



## **Performance Management Policy (Part 1) & Capability Policy (Part 2)**

**Reviewed: March 2018**

**Next review: March 2021**

**Signed on behalf of the Governing Body**

**.....Emma East..... Date: .....6/03/18....**

### **Introduction**

This policy and procedure has been consulted upon with the recognised trade unions and professional associations for Hampshire maintained schools. Where Hampshire maintained schools wish to localise this policy and procedure further, consultation will need to take place with staff and representatives of the recognised unions and associations. This policy and procedure is commended to academies and other schools who have freedom to develop their own policy and procedure, although such schools who wish to adopt this policy and procedure are advised to take this through their own negotiation/consultation framework.

This procedure does not form part of any employee's contractual terms and conditions and any links within this document to other documents are for ease of use and do not form part of this procedure.

This policy and procedure has been written in accordance with the Model Pay Policy contained in the Manual of Personnel Practice. Schools that have chosen to adopt an alternative pay policy will need to make relevant adjustments.

This policy and procedure will be reviewed every three years or whenever a change in employment legislation necessitates a review, whichever is sooner.

Schools should ensure that employees clearly understand the ethos of the school and that performance management arrangements are in place to support employees to achieve their individual and school aspirations. It should be recognised that there is a collective responsibility to achieve these goals. The Capability Procedure is a supportive process aimed at generating sustained improvement.

### **Purpose**

This document sets out the framework for a clear and consistent assessment of the overall performance of employees, including the Headteacher, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected of teachers and other staff. It also sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.

## Application

The Model Performance Management Policy is for all employees working within a school/school managed provision or establishment (which for ease of reference are referred to throughout this document as 'schools'), with the exception of those employees on contracts of less than one term, those undergoing induction (i.e. NQTs), and those who are subject to the Capability Procedure (see [Part 2](#) of this document).

The Capability Procedure is for all employees working within a school/school managed provision or establishment (which for ease of reference are referred to throughout this document as 'schools').

## Part 1 – Performance Management Policy

1. [Principles](#)
2. [The Performance Management Cycle](#)
3. [Appointing reviewers](#)
4. [Setting objectives](#)
5. [Reviewing performance](#)
6. [Dealing with performance concerns](#)

## Part 2 - Capability Procedure

1. [Principles](#)
2. [Stages of the Procedure](#)
3. [Stage 1 - Formal Meeting](#)
4. [Stage 2 - Formal Meeting](#)
5. [Stage 3 – Headteacher/Governors' Committee Hearing](#)
6. [Improvement in performance achieved](#)
7. [Fast-track Procedure](#)
8. [Gross Incapability](#)
9. [Failure to make progress during a review period](#)
10. [Right of Appeal](#)
11. [Requirement for schools to pass on information about a teacher's capability to a new employer](#)
12. [Support](#)

### [Appendix 1 Employees with less than two years of continuous service](#)

## Part 1 – Performance Management Policy

### 1. Principles

- 1.1 Performance management in this school will be a **supportive and developmental** process designed to ensure that all employees have the skills and support they need to carry out their role effectively. It will help to ensure that all employees are able to continue to improve their professional practice and to develop in their careers.
- 1.2 The process of setting and reviewing performance objectives for staff in schools is an integral part of the school's overall approach to school improvement and development. Performance objectives will be written in such a way that they complement and link to the targets expressed in the school improvement/development plan.
- 1.3 It is important to recognise that the objectives set for any member of staff will not represent the complete job that the individual is expected to perform. Reviewing performance is about measuring the progress made against the objectives set with appropriate support, which will represent key priorities for that individual, and in addition, assessing and recognising the overall performance of that person in the job, including an assessment against any relevant standards/accountabilities.
- 1.4 There is no correct number of objectives to set for any member of staff. The number will depend on the role they undertake, the relevant priorities for that person at that time and the nature and complexity of each objective set.
- 1.5 The process of performance management will be carried out in accordance with this policy, which is underpinned by the statutory regulations for teachers and local agreements for support staff.
- 1.6 Performance management will be carried out in such a way to ensure consistency of treatment and fairness.
- 1.7 The Governing Body and Headteacher will monitor the operation and effectiveness of the school's performance management arrangements.
- 1.8 The performance management process will be treated with confidentiality. Normally only the reviewer, reviewee and the Headteacher will have access to performance management information and documentation relating to the reviewee. However, to enable moderation of objectives and assessments to take place, paperwork may be shared with members of the Senior Leadership Team in accordance with the school's Pay Policy. In the event of an Ofsted inspection taking place, Ofsted inspectors may request that anonymised information about the school's performance management arrangements, including the most recent performance management outcomes and their relationship to salary progression, is provided. Governors may also request an anonymised sample of performance management statements to enable them to perform their role in monitoring the effectiveness of the school's performance management system.
- 1.9 The Governing Body and Headteacher will ensure that all written performance management records are retained securely for six years and then destroyed.
- 1.10 Where an employee's performance is affected by a health problem and/or sickness absence, the matter will normally be dealt with in accordance with the school's Absence Policy and Procedure. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work.

- 1.11 When assessing an employee through the performance management process, factors such as any periods of ill health, or maternity leave, will be taken into account as this may affect an employee's ability to meet their objectives.
- 1.12 Text in italics denotes areas where schools may wish to exercise discretion.
- 1.13 The audio or video recording of any meetings or hearings held under this procedure is not permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. Only in exceptional cases may an employee request an audio or video recording of the meeting as an alternative, In such cases, consideration will be given as to whether or not recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.

## **2. The Performance Management Cycle**

- 2.1 The performance management cycle for the Headteacher and all teachers will run for twelve months, with the end of year review being completed by October for teachers, and December for the Headteacher, in reference to the previous academic year. The performance management cycle for support staff will run for twelve months with the end of year review being completed by December, in reference to the *previous academic year or current financial year*.
- 2.2 Employees who are employed on a fixed-term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the period will be determined by the duration of their contract.
- 2.3 The performance management cycle will link to the pay arrangements for employees. In the case of teaching staff, the end of year review and the annual pay determination will take place by the end of October each year (December for the Headteacher) and is informed by the performance management cycle concluding at the end of the previous academic year (31 August). In the case of support staff who are performance managed via the Individual Performance Planning (IPP) process, the end of year review will be completed by December in order for decisions about pay to be made, effective from 1 April each year.

## **3. Appointing reviewers**

- 3.1 The Headteacher's performance will be reviewed by the Governing Body, supported by a suitably skilled external adviser who has been appointed by the Governing Body for that purpose.
- 3.2 *In this school the task of reviewing the Headteacher, including the setting of objectives, will be delegated to a sub-group consisting of two/three (delete as appropriate) members of the Governing Body. The appointed governors will be known as the Headteacher Performance Management Committee (HPMC).*
- 3.3 Given the close working relationship between the Headteacher and the Chair of Governors, it would not normally be appropriate for the Chair of Governors to be part of the HPMC.
- 3.4 The Headteacher will decide who will review other teachers and support staff, however this will normally be the employee's line manager. The Headteacher will determine whether the reviewer also makes a recommendation about pay progression, in accordance with the school's Pay Policy. The Headteacher has the discretion to delegate the review process to

other employees who will normally be line managers. Reviewers will have the necessary knowledge and training in order to undertake this role.

- 3.5 Where performance concerns arise ([see section 6](#)), the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role of reviewer themselves.

#### **4. Setting Objectives**

- 4.1 The Headteacher's objectives will be set by the Governing Body after consultation with the external adviser. At least one of the targets for the Headteacher will relate to outcomes for pupils.
- 4.2 Objectives for each employee will be set before, or as soon as practicable after, the start of each performance management cycle. In setting objectives, reviewers will have regard to what can reasonably be expected given the employee's role and level of experience, as communicated in the school's Pay Policy. The level of expectation of an employee's performance must also be communicated at the outset of the performance management cycle. For example, where the School has been explicit that to achieve their improvement plans teaching needs to be good or above, this expectation must be clearly communicated to all staff through the school's ratings of performance as defined in the school's Pay Policy.
- 4.3 The objectives set for each teacher will, if achieved, contribute to the school's plans for improving the school's educational provision and performance and improving the education of pupils at the school, and will take into account the outcomes for pupils. Objectives will also take into account the professional aspirations of the employee.
- 4.4 Objective setting will have regard to a reasonable level of expectations of the employee in the context of work/life balance.
- 4.5 Before, or as soon as practicable after, the start of each performance management cycle, each teacher will be informed of the standards, objectives and success criteria against which that teacher's performance in that performance management cycle will be assessed. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year.
- 4.6 Before, or as soon as practicable after, the start of each performance management cycle, each member of support staff will be informed of the key accountabilities against which that employee's performance in that performance management cycle will be assessed, for example those contained within the role profile applicable to that employee. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year.

#### **5. Reviewing Performance**

##### **5.1 Evidence**

A number of methods will be used in order to obtain evidence by which to assess an employee's performance. These include those detailed below. Such evidence will be triangulated in order to undertake an overall assessment of the employee's performance. This will include their performance against their objectives and against the relevant standards/key accountabilities for their role.

##### **5.1.1 Observation**

This school believes that observation of classroom practice and other responsibilities is important both as a way of assessing the performance of classroom-based employees in order to identify any particular strengths and areas for development they may have, and of

gaining useful information which can inform school improvement more generally. Therefore, feedback from lesson observations will be developmental and not simply a judgement. All observation will be carried out in a supportive manner.

In this school classroom-based employees' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the employee and the overall needs of the school at that time. Classroom observation of teachers will normally be carried out by those with QTS. In addition to formal observation, the Headteacher or other leaders with responsibility for standards in the classroom may "drop in" in order to evaluate the standards of teaching and to check that high standards of professional performance are established and maintained. The length and frequency of "drop in" observations will vary depending on specific circumstances.

Observations are a snapshot in time and reviewers will use the information gathered from these alongside other types of evidence to make judgements about performance.

*As soon as practicable after an observation and within two working days, verbal feedback will be given to the employee. This will be followed up with written feedback within four working days of the observation taking place. Where it is not reasonably practicable to provide feedback within these timescales, feedback will be provided at the earliest opportunity thereafter.*

Teachers (including the Headteacher) who have responsibilities outside the classroom, and support staff who are not classroom-based will also have their performance of those responsibilities observed and assessed.

Observations undertaken by Ofsted inspectors or as a result of local authority monitoring, will not, in themselves, be used for performance management purposes. However, these observations may highlight the need for the school to undertake separate observations for performance management purposes, for example if a lesson is rated as inadequate by Ofsted. Observations undertaken by a local authority officer may be used in performance management where this has been planned and communicated to all parties in advance.

#### **5.1.2 Pupil progress and attainment**

Rates of pupil progress and levels of attainment as pertinent to the teacher's role will be used in assessing a teacher's performance against the Teachers' Standards and, where relevant, against objectives.

The HPMC, with advice from the External Adviser, will review levels of pupil attainment, rates of pupil progress and whole school performance in their assessment of a Headteacher's performance in addition to other objectives that may have been set.

Where support staff are providing support to groups or individual pupils, the progress and attainment of those pupils may be taken into account in assessing the performance of the employee. This will only be used alongside other evidence which supports the level of contribution of the employee to the progress and attainment of pupils.

#### **5.1.3 Work sampling**

Work sampling may be used in assessing teacher performance against the standards for the role, and where relevant, against objectives.

#### 5.1.4 Other evidence

Other evidence may be considered, where it is pertinent to the objectives set and the standards/accountabilities for the role.

Examples of such evidence may include (but are not limited to):

##### Teachers

- Short, medium and long-term planning.
- Effective deployment and management of classroom-based support staff.

##### The Headteacher

- Evidence from reports from external sources such as Ofsted, the local authority, or other reviews.
- ASP performance data and other performance tables.

##### Support staff

- A sample of written correspondence produced (administrative staff).
- A sample of budget correspondence (finance staff).
- A sample of health and safety monitoring (site staff).
- Examples of displays and resources prepared (classroom-based support staff).

It may also be appropriate to consider evidence such as feedback from colleagues, including peers, and for line managers, their staff.

#### 5.2 Feedback

- 5.2.1 Employees will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength and celebrate success, as well as any areas that need development and support. Where there are any concerns about any aspects of an employee's performance, this will be managed in accordance with [Section 6](#) of this policy.

#### 5.3 Annual Assessment

- 5.3.1 Every employee's performance will be formally assessed in each performance management cycle. In assessing the performance of the Headteacher, the Governing Body will consult the external adviser.
- 5.3.2 *This assessment is the end point to the annual performance management process, but performance and development priorities will be reviewed and addressed on a regular basis throughout the year in interim meetings which will take place (insert frequency, e.g. once per term).*
- 5.3.3 An employee will receive a written performance management statement as soon as practicable following the end of each performance management cycle. The employee will have the opportunity to comment on this. Teachers will receive their written performance management statement by 31 October (31 December for the Headteacher). *Support staff will receive their performance management statement by (date).* The performance management statement will include:
- an assessment of the employee's performance of their role and responsibilities against their objectives in the last performance management cycle;
  - an assessment of the employee's performance of their role and responsibilities against the standards/accountabilities for their role in the last performance management cycle;

- summary of the evidence considered to support the decisions made;
- a recommendation on pay based on performance in the last performance management year (where staff are eligible for progression).

The employee will also receive a new performance management statement for the new performance management cycle. This will include:

- details of the employee's objectives for the new performance management cycle;
- details of the standards/accountabilities to apply in the new performance management cycle;
- an assessment of the employee's current training and development needs and identification of any action that should be taken to address them in the new performance management cycle;
- an indication of when monitoring will take place.

5.3.4 The assessment of performance against the objectives and standards will inform the planning process and training and development needs for the next performance management cycle.

5.3.5 All staff and reviewers are encouraged to also use performance management meetings to discuss other matters pertinent to their employment.

5.3.6 With the exception of the Headteacher pay recommendation, all pay recommendations arising out of the performance management process must be approved by the Headteacher before being shared with the individual member of staff to whom the recommendation relates, and referred to the governors' pay committee. The HPMC must also refer their recommendation to the governors' pay committee.

5.3.7 Pay progression for all staff will be as set out in the school's Pay Policy.

#### 5.4 Moderation of Performance Management Statements

5.4.1 The Headteacher will take responsibility, where the reviewer role has been delegated, for ensuring there is an appropriate system in place to moderate performance management statements and pay recommendations, to ensure consistency and equality of treatment.

### 6. **Dealing with performance concerns**

6.1 The majority of employees are competent in their role for the majority of the time. On occasions, however, an individual's performance can be deemed to be below accepted standards and support is needed to help them re-attain and sustain the required level of performance.

6.2 Concerns about performance will be addressed at the time they are identified and not left to the employee's next performance management meeting. This will assist the employee to recognise issues at an early stage.

6.3 Performance concerns may be identified by the reviewer or by a Senior Manager/Headteacher. Where a concern is identified that is likely to require structured managerial support, the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role themselves. A reviewer must notify the Headteacher where they identify performance concerns and confirm how the Headteacher intends to proceed.

6.4 Concerns about the performance of the Headteacher may be identified by an individual or combination of sources. Where a concern is identified via the HPMC, the Chair of the HPMC must notify the Chair of Governors. Where the concern is notified to the Chair of Governors,

the Chair of Governors must notify the Chair of the HPMC. In both circumstances, the Chair of the HPMC will review the evidence available with the School's School Improvement provider to determine how to proceed.

- 6.5 Where it is necessary to take forward a performance concern in respect of the Headteacher, this will be undertaken by the HPMC, with professional advice from the School's School Improvement provider, and the Chair of Governors will be kept apprised of the situation.
- 6.6 When raising performance concerns with an individual, the Headteacher/Senior Manager/HPMC will take into account any factors which may be having an impact on the employee's ability to perform their duties. However, such factors in themselves do not negate the need to address performance concerns.
- 6.7 Whilst there are no formal rights of representation at this stage, employees are encouraged to contact their Professional Association or Trade Union Representative for advice and support.
- 6.8 Identifying when performance is deemed to be below accepted standards
- 6.8.1 The Headteacher/Senior Manager/HPMC may consider a member of staff to be underperforming where:
- the standard of performance falls below that which is required to meet or make progress towards a specific performance management target; and/or
  - the standard of performance falls below that which is required to meet the expectations of a particular role in their school; and/or
  - the performance falls below the relevant standards/accountabilities for the role; and/or
  - the overall school performance falls below that which is required (in the case of the Headteacher).
- 6.8.2 If the Headteacher/Senior Manager has evidence to show that an employee is no longer meeting the expectations of their role, these concerns will be addressed with the individual promptly.
- 6.8.3 Where the school has clearly communicated a level of expectation, the Headteacher and senior managers may consider a member of staff to be underperforming if they are not reaching this level of expectation.
- 6.9 Determining possible initial courses of action
- 6.9.1 Depending on the severity of the under performance, the Headteacher/Senior Manager/HPMC need to take a view as to the proportionate response. This may include:
- an early conversation to confirm the expected standards of the role;
  - coaching/mentoring support;
  - structured managerial support;
  - consideration of application of the Capability Procedure (exceptional circumstances or concerns).
- An early conversation and coaching/mentoring support will only be used on their own to support low level or early stage concerns where these may be an effective measure. Where the performance concern is more significant or continues, structured managerial support will normally be put in place.

## 6.10 Structured managerial support

- 6.10.1 Where a performance concern has been identified that requires additional support, a discussion will be held between the Headteacher/Senior Manager/HPMC and the employee. The outcome of the meeting will be to identify what steps will be taken to assist the employee to improve their performance and move to the required standard. (In cases involving the Headteacher, the HPMC will normally invite the School's School Improvement provider to provide support at this meeting.) The discussion will include:
- what area(s) of performance is/are of concern;
  - what improvement is required/the standard the employee needs to meet;
  - the timescales in which this is to be achieved (these will vary depending on the issues identified);
  - the support that will be provided to assist the employee;
  - how frequently the performance/progress will be monitored and reviewed;
  - the seriousness of the issue and potential consequences of improvement not being achieved, including potential impact on pay progression.
- 6.10.2 The employee will be invited to provide his/her point of view on the shortfall in performance and whether they believe there is an underlying reason. The employee will also be asked to identify what support they feel they need in order to achieve the required improvement, and the Headteacher/Senior Manager/HPMC will indicate what support they intend to put in place.
- 6.10.3 The key outcomes of the discussion will be recorded in writing and shared with the individual. The written record of the discussion will be placed on the individual's personal file and a copy given to the employee.
- 6.10.4 Review meetings will be held at the agreed timescales to review progress towards targets set and the appropriateness of the support being given. At these meetings, any improvements will be communicated to the individual as well as the remaining gap between their current level of performance and the expectations set. The outcome of these meetings will also be recorded in writing and a copy shared with the individual.
- 6.10.5 The purpose of any structured managerial support programme is to assist the employee to achieve the necessary improvement within the agreed timescales. Where this is successful the Headteacher/Senior Manager/HPMC will confirm this at the relevant review meeting and record this in writing to the employee. The employee will be informed that the improvement in their performance must be sustained.
- 6.10.6 If the employee is not making the necessary progress towards the required improvement, the employee will be informed that failure to achieve this may lead to the Capability Procedure being applied (see [Part 2](#) of this document) and that there may be an impact on their pay progression. The Headteacher/Senior Manager/HPMC will make a judgement about when to communicate this given that it may not be appropriate to do so during the first discussion. However, if a move to the Capability Procedure is a likely outcome, the potential for this must be communicated to the member of staff in good time. It must be recorded in writing that the employee has been informed of the potential consequences should their performance not meet the required standard. If the necessary improvement is then not achieved within the agreed timescales, the Headteacher/Senior Manager/HPMC will need to consider use of the Capability Procedure.
- 6.10.7 Where the employee has initially made the required improvement but this performance has not been sustained independently over a 6 month period, the Headteacher/Senior Manager/HPMC will need to consider use of the Capability Procedure.

## 6.11 By-passing structured managerial support

6.11.1 In most circumstances a structured managerial support programme will be put in place prior to the Capability Procedure being used. However, the Headteacher/Senior Manager/HPMC may determine that it is appropriate to move straight to the Capability Procedure, in the following circumstances:

- the employee's performance is putting the health and safety of pupils and/or staff at risk;
- the employee's performance is putting the education of pupils in serious jeopardy;
- the employee's performance has not been sustained independently for 6 months at an accepted level following an earlier managerial support programme.

## 6.12 Transition to the Capability Procedure

6.12.1 At any stage the Headteacher/Senior Manager/HPMC may consider a transition to the Capability Procedure ([Part 2](#) of this document). The Headteacher/Senior Manager/HPMC will have specific regard to:

- the nature and severity of the under performance;
- the impact on pupils and colleagues both in the short and longer term;
- the likely and required timescale for improvements to be made;
- the engagement of the employee in the programme.

6.12.2 In a typical case, if a managerial support programme has been in place and the issues have not resolved after 4 school weeks/half a term then it would be appropriate to consider moving onto the Capability Procedure. However, when determining how long to wait before moving onto the Capability Procedure, the Headteacher/Senior Manager/HPMC will give consideration to the circumstances of the case, in particular the factors listed under paragraph 6.12.1 above. In such circumstances where the Headteacher/Senior Manager/HPMC determine a need to consider the application of the Capability Procedure, the employee will be invited to attend a meeting at which such a consideration will be undertaken. The individual will be given the opportunity to be accompanied at the meeting by a Professional Association/Trade Union Representative or work colleague and be provided with a copy of the Capability Procedure in advance. The meeting will be arranged in accordance with Section 3 of the Capability Procedure (Stage 1 – Formal Meeting).

6.12.3 At this meeting, depending on the level of concern, the responses of the employee, the progress so far, and whether the Headteacher/Senior Manager/HPMC feels improvement is likely to be seen in the necessary time frame, the Headteacher/Senior Manager/HPMC will decide either to continue to offer a further period of managerial support or to confirm that the employee will now be moved onto the Capability Procedure.

6.12.4 Should the Capability Procedure commence, performance management will be suspended.

## Part 2 – Capability Procedure

### 1. Principles

- 1.1 This procedure will apply in circumstances where poor performance is assessed to be as a result of an employee's lack of skill, ability, knowledge, experience or aptitude. Where poor work performance is assessed to be due to a deliberate or wilful failure to fulfil the duties of an employee's role and/or a deliberate lack of care, the matter will be dealt with under the School's Disciplinary Procedure as this is a conduct concern.
- 1.2 Where an employee wilfully and unreasonably refuses to co-operate with the application of the Capability Procedure, the matter will be dealt with under the Disciplinary Procedure.
- 1.3 Poor performance due to health problems and/or sickness absence will normally be dealt with via the [School's Sickness Absence Policy and Procedure](#). This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work. In some cases it may be appropriate for the Capability Procedure to continue during a period of sickness absence, however the Headteacher/Senior Manager/Headteacher Performance Management Committee (HPMC) will have regard to the views of Occupational Health.
- 1.4 Prior to the implementation of this procedure, the Headteacher/Senior Manager/ HPMC will normally need to be able to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the employee and, as appropriate, provide support designed to facilitate improvement.
- 1.5 This procedure aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:
- from within the school;
  - through accessing expertise in another school;
  - via the local authority's advisory services;
  - from other expert sources external to the school;
  - through training courses or events.
- 1.6 The stages specified in this document must be dealt with on a professional and confidential basis. Governors will be notified in the event that the formal Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.
- 1.7 Employees are encouraged to be accompanied by a professional association or trade union representative or by a work colleague under any stages of the Capability Procedure and to seek advice at the earliest opportunity where they are subject to formal action. The companion is allowed to make representations on behalf of the employee, submit papers, ask questions and address a meeting on behalf of the employee but is not allowed to answer questions on behalf of the employee. It is the employee's responsibility to arrange their own companion and advise management of this. If the employee, or their companion, is unable, for good reason, to attend a meeting, an alternative date will be arranged, once only, normally within 5 working days of the original meeting.
- 1.8 When the Capability Procedure has commenced, the employee will be provided with a copy of the Procedure.
- 1.9 All targets and support and review meetings will be recorded during the capability process.

- 1.10 The employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed within the hearing and appeal process detailed below.
- 1.11 If the employee has less than two years of continuous service with the employer (depending on the employee's start date), the procedure at [Appendix 1](#) will be used.
- 1.12 The employee will have the right of appeal against any formal action taken against them in accordance with [section 10](#) of this procedure.
- 1.13 The School will have the right to request that an officer from Education Personnel Services attends any meetings under Stages 1 or 2 of the Capability procedure, in order to provide support to the Senior Manager/Headteacher/HPMC. Education Personnel Services will have the right to attend a meeting held under Stage 3 of the Capability Procedure in Hampshire Maintained Schools (other than in Voluntary Aided or Foundation Schools unless such rights exist) on behalf of the Local Authority.
- 1.14 In the interests of fairness, both parties are expected to provide details of any significant issues and relevant papers in advance of meetings arranged under the formal procedure. Management documents will normally be supplied with the letter inviting the employee to the formal meeting. The employee, or their representative/colleague, must submit their information to arrive at least **3 working days** before the meeting.
- 1.15 Responsibility for decision-making within this procedure rests with the Headteacher/Senior Manager/HPMC, and the Headteacher/Governors' Committee where convened. If the governing body has delegated to the Headteacher the power to dismiss, the Headteacher will not normally be able to fulfil that role where he/she has had substantial involvement in the earlier stages of the procedure.
- 1.16 Where this procedure is used in relation to Headteacher poor performance, the HPMC will undertake the role of Headteacher/Senior Manager. In such cases, an additional professional adviser from the School's School Improvement provider will be present, at any stage, to provide governors with professional advice.
- 1.17 The time periods in this procedure will also apply to part-time employees.
- 1.18 A first formal warning given as part of the application of this procedure will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within 12 months from the date of such a decision, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 1.
- 1.19 Where a final warning has been issued, this will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within a period of two years (six terms) from the date of issue, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 2 at any time during this two-year period.
- 1.20 Action involving use of a formal written warning and beyond will not be taken in respect of an accredited representative of a Trade Union unless the Headteacher or Education Personnel Services (as appropriate) has informed the relevant full-time official of the action that is being contemplated.

- 1.21 The audio or video recording of any meetings or hearings held under this procedure is not permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. Only in exceptional cases may an employee request an audio or video recording of the meeting as an alternative. In such cases, consideration will be given as to whether or not recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.

## **2. Stages of the Procedure**

- 2.1 There are three stages in the Capability Procedure, as follows:

- Stage 1 - Formal Meeting Stage
- Stage 2 – Formal Meeting Stage
- Stage 3 – Headteacher/Governors' Committee hearing

- 2.2 At every stage of the procedure the employee will be advised of the nature of the concern, be given an opportunity to provide their view, and have the right to be accompanied.

## **3. Stage 1 - Formal Meeting**

### **3.1 Invitation to a Stage 1 Formal Meeting**

- 3.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 1 Formal Meeting. The invitation letter will:

- inform the employee of the stage of the procedure being followed;
- provide the employee with a minimum of 5 working days' notice of the meeting;
- inform the employee of the right to be accompanied at the meeting;
- inform the employee of the requirement to confirm before the meeting whether they intend to be accompanied at the meeting, and, if so, by whom;
- inform the employee that, if they wish to refer to any written information at the meeting, this must be submitted to arrive 3 working days before the meeting;
- explain that if the employee needs special support or assistance during the meeting, they should notify the Headteacher/Senior Manager/HPMC in advance of the meeting;
- remind the employee of their access to the Council's Employee Support service;
- enclose a copy of the Capability Procedure (if they have not already been provided with a copy) and all written information the Headteacher/Senior Manager/HPMC wishes to rely upon during the meeting;

### **3.2 Conduct of the Stage 1 Formal Meeting**

- 3.2.1 The Headteacher/Senior Manager/HPMC will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the Capability Procedure may be required;
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the employee's work) and clarify the requirements of the employee's role and the standards expected;
- ask the employee to account for their continued under-performance including any mitigation the employee feels is relevant;

- consider all the facts and, if necessary, adjourn the meeting to consider these further before making a decision about whether the employee will move onto the Capability Procedure;
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made;
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews ([noting section 9](#)).

### 3.3 Outcomes of the Stage 1 Formal Meeting

#### 3.3.1 Possible outcomes include:

- no formal action required (in which case it may be appropriate to continue to address the concerns through the performance management process and the Capability Procedure will not apply);
- a Formal Warning is issued;
- (in serious cases) a Final Warning is issued ([see section 7](#));
- (in exceptional cases) a decision is made to suspend the employee pending an investigation into a concern of gross incapability ([see section 8](#)). In such circumstances, the Headteacher/Senior Manager/HPMC may refer the matter directly to a hearing under Stage 3.

An employee issued with a warning will be told the consequences of further poor performance or failure to improve within the set review period. The length of the review period will depend on the circumstances of the individual case but in most cases will be between four and ten weeks. Progress will be formally reviewed at the end of this period, however interim reviews will also be held to assess progress ([noting section 9](#)).

- 3.3.2 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

## 4. **Stage 2 - Formal Meeting**

### 4.1 Invitation to a Stage 2 Formal Meeting

- 4.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 2 Formal Meeting. The invitation letter will be in accordance with paragraph 3.1.1.

### 4.2 Conduct of the Stage 2 Formal Meeting

#### 4.2.1 The Headteacher/Senior Manager/HPMC will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the next stage of the Procedure may be required;
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the employee's work) and clarify the requirements of the employee's role and the standards expected;
- ask the employee to account for their continued under-performance including any mitigation the employee feels is relevant;
- consider all the facts and, if necessary, adjourn the meeting to consider this further before making a decision about whether the next formal stage will be commenced or the current stage extended;

- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made;
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews.

#### 4.3 Outcomes of the Stage 2 Formal Meeting

##### 4.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease ([see section 6](#));
- the Formal Warning remains in place for a further specified period of time under Stage 1;
- a Final Warning is given.

The employee will be told the consequences of further poor performance or failure to improve within the set review period (as defined in section 4.5 and 5, below). In most cases, a review period will be set of no more than four weeks.

The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

#### 4.4 Stage 2 Final Review Meeting

4.4.1 At the end of the review period in Stage 2, the employee will be invited to a Final Review Meeting. The invitation letter will be in accordance with paragraph 3.1.1. The conduct of the meeting will be in accordance with paragraph 4.2.

##### 4.4.2 Possible outcomes include:

- a decision to refer the matter to a Headteacher/Governors' Committee Hearing to consider dismissal on the grounds of Capability;
- the Final Warning remains in place for a further specified period of time;
- no further action, in which case the Capability Procedure will cease ([see section 6](#)).

4.4.3 The Headteacher/Chair of the HPMC (in the case of a Headteacher) will inform the Chair of the Governing Body and Education Personnel Services (if not already involved) of the outcome of the Stage 2 Final Review Meeting.

4.4.4 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

#### 4.5 Consideration of alternative options

Before any meeting takes place under Stage 3 of this procedure (with the exception of potential gross incapability cases), Education Personnel Services and, where appropriate, a Local Authority Officer and/or, in the case of an Aided School, an officer of the Diocese, will meet with the employee and the Headteacher/Senior Manager/HPMC separately to examine any available alternatives which would obviate the need for the application of Stage 3 or beyond. This will include consideration of whether or not it is feasible to make any offer of alternative employment to the employee.

## 5. Stage 3 – Headteacher/Governors’ Committee Hearing

### 5.1 Invitation to a Stage 3 Hearing

5.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 3 Hearing. The invitation letter will be in accordance with paragraph 3.1.1 and the employee must be advised that dismissal is a potential outcome. The employee must be advised of their right to be accompanied at the Hearing in accordance with paragraph 1.7.

### 5.2 Conduct of a Stage 3 Hearing

5.2.1 Where the Headteacher has formally delegated powers of dismissal and has not had substantial involvement in Stages 1 and/or 2 of the procedure, the Headteacher may hear the matter. Where this is not the case, the matter will be heard by a Governors’ Committee.

5.2.2 The Hearing will be conducted in accordance with the procedure for [Headteacher/Governor Committee Hearings](#).

5.2.3 In the case of the Headteacher, the Chair of the HPMC will commission an Advocate from the School Improvement Service and a senior officer from Education Personnel Services to present the management case. The Chair of the HPMC will normally be called as a witness.

### 5.3 Outcomes of the Stage 3 Hearing

5.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease ([see section 6](#));
- the previous Final Warning should remain in place for a further specified period of time (in which case the required improvement in performance will be identified as well as the support that will be provided to help the employee achieve this and the period of time in which the necessary improvement must be made);
- the employee is dismissed on the grounds of capability with the appropriate contractual notice;
- the employee is dismissed summarily (in gross incapability cases – [see section 8](#)).

5.3.2 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. If the decision is to dismiss the employee the letter will:

- specify the reason for the decision to dismiss;
- confirm that the dismissal will take place with notice (or without notice in the case of gross incapability);
- confirm that the employee has the right of appeal against the decision, and the mechanism for doing so.

## 6. Improvement in performance achieved

6.1 If the employee’s performance improves as required, the Headteacher/Senior Manager/HPMC will meet the employee to tell them this. This will be confirmed in writing to the employee and the letter will be placed on the employee’s file. The Capability Procedure will cease at this point and Performance Management will re-start. If the employee was at Stage 1 of the Capability procedure, their improvement in performance will need to be sustained for at least 12 months, at Stage 2 the improvement would need to be sustained for at least 24 months. If the employee’s performance declines during this period of time, the Headteacher/Senior Manager/HPMC will have the option to re-enter the procedure at the appropriate point.

## **7. Fast-track procedure**

- 7.1 In very serious cases it may be necessary to issue a Final Warning at a Stage 1 meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the Headteacher/Senior Manager/HPMC will proceed to Stage 3 – a Headteacher/Governors' Committee Hearing.

## **8. Gross Incapability**

- 8.1 When an employee's performance is regarded as gross incapability it would be inappropriate to take them through a staged procedure, particularly if the health and safety of pupils or other employees is in serious jeopardy or there are serious consequences for the school, to the extent that dismissal would be justified. In such cases, a full investigation must take place and the employee must be given the opportunity to respond. The matter would normally be referred straight to a Headteacher/Governors' Committee hearing and a potential outcome is that the employee is summarily dismissed on the grounds of gross incapability.

## **9. Failure to make progress during a review period**

- 9.1 The review periods set at each stage of the Procedure are the maximum number of weeks in which an employee must make the necessary improvements in performance. However, where during a stage there is evidence to suggest a more serious problem or that progress is insufficient or the individual is unlikely to make the required improvements, the Headteacher/Senior Manager/HPMC may decide to move to the next Stage of the Procedure.

## **10. Right of Appeal**

- 10.1 An employee may appeal against any warning issued to them through the Capability Procedure and/or against a decision to dismiss them. For appeals against warnings under this procedure, the employee must submit an appeal in writing to the Headteacher/Senior Manager who signed the letter confirming the action to be taken under the procedure. Appeals against dismissal under Stage 3 of this procedure must be addressed to the Clerk to Governors. In both instances, the appeal must be received within 10 working days of receipt of the letter confirming the warning/dismissal and the employee must state in full the reasons for their appeal.

- 10.2 The purpose of an appeal is to enable an impartial review to be carried out as to the 'reasonableness' of the previous decision. The appeal should not become another capability hearing but should focus on reviewing the process followed, and the reasonableness of the decision that was taken.

### **10.3 Invitation to Appeal Meeting**

- 10.3.1 If the employee lodges an appeal in line with the procedure, they will be invited by letter to an appeal meeting and given at least 7 working days' notice of the meeting date. Any relevant documentation must also be included with the letter.

- 10.3.2 The letter inviting the employee to the appeal meeting must include their right to be accompanied at that meeting.

- 10.3.3 If the warnings have been issued by a Senior Manager during the formal stages, the appeal may be heard by the Headteacher. If the warnings have been issued by the Headteacher during the formal stages, the appeal will be heard by a governors' committee. Where the

Headteacher has heard appeals under Stage 1 and/or Stage 2, this will preclude the Headteacher from forming the committee under Stage 3 of this procedure.

- 10.3.4 Any appeal against dismissal will be heard by a governors' committee. The Headteacher or Clerk to the Governors' Committee (depending on who is hearing the appeal), will issue documentation with the letter of invitation to the appeal meeting. This will consist of the documentation used at the original hearing, supplemented with the employee's letter of appeal. Where either party wishes to provide additional information, this must arrive at least 3 working days in advance of the meeting to allow time for the information to be considered.

#### 10.4 Conduct of Appeal Meeting

- 10.4.1 The conduct of the meeting will be in accordance with the Procedure for [a Governors' Appeal Committee Hearing](#) in the case of all Hampshire Maintained schools. This procedure is commended for use to academies and other external schools.

- 10.4.2 The outcome should normally be confirmed to the employee in writing within 5 working days. If it is necessary to vary this timescale, the employee should be notified at the conclusion of the meeting.

### 11. **Requirement for schools to pass on information about a teacher's capability to a new employer**

- 11.1 The School Staffing (England) (Amendment) Regulations 2012 require maintained schools to pass on information to a prospective employer about any teacher or Headteacher who has been on the Capability Procedure in the last two years. Specifically they will need to provide details of the duration of capability and an explanation of the outcome. Whilst the Regulations do not apply to Academies, Academies can also ask for the information as part of their recruitment processes.

### 12. **Support**

- 12.1 Employee Support is a confidential counselling and support service provided by trained, experienced counsellors, providing telephone and face-to-face counselling. This service is available to all staff in Hampshire maintained schools and more information can be found at <http://www3.hants.gov.uk/occupational-health/employee-support.htm>, or by contacting the helpline on [0800 030 5182](tel:08000305182). Staff in Academies and other schools should contact their school's counselling service where provided.

- 12.2 Employees can also seek advice and support from their professional association or trade union. A list of teacher professional association contact details are available at <http://www3.hants.gov.uk/education/teachers-info/tlp.htm>  
Teachers can also seek support from the Teacher Support Line <http://teachersupport.info/>

## Appendix 1 - Employees with less than two years of continuous service with the employer

This procedure applies to employees with less than two years of continuous service where performance is considered unacceptable.

It is expected that all new employees, during and after their induction, will have informal discussions with their line manager and that any concerns over the employee's performance are raised as early as possible.

### Formal Meeting

There is only one formal meeting for employees in their second year of service (depending on the employee's start date). The Headteacher/Senior Manager will adopt the same approach as they would for a Stage 2 Formal Meeting (see [Section 4](#) of the Capability procedure).

Possible outcomes include:

- no formal action required (in which case it may be appropriate to continue to address the concerns through the induction and/or performance management process and the Capability Procedure will cease;
- a Final Warning is given in which case the employee will be told the consequences of further poor performance or failure to improve within the set review period;
- the matter is referred to a Headteacher/Governors Committee Hearing in order to consider whether the employee should be dismissed.

The outcome of the meeting will be confirmed to the employee. If the decision is to issue a Final Warning, the letter will:

- specify the reasons for the Stage 2 Final Warning, including details of the performance problems;
- include details of how long the final warning will remain in place;
- identify the improvement in performance required;
- identify any additional support or training to help the employee achieve the performance standards required;
- specify the period of time allowed for the necessary improvement to be made;
- specify the review dates;
- remind the employee that failure to improve to the required standard may lead to dismissal;

The timescale for the set review period for employees in their second year of service will be shorter and will not result in the employment being extended beyond two years prior to a final decision being taken.

If the decision is to refer the matter to a Headteacher/Governors' Committee Hearing, the letter will confirm the arrangements for this in accordance with the [Procedure for Headteacher and Governors' Committee Hearings](#). The letter will confirm that a possible outcome of this hearing is that the employee could be dismissed on the grounds of capability.

This Procedure does not prevent a summary dismissal on the grounds of gross incapability in accordance with [Section 8](#) of the Capability Procedure.

### Right of Appeal against Dismissal

Under this procedure, an employee only has the right of appeal against a dismissal decision; there is no right of appeal against a warning.

The employee must lodge an appeal as set out in [Section 10](#) of the Capability Procedure.