

## Pwyllgor Cyflogaeth ac Apeliadau

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Man Cyfarfod  
**Ystafell Bwyllgor A - Neuadd y Sir,  
Llandrindod, Powys**

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Dyddiad y Cyfarfod  
**Dydd Gwener, 25 Hydref 2019**

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Amser y Cyfarfod  
**10.00 am**

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I gael rhagor o wybodaeth cysylltwch â  
**Stephen Boyd**  
01597 826374  
steve.boyd@powys.gov.uk



Neuadd Y Sir  
Llandrindod  
Powys  
LD1 5LG

Dyddiad Cyhoeddi

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Mae croeso i'r rhai sy'n cymryd rhan ddefnyddio'r Gymraeg. Os hoffech chi siarad Cymraeg yn y cyfarfod, gofynnwn i chi roi gwybod i ni erbyn hanner dydd ddau ddiwrnod cyn y cyfarfod

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### AGENDA

<b>1.</b>	<b>DIWEDDARIAD AM ABSENOLDEB SALWCH</b>
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Derbyn ac ystyried adroddiad ar lefel salwch.  
(Tudalennau 1 - 6)

<b>2.</b>	<b>STRATEGAETH Y GWEITHLU</b>
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Derbyn ac ystyried adroddiad gan y Pennaeth Datblygu'r Gweithlu a Threfniadaeth.  
(Tudalennau 7 - 14)

<b>3.</b>	<b>DIWEDDARIAD AR GYFRAITH CYFLOGAETH</b>
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Derbyn diweddariad ar gyfraith cyflogaeth.  
(Tudalennau 15 - 18)

<b>4.</b>	<b>DIWEDDARIAD AR BOLISI CYFLOGAETH</b>
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Derbyn diweddariad ar lafar ar bolisi cyflogaeth gan Bartner Busnes Polisi Cyflogaeth a Datblygu Gwasanaeth.  
(Tudalennau 19 - 20)

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

## Employment and Appeals Committee – 25<sup>th</sup> October 2019

### Sickness Absence Update

#### Introduction

The sickness absence update provided at EAC on 17<sup>th</sup> July 2019 evidenced that Powys County Council had the 3<sup>rd</sup> lowest sickness days lost per full time equivalent (FTE) for 2018/19, when compared to all other Local Authorities, at a rate of 9.16 per FTE. It was also noted that the average sickness absence days lost per FTE from 2017/18 to 2018/19 had increased across Wales, whereas PCC evidenced a decrease.

The update also summarised the work carried out to help increase attendance and employee wellbeing. Successful achievements have been the launch of a new Employee Assistance Programme along with the appointment of HR Case Workers who have been proactive in reducing long-term sickness cases through supporting employees in returning to work.

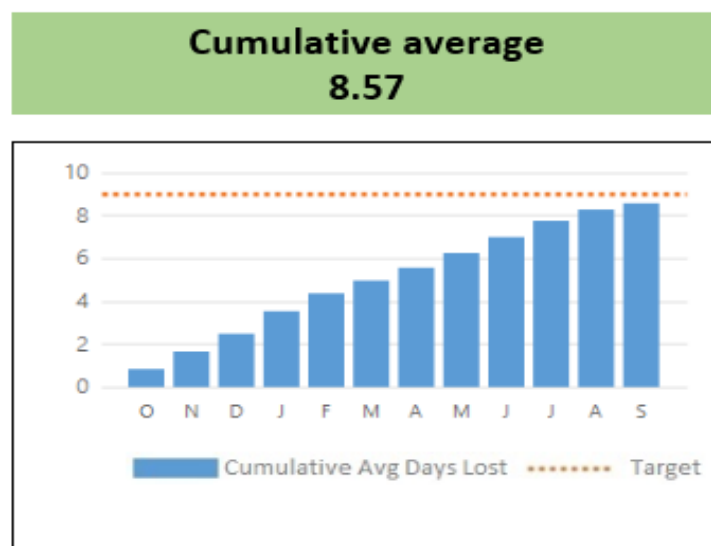
Committee asked for further detail on monitoring sickness stats within the council through the year, and also specifically requested data on short and long-term absences, which will be provided in this update report.

The sickness data provided in this report has been extracted from the Powys Insight Centre dashboards on 16<sup>th</sup> October 2019.

#### Annual Sickness Absence Data

For the 12-month period ending 30<sup>th</sup> September 2019, the Council's cumulative sickness days lost per FTE is 8.57, which again continues the trend identified in the previous report where absence rates are continuing to reduce.

The graphics below illustrate the cumulative average days lost per FTE for the 12-month period up to 30<sup>th</sup> September 2019.



## New Council Structure Data

Due to the Council reorganisation effective from 1<sup>st</sup> March 2019, the graphic below evidences the 7-month cumulative average days lost per FTE for each Directorate as at 30<sup>th</sup> September 2019.

### Summary of Cumulative Average days lost per FTE for each Directorate on the last 7 months (available for Power User Only)

Select blue underline text to reveal detail

Level	Report Date	Department	FTE Days Lost (cumulative)	Average FTE (cumulative)	Average Days Lost Per FTE (cumulative)
3	September 2019	<a href="#">Children &amp; Adults</a>	4475.75672	1652.21262	2.71
3	September 2019	<a href="#">Legal &amp; Democratic Services</a>	37.12162	31.68030	1.17
3	September 2019	<a href="#">Finance (Section 151)</a>	246.10540	121.31675	2.03
3	September 2019	<a href="#">Transformation</a>	1162.49896	276.22263	4.21
3	September 2019	<a href="#">Economy &amp; Environment</a>	5405.95152	1069.86781	5.05

## Quarterly Sickness Data Analysis

The sickness days lost per FTE for the current year April to September 2019 is a cumulative total of 3.99, which as the table below illustrates, is a 4.7% improvement from the same period in 2018, where a cumulative total of 4.18 sickness days were lost per FTE.

2018/19	
Month	Average Days Lost Per FTE
Apr-18	0.75550
May-18	0.79262
Jun-18	0.72495
Jul-18	0.68965
Aug-18	0.56239
Sep-18	0.65852

<b>Cumulative Total</b>	<b>4.18363</b>
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2019/20	
Month	Average Days Lost Per FTE
Apr-19	0.55333
May-19	0.71454
Jun-19	0.74785
Jul-19	0.69251
Aug-19	0.54205
Sep-19	0.74263

<b>Cumulative Total</b>	<b>3.99291</b>
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### Short-Term and Long-Term Sickness

Short-term sickness is defined as any absence less than 28 calendar days, whereas a long-term absence is an absence equal to or greater than 28 calendar days.

The following data details the number of absences recorded against short-term and long-term absences for each of the last six quarters:

#### 2018/19 – Absences Recorded

Calendar Days	Q1 April - June	Q2 July - Sept	Q3 Oct - Dec	Q4 Jan - Mar
Short-Term (< 28 days)	1295	1025	1998	2034
Long-Term (>= 28 days)	335	288	302	371
	(154 are over 4 months)	(125 are over 4 months)	(127 are over 4 months)	(143 are over 4 months)

#### 2019/20 – Absences Recorded

Calendar Days	Q1 April - June	Q2 July - Sept	Q3 Oct - Dec	Q4 Jan - Mar
Short-Term (< 28 days)	1307	1028	n/a	n/a
Long-Term (>= 28 days)	327	297	n/a	n/a
	(137 are over 4 months)	(105 are over 4 months)	n/a	n/a

Whilst the Q1 and Q2 are comparable for both 2018/19 and 2019/20 in terms of the number of absences recorded, it is worth noting of those absences falling in to the long-term category of calendar days lost, the number that exceed 4 months has reduced by 17 absences (11%) in quarter 1, and 20 absences (16%) in quarter 2 when comparing both years.

It is important to note that individual absences recorded in the tables above can span quarters therefore a cumulative total of the above should not be assessed. This will be looked at in more detail within sections to follow.

## Long-term Sickness by Directorate

Due to the Council reorganisation effective from 1<sup>st</sup> March 2019, the graphic below evidences the 7-month cumulative average days lost per FTE for each Directorate as at 30<sup>th</sup> September 2019.

### Summary of Cumulative Average days lost per FTE for each Directorate on the last 7 months (available for Power User Only)

Select blue underline text to reveal detail

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The table below illustrates the number of active long-term sickness absences equal to or greater than 28 calendar days, as at the last day of each of the last 3 quarters, including the headcount.

The data shows an overall decrease in the number of employees on active sickness absence on the respective dates between 31/03/2019 and 30/09/2019, this is mainly due to the significant decrease in the number in the Education Directorate.

Directorate	Active sickness absences equal to or over 28 days			Headcount of employees per Directorate as at 30/09/2019
	31/03/2019	30/06/2019	30/09/2019	
Childrens & Adults	22	25	27	906
Economy & Environment	31	36	41	1428
Education	73	74	47	3102
Finance (Section 151)	2	1	1	136
Legal & Democratic Services	0	0	1	67
Transformation	2	7	6	227
<b>Totals</b>	<b>130</b>	<b>143</b>	<b>123</b>	<b>5866</b>

The table below simplifies the above, showing the variance in the number of active sickness absences by Directorate for the periods stated.

Variance in active sickness absences equal to or over 28 days			
Directorate	31/03/2019 to 30/06/2019	30/06/2019 to 30/09/2019	overall 31/03/2019 to 30/09/2019
Childrens & Adults	+3	+2	+5
Economy & Environment	+5	+5	+10
Education	+1	-27	-26
Finance (Section 151)	-1	0	-1
Legal & Democratic Services	0	+1	+1
Transformation	+5	-1	+4
<b>Totals</b>	<b>+13</b>	<b>-20</b>	<b>-7</b>

### Long-term Sickness by Service Area

The tables below further breakdown the Directorates into their respective service areas at each of the last three quarter-end dates, including the headcount as at 30/09/2019.

Directorate	Service	Active sickness absences equal to or over 28 days			Headcount of employees per Directorate as at 30/09/2019
		31/03/2019	30/06/2019	30/09/2019	
Childrens & Adults	Adult Services	17	18	19	564
	Childrens Services	3	5	7	307
	Commissioning (Children & Adults)	1	1	1	38
	Strategic Commissioning	1	1	0	0
Economy & Environment	Highways, Transport & Recycling	15	22	19	545
	Housing and Community Development	15	15	20	740
	Property, Planning and Public Protection	1	0	2	147
Education	Schools	70	72	45	2954
	Schools Service	0	0	1	92
	Youth Services	3	1	1	54
Finance (Section 151)	Commercial Services	0	0	0	10
	Finance	0	0	0	50
	Income & Awards	2	1	1	67
	Pension Fund	0	0	0	9
Legal & Democratic Services	Corporate Legal & Democratic	0	0	1	67
	Members Support	0	0	0	3
Transformation	Digital Services	2	4	5	116
	Transformation and Communications Service	0	1	0	41
	Workforce & Organisation Development	0	2	1	69
<b>Totals</b>		<b>130</b>	<b>143</b>	<b>123</b>	

Using the above figures from 30/09/2019, the next table converts this into a percentage of the number of active long-term absentees versus the service headcount.

Directorate	Service	Active sickness absences equal to or over 28 days 30/09/2019	Headcount of employees per Directorate as at 30/09/2019	% of active sickness versus headcount per Service
Childrens & Adults	Adult Services	19	564	3.37%
	Childrens Services	7	307	2.28%
	Commissioning (Children & Adults)	1	38	2.63%
	Strategic Commissioning	0	0	0.00%
Economy & Environment	Highways, Transport & Recycling	19	545	3.49%
	Housing and Community Development	20	740	2.70%
	Property, Planning and Public Protection	2	147	1.36%
Education	Schools	45	2954	1.52%
	Schools Service	1	92	1.09%
	Youth Services	1	54	1.85%
Finance (Section 151)	Commercial Services	0	10	0.00%
	Finance	0	50	0.00%
	Income & Awards	1	67	1.49%
	Pension Fund	0	9	0.00%
Legal & Democratic Services	Corporate Legal & Democratic	1	67	1.49%
	Members Support	0	3	0.00%
Transformation	Digital Services	5	116	4.31%
	Transformation and Communications Service	0	41	0.00%
	Workforce & Organisation Development	1	69	1.45%
<b>Totals</b>		<b>123</b>	<b>5873</b>	<b>2.09%</b>

The data evidences that 2.09% of the Council's headcount are currently on long-term sickness as at 30/09/2019, with six services exceeding this average.



**CYNGOR SIR POWYS COUNTY COUNCIL.****Employment and Appeals Committee****25<sup>th</sup> October 2019****REPORT AUTHOR:** Paul Bradshaw, Head of Workforce & Organisational Development**SUBJECT:** Draft Workforce Strategy**REPORT FOR:** Information and Comment**1. Purpose**

To provide the Committee with an opportunity to comment upon and help shape the Council's Workforce Strategy.

**2. Background**

**2.1** At the last meeting of the Committee, I shared my paper to EMT about the Council's aspirations for the workforce. The purpose of which, was to explore how the Council could set out to ensure that employees have a great work experience, recognising that good employee engagement is both the right thing to do, and also has a direct correlation with high performance. To this end, our aspiration is to develop an even more confident and healthy workforce, which invests all of its talents and energy in; changing, improving and transforming the services we deliver to the people and communities of Powys, and the way in which we deliver those services. To bring our aspirations to life, my team developed a Workforce Transformation Plan for the next two years, which lays out a comprehensive set of actions.

**2.2** Alongside this we worked closely with colleagues from our Engage 4 Change Group, who ran a number of workshops during the summer, with staff from across the Council about employee perceptions / feelings. This explored how employees felt the Council could better manage, engage and work with staff and provided my team with some really helpful feedback on how we can better support the workforce moving forwards.

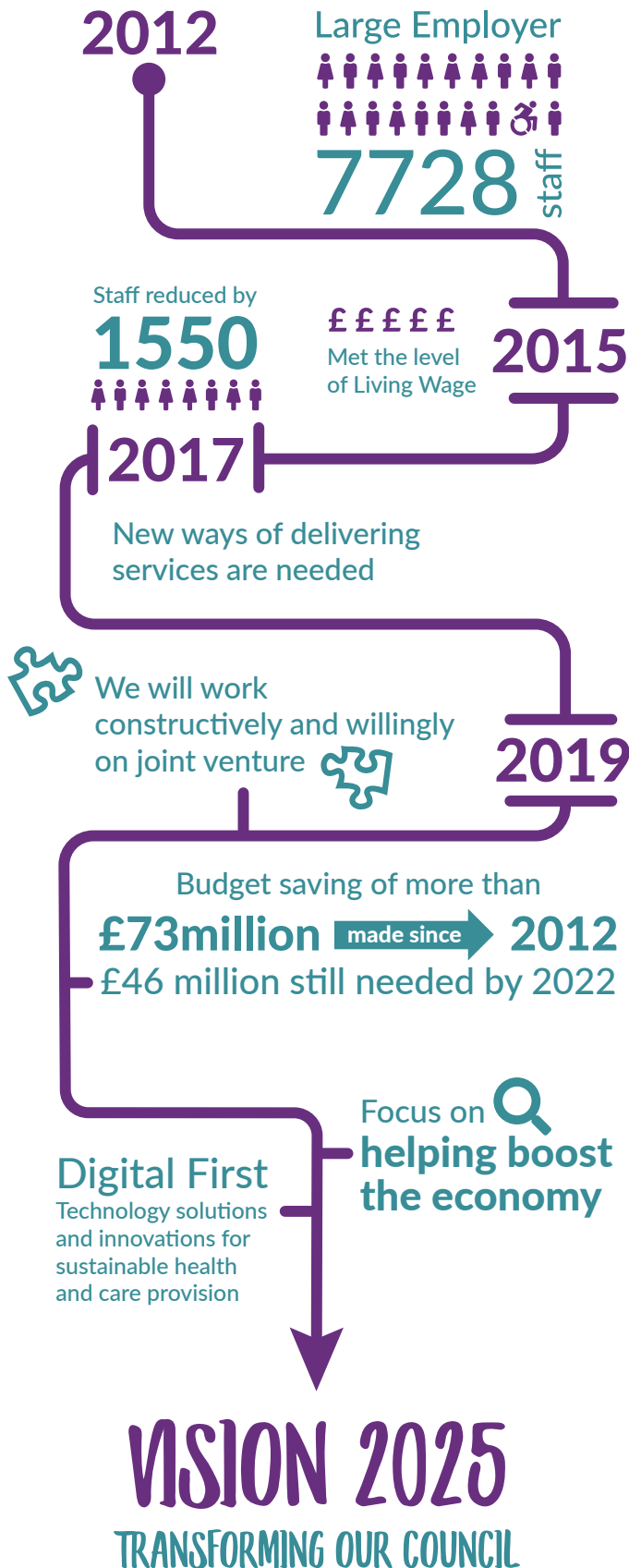
**2.3** To bring these two key pieces of work together, we have updated our Workforce Transformation Plan and have produced the attached Workforce Strategy.

**2.4** As you can see, the draft strategy lays out its context/purpose, its fundamental link to the Council's vision and priorities, and importantly recognises the importance of the workforce and how the Council will invest in it. The second half of the strategy then sets out a comprehensive set of actions, which will be delivered over the coming years to bring our aspirations to life and looks how we will be able to measure the success of the strategy.

**3. Recommendation**

That the Committee notes the report and draft Workforce Strategy and be invited to comment in order to help shape the strategy.

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol



## Introduction & Context

The Council has set out an exciting vision for the future of Powys, which more than ever will call upon great partnership working and redefines our relationships and role, with the people, communities and partners of Powys. This Workforce Strategy has been developed to help deliver our vision and sets out how we will deliver our people priorities over the next 3 years, putting the foundations in place to ensure we have a confident, healthy and able workforce that can deliver the vision and thrive in work.

## Workforce Challenges

Vision 2025 has identified the strategic priorities and projects which, when successfully implemented, will make a transformational difference to the quality of life of the people of Powys. This responds to the needs and changing demands of the public and also positively addresses the opportunities identified in external reviews of our services, for instance in children's and adult services.

The Council is ambitious and has recently set out its plans for the next 3 years which will deliver the vision, whilst at the same time, doing so with significantly less money, which could see a reduction of up to £46m over this period.

All of this means that a significant improvement and transformation agenda has been developed for the future. The delivery of which will require strong and collective leadership, careful mobilisation of resources, effective partnership working and a determined focus on delivering the outcomes which matter most. In deciding how this agenda can be best delivered it is important that every employee, every one of you, has the opportunity to shape what this will look like in your service and team.

## What needs to be done?

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The scale of the challenge we are facing requires cultural and organisational change. We will need to reshape the workforce, retaining and nurturing the people who have the right behaviours and skills needed for the future, and to better align the workforce to our priorities. This strategy outlines the high-level activities that will develop the structure, capabilities and skills of the workforce, to ensure Vision 2025 is a great success. The Workforce Strategy will therefore sit alongside and integrate with a number of other key strategies, which together will shape a fit for purpose and strong organisation, delivering ever improving outcomes for local people.

Our workforce is our greatest resource and it is essential that it is confident, competent and skilled. This strategy outlines how we will invest in the workforce, in developing the right skills and focus, so that they are confident and successful in their roles and in delivering our priorities.

**This investment will focus on our organisational agility, leadership and management, culture and engagement, capability and capacity, improvement and transformation, and importantly our ongoing health and wellbeing.**

## Our workforce profile

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In moving the council forward, it's important that we begin by understanding the makeup of our current workforce.



## What are our values and what do they mean?

Our values have been developed to underpin our progress in achieving our aims and objectives as a council:



### Professional

Whatever role we play in the council, we act with professionalism and integrity



### Positive

We take a positive attitude in all we do



### Progressive

We take a proactive and responsible approach to planning for the future



### Open

We keep each other informed, share knowledge and act with honesty and integrity



### Collaborative

We work constructively and willingly on joint initiatives

## Our Vision (Vision 2025)

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We will be an open and enterprising council



## Our People Strategy



In order to realise Vision 2025 we will develop a workforce that is agile and flexible, with the right skills, attitudes, behaviour and which demonstrates good practice. We will also grow our own staff and managers for the future, be an attractive employer and focus on outcomes for citizens and communities rather than activities. This strategy is one of our key enablers in helping us become the council of the future and is built around the 6 key themes summarised below:

Outcomes	Theme	Action
Employees have the autonomy, flexibility and accountability to make a positive difference in their day to day environment	Organisation agility	<ul style="list-style-type: none"> <li>• Develop and implement an annual workforce resourcing plan, encapsulating; fit for purpose operating model/ structures, recruitment and retention needs, talent management, succession planning and developing the ongoing and new skills needed in our workforce</li> <li>• Review and define agile working arrangements, in conjunction and alignment with a wider agile working programme</li> <li>• Develop our systems &amp; dashboard so that they better enable managers &amp; employees to access the information they need from all locations</li> <li>• Review and improve our redeployment arrangements so that they maximise the number of employees successfully redeployed and minimise the time involved in so doing</li> </ul>
Excellent management across the council supported by a leadership and management development programme	Leadership & Management	<ul style="list-style-type: none"> <li>• Define our leadership approach with SLT - e.g. collaborative &amp; compassionate</li> <li>• Develop a set of behavioural competencies that bring the collaborative and compassionate approach to life</li> <li>• Provide all new leaders with induction in our leadership approach and what is expected and provide training and induction in softer people management skills</li> <li>• Provide leaders with further opportunities to develop their knowledge and skills, for instance by participating in; best practice/informative events, interactive manager forums/networks and by working/engaging with coaching and mentoring</li> </ul>
Through a collaborative culture, employees empowered and encouraged to change and improve the organisation	Culture and Engagement	<ul style="list-style-type: none"> <li>• Develop the coaching conversation skills of all of our leaders, so we can support the work and performance of colleagues on a day to day and week to week basis, rather than twice a year during formal performance review meetings</li> <li>• Develop and embed a set of behavioural competencies for the workforce so that employees know what kind of behaviours they can expect from each other and are aware of what is expected from them</li> <li>• Build on how we recognise the good work of staff, for instance through immediate real time thanks, praise and recognition arrangements.</li> <li>• Actively listen to feedback from staff surveys, pulse surveys and the Engage for Change group using the findings to inform our next cultural steps and to assess the impact of our ongoing actions</li> </ul>

A high performing workforce with the right skills and behaviours	Capability and capacity	<ul style="list-style-type: none"> <li>• Promote induction standards to ensure comprehensive induction for all new starters, including staff managers and Members</li> <li>• Identify our future skills gaps and the newly emerging skills required through our organisational and service strategies and plans, to provide a programme of skills development to support colleagues across the Council</li> <li>• Offer needs led learning and development interventions to address significant training needs identified through the Appraisal process and explore any such need with each service (this can be referred to as bottom up training needs)</li> </ul>
A workforce that has improved and transformed service delivery	Improvement and transformation	<ul style="list-style-type: none"> <li>• Develop a small cadre of Change Champions around the Council, selected on the basis that they are change positive and want to contribute to transformation and improvement.</li> <li>• Deliver training to colleagues identified through our workforce resource planning, in the Council's chosen change and transformation methodology</li> <li>• Roll out and support Dragon's Den events across the Council</li> </ul>
Employees will have the best possible experience of the organisation	Health & Wellbeing	<ul style="list-style-type: none"> <li>• Develop a health &amp; Wellbeing Action Plan</li> <li>• Develop new initiatives to support the improvement of the health and well-being of the workforce</li> <li>• Procure a new occupational health contract, which is more flexible and able to offer timely appointments and counselling to staff</li> <li>• Procure and implement a 24/7 Employee Assistance Programme, which employees can access for advice and support at any time</li> </ul>

## Success Measures



Reduced Sickness Absence



Reduced operating expenditure per employee



Increased number of opportunities for Care Leavers, Apprentices and Graduates



Regular and effective induction programmes for staff and members



More applications from local people for council jobs



Improved positive feedback in the staff survey

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol



## Employment Case Law Update October 2019

### Employment Committee

#### **Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad (t/a Clifton House Residential Home) [2018] EWCA Civ 1641**

The Court of Appeal held that workers on sleep-in shifts were only entitled to the national minimum wage in respect of hours in which they were required to be awake for the purposes of working, not for the whole shift.

The cases concerned two care workers (Mrs Tomlinson-Blake and Mr Shannon) who were contractually obliged to spend the night at, or near, their workplaces and were expected to sleep for most of the period but could be woken if their assistance was required. The care workers were paid a fixed sum for the sleepover shift; Mrs Tomlinson-Blake was paid additional sums if called on during the night for more than an hour, and Mr Shannon received free accommodation all year round in addition to the fixed sum. The workers argued that they were being underpaid under the NMWR 1999 and NMWR 2015 on the basis that the whole sleep-in shift constituted time work or salaried hours work.

The Court of Appeal has overturned an EAT decision on national minimum wage for sleep-in shifts. Underhill LJ, delivering the judgment of the court, held that care workers who were required to sleep at, or near, their workplace and be available to provide assistance if required, were available for work rather than actually working. Accordingly, they were not entitled to be paid the national minimum wage for the whole of the sleep-in shift, but only for the time when they were required to be awake for the purpose of working. The sleep-in exception in regulation 32 of the National Minimum Wage Regulations 2015 is intended to apply to cases where "the essence of the arrangement is that the worker is expected to sleep".

The judgment brings some clarity by ruling that workers who sleep at a residential care home or similar place of work while "on call" for emergencies are merely available for work (and therefore not entitled to the NMW) until actually called upon

#### **Base Childrenswear Ltd v Otshudi UKEAT/0267/18**

The EAT considered whether the tribunal had been correct to make an award in the middle of the middle Vento band in respect of a claimant's injury to feelings caused by a one-off act of racial harassment.

Whether the discrimination was a one-off act or a course of conduct was a relevant factor for the tribunal to take into account, but it was not determinative. The tribunal had correctly focused on the effect the discriminatory act had had on the particular claimant.

The EAT did, however, allow the appeal in part in respect of the aggravated damages award. The tribunal had taken into account the employer's *failure to follow the Acas Code of Practice on Disciplinary and Grievance Procedures (Acas Code)* in respect of the claimant's post-termination grievance when making both the aggravated damages award and an uplift of 25% for failure to follow the Code.

It is notable that the tribunal made an uplift of 25% in respect of the employer's failure to follow the Acas Code in respect of a post-termination grievance. The Acas Code does not expressly state that it applies to grievances received from former employees and there have been no previous appellate decisions confirming the position. Although the employer did not appeal the uplift made in this case, the EAT made no obiter comments disagreeing with the tribunal's approach. *In light of this, it would be advisable for employers to always follow the Acas Code in respect of post-termination grievances*

*VENTO BANDS (April 2019)*

*Lower - £900 to £8,800*

*Middle - £8,800 to £26,300*

*Top - £26,300 to £44,000*

### **Coletta v Bath Hill Court (Bournemouth) Property Management Ltd UKEAT/0200/17 (Court of Appeal decision awaited – hearing 25/07/19)**

The EAT considered whether the six-year limitation period under section 9 of the Limitation Act 1980 applied to unlawful deduction from wages claims brought before 1 July 2015, when the Deduction from Wages (Limitation) Regulations 2014 (SI 2014/3322) came into effect.

The EAT has held that, for unlawful deduction from wages claims issued before 1 July 2015, there was no six-year "backstop" period limiting the amount that could be claimed in respect of a series of deductions.

Section 9 of the Limitation Act 1980 (LA 1980) prescribes a six-year limitation period for all statutory monetary claims. However, section 39 provides that where a claim is brought

under a statute that already prescribes a period of limitation, the LA 1980 limitation period does not apply.

The claimant had brought his claim within three months of the last deduction in a series, in accordance with section 23 of the ERA 1996, and was therefore entitled to recover all of the sums that were not properly paid over the 15-year period, without the imposition of a backstop of six years.

**For most unlawful deduction claims brought since 1 July 2015, the Deduction from Wages (Limitation) Regulations 2014 (SI 2014/3322) imposed a two-year backstop period.** *This means that in respect of any claims for underpaid wages, commission, bonuses and holiday pay, tribunals cannot consider deductions where the relevant date of payment was more than two years before the date of presentation of the complaint. This judgment will therefore have no application to most unlawful deduction claims issued on or after 1 July 2015.*

#### **Awan v ICTS UK Ltd UKEAT/0087/18**

The EAT has held that an employment tribunal erred in finding that an employer was entitled to dismiss an employee on the ground of capability while he was contractually entitled to long-term disability benefits. The President, Mrs Justice Simler DBE, sitting alone, held that there was an inherent contradiction between the employer's contractual right to terminate on notice and the employee's contractual right to disability benefits. A term must therefore be implied into the contract, either on the officious bystander or business efficacy tests, that the employer could not terminate for incapacity reasons while the employee was entitled to disability benefits.

*This case suggests that a termination clause which expressly reserves the right to terminate for incapacity will not entitle an employer to do so where there is also a contractual right for the employee to receive disability or PHI (Permanent Health Insurance) benefits.*

#### **Ali v Capita Customer Management Ltd; Hextall v Chief Constable of Leicestershire Police [2019] EWCA Civ 900 – Court of Appeal (Judgement - June 2019)**

*Failure to pay male employee enhanced shared parental pay was not direct or indirect sex discrimination or breach of equal pay sex equality clause*

The Court of Appeal has held that it was neither direct or indirect discrimination, nor a breach of the equal pay sex equality clause for two employers in two separate cases not to pay male employees enhanced shared parental pay of an amount equivalent to the enhanced maternity pay available to female employees.

The direct discrimination claim failed because the correct comparator was a female colleague on shared parental leave, not a woman on maternity leave. The purpose of statutory maternity leave related to matters exclusive to the birth mother resulting from pregnancy and childbirth, and that purpose had not been altered by the introduction of shared parental leave. A woman on maternity leave could not therefore be the correct comparator.

The second claimant was also precluded from bringing an indirect sex discrimination claim because of the effect of section 70(2)(a) of the EqA 2010, which provides that the inclusion of a less favourable term in an employee's terms of work could not be regarded as sex discrimination for the purposes of section 39(2) where that term was inserted because of section 66 (the sex equality clause). In any event the indirect sex discrimination claim would have failed because the correct pool for comparison could only consist of employees on shared parental leave and any disadvantage to the claimant would have been justified as being a proportionate means of achieving the legitimate aim of the special treatment of mothers in connection with pregnancy or childbirth.



## **Policy Report: Employment and Appeals Committee**

**25 October 2019**

### **Introduction**

The Council manages 47 employment policies covering subject matter as diverse as employee discipline and grievances to volunteering and whistleblowing. Furthermore, we currently have around 14 manager and employee guidance notes that will be increased to around 25 over the next few months.

### **Introducing new policies**

We follow a very simple but inclusive policy approval process. For the introduction of policies that represent a significant departure from the norm, we facilitate focus group sessions comprising trade union and management representatives. The purpose of these sessions is to test new ideas with attendees, obtain detailed information about personal and group feelings, perceptions and opinions. After the focus group sessions, the draft policy is presented to the Employment Policy Forum.

The Policy Forum is the opportunity for elected Members, trade union workplace representatives, HR, legal and management representatives to consider a draft policy, suggest/debate changes and once all parties are satisfied with its content, the policy is approved, translated into Welsh and published on the intranet.

### **The policy review process**

Most policies are reviewed every 2 years although if there are legislative/regulatory changes, reviews are done sooner.

### **Progress over the last Quarter**

The following policies have been reviewed:

Management of Attendance (Sickness Absence) – still not released pending further legal advice;

Performance Capability – published

Employee Probationary Policy - published

Employee Leave Policy – published

Violence Against Women/ Domestic Abuse/ Sexual Violence Policy - published

Guidance Note: Autism in the Workplace – published

The following policies were introduced:

Menopause in the Workplace – published

Carer's Policy – translation completed, awaiting publication

### **Objectives for the next Quarter**

The policy focus at the moment is on building a suite of Employee Health and Wellbeing policies and guidance documents to improve employee wellbeing in order to:

- Build and sustain improved employee morale;
- Drive effective recruitment and retention;
- Improve productivity; and
- Reduce the damaging trend of presenteeism.

As well as our health and wellbeing offering, the following policies will be due for review:

- Management of Change;
- Disciplinary;
- Grievance;
- Whistleblowing;
- Secondment; and
- Agile Working.

### **Highlights**

As mentioned, we introduced a Menopause Policy (we are one of only two authorities in Wales to have one) and this was very well received by our trade union partners. Furthermore, the number of queries and compliments we have had from predominantly female employees has been pleasantly surprising, with one comment being, "it has been a lifesaver".

Note that for those who are reluctant to perhaps approach a male manager with any issue in relation to the menopause, we have a dedicated female HR practitioner to support them and to work with their manager to consider reasonable adjustments where required.

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