



**Reference:** 604A2016

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## Report on Equality and Human Rights Impact Assessment – Wales Audit Office’s Capability Policy

- 1 In accordance with Regulation 8 of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, the Auditor General and the Wales Audit Office have made arrangements for assessing the likely impact of their proposed policies and practices on their ability to comply with the general equality duty, monitoring such impacts and publishing reports on such assessments. This report is made in accordance with those arrangements.
- 2 Our impact assessment arrangements also consider whether our proposed policies or practices infringe human rights and whether they take appropriate opportunities to promote human rights.

### The purpose of the policy

- 3 All Wales Audit Office staff are required to perform the duties of their role to an acceptable standard. The primary aim of the Capability Policy is to inform and guide Wales Audit Office staff as to what happens when such standards have not been met. The policy is intended to provide a framework for dealing with cases of unsatisfactory performance in a fair, supportive and consistent way. It contains both informal and formal measures to support and develop employees who have not successfully performed their role.
- 4 The policy is intended to benefit all Wales Audit Office staff, including employees who are performing poorly, line managers and HR staff. The policy recognises that capability issues in the workplace can arise for many reasons, including, but not limited to, behavioural or attitude issues, personal issues affecting circumstances, and discrimination caused by bullying and harassment etc. The policy sets out that, whatever the cause, all capability issues should be dealt with sensitively, confidentially and in a timely manner.

- 5 The policy recognises the connection that can exist resulting in capability issues at work because of someone experiencing discrimination. It supports a fair system, ensuring employees are given the opportunity to discuss with their line managers the reasons for poor performance. They are to be offered appropriate advice, guidance and an opportunity to improve their performance. The policy supports the general equality duty, particularly in terms of having due regard to the need to eliminate discrimination. The policy will be used alongside the Equality and Diversity Policy and other relevant policies.
- 6 The Capability Policy is relevant to all Wales Audit Office employees who are performing unsatisfactorily in their role.

### Summary of the steps taken to carry out the assessment, including information taken into account

- 7 The main steps taken to carry out the assessment are:
  - engagement with persons representing the interests of persons with protected characteristics so as to inform the following steps.
  - consideration of relevance of the Capability Policy to the general equality duty and, where relevant, of the likely impact of the policy on the Wales Audit Office's ability to comply with that duty.
  - consideration of the relevance of the Capability Policy on human rights; whether there is any infringement and have all opportunities for supporting human rights been taken.
  - consideration of the known or likely impact of the policy on groups of persons with protected characteristics.
  - consideration of what further information should be collected to inform the impact assessment and to allow ongoing monitoring.
  - consideration of what action or decision should be taken as a result of the assessment, in particular modification or cessation of implementation of the policy.

## Results of the assessment and decisions taken in relation to the results

### Engagement

- 8 HR has engaged with Wales Audit Office trade unions and the Equality Interest Group (EIG) on the proposed policy. The EIG made three recommendations, which are set out in the 'actions' section of this summary report.

### Relevance of the policy to the general equality duty and human rights

- 9 The Capability Policy is relevant in helping us to eliminate any discrimination because there can be a link between poor performance and discrimination in the workplace. Research shows that in certain occupations, staff with protected characteristics such as race and disability are disproportionately involved in capability reviews.
- 10 There is potential in any workplace for capability processes to allow subjective factors or discriminatory attitudes to influence assessments of performance or capability. Having a capability policy that highlights and guides staff to deal with issues sensitively and take action in a fair way both for those who are performing poorly and for those advising them, such as line managers and HR staff, is important in supporting a wider working environment and working relationships and improving performance. The policy also looks towards the advance of equality of opportunity by highlighting the need to consider reasonable adjustments requested by staff with protected characteristics during the capability processes, whether at the informal or formal stage. The policy does not infringe human rights.

### Likely impact

- 11 While the policy is relevant to all nine protected characteristics, it is worth noting in particular that persons with impairments could be particularly affected, as health issues could result in poor performance. It may therefore be necessary to make reasonable adjustments, and by recognising this, the Capability Policy seems likely on balance to help achieve fairer performance management. We do not see the policy having any discriminatory effect or infringing human rights.

## Further information and monitoring

- 12 As stated above, the Capability Policy must be applied fairly by ensuring that employees are given the appropriate advice, guidance and opportunity to improve their performance. In order to monitor this, line managers and HR will be required to record all instances of capability actions, both informal and formal.

## Action or decisions to be taken as a result of the assessment

- 13 Given the likely positive impact of the policy, we consider that it should be implemented. The assessment process has, however, identified the need for further modifications and other actions, and the recommendations are:
- we should give greater recognition to the link between capability and discrimination, especially disability discrimination eg by providing supplementary Q&A with the Capability Policy that focuses on underlying issues of poor performance.
  - **EIG recommendation:** we should re-examine the criteria set out in stages one and two of the capability process as the current measures of 'not quite' and 'clearly sufficient' allow for potential discriminatory bias.
  - **EIG recommendation:** we should clarify the meeting arrangements between line managers and underperforming employees at the first written warning stage of the capability process. Clarifying the process should result in greater fairness.
  - **EIG recommendation:** we should clarify arrangements relating to the reconvening of the appeal panel and other meetings at the final stages of the appeal process. Clarifying the process should result in greater fairness.
  - we should finalise and publish a reasonable adjustments policy for employees to be used in conjunction with other policies such as the Capability Policy. This will protect those employees with performance issues resulting from reasonable adjustments not being in place. For reasonable adjustments to be effective and so as not to be a reason for an employee to be placed on capability, adjustments are required to be in place prior to either a probation period being classed as unsatisfactory or sanctions being applied under the capability process.

- we should monitor the impact of the policy, and in particular, we should review information annually. In order to do this HR must keep a record of all capability issues, both informal and formal proceedings. HR must provide an analysis of capability issues by protected characteristics so any resulting trend can be easily identified.

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