

Preparation

1.	What are you equality impact assessing?	All Wales Improving Performance at Work Policy (previously the All Wales Capability Policy)
2.	Policy Aims and Brief Description	<p>The primary aim of this policy is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.</p> <p>Where an employee is either jointly employed or is not employed by the <i>NHS Organisation</i> but provides a service for the <i>NHS Organisation</i>, the performance issue will be addressed under the scope of the policy of the lead employer.</p> <p>This policy should be used where the unsatisfactory performance is due to a genuine lack of skill or ability. Where unsatisfactory performance is attributed to suspected misconduct, it should be dealt with under the Disciplinary Policy. Where the primary cause of unsatisfactory performance is considered to be health related, this should be referred, in the first instance to the All Wales Managing Attendance at Work Policy.</p>
3.	Who is responsible for the Policy/work?	NHS organisations and sub committee of the Welsh Partnership Forum Business Committee

4.	Who is Involved in undertaking this EqIA?	Welsh Partnership Forum Business Committee (Sub Group) (Andrew Davies, Heather Hinkin, Caroline Hurley)
5.	Is the Policy related to other Policies/areas of work?	Managing Attendance at Work, Disciplinary, Respect and Resolution Policies. Codes of Conduct of Professional/Regulatory Bodies, Staff Charters
6.	Stakeholders	All employees, trade unions, patients, carers
7.	What might help/hinder the success of the Policy?	<p>Factors that may hinder:</p> <p>Lack of leadership and commitment at Board level Lack of staff training and development to undertake duties to required standard. Time constraints. Organisational change.</p> <p>Factors that may help:</p> <p>The inclusion of the following principles following the audit of All Wales policies through an Anti-Racist Lens:-</p> <p>3.7 Line managers will put the employee at the centre of the process and respect and appropriately respond to each person's needs and values. They will recognise the potential for bias involving employees from an ethnic minority background, as well as those from other under-represented groups, and will be proactive to ensure bias does not form part of any decision-making.</p> <p>3.8 Line managers will recognise the ways cultural backgrounds, values and norms may influence an employee's behaviour, communication style or perceptions. By</p>

integrating cultural competence, decision-makers can avoid misinterpreting actions or intentions that stem from cultural differences rather than misconduct.

3.9 Line managers will be aware of the impact that experiences of racism, microaggressions, and other forms of discrimination can have on employees is recognised. The aim is to ensure that all employees are treated with fairness, dignity, respect, and taking into account their backgrounds, circumstances, and characteristics. These include age; impairment or health condition (disabled people); gender, gender identity or gender expression; race, culture, ethnicity or nationality; religion, belief, or non-belief; sexual orientation; pregnancy and maternity; and relationship status.

3.10 Line managers should be aware of the role intersectionality has on an employee's experiences of the Improving Performance at Work policy. When employees have more than one protected characteristic, employees can experience discrimination, unconscious bias and other elements of poor treatment because they experience it due to a number of characteristics. For example, if somebody is from the Black community and are disabled, they may experience the application of policies more acutely than somebody with only one protected characteristic because of the role power, privilege and unconscious bias may play from the two different protected characteristics and in the application of such policies.

It is important that line managers are aware of their own positions of seniority and unconscious bias and be aware of cultural competency when applying this process. This should be even more important when dealing with employees with intersecting protected characteristics.

Development of management competencies

Integration of performance management skills in management development

		Development of All Wales approach to compassionate leadership Work on employee harm

The Human Rights Act contains 15 rights, all of which NHS organisations have a duty to act compatibly with and to respect, protect and fulfil. The 6 rights that are particularly relevant to healthcare are listed below. For a fuller explanation of these rights and other rights in the Human Rights Act please refer to **Appendix A: The Legislative Framework**.

Depending on the Policy you are considering, you may find the examples below helpful in relation to the Articles.

	Yes	No
Consider, is the Policy relevant to:		
Article 2 : The right to life Examples: The protection and promotion of the safety and welfare of patients and staff; issues of patient restraint and control	Staff and Patient safety issues	
Article 3 : The right not be tortured or treated in an inhuman or degrading way	Issues of dignity and respect and protection/promotion	

<p>Examples: Issues of dignity and privacy; the protection and promotion of the safety and welfare of patients and staff; the treatment of vulnerable groups or groups that may experience social exclusion, for example, gypsies and travellers; Issues of patient restraint and control</p>	<p>of patient and staff safety</p>	
<p>Article 5 : The right to liberty</p> <p>Examples: Issues of patient choice, control, empowerment and independence; issues of patient restraint and control</p>		<p>✓</p>
<p>Article 6 : The right to a fair trial</p> <p>Example: issues of patient choice, control, empowerment and independence</p>	<p>Issue of fair decision making process.</p> <p>Case law relating to legal representation at disciplinary i.e. Hameed vs Central Manchester University Hospital NHS Foundation Trust and Kulkarni vs Milton Keynes Hospital NHS Trust</p>	
<p>Article 8 : The right to respect for private and family life, home and correspondence; Issues of patient restraint and control</p>	<p>Issues of dignity and privacy, for example, impact on</p>	

<p>Examples: Issues of dignity and privacy; the protection and promotion of the safety and welfare of patients and staff; the treatment of vulnerable groups or groups that may experience social exclusion, for example, gypsies and travellers; the right of a patient or employee to enjoy their family and/or private life</p>	<p>family life of suspension and potential loss of employment. Confidentiality issues of not wanting family members to know that going through process.</p>	
<p>Article 11 : The right to freedom of thought, conscience and religion</p> <p>Examples: The protection and promotion of the safety and welfare of patients and staff; the treatment of vulnerable groups or groups that may experience social exclusion, for example, gypsies and travellers</p>	<p>Issues of respect for different religious beliefs and cultural values.</p>	

Equality Strand	Information Gathered
Race	<p>Fair dismissal on the grounds of capability – Napier and sons Race inclusion report: Equality of career progression CIPD Race in the workplace: The McGregor-Smith review The Race at Work Charter - Business in the Community Supporting race equality, diversity and inclusion (EDI) at work: Guidance for managers CIPD Key Resources for Workplace Equality - Business in the Community</p>
Disability	<p>Disability discrimination – keypoints in the workplace - ACAS Work Foundation report on Work, Health and Absence in the Public Sector The Public Sector and Equality for Disabled People, Dept for Work and Pensions Disability and sickness absence – PCSU Sickness absence and disability – TUC Guidance on disability related absence – Probation Association Guidance relating to disability for the NHS – NHS Employers Fair dismissal on the grounds of capability – Napier and sons Capability and performance - Supporting disabled people at work - Acas Conduct and capability procedures when managing performance - Acas Performance managing employees with potential disabilities Capability dismissal and disability face2faceHR Can a disabled employee argue that continuing with performance management against them is a failure to make reasonable adjustments? Practical Law</p>
Gender	<p>The Work Foundation has also produced a number of reports on changing demographics. Equal Opportunities Commission “Gender Equality and the Future of Work” Legal and General’s “Value of a Mum” Gender, culture and organisational change, Open University</p>

	<p>Sex Discrimination in the Workplace, ACAS, March 2016</p> <p>How to improve gender equality in the workplace: actions for employers - GOV.UK</p> <p>Women in the Workplace 2024 report McKinsey</p> <p>The gender gap in performance reviews - ScienceDirect</p> <p>Improving Women's Progression in the Workplace</p>
Gender Reassignment	<p>The Workplace and Gender Reassignment</p> <p>Gender Reassignment Policy – Cardiff University</p> <p>Gender Reassignment Policy – Aston University</p> <p>Absence from Work Because of Gender Reassignment – Citizens Advice</p> <p>Supporting transgender and non-binary people at work: Guide for people professionals CIPD</p> <p>Preventing discrimination - Gender reassignment discrimination - Acas</p> <p>The Workplace and Gender Reassignment</p> <p>Transgender Workplace Support Project</p> <p>Transforming the Wokplace – A TUC guide Activist Template</p> <p>Supporting transgender workers</p>
Sexual Orientation	<p>Preventing discrimination - Sexual orientation discrimination - Acas</p> <p>Inclusion at work: Perspectives on LGBT+ working lives</p> <p>Peak performance – Gay people and productivity productivity:A4 report</p> <p>Job Satisfaction and Sexual Orientation in Britain - Sait Bayrakdar, Andrew King, 2022</p>
Age	<p>Fair dismissal on the grounds of capability – Napier and sons</p> <p>EHRC report “Working Better 2008”</p> <p>The Work Foundation has also produced a number of reports on changing demographics, changing work patters for young workers, retention of older workers, e.g. 0-5 How small children can make a big difference, The Ageing Workforce, Work, Health and Absence in the Public Sector</p> <p>Productivity and Age – Age UK Policy position paper – grandparents</p> <p>Performance Management Systems, it's Processes and the effect on the Ageing workforce - Feedback - Community Feedback - CIPD Community</p> <p>Curvilinear Relationships Between Age and Job Performance and the Role of Job Complexity Work, Aging and Retirement Oxford Academic</p> <p>Getting better with age? The experiences of older workers - NIESR</p> <p>Fulfilling work: What do older workers value about work and why? Centre for Ageing Better</p>

	<p>Performance life span of workers mapped in new research - HR News The Rising Importance of Older Workers Bain & Company</p>
Maternity and Pregnancy	<p>Pregnancy related absence - EHRC Pregnancy and Maternity Rights – Xpert HR Discrimination at Work Because of Pregnancy or Maternity Leave - CAB Preventing discrimination - Pregnancy and maternity discrimination - Acas Tips for Improving Performance of Pregnant Employees at Work: Help, our pregnant employee is underperforming? - Redwing Solutions Managing pregnant employees Pregnancy and maternity: Pregnancy EHRC Workplace support for employees experiencing pregnancy or baby loss CIPD</p>
Religion or Belief	<p>acas-religion-or-belief-and-the-workplace.pdf Various case studies relating to the need for flexible arrangements for staff who may not live in the same country as their relatives. Preventing discrimination - Religion or belief discrimination - Acas How to embrace religious diversity in the workplace Faith-friendly policies improve workplaces, companies tell No 10 - Religion Media Centre Managing Religion and Belief in the Workplace – People Management 66321 Is religious diversity good for team performance? - LSE Business Review</p>
Marriage and Civil Partnership	<p>Preventing discrimination - Marriage and civil partnership - Acas Marriage and civil partnership discrimination: UK employment law CIPD</p>
Welsh Language	<p>Some Work Foundation reports relating to employers and the Welsh Language.</p>
Human Rights	<p>General</p> <p>There are gaps in workforce equality monitoring data across all of the protected characteristics. Disaggregated workforce monitoring data is required to inform future policy review and assessment.</p>

It is also noted that public sector employers in Wales will have a specific duty to make arrangements to collect employee data in respect of such procedures.

Assessment of Relevance and Priority

Equality Strand	Evidence: Existing Information to suggest some groups affected. Gathered from Step 2. (See Scoring Chart A)	Potential Impact: Nature, profile, scale, cost, numbers affected, significance. Insert one overall score (See Scoring Chart B)	Decision: Multiply 'evidence' score by 'potential impact' score. (See Scoring Chart C)
Race	1	+2	2
Disability	2	+3	6
Gender	2	+3	6
Gender reassignment	2	+1	2
Sexual Orientation	2	+1	2
Age	2	+3	6
Religion or Belief	2	+2	4
Maternity and Pregnancy	1	+2	2
Marriage and Civil Partnership	1	+1	1
Welsh Language	2	+2	4
Human Rights	2	+3	6
			41/10 = 4.1

Scoring Chart A: Evidence Available

3	Existing data/research
2	Anecdotal/awareness data only
1	No evidence or suggestion

Scoring Chart B: Potential Impact

-3	High negative
-2	Medium negative
-1	Low negative
0	No impact
+1	Low positive
+2	Medium positive
+3	High positive

Scoring Chart C: Impact Decision

-6 to -9	High Impact (H)
-3 to -5	Medium Impact (M)
-1 to -2	Low Impact (L)
0	No Impact (N)
1 to 9	Positive Impact (P)

Outcome Report

Organisation:	Welsh Government/NHS Wales/Trade Unions
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Proposal Sponsored by:	Name:	
	Title:	Joint Chairs
	Department:	Welsh Partnership Forum

Policy Title:	All Wales Improving Performance at Work Policy (previously All Wales Capability Policy)
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Brief Aims and Objectives of Policy:	See section above - preparation
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	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
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Was the decision reached to proceed to full Equality Impact Assessment?:	Record Reasons for Decision:	
	The principles and values of the policy are grounded in the promotion of fair and equal treatment. Some issues highlighted through the process have been addressed by amending the policy and developing an action plan to ensure monitoring data is continually available at organisation level.	
If no, are there any issues to be addressed?	Yes ✓	No ☐
	Record Details: Lack of robust workforce monitoring data is being addressed through All Wales data monitoring and local implementation. Action will be taken to ensure data gaps are addressed through Workforce Information Systems Programme and Electronic Staff Record (ESR). Also, training for managers to ensure that the provisions of the policy are applied fairly and equally should be addressed at organisational level.	

Is the Policy Lawful?	Yes ✓	No ☐
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Will the Policy be adopted?	Yes ✓	No ☐
	If no, please record the reason and any further action required:	

Are monitoring arrangements in place?	Yes ✓	No ☐
	<p>Refer to Action Plan (Form 8)</p> <p>Monitoring arrangements will be addressed through local application of all Wales action plan. Scrutiny and review of monitoring reports should be undertaken at regular intervals by boards or sub committees.</p>	

Who is the Lead Officer?	Name:	Helen Arthur
	Title:	Director of NHS Workforce and OD
	Department:	Welsh Government
Review Date of Policy:	N/A	

Signature of all parties:	Name	Title	Signature
	Andrew Davies		
	Heather Hinkin		
	Caroline Hurley		

Please Note: An Action Plan should be attached to this Outcome Report prior to signature

Action Plan for All Wales Improving Performance at Work Policy

	ACTION	WHO	HOW/ WHEN
Monitoring Arrangements			
How will the Policy be monitored?	Monitoring arrangements will be determined locally. Monitoring outcomes will be reported to Boards	Workforce and OD Directors	Every 6 months
What monitoring data will be collected?	Local application of Improving Performance at Work policy and procedure disaggregated against each protected equality characteristic, workplace/directorate and staff group.	Workforce and OD Directors	Ongoing
Other Actions			

<p>Describe any other actions highlighted through the policy screening</p>	<p>Policy training for managers to include scope and application of duty to consider reasonable adjustments for disabled employees.</p> <p>Continued roll out of appropriate training and support to ensure implementation takes into account of debiasing techniques and cultural competence.</p>	<p>OD and Training</p>	<p>To be determined</p>
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