



MEETING TITLE: Trust Board Meeting held in Public		MEETING DATE 27/07/2021	
TITLE of PAPER	Position Update – Improving and Equalising the Employment Experience	PAPER REF	TB21.038
KEY PRIORITIES	Attract, develop and retain a highly skilled, engaged and diverse workforce Embed an ethos of continuous improvement and innovation, that has the voice of patients, communities and our people at its heart Create a safe and high performing organisation based on openness, ownership and accountability		
PURPOSE OF THE PAPER	The purpose of the paper is to provide a position update to the Board regarding the actions to meet the NHS England guidance for ‘Improving and Equalising the Employment Experience.		
For Approval	<input type="checkbox"/>	For Assurance	<input checked="" type="checkbox"/>
For Decision	<input type="checkbox"/>	Discussion/Information	<input type="checkbox"/>
AUTHOR / LEAD	Alison Cockerill, Head of Employee Relations	ACCOUNTABLE DIRECTOR	Mandy Wilcock, Director of People & Organisational Development
DISCUSSED AT / INFORMED BY – Trust Board in Public – 28 th November 2019			
PREVIOUSLY AGREED AT:	Committee/Group: Trust Management Group	Date: 21 st July 2021	
RECOMMENDATION(S)	It is recommended that the Trust Board: 1) Note the contents of the paper. 2) Support the Directorate ongoing work to meet the guidance.		
RISK ASSESSMENT		Yes	No
Corporate Risk Register and/or Board Assurance Framework amended		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Equality Impact Assessment		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Resource Implications (Financial, Workforce, other - specify)		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Legal implications/Regulatory requirements		<input type="checkbox"/>	<input checked="" type="checkbox"/>
ASSURANCE/COMPLIANCE			
Care Quality Commission Choose a DOMAIN(s)		3: Caring 5: Well led	
NHSI Single Oversight Framework Choose a THEME(s)		4. Operational Performance 6. Leadership & Improvement Capability (Well-Led)	

Improving and Equalising the Employment Experience A Position Update

1. PURPOSE/AIM

- 1.1 The purpose of the paper is to provide a position update to the Trust Board on the actions identified Improving and Equalising the Employment Experience – A Response to National Guidance.
- 1.2 Appendix 1 of this paper outlines a summary of the national guidance and the progress made against the November 2019 action plan.

2. BACKGROUND/CONTEXT

- 2.1 In May 2019, a ‘Task and Finish’ Advisory Group of NHS England and NHS Improvement published and circulated to NHS Trust and Foundation Trust Chairs and Chief Executives, new guidance about how Trusts might embed the lessons learnt from an independent review of ER case management across the NHS. Trusts were asked to review this guidance, undertake a gap analysis in relation to current practice and make proposals for improvement where this might offer further rigour and reassurance.
- 2.2 The Board may recall, the previous paper reviewed principles of best practice contained in two national guidance documents from NHS England and NHS Improvement. They were:
 - Learning Lessons to improve our people practices of May 2019.
 - A fair experience for all; closing the gap in rates of disciplinary action across the NHS workforce of July 2019.
- 2.3 It also identified actions required to be taken by the Trust to ensure it was compliant with these documents.
- 2.4 The findings of the WRES Improvement Team, A Fair Experience for all – closing the ethnicity gap in rates of disciplinary action across the NHS, were also brought into this piece of work and associated action plan. The guidance required Trusts to aspire to:
 - Equalise the proportionality of BME and white staff entering the formal disciplinary process.
 - To reduce the overall likelihood and number of any staff entering the formal disciplinary process
- 2.5 YAS committed to review our employment practices and to introduce ‘checks and balances’ to ensure that minority groups were not disproportionately disadvantaged in disciplinary processes. An update on the actions in relation to these actions can be found in Appendix 1.

3. ACTIONS OF NOTE TO MEET THE STANDARDS IDENTIFIED.

- 3.1 The progress against some of the actions identified has been slower than anticipated primarily due to the Trust’s response to COVID19 and the reduced

capacity of the HR function, management, and staff side during the pandemic. The greatest impact of this has been in relation to the pace of progressing the workforce policies through the Trust's consultative machinery. However, a number of actions have been undertaken in addition to continuing our good practice in some areas.

3.2 The following actions are worthy of note:

- As per the ask to have a decision-making methodology, regarding the progress of a case through a formal process, a full and thorough gateway review process has been in place since November 2019. This was reviewed in January 2021 and continues to be an effective process welcomed by HR and managers involved in case work. The purpose of the gateway review conversation is to determine the most appropriate course of action and must consider:
 - the possibility of resolving the matter informally.
 - the questions posed in the [just culture guide](#); (this replaced the incident decision tree referred to in the original paper)
 - the likelihood and effect of any discrimination or unconscious bias that may have been a factor in the incident(s) or subsequent decision making.

The impact of having this process was seen in the improvement to the Workforce Race Equality Standard, Metric 3 (Relative likelihood of BME staff entering the formal disciplinary process, compared to that of white staff, as measured by entry into a formal disciplinary investigation. (The target here is 1.0 where BAME and white staff have equal likelihood of entering the disciplinary process.). This metric has been of concern in previous years, however as a direct result of the introduction of the gateway process, the WRES metric improved significantly, reducing from 1.48 to 0.96. This means that white and BAME staff are equally as likely to enter the disciplinary process. Since the review in January 2021, the gateway review now involves the commissioning manager (the decision maker) and is not restricted to a HR perspective. Additionally, in the interests of transparency, there is a robust auditable evidence trail linked to the process.

- A robust risk assessment process is now in place that ensures that suspension from duty is absolutely the last resort, where there are concerns regarding a member of staff remaining in their substantive post. All suspensions are approved by a Director with clear timescales for review to ensure these do not continue unnecessarily.
- The Employee Wellbeing Policy has been updated with inclusion of the new Post-incident Care process. The document now includes a specific section regarding supporting staff during the investigatory process with escalation, and onward reporting, to the Trust Board where any harm, associated with the process, comes to an individual. Staff have been made aware of this and it was featured recently on the Chief Executives Team Brief.

- A lessons' learnt and thematic analysis exercise regarding our case work has been presented to TEG and Quality Committee; these will continue on a bi-annual basis. Trust Board will receive this in the private meeting.

4. NEXT STEPS

4.1 The department will continue to progress the actions as per the ask from NHS England/improvement. The Directorate remain committed to working closely with trust leaders ensuring our staff experience in respect of employee relations is fair, transparent, and proportionate.

4.2 The other next steps include.

1. As per the national request, we will report to NHSE/I on our continued progress to meet the standards.
2. Continue to engage with our Staff Networks to hear the employee voice.
3. Continue to work in partnership with Trade Unions to better understand the employee experience and work together to address any disproportionality and provide support to our staff.
4. Continue to listen to staff experiences, proactively review staff survey results and use these to inform employment policy going forward.
5. Continue to review our practices through a lessons learnt processes and ensure that learning is fed into development for the Employee Relations team and future policy development
6. Update the Trust Board on the completion of the work and any outcomes of note.

5. RECOMMENDATIONS

It is recommended that the Trust Board:

1. Note the contents of the paper and the progress made in relation to the reduction in the proportionality of BME and white staff entering the formal disciplinary process.
2. Support the trust ongoing work and outstanding actions to meet the expectations in the guidance, specifically around consultations on the Disciplinary policy and procedure.

6. APPENDICES

Appendix 1 – A Position Update on YAS proposed response to the replicated guidance arising from:

- The 'learning lessons to improve our people practices' work from NHS England and NHS Improvement of May 2019.
- 'A fair experience for all; closing the gap in rates of disciplinary action across the NHS workforce of July 2019', also received from NHS England and NHS Improvement but in July 2019.

Appendix 1: Action plan update

No	Summary of the national guidance	Previous practice	Position Update
1.	Adhering to best practice		
1a).	The development and application of local investigation and disciplinary procedures should be informed and underpinned by the provisions of current best practice guidance, principally the ACAS 'code of practice on disciplinary and grievance procedures' and other relevant guidance (as published)	All current and proposed policies are developed in line with ACAS code of practice. W&OD is developing an over-arching 'Guide to conducting Investigations and Hearings' which, amongst other things, is proving a ready and effective vehicle to embed and implement the recommended measures of both national guidance documents	The revision of the Disciplinary Policy and Procedure is currently going through consultation and these documents will include reference to, or signpost to additional supporting documents covering best practice guides for conducting investigations and hearings. All existing policies are compliant with ACAS Code of Practice. The anticipated implementation date after consultation journey is October 2021 .
1b).	Employers should take every measure to ensure complete independence and objectivity is maintained at each stage of an investigation and disciplinary procedure	When appointing an investigating officer, the HR team ensures that the manager has not had any previous involvement in the case.	The Trusts good practice in this area is fully implemented and works well.
2.	Applying a rigorous decision-making methodology		
2 a)	Consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, employers should apply a decision-making methodology that provides for full and careful consideration of context in determining the next steps	HR team currently provides advice to managers regarding next steps	A full and thorough gateway review process has been in place since November 2019. This was reviewed in January 2021 and continues to be an effective process welcomed by HR and managers involved in case work.
2b)	In all decision making that relates to the application of sanctions, the principles of plurality should be adopted	This is embedded in existing policy and practice whereby panels are appointed to consider cases where	The Trusts good practice in this area continues.

No	Summary of the national guidance	Previous practice	Position Update
		(disciplinary) or other sanction may be an outcome	
3.	Ensuring people are fully trained and competent to carry out their role		
3.	Employers should only appoint individuals as case managers, case investigators and panel members who have received up to date comprehensive training and who, through such training, are able to demonstrate the aptitude and competencies (with knowledge of best practice, the principles of natural justice and appreciation of race and cultural considerations)	The Trust currently has a list of case investigators who have attended the Investigations Training which is delivered by Capsticks	<p>The Trust continues to use only trained investigators and are offering additional training for managers chairing panels.</p> <p>The development of the E-learning refresher training has been delayed due to Covid-19. It is anticipated that this will be ready for the next financial year.</p>
4.	Assigning sufficient resources		
4.	Before commencing investigations, organisations should ensure that appointed case managers, case investigators and other individuals charged with specific responsibilities are allocated sufficient time and resources that will fully support the timely completion of these procedures. The extent to which individuals charged with these responsibilities are truly independent should also be considered.	<p>The Trust has recently trained more managers to support investigations and therefore a wide variety of managers are now trained.</p> <p>When appointing an investigating officer, the HR Team ensures that the manager has not had any previous involvement in the case.</p>	<p>The ER Assistants continue to actively manage and maintain the list of trained investigators / panellists to ensure that it is updated. The HR team question capacity before case allocation of cases to investigators.</p> <p>The consultation on the Disciplinary policy includes a position whereby simple and early-stage cases do not all require both commissioning mgrs. and investigating officers.</p>
5.	Decisions relating to the implementation of suspensions/exclusions		
5.	Any decision to suspend/exclude should not be taken by one person alone, or by anyone who has an identified or perceived conflict of interest.	Independence is already in place	The Trusts good practice in this area continues.

No	Summary of the national guidance	Previous practice	Position Update
	Decision to suspend/exclude should be a measure of last resort that is proportionate, time bound and justified. The continued suspension/exclusion of any individual should be subject to appropriate senior oversight and sanction.	<p>The robust risk assessment and sign off process in place supports suspension decisions.</p> <p>The current Trust Scheme of Delegation restricts those who can suspend and decide disciplinary sanctions to Bands 8a and above and dismissals to Bands 8b and above</p>	This is referenced in the Disciplinary Policy & Procedure and will be supported by a further Suspensions Guide document given that not all suspensions occur via a disciplinary route.
6.	Safeguarding people's health and wellbeing		
6a)	Concern for the health and welfare of individuals involved in investigation and disciplinary procedures should be paramount and continually assessed, and appropriate professional occupational health assessments and intervention should be made available to any person who either requests or is identified as requiring such support	The Trust carries out occupational health assessment for individuals, where appropriate and allocates a Contact Support Officer (CSO) on each occasion a person is investigated	The Trusts good practice in this area continues.
6b)	A communication plan should be established with individuals who are the subject of an investigation or disciplinary procedure and this plan should form part of the associated terms of reference. Communications should be timely; comprehensive; unambiguous and compassionate	The Trust commitment to staff health and wellbeing (H&W) is evident in its associated H&W programme. This includes a full EAP service to which staff are signposted	This is referenced in the Disciplinary Policy & Procedure and will be reinforced in the training and support that HR provide to managers.
6c)	Where a member of staff who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject		Prompts and reminders for the welfare contact officer are included in the drafted documents associated with the revised Disciplinary Policy currently under consultation. They are also included in the Gateway review checkpoints. The revised Employee Wellbeing policy also

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	of an immediate independent investigation commissioned and received by the Board		references support for staff subject to investigations.
7.	Board-level oversight		
7.	Employers should establish mechanisms by which data relating to investigations and disciplinary procedures is reported to Board. This to include, for example, number of procedures, reasons for their use, adherence to process; justification for suspensions, outcomes, impact on patient care and staff and lessons learnt.		<p>Case debriefs occur with all concluded ER activity.</p> <p>JSG and TMG will be provided a quarterly update of the themes emerging from the ER activity. This will also be presented to Quality Committee bi-annually.</p> <p>Lessons learned for ET casework continues to be reported to TEG.</p>