cases.

- Dismissal recorded as ‘conduct’ should represent formal disciplinary cases which have resulted in the termination of employment. This is the reason which was the key focus of the discussion at the Advisory Board. The dataset indicates that 10 employees in the BAME group have been terminated for reason of misconduct in a 10-year period.
- Dismissal for ‘statutory reason’ should only be used in cases which align to the definition used in employment law. It is a reason that should feature rarely. In this connection, the dataset above should be considered with caution in respect of this description as it is likely to be a data entry error in the majority of cases.

Table 3 represents the data held in HDdUHB’s ESR as at 31st March 2021 in relation to the workforce profile by staff group and ethnicity.

Table 3

Staff Group	BAME staff	% of BAME staff
Add Prof Scientific and Technic	12	2%
Additional Clinical Services	99	12%
Administrative and Clerical	52	6%
Allied Health Professionals	26	3%
Estates and Ancillary	53	7%
Healthcare Scientists	13	2%
Medical and Dental	404	49%
Nursing and Midwifery (N&M) Registered	177	21%
Total	836	100%

Table 4 summarises the staff groups for the 20 cases in the BAME group. For example, 6 out of the 20 cases of dismissal were in the N&M staff group:

Table 4

Staff Group	No of Cases
Add Prof Scientific and Technic	0
Additional Clinical Services	7
Administrative and Clerical	1
Allied Health Professionals	1
Estates and Ancillary	1
Healthcare Scientists	0

Medical and Dental	4
Nursing and Midwifery Registered	6
Total	20

A detailed analysis of the 20 employees whose contracts have been terminated has been undertaken in order to validate that the reasons for termination were accurate and to provide a more qualitative level of assurance around the reasons for termination being in accordance with Human Resources (HR) policy, e.g. with the employee having full access to support via representation, etc.

The Workforce teams have confirmed that in all cases, employees are offered the right to be accompanied during any formal investigation, hearing or appeal. The employee can choose their representative to accompany them during processes; this can be a BAME Trade Union (TU) representative or work colleague, if that is their preferred representative. For future case management, the Workforce teams are mindful of the need to ensure both gender and ethnicity balance for the appointment of Investigation Officers and members of the panel.

Table 5 sets out the number of Investigating Officers who are trained to conduct investigations in disciplinary cases. The policy and procedural requirements differ for staff covered by Agenda for Change (A4C) Terms and Conditions compared to Medical and Dental (M&D) Terms and Conditions. Cases for staff on A4C terms are managed via the All-Wales Disciplinary Policy and staff on M&D terms are managed via the Upholding Professional Standards Policy (UPSW). When an individual is trained in UPSW they are provided with training which allows them to undertake the role of Investigating Officer, Case Manager or Panel Member. In this connection, the training provision is wider than the role of Case Investigator only. Training requirements differ which is why those trained are presented separately in the table below.

Table 5

Staff Group	Total Number Trained	Total Number trained from BAME group	% trained from BAME group
A4C – All Wales Disciplinary Policy	51	2	4%
M&D – Upholding Professional Standards	74	11	15%
Total	125	13	10%

- 6.77% of the total workforce in HDdUHB are BAME. 13 of the 125 staff trained to be Investigating Officers are BAME staff, which represents 10% of those trained.
- Whilst the 10% trained appears an acceptable representative of the workforce profile, we will seek to train additional staff from a BAME background as a positive action.

Dismissal – Capability (ill health or performance) – 5 cases

- 1) N&M Overseas Nurse appointment - unable to secure PIN following appointment.
- 2) Health Care Support Worker (HCSW) - ill health termination.
- 3) Occupational Therapist - ill health termination.
- 4) Specialty Doctor on a fixed term contract - ill health termination.
- 5) Bank Nurse - contract of engagement terminated on the grounds of medicine management errors.

Length of service

Less than 1 year	2
Less than 5 years	2
Less than 10 years	0
More than 10 years	1

Dismissal – Conduct – 10 cases

- 1) Consultant - dismissed for conduct and performance reasons.
- 2) Nurse - dismissed for fraud and failure to declare previous misconduct at the point of application – subsequently struck off by the Nursing & Midwifery Council.
- 3) HCSW - dismissed for sexual assault allegations.
- 4) HCSW - dismissed for sexual activity with a child allegations.
- 5) Bank HCSW – contract of engagement terminated on the grounds of performance.
- 6) Nurse - dismissed for inappropriate behaviour towards a female colleague.
- 7) Nurse - dismissed for inappropriate behaviour towards a female colleague.
- 8) Facilities Assistant - dismissed for sexual assault conviction outside work.
- 9) Bank HCSW dismissed - unable to access record to confirm details of the case.
- 10) Nurse - dismissed for theft of drugs.

Length of service

Less than 1 year	4
Less than 5 years	4
Less than 10 years	1
More than 10 years	1

Dismissal - Some Other Substantial reason – 4 cases

- 1) N&M Overseas Nurse appointment - unable to secure PIN following appointment.
- 2) Junior Doctor on a fixed term contract - terminated due to General Medical Council (GMC) issue.
- 3) Nurse - terminated on the grounds of ill health.
- 4) Doctor - unable to access records to confirm details of the case.

Less than 1 year	2
Less than 5 years	2

Dismissal – Statutory Reason – 1 case

- 1) Admin and Clerical Manager - dismissed health and performance capability dismissal.

Less than 1 year	1
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Records are not available for the cases which date back over the 10 year period. A sample of 10 recent cases across various termination reasons have been reviewed to assess gender and ethnicity composition of the panels.

With regard to disciplinary proceedings relating to AFC staff, the Disciplining Officer (DO) is likely to be the senior Line Manager with the authority to do so. With regard to Investigating Officers, they are predominantly appointed from outside of the Directorate where the individual subject to proceedings is employed. This is to ensure impartiality. There are exceptions, i.e. where due to the nature of the allegation a professional of the same specialism is required. This has occurred in midwifery, e.g. where the matter under investigation was a professional midwifery matter.

With regard to medical staff, appointment of the Case Manager (CM) is governed by Upholding Professional Standards in Wales (UPSW). This requires that the CM is a Deputy Medical Director (MD), Associate MD (AMD) or Assistant MD. However, this would limit the role of CM to a restricted number of individuals which is not feasible. HDdUHB therefore allocates the role of CM to Hospital Clinical Directors and Clinical Directors in addition to the Deputy and AMDs. Case Investigators can be either experienced and appropriately trained medical or non-medical staff and will be appointed depending on the specific nature of the allegations. In addition, HDdUHB appoints external Case Investigators (CI) where it is anticipated that the case is likely to be complex or where the investigation is likely to be lengthy and potentially time consuming.

Table 6

Case Number	Gender Composition	Panel Composition
1 (Male)	CI was male, Workforce Support was male. CM was female. Disciplinary Panel had one male and two female members.	CI was white male, supported by a white male. Disciplinary Panel had no BAME representation. Appeal Panel was chaired by a BAME barrister.
2 (Male)	IO was male, Workforce Support to the IO was female.	IO was white male, supported by a female who was BAME.

	Disciplinary Panel had two females and one male (female DO and female Professional Advisor, male Workforce Advisor).	Disciplinary Panel had no BAME representation.
3 (Male)	IO was female, Workforce Support to the IO was male. Disciplinary Panel had two females and one male (Male DO, female Workforce Advisor and Professional Advisor).	IO was white female, supported by a white male. Disciplinary Panel had no BAME representation.
4 (Male)	IO was Female, Workforce Support to the IO was male. Disciplinary Panel had one female and one male (male DO and female Workforce Advisor).	IO was white female, supported by a white male. Disciplinary Panel had no BAME representation.
5 (Male)	IO was male, Workforce Support to the IO was male. Disciplinary Panel had two females (female DO and female Workforce Advisor).	IO was white male, supported by a white male. Disciplinary Panel had no BAME representation.
6 (Female)	(n/a) No investigation required – capability dismissal.	The Manager and the Workforce Support were both white females, no BAME representation.
7 (Male)	(n/a) No investigation required – capability dismissal.	The Manager and the Workforce Support were both white males, no BAME representation.
8 (Female)	The IO was female, Workforce Support to the IO was female. All three members of the Disciplinary Panel were female (female DO, Professional Advisor and Workforce Advisor).	IO was white female, Workforce support was white female. Disciplinary Panel had no BAME representation.
9 (Male)	(N/A) No investigation required – dismissal was the result of continued failure to attend for duty and employee’s contract was terminated on that basis.	Manager was white female, Workforce Support was white female, no BAME representation.
10 (Female)	N/A No investigation required in this case, prima facie evidence and staff member discontinued working for HDdUHB.	Manager was white female, supported by a white female, no BAME representation.

The following support is offered to members of staff who are being managed through a formal process:

- a) Formal right to be accompanied during suspension/exclusion discussions, investigation meetings and hearing. This can be a work colleague or TU representative;
- b) Named contact for the case in the Workforce team;
- c) Signposting to Occupational Health and Staff Psychological team. Checklists include the text “Remind the employee that the services of the Health Board’s Occupational Health Department and Staff Psychological Well Being Service remain available at all times should they wish to access them”;
- d) Standard letters offer named contact for support, e.g. peer. The letters include “The following individual has been identified to act as a point of support to you during this process insert the name, phone and email of the person identified”
- e) Medical staff are offered a work colleague in order to discuss matters with and to ensure linkage with the workplace;
- f) Case Management Checklist includes a prompt for the W&OD team to set up diary reminders to provide regular verbal or written updates on progress to all parties;
- g) The ‘Initial Assessment of Facts’ template includes a prompt for the W&OD team to identify if a named point of contact of support for the employee needs to be identified at this point.
- h) The letter informing the employee that an issue has arisen includes the following text ‘The following individual has been identified to act as a point of support to you during this process insert the name, phone and email of the person identified”.

Conclusions

- 1) The data indicates that **6.6%** of employees in the BAME group have had their contracts terminated. In order to assess whether this is disproportionate, we need to compare this against the profile of HDdUHB’s workforce who have declared on ESR that their ethnicity is in the BAME group. The % of employees in the BAME group will vary over the 10-year period of the data set being analysed, however it is currently **6.7%**.

2011	5.7%
2016	6.1%
2021	6.7%

Based on the review of **quantitative data alone**, there is no evidence of disproportionate impact as the % of employees terminated in the BAME group is broadly aligned to % of HDdUHB’s workforce who are in the BAME group.

- 2) Workforce teams have confirmed that in all cases, employees are offered the right to be accompanied during any formal investigation, hearing or appeal. The employee can choose their representative to accompany them during processes,

which can be a TU representative or work colleague from a BAME if that is their preferred representative. For future case management, the workforce teams are mindful to ensure that both gender and ethnicity balance for the appointment of Investigation Officers and members of the panel.

- 3) Positive action will be taken to encourage more individuals from the BAME group to come forward for training to be Agenda for Change Investigating Officers and Case Investigators, Case Managers and Panel Members for UPSW cases. Positive action is needed in order to try to ensure gender and ethnicity balance re IO's and panels.
- 4) In 9 of the 20 cases, employees had a length of service of less than one year. In at least 6 cases, 'inappropriate behaviour' is a reason for the dismissal. The Workforce teams could review the nature of some of these cases and consider whether any further information can be provided during induction and orientation to role and culture in the workplace.

Recommendations

The BAME Advisory Board is asked to:

- 1) Note the findings of the review;
- 2) Support the conclusions presented;
- 3) Support the recommendation that for future case management, the Workforce teams consider both gender and ethnicity balance for the appointment of IOs and members of the panel;
- 4) Support the recommendation that positive action is taken to encourage more individuals from the BAME group to come forward for Investigating Officer training;
- 5) Support the recommendation that the W&OD Directorate work in partnership with a member of the Advisory Board to look at ways of encouraging staff to speak up about their negative experiences from disciplinary investigations or hearings/appeals;
- 6) Support the recommendation that the Workforce teams to review the nature of the 'inappropriate behaviour' in some of these cases and consider whether any further information can be provided during induction and orientation to role and culture in the workplace, and;
- 7) Consider any further recommendations which may be appropriate.

Prepared by:

**Hashim Samir, Consultant Radiologist and Vice Chair of BAME Advisory Board
and Annmarie Thomas, Assistant Director of Workforce (Resourcing and
Utilisation)**

16th November 2021`