

**Merseyside Fire and Rescue Service**  
**Equality Impact Assessment Form**

<b>Title of policy/report/project:</b>	<b>Conduct and Capability policy</b>
<b>Department:</b>	<b>POD</b>
<b>Date:</b>	<b>January 2014</b>
<b>Author</b>	<b>Amanda Cross</b>

**1: What is the aim or purpose of the policy/report/project**

*This should identify “the legitimate aim” of the policy/report/project (there may be more than one)*

The policy is necessary to provide managers with a formal process for managing capability issues , so that all employees regardless of grade are managed in line with ACAS guidelines, the National Conditions of Service ( grey, green and red books) and the principles of natural justice; in a clear, fair and reasonable manner in relation to conduct and performance matters.

The aims and objectives of the policy are for managers to have a formal process for managing any issues of shortfalls in performance and to support employees achieve the standards required in the job. Should an employee be dismissed for capability, to ensure that the dismissal is carried out fairly.

The outcomes are:

- To ensure consistent treatment for everyone and to offer support when standards are not met.
- having a capability policy in place which compiles with the statutory minimum dismissal procedure

The policy will benefit both employees and the employer as it ensures key learning and development needs are recognised and addressed early on, ensuring that employees are given the opportunity to address these before the matter gets too serious.

## 2: Who will be affected by the policy/report/project?

*This should identify the persons/organisations who may need to be consulted about the policy /report/project and its outcomes (There may be more than one)*

1. SMG as the body authorised to make decisions regarding equality and diversity issues.
2. POD to ensure the information is accurate and aligned to National and European statute and case law.
3. Representative bodies to ensure the policy is in line with best practice and is used correctly
4. All employees who will be managed via this policy and its associated procedures.

## 3. Monitoring

*Summarise the findings of any monitoring data you have considered regarding this policy/report/project. This could include data which shows whether the it is having the desired outcomes and also its impact on members of different equality groups.*

### What monitoring data have you considered?

### What did it show?

Professional standards information reports that of the 36 disciplinary warnings issued last year 34 were male employees and 1 female employee was disciplined on two occasions for failing to improve the same conduct issue. The female employee was a green book employee. There were no grey book female employees disciplined for conduct issues.

Professional standards will monitor all formal action taken by Managers in relation to conduct and capability. HR Managers will be responsible for coaching and guiding Managers in the effective use of the policy, with monthly meets to ensure consistency of application.

The Task and Finish committee have asked for scrutiny for the first year to ensure that the policy is being used appropriately.

## 4: Research

*Summarise the findings of any research you have considered regarding this policy/report/project. This could include quantitative data and qualitative information; anything you have obtained from other sources e.g. CFOA/CLG guidance, other FRSs, etc*

<p><b>What research have you considered?</b></p>	<p><b>What did it show?</b></p> <p>ACAS, DBIS, Directgov, CIPD, HSE and TUC websites as background reading.</p> <p>Employment Relations Act and extant case law to ensure the policy is in line with the current legal position.</p> <p>The Equality Act Employment Statutory Code of Practice 2010 was researched for examples of reasonable adjustments particularly with regard to disability related absence and capability.</p> <p>Cleveland, Leicester and West Midlands FRS policies were reviewed to gauge a FRS perspective.</p> <p>Kent Police, various NHS Trusts to gain a wider public sector stance.</p>
<p><b>5. Consultation</b></p> <p><i>Summarise the opinions of any consultation. Who was consulted and how? (This should include reference to people and organisations identified in section 2 above)</i></p> <p><i>Outline any plans to inform consultees of the results of the consultation</i></p>	
<p><b>What Consultation have you undertaken?</b></p>	<p><b>What did it say?</b></p> <p>The policy and associated SI's will be submitted to DAG for discussion.</p> <p>The material has been to the Authority Task and Finish Group for member scrutiny.</p> <p>The policy and associated SI's have been circulated to SMG.</p> <p>The representative bodies are being consulted.</p> <p>The Policy will also be submitted to the Next Diversity Meeting in April 2014 for further consultation, specifically in relation to the issues raised within this EIA.</p>

## **6. Conclusions**

*Taking into account the results of the monitoring, research and consultation, set out how the policy/report/project impacts or could impact on people from the following protected groups? (Include positive and/or negative impacts)*

### **(a) Age**

Our employees are all of working age, however as employees age they are more statistically likely to develop certain age related illness for example cancers, sight and hearing related disabilities. These cases are currently managed by our Occupational Health Teams who will continue to assist employees at an early stage to mitigate age related causes of ill health.

The Service actively encourages employees to maintain their health and fitness through targeted support such as Roy Castle Lung Cancer charity, pathways programmes for alcohol and trained mental health first aiders.

In addition the Service support employees to maintain good health regardless of age via informal means such as the Sports and Social clubs and through formal means for example, the provision of gyms and for Fire Fighters scheduled time in fitness training. There have been convincing links between the maintenance of physical fitness and age related illness for example a recent study demonstrated the benefit of walking in reducing the likelihood of dementia.

### **(b) Disability including mental, physical and sensory conditions)**

A potential barrier could be that an employee with a disability as defined under the Equality Act 2010 (Disability Discrimination Act) may not be able to attain the standards required for the job. In such circumstances, consideration will be given to extending the capability review period to allow sufficient time for the employee to meet the standards, and advice be sought from Occupational Health and Diveristy Manager to see if any reasonable adjustments may be needed in either the workplace or the duties of the role to assist the employee to reach the required standards.

The duty to make 'reasonable adjustments' is owed to employees as and when the need arises. The obligation is placed on the employer when employees who are disabled or become disabled, have notified their employer that they have a disability This provision does not oblige employers to make the best adjustments possible, e.g. to re-allocate key functions of a job, or to provide items which the individual could be reasonably expected to have already for their personal use. However, in deciding if it is reasonable to require an employer to undertake a particular action, the following factors will be taken into account at an Employment Tribunal:

- the extent to which taking the action would prevent the disabling effect in question
- the practicability of such a step

- the financial and other costs and the degree of disruption to the employer
- the financial or other resources available to the employer
- the availability to the employer of financial and other assistance (for example, the "Access to Work" scheme)
- the nature of the employer's activities and size of its undertaking (for example where an employee becomes disabled and can no longer undertake the duties of the post, it might be reasonable given the size of the Authority and the wide range of jobs available to seek suitable alternative employment in accordance with the redeployment policy).

In relation to conduct and capability meetings, reasonable adjustments will be made to ensure a person with a disability can understand the process and has access to information in a manner compatible with their disability, for example a signer can be arranged for a deaf employee.

With the support of pathways programmes for substance abuse and the introduction of one to support mental health issues, the Service is looking at early proactive interventions and sustainable support for its employees rather than dismissals.

There is however, the potential for capability dismissals when all other options have been explored and exhausted, and after suitable and sufficient assessments have taken place. Where a capability issue arises through absence or fitness the Service is bound by the Equality Act 2010 to make reasonable adjustments and consider reasonable steps in order to assist an employee to remain in work. The capability process is a multi-staged process where the employee and employer can jointly discuss required improvements, action plan and supportive measures.

**(c) Race (include: nationality, national or ethnic origin and/or colour)**

No differential impact.

**(d) Religion or Belief**

No differential impact

**(e) Sex (include gender reassignment, marriage or civil partnership and pregnancy or maternity)**

The service employees 1192 employees of which 243 are female. The majority of operational personnel are male and therefore will have a disproportionate skew in potential capability issues for FF fitness management.

No female FF's have been disciplined for conduct issues although 1 female green book employee has been managed through this process.

There are already risk assessments for pregnant employees to ensure they are managed appropriately in relation to their capability and attendance. Moreover absences related to pregnancy related illness when certified as such will not be counted when absence is the subject of the capability policy.

**(f) Sexual Orientation**

No differential impact.

**(g) Socio-economic disadvantage**

Fitness of all staff to enable them to work effectively and attend work without significant amounts of sickness levels is an important aspect for MFRS. All employees have access to free gyms on Service premises to assist in the maintenance of personal fitness, there is also time allocated in the operational Work routine for Fire Fighters to enable them to maintain fitness levels to meet fitness standards and assessments.

## 7. Decisions

*If the policy/report/project will have a negative impact on members of one or more of the protected groups, explain how it will change or why it is to continue in the same way.*

*If no changes are proposed, the policy/report/project needs to be objectively justified as being an appropriate and necessary means of achieving the legitimate aim set out in 1 above.*

The conduct and capability policy provides a framework to enable all employees to understand the standards of performance, conduct and behaviour expected from them, and to have set procedures where these standards are not met. Where an employee does not meet these standards, the policy is focussed on finding solutions and helping the employee understand consequences of not meeting those standards.

There may be occasions where an employee despite their best efforts cannot meet the Service's expectations. When all reasonable steps have been considered and the next outcome is a dismissal for conduct or capability, the service will be able to demonstrate that the actions taken were those of a reasonable employer.

## 8. Equality Improvement Plan

*List any changes to our policies or procedures that need to be included in the Equality Action Plan/Service Plan.*

See recommendations below in section 9

## 9. Equality & Diversity Sign Off

***The completed EIA form must be signed off by the Diversity Manager before it is submitted to Strategic Management Group or Authority.***

**Signed off by:**

Wendy Kenyon

**Date:**

7.2.13

Action Planned	Responsibility of	Completed by
1To include within the policy a section which would state that if a disabled employee is subject to the capability procedure then 'specialist' advice should be sought from HR, Occupational Health and Diversity Manager.	Amanda Cross	To be included as part of the consultation discussions- Actioned and completed

