

Introduction

Newport City Council is committed to providing a first-class education for the children and young people of Newport. In order to ensure this, school managers and governing bodies must recognise the importance of addressing performance issues in a fair, transparent and efficient manner. Ysgol Bryn Derw is therefore committed to ensuring that all staff possess the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively.

Aims of Policy

To provide clear guidance to Headteachers and Governing Bodies of schools in relation to dealing with capability procedures.

The aims is to encourage all employees to maximise their performance, including work standards, attendance and productivity and knowledge; providing them with the opportunity to understand their capability and the opportunity to develop and improve.

If concerns relate to attendance due to health and wellbeing conditions, then managers should ensure the Wellness at Work Policy is followed in the first instance prior to considering the Capability Policy.

Scope

Newport City Council commends this guidance to individual Governing Bodies for adoption. If adopted by a Governing Body, the guidance will apply to all employees under the direct control of that Governing Body, with the exception of:

- ✦ Employees in their probationary period; the Council's Probationary Period Policy should be used.
- ✦ Newly qualified teachers during their induction period, who are subject to the provisions of the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2003.

School Based Employees

This guidance applies to all school based employees.

Voluntary Aided schools may wish to note and follow this guidance.

[Wellness at Work Policy](#)

To be read in conjunction with

[Capability of School Teaching Staff – Guidance for Schools](#)

[Capability of Headteachers – Guidance for Schools](#)

Principles

The principles of this guidance can be found below.

GUIDANCE**I INTRODUCTION – CAPABILITY FOR ALL PERFORMANCE ISSUES UNRELATED TO ATTENDANCE**

- 1.1 ***Insert name of Council*** is committed to providing a first-class education for the children and young people of ***insert Council area.*** In order to ensure this, school managers and governing bodies must recognise the importance of addressing performance issues in a fair, transparent and efficient manner. ***Insert name of school*** is therefore committed to ensuring that all staff possess the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively.
- 1.2 Effective performance management procedures demonstrate a school's commitment to develop all employees to ensure job satisfaction, high levels of expertise and progression of employees in their profession. It will also help employees to meet the needs of pupils and raise standards. Effective performance management means paying continuous attention to monitoring progress during the year by line managers, intervening early and providing support if there are concerns about the performance of an employee. It sets a framework for staff, leaders and governors to agree and review priorities and objectives in the context of professional development and the school's improvement plans.¹
- 1.3 The purpose of this procedure and the Welsh Government guidance documents on capability procedures for school-based staff is to help schools secure improvement – this is a joint effort between the employee, the Head Teacher and the Governing Body. Early identification of problems and appropriate intervention and support through effective performance management will help to avoid the need for formal capability procedures at a later date. In many cases improvement may be achieved through existing review processes often with a minimum of support and attention. In those instances where serious concerns are identified in terms of unsatisfactory performance a more formal approach may be required.

¹ Under the School Teacher Appraisal (Wales) Regulations 2011 there is a statutory requirement to undertake

1.4 Where it emerges that the issue causing concern is one of misconduct because the employee has failed to do something as a result of his or her own negligence or by refusal to act, then the issue should be dealt with in line with the school's Disciplinary Procedure.

1.5 Where it emerges that the issue causing concern is as a result of the employee's ill health, the issue should be dealt with in line with the school's sickness policy.

2 PURPOSE

2.1 The purpose of this procedure is to enable: -

- all employees to be effective by ensuring that they achieve, sustain and improve on the levels of skill, knowledge and aptitude required of them to improve standards and achieve better outcomes for pupils;
- all employees to access an appropriate programme of monitoring, support, guidance and training to achieve and sustain a satisfactory level of performance; and
- employees to be made aware of circumstances where there is evidence that a satisfactory level of performance is not being achieved.

2.2 Sections 5 to 9 of this procedure represent a set of stages that will provide employees with opportunities to hear how or why their performance is considered unsatisfactory and to offer any explanation that they wish to put forward.

2.3 This procedure is written with the presumption that the Head Teacher will have the lead decision-making role when dealing with performance issues involving other members of staff, with the exception of the Deputy Headteacher, and that line managers or other senior leaders may be designated with the responsibility of gathering and collating written evidence regarding the concerns.

2.4 Where the Head Teacher's and Deputy Headteacher's performance is concerned, the Chair of Governors should undertake the lead role at the informal stage and so where it says in the procedures what the Head Teacher will do, substitute "Chair of Governors" for "Head Teacher." In undertaking their role, the Chair of Governors, in the case of a Head Teacher, will appoint, where appropriate, a member of the Local Authority or Regional Consortium to investigate the issues and/or provide appropriate support during the informal stage. In the case of a Deputy Headteacher, the Chair of Governors will appoint the Head Teacher to undertake the role of designated manager.

3 GENERAL PRINCIPLES

3.1 The main principles behind this procedure are that: -

- all employees should be treated with respect, consistency and fairness;
- matters of unsatisfactory performance will be raised promptly with employees and appropriate support, guidance and training to achieve a satisfactory level of performance will be provided in a timely manner.
- all matters of managing unsatisfactory performance and related investigations will be treated in confidence by all parties involved throughout all stages of the process;
- where reference is made in this procedure to “a satisfactory level of performance” this means the level of performance that is laid down in the job description and person specification, the Professional Standards for Teaching and Leadership and the Code of Professional Conduct and Practice for Registrants with the Education Workforce Council;
- where an employee’s trade union representative cannot attend a formal meeting, which may lead to a sanction, an alternative date, normally within five working days, should be offered by the representative.

Should the representative subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

- all meetings at the various stages of this procedure should be arranged as soon as possible, within the time limits specified. If the time limits cannot be met for any justifiable reason they can be extended by agreement on both sides;
- employees subject to these procedures should be given at least five working days' notice in writing (ten working days at Stage 4) of the time and place of any meeting or hearing set up to hear the capability matter or any appeal that may follow. Where the identity of the trade union representative is known, their availability to attend the meeting/hearing will be sought wherever possible;
- employees subject to these procedures will be advised of the performance concerns raised against them in advance of any interview, performance review or capability hearing and will be given the opportunity to state their case and present relevant evidence before any decision is made;
- at all stages of the procedure employees have the right to be represented by a work colleague or their trade union. Please note this does not include a right to representation at review meetings held with the designated manager/consortium representative for the purposes of monitoring and reviewing performance;
- appeals against warnings will be allowed under this procedure but they must not delay the on-going nature of the process. Where such appeals are made, they will be heard by the Capability Appeals Committee of the Governing Body;
- where there is an appeal against a dismissal on grounds of incapability the matter will be heard by the Staff Disciplinary and Dismissal Appeals Committee (SD&DAC); and
- all stages of this procedure should be fully recorded with the Head Teacher/Chair of Governors ensuring a record of all interviews and performance reviews with employees are made, giving the date, time and explanation (if any) provided at all stages of the procedure. The meetings of the Capability Committee, Capability Appeals Committee, SD&DC and SD&DAC will be fully recorded by the Clerk to the Governing Body, in accordance with the service level agreement.

3.2 At all formal stages of this procedure, the employee will be provided with a support plan, which will be drafted in consultation with the employee and appropriate advisors and where possible agreed by all parties, specifying:

- the performance concerns
- the targets to be achieved
- the support to be provided to achieve the targets
- who will monitor performance and progress following the formal meeting
- the monitoring process including periodic structured meetings, informal discussion and direct support
- how improvement will be monitored
- the use of external expertise to judge standards and provide support where appropriate
- the timescales in which the required level of performance is to be achieved.

3.3 If at any stage during the procedure the employee consistently achieves a satisfactory standard and there is evidence to suggest that this improvement is sustainable these procedures will conclude. The Head Teacher (Chair of Governors in the case of a Head Teacher or Deputy Headteacher) will inform the employee of this both verbally and in writing. The employee must also be encouraged to sustain and improve their performance in the future. If, however, following this successful conclusion the employee fails to sustain a satisfactory level of performance at a later date, the Head Teacher/Chair of Governors will recommence the procedure as follows: -

- at the Stage where the previous procedure concluded if the failure in performance occurs within 12 working weeks (or one year in the case of Head Teachers) of that conclusion i.e. if it concluded at Stage 2 the procedure will recommence at Stage 3; or
- at Stage 1 if the failure in performance occurs after 12 working weeks (or one year in the case of Head Teachers) after the conclusion of the procedure.

3.4 The possibility of offering alternative employment may be considered and discussed with the employee at any stage of the procedure if it is considered appropriate to the particular circumstances. Any redeployment would have to be subject to agreement with the employee. Employees who wish to be considered for redeployment will be offered advice and support.

Alternative employment does not have to be of an equivalent grade. This may be especially relevant in the case of an employee who has gained promotion and has been unable to sustain the required standards at the new level. If an employee is offered and accepts a post at a lower grade there will be no right of protection to their current terms and conditions.

3.5 Where it is necessary to recommence this procedure on more than two occasions the Head Teacher/Chair of Governors may consider that there is sufficient cumulative evidence indicating serious performance issues that require the procedures to start at Stage 4 immediately.

3.6 Where it emerges during this procedure that the issue causing concern is one of misconduct because the employee has failed to do something as a result of their own negligence or by simply refusing to do it, then the issue is not one of lack of capability and it may be dealt with under the school's Disciplinary Procedure.

3.7 Where an employee feels that they have been treated unfairly or have been discriminated against during the Capability Procedure they may bring a grievance at any stage of this procedure. The grievance should be heard separately so that the Capability Procedure is able to continue uninterrupted, as no procedure should automatically have precedence over any other. Where the grievance is against the designated manager leading on the capability procedure then the Head Teacher should appoint another manager to deal with the capability whilst the grievance is being heard.

In the case of the Head Teacher and Deputy Headteacher, the Chair of Governors should take advice and consider whether to allocate an alternative person to the role.

- 3.8 The roles and responsibilities of governing bodies, Head Teachers, Senior Leaders, middle managers, individual employees, the Chief Education Officer, the consortium representative and the HR Adviser are given in the Welsh Government “Guidance on the Capability of School Teaching Staff” and in the case of a Head Teacher “Capability of Head Teachers Guidance”.
- 3.9 It is possible that either prior to or during the course of this procedure the Head Teacher/Chair of Governors may become aware that an employee has, is perceived to have or is associated with someone who has or who is perceived to have, a “Protected Characteristic.” The Equality Act 2010 lists the “Protected Characteristics” as: - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In some circumstances, where this may have significance relating to an employee’s performance, the Head Teacher/Chair of Governors will need to make further enquiries of the member of staff about what assistance may help and seek advice as to any reasonable adjustments that may need to be considered.
- 3.10 The time period for improvement at each stage should not normally exceed six working weeks. Consideration should however be provided to the working hours of part time staff when setting targets and timescales for review periods in order to ensure there is a reasonable opportunity to demonstrate the required improvements within the time period set.
- 3.11 The purpose of the procedure is to provide the appropriate support, guidance and training to enable an employee to achieve a satisfactory level of performance. If at any point prior to or during this procedure, an employee feels they have a medical issue or there are matters effecting their wellbeing which are in turn impacting upon their performance, there is a duty upon the employee to raise this with the Head Teacher/Chair of Governors in order that consideration can be given to any reasonable adjustments or additional steps that may be required to support the employee.

4 EXCEPTIONAL CIRCUMSTANCES

- 4.1 In the exceptional case where the Head Teacher (Chair of Governors in the case of a Head Teacher and Deputy Headteacher) has overwhelming evidence that the continued employment of the employee will jeopardise pupils’ education, or puts them or other staff at risk of harm, it will be appropriate to issue a final written warning. If the employee does not achieve a satisfactory level of performance after a review period of a minimum of four weeks, it will be appropriate to refer the matter to Stage 4 of these procedures. For this to occur the employee’s performance must fall so far short of what is required that improvement to a satisfactory level of performance may be deemed impossible or the employee’s failure in performance has a seriously detrimental effect in the school. The Head Teacher/Chair of Governors may also consider suspending the employee where it appears to be necessary for the protection of pupils, staff or property.

5 INFORMAL SUPPORT

5.1 Where concerns regarding an employee's performance have reached a point where the employee is failing to respond to feedback and additional support which has been provided to them through the performance management process, the employee should be advised by their line manager (or Chair of Governors in the case of a Head Teacher) that continued failure to improve performance could result in a need to address their performance issues via the Capability Procedure. For this reason, in the case of all staff other than the Deputy Headteacher, the Head Teacher will instigate an investigation of the issue and appoint a designated member of management to undertake the task. The designated manager must meet with the employee to ensure that there is complete clarity on where the performance issue lies, and a plan devised to support the employee to improve their performance to the standard required.

In the case of a Deputy Headteacher, the Chair of Governors will appoint the Head Teacher as designated manager.

In the case of Head Teachers, the Chair of Governors should secure from the Regional Consortium the support of an individual with appropriate education expertise and no previous direct involvement in the work of the school. That person will be responsible for clarifying the concerns and gathering relevant contextualised evidence in advance of the meeting with the Head Teacher.

5.2 For all staff other than the Deputy Headteacher, the Head Teacher will invite the employee to a meeting to discuss the performance concerns. The employee will be provided with five working days' notice of the meeting. Details of the performance concerns and confirmation of their right to be accompanied by a trade union representative or work colleague will also be provided in advance of the meeting. The Headteacher may be accompanied at the meeting by a representative from Human Resources. The Headteacher will provide evidence of the concerns regarding the employee's performance and engender discussion and dialogue with them so that mutual understanding of the performance issues is established. A written record of the meeting should be taken.

As a result of the meeting the Head Teacher may determine one of the following actions:

- that no further action is required as the Head Teacher is satisfied with the employee's response
- that a support plan and review period should be established to address the performance concerns

In the case of a Head Teacher or Deputy Headteacher, the meeting will be held with the Chair of Governors who will normally be accompanied at the meeting by a Local Authority representative².

5.3 If a support plan is required, this will be drafted in line with the requirements set out in 3.2 of this procedure.

² In accordance with the WG Capability of Headteachers – Guidance for Schools, the local authority may determine to appoint a representative of the regional consortium to attend as their local authority representative.

The time period for improvement should be no more than six working weeks and the Head Teacher/Chair of Governors should set the date for the review meeting and establish clear targets for performance improvement.

5.4 The Head Teacher/Chair of Governors will:

- outline the performance concerns
 - outline the targets to be achieved
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- specify the support for the employee in achieving the targets;
 - require the designated manager to monitor performance and progress following this first meeting;
 - ensure that the monitoring process includes a range of supportive interventions;
 - ensure that the support to be provided is specific, time limited and will help them achieve an improvement in their performance;
 - ensure that throughout the monitoring process the employee is given the opportunity of commenting upon the proposed plan of support;
 - ensure that the monitoring process is conducted in a sympathetic and non-threatening way with the objective of improving the employee's work performance. However, it must be made clear that Stage 1 of the procedure will be triggered if there is no improvement within the review period.
- 5.5 During the review period the designated manager will be responsible for gathering and collating any further written evidence. In the case of a Deputy Headteacher, the Headteacher will undertake the role of designated manager. In the case of a Head Teacher the consortium representative will, on behalf of the Chair of Governors, co-ordinate the implementation of the support plan and be responsible for gathering and collating evidence relating to the performance of the Head Teacher and progress against the performance targets throughout the review period. Progress will be reported to the Head Teacher or Chair of Governors (in the case of a Head Teacher and Deputy Headteacher) during the review period and also presented to the Head Teacher or Chair of Governors (in the case of a Head Teacher and Deputy Headteacher) at the end of the review period.
- 5.6 In the case of a Head Teacher, at the end of the review period an interview will be conducted by the Chair of Governors. The Head Teacher will be provided with five working days' notice of the meeting and be informed of the right to be accompanied by a trade union representative or work colleague. The appointed consortium representative will present their report and the Chair of Governors may find it helpful to be accompanied at the meeting by a local authority representative. A written record of the meeting should be taken. If the Chair of Governors determines that the evidence from the informal support programme indicates that the employee's performance remains unsatisfactory, the Chair of Governors will convene a Governor Capability Committee under stage 1 of the procedure.

- 5.7 Where the Chair of Governors determines that the Head Teacher has achieved partial improvement, they may determine to extend the period of the informal stage. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.
- 5.8 Where the Chair of Governors determines that the evidence demonstrates that the Head Teacher's performance has improved to a satisfactory level the Chair will determine that no further action is necessary and that the procedure will cease. This will be confirmed in writing, with the employee reminded of the requirement to sustain the satisfactory level of performance and the consequences of failing to sustain this standard.
- 5.9 If at any time in this procedure the Head Teacher, Chair of Governors or Governor Committee determines that an employee has not engaged positively and constructively with the process of improvement then the matter may be considered to be an issue of professional misconduct and may be addressed under the school's Disciplinary Procedure.

6 STAGE 1 INFORMAL SUPPORT REVIEW MEETING (FOR STAFF OTHER THAN THE HEAD TEACHER)

- 6.1 For all employees other than the Deputy Headteacher, the informal support review meeting will be conducted by the Head Teacher. In the case of a Deputy Headteacher, the review meeting will be conducted by the Chair of Governors.
- 6.2 Shortly before the Stage 1 review meeting takes place, the designated manager should prepare for it by undertaking an assessment of the employee's performance during the agreed timescale for improvement and outlining their assessment within a report.
- 6.3 The employee should be notified of the date and arrangements for the review meeting in writing, giving the required five working days' notice and being informed of the right to be accompanied by a trade union representative or a work colleague. A copy of the designated manager's report and all supporting documentation will also be provided at this point.
- Should the employee wish to submit any documentation, it should be provided to the Head Teacher/Chair of Governors at least two working days in advance of the meeting.
- 6.4 At the meeting the designated manager will present their report on the review period and the employee will have the opportunity to provide a response to the report. The Head Teacher/Chair of Governors may be accompanied by a representative from Human Resources. In the case of a Deputy Headteacher, the Chair of Governors may also be accompanied at the meeting by a local authority representative. A written record of the meeting should be taken and a copy provided to the employee.
- 6.5 If the evidence from the informal support programme indicates that the employee's performance has improved to a satisfactory level, the Head Teacher/Chair of Governors will determine that no further action is

necessary, and that the procedure will cease. This will be confirmed in writing, with the employee reminded of the requirement to sustain the satisfactory level of performance and the consequences of failing to sustain this standard.

- 6.6 If the Head Teacher/Chair of Governors determines that the employee has achieved partial improvement, they may determine to extend the period of the informal stage. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.
- 6.7 If insufficient progress has been made and the employee is still not achieving a satisfactory level of performance the Head Teacher/Chair of Governors will issue the employee with a Stage 1 oral warning, also provided in a written format that will state:

- the performance problem;
- the level of performance that is required;
- the timescale for improvement (not to exceed six working weeks);
- the date on which the employee's performance will be reviewed;
- that the oral warning will remain on record for 13 working weeks
- the consequences of failure to meet the required standard and the potential to move to Stage 2 of the procedure;
- the support that will be given;
- in the case of teachers, the current performance management cycle will be suspended while the formal process is on-going; and
- the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

A support plan will also be established for the review period, in line with the requirements outlined in section 3.2 of this procedure.

STAGE 1 MEETING OF THE GOVERNORS CAPABILITY COMMITTEE (IN THE CASE OF HEAD TEACHERS)

6.8 If in the case of a Head teacher, insufficient progress has been made and they are still not achieving a satisfactory level of performance, the Chair of Governors will establish a Governor Capability Committee to address the issues and consider whether to trigger the formal stage of the procedure.

6.9 The Governor Committee will consist of three members of the Governing Body and if the Chair of the Committee consents, advisors from the Consortium, Local Authority, Diocesan Authority or HR may attend in an advisory capacity.

6.10 The consortium representative will prepare a formal report on the Head Teacher's performance identifying the performance shortfall, the actions taken at the informal stage and the impact or otherwise of those interventions. The consortium representative will attend the meeting of the Governor Capability Committee to present the report.

6.11 The Head Teacher should be notified of the date and arrangements for the hearing, including their right to be accompanied by a trade union representative or work colleague, in writing at least five working days in advance of the hearing. All documentation for the panel, including the report of the consortium representative will be provided at this point.

Should the Head Teacher wish to submit any documentation, it should be provided at least two working days in advance of the meeting of the Governors Capability Committee meeting.

6.12 At the hearing the report on the Head Teacher's performance against required standards will be presented by the consortium representative. The Head Teacher and their representative will then have an opportunity

to respond to the report and performance concerns raised. A written record of the meeting should be taken and a copy provided to the Head Teacher.

6.13 Following the Head Teacher's response to the report the Governor Committee will consider all the evidence presented before determining one of the following outcomes:-

- the Head Teacher's performance is satisfactory, and no further action will be taken. The Head Teacher should be reminded of the requirement to sustain a satisfactory level of performance and the consequences if this is not achieved
- the Head Teacher's performance is unsatisfactory and they should be issued with a formal warning and advised of the expected improvements within a specified timescale
- The Head Teacher has made some progress towards improving their performance but has not yet achieved the required satisfactory standard and the review period should be extended by a period no greater than the original period set. This option would not normally be considered where an extension of review period has already been provided under the informal stage.

6.14 If it is determined to issue the Head Teacher with a formal warning this will be a written warning. The written warning will state:

- the performance problem;
 - the level of performance that is required;
 - the timescale for improvement (not to exceed six working weeks);
 - the date on which the Head Teacher's performance will be reviewed; that the written warning will remain on record for one year.
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- the consequences of failure to meet the required standard and the potential to move to Stage 2 of the procedure;
 - the support that will be given;
 - the current performance management cycle for the Head Teacher will be suspended while the formal process is on-going; and
 - the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

A support plan will also be established for the review period, in line with the requirements outlined in section 3.2 of this procedure.

7 STAGE 2

7.1 At the end of the agreed review period for Stage 1, the designated manager (or consortium representative in the case of a Head Teacher) should gather evidence and undertake an assessment of the employee's performance against the identified targets during the timescale for improvement.

7.2 A review meeting will take place as per the process for Stage 1. If the Head Teacher/ Chair of Governors (in the case of a Deputy Headteacher)/ Governor Capability Committee (in the case of a Head Teacher), determines that sufficient progress has been made and the employee is now achieving a satisfactory level of performance that is sustainable, then the review meeting will reflect this by acknowledging the improvement made by the employee and by formally concluding the Capability Procedure. This will be confirmed in writing and the employee will be reminded of the expectation of sustaining a satisfactory level of performance and the consequence of failure to sustain this standard.

7.3 If the Head Teacher/Chair of Governors/Governor Capability Committee determines that the employee has achieved partial improvement they may determine to extend the review period. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.

7.4 If, having considered all the information presented by both parties, the Head Teacher/Chair of Governors/Governor Capability Committee determines that insufficient progress has been made, the meeting may conclude with the employee being issued a Stage 2 written warning (or final written warning in the case of a Head Teacher) setting out:

- the performance problem;
- the level of performance that is required;
- the timescale for improvement (not to exceed six working weeks);
- the date on which the employee's performance will be reviewed;
- for employees other than the Head Teacher, that the warning will remain on record for 26 working weeks
- for a Head Teacher, that the warning will remain on record for one year;
- the consequences of failure to meet the required standard and the potential to move to Stage 3 of the procedure;
- the support that will be given; and
- the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

A support plan will also be established for the review period, in line with the requirements outlined in section 3.2 of this procedure.

8 STAGE 3

8.1 At the end of the agreed review period for Stage 2 the designated manager (or consortium representative in the case of a Head Teacher) should gather evidence and undertake an assessment of the employee's performance against the identified targets during the timescale for improvement.

8.2 A review meeting will take place as per the process for Stages 1 and 2. If the Head Teacher/Chair of Governors (in the case of a Deputy Headteacher)/Governor Capability Committee (in the case of a Head Teacher) determines that sufficient progress has been made and the employee is now achieving a satisfactory level of performance that is sustainable, then the review meeting will reflect this by acknowledging the improvement made by the employee and by formally concluding the Capability Procedure. This will be in writing and the employee will be reminded of the expectation of sustaining a satisfactory level of performance and the consequence of failure to sustain this standard.

8.3 If the Head Teacher/Chair of Governors/Governor Capability Committee determines that the employee has achieved partial improvement they may determine to extend the review period. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.

For employees other than the Head Teacher

8.4 If, having considered all the information presented by both parties, the Head Teacher (or Chair of Governors in the case of a Deputy Headteacher) determines that insufficient progress has been made, the meeting may conclude with the employee being issued a Stage 3 final written warning setting out:

- the performance problem;
- the level of performance that is required;
- the timescale for improvement (not to exceed six working weeks);
- the date on which the employee's performance will be reviewed;
- that the warning will remain on record for one year;
- the consequences of failure to meet the required standard and the potential to move to Stage 4 of the procedure;
- the support that will be given; and
- the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

A support plan will also be established for the review period, in line with the requirements outlined in section 3.2 of this procedure.

Head Teacher

8.5 In the case of a Head Teacher, where the Governor Capability Committee, having considered all the information presented by both parties, determines that insufficient progress has been made, the meeting may conclude with the issues being referred to the Staff Discipline and Dismissal Committee to consider under Stage 4 of the procedure. If this occurs, the Governors should seek the advice and support of the Regional Consortium and Local Authority (or the Diocesan Authority or provider of HR support, if applicable).

End of Stage 3 Review Period – Employees other than the Head Teacher

- 8.6 At the end of the agreed review period for Stage 3 the designated manager should gather evidence and undertake an assessment of the employee's performance against the identified targets during the timescale for improvement.
- 8.7 A review meeting will take place as per the process for Stages 1, 2 and 3. If the Head Teacher (or Chair of Governors in the case of a Deputy Headteacher) determines that sufficient progress has been made and the employee is now achieving a satisfactory level of performance that is sustainable, then the review meeting will reflect this by acknowledging the improvement made by the employee and by formally concluding the Capability Procedure. This will be confirmed in writing and the employee will be reminded of the expectation of sustaining a satisfactory level of performance and the consequence of failure to sustain this standard.
- 8.8 If the Head Teacher/Chair of Governors determines that the employee has achieved partial improvement they may determine to extend the review period. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.
- 8.9 Where, having considered all the information presented by both parties, the Head Teacher/Chair of Governors determines that insufficient progress has been made, the meeting may conclude with the issues being referred to the Staff Discipline and Dismissal Committee to consider under Stage 4 of the procedure. If this occurs, the Head Teacher/Chair of Governors should seek the advice and support of the Local Authority (or the Diocesan Authority or provider of HR support, if applicable).

9 STAGE 4

- 9.1 Where the procedures detailed at Stages 1, 2 and 3 of this procedure have been followed with a final written warning issued and the employee has not achieved a satisfactory level of performance within the agreed timescale for improvement, it will be appropriate to inform the employee that a hearing will be held before the Staff Discipline and Dismissal Committee of the Governing Body.
- 9.2 At this stage there may be circumstances where the Head Teacher or Chair of Governors may consider suspending an employee from duty on full pay where they consider that it is necessary for the protection of children, staff or property or where the continued presence of the person at work could have a detrimental effect on the running of the school. This is only likely to occur in exceptional circumstances and where all alternative options have been explored.
- 9.3 Where the Head Teacher, Chair of Governors or Governor Capability Committee refers a capability matter to the Staff Discipline and Dismissal Committee, the Chief Education Officer (CEO) must be notified of the case. The CEO, or their representative, has a right to attend any meeting that might lead to a dismissal in schools where the Council is the employer, for the purposes of providing advice. In voluntary aided schools, where the Governing Body is the employer, the diocesan officer or their representative has the same advisory right as those given to the CEO and must therefore also be notified.

9.4 The hearing will be held as soon as it can be arranged by the clerk to the Staff Discipline and Dismissal Committee, even if the employee has subsequently resigned or is on sick leave. Where the employee is on sick leave or has resigned, they, along with their representative, must be provided with a reasonable opportunity to attend or, where they choose not to attend, provide written submissions to the committee.

The employee will be informed in writing with a minimum of ten working days' notice of:

- the date, time and place for the hearing
- the purpose of the hearing and the range of possible outcomes, including that a potential outcome of the hearing is dismissal
- the right to be accompanied by a trade union representative or a work colleague
- the membership of the staff discipline and dismissal committee and staff discipline and dismissal appeals committee
- the name of the person presenting the case against the member of staff
- the full details of the performance concerns, the evidence to be presented and the names of any witnesses to be called, etc.
- who will be the adviser to the staff discipline and dismissal committee and the staff discipline and dismissal appeals committee
- the date by which all relevant documentation should be received by the clerk prior to the hearing.

The clerk will arrange for the documentation from both parties to be distributed to the member of staff and their representative, including up-to-date procedures, no less than ten working days prior to the hearing.

All supporting documentation being provided to the committee should be provided at this point. This should include a report detailing the performance of the employee against the targets set, the actions taken and the impact or otherwise of those interventions.

Should the employee wish to submit documentation to support their case this should be provided at least two working days in advance of the meeting.

9.5 At least five working days before the hearing, the Staff Discipline and Dismissal Committee should be sent: -

- written details of the arrangements for hearing the capability matter;
- formal written notice of the capability matter and any supporting documentation such as written reports prepared by the designated manager/Head Teacher/Consortium Representative at each stage of the capability procedure; and
- Copies of the minutes of all previous review meetings detailing the employee's response to the capability matter with any supporting documentation.

- 9.6 All evidence that will be used at the hearing is provided in confidence and this must remain so throughout the proceedings. No new material should be introduced in the capability hearing above and beyond that previously issued to the Staff Discipline and Dismissal Committee.
- 9.7 At no time prior to the capability hearing will members of the Committee discuss the capability matter.
- 9.8 The Committee will follow the procedure outlined in Appendix A. The purpose of the hearing is to:
- assess the evidence of performance standards against requirements and the progress achieved during the procedure
 - allow the employee and their representative to respond to the report findings and evidence presented
 - enable the Committee, with appropriate advice, to reach a viewpoint on whether performance standards have improved sufficiently
- 9.9 Having considered all the evidence and taken into account advice provided, the Committee will determine one of the following outcomes:
- The employee's performance is satisfactory, and no further action will be taken. The employee should be reminded of the requirement to sustain a satisfactory standard of performance and the consequences if this is not achieved
 - The employee's performance is unsatisfactory, and the employee should be dismissed on grounds of incapability
 - The employee has made some progress towards improving their performance but has not yet achieved the satisfactory standard and the review period should be extended.
- 9.10 Where the Committee does not recommend the dismissal of the employee but is still not satisfied with the employee's performance so agrees a further review period to allow the employee to achieve the required level of performance, the extension period should not exceed six working weeks. Where this occurs, the Committee must reconvene at the end of the extended period to review the progress of the employee and if a satisfactory level of performance is still not met recommend dismissal with the right to appeal.
- 9.11 Where the Committee determines that the employee should be dismissed it will confirm its decision to make this recommendation and reasons in writing to the employee and ask the Council to proceed accordingly (please see Section 11 below). The Committee will also inform the employee of their right to appeal against the decision to dismiss them. The employee will be entitled to statutory notice of dismissal in accordance with their conditions of service, the Staffing of Maintained Schools (Wales) Regulations 2006 and the Employment Rights Act 1996.

10 APPEALS

Appeals against a warning being issued

- 10.1 Where the employee appeals against a decision to issue a warning under the Capability Procedure the appeal will be heard by the Capability Appeals Committee of the Governing Body. The Appeals Committee will follow the procedure outlined in Appendix B.
- 10.2 The employee must notify the clerk to the Governing Body in writing that they intend to appeal, stating their grounds for appeal, within five working days of receiving written confirmation of the decision.
- 10.3 On receipt of the written request to appeal, the clerk to the Governing Body will arrange for the Capability Appeals Committee to hear the appeal.
- 10.4 Having considered all of the evidence presented, the Capability Appeals Committee will determine one of the following three outcomes: -
- confirm the original decision;
 - agree a further review period of no more than six working weeks to allow the employee to achieve a satisfactory level of performance. Where this occurs the Appeals Committee must reconvene at the end of the extended period to review the progress of the employee and if a satisfactory level of performance is still not met confirm the original decision; or
 - Issue a lower sanction

There will be no further right of appeal.

Appeals against dismissal

- 10.5 Where the employee appeals against the dismissal decision of the Staff Discipline and Dismissal Committee the appeal will be heard by the Staff Discipline and Dismissal Appeals Committee. The Appeals Committee will follow the procedure outlined in Appendix B.
- 10.6 Where an employee has been dismissed and given the right of appeal they must notify the clerk to the Governing Body in writing that they intend to appeal, stating their grounds for appeal, within five working days of receiving written confirmation of the decision.
- 10.7 On receipt of the written request to appeal the decision of the Staff Discipline and Dismissal Committee, the clerk to the Governing Body will arrange for the Staff Discipline and Dismissal Appeals Committee to hear the capability appeal. The guidance given in paragraphs (9.4 to 9.7) will still apply.
- 10.8 Having considered all the evidence presented, the Staff Discipline and Dismissal Appeals Committee will determine one of the following three outcomes: -
- confirm the decision of the Staff Discipline and Dismissal Committee to dismiss the employee;

- agree a further review period of no more than six working weeks to allow the employee to achieve a satisfactory level of performance. Where this occurs the Staff Discipline and Dismissal Appeals Committee must reconvene at the end of the extended period to review the progress of the employee and if a satisfactory level of performance is still not met, confirm the dismissal; or
- recommend that the employee be redeployed should suitable alternative employment be available.

There will be no further right of appeal.

11 DISMISSAL OF AN EMPLOYEE

11.1 Whilst the management of school staff is wholly delegated to the Governing Body of a community school the Council is still the employer. The Governing Body therefore, can only recommend to the Council that an employee be dismissed from the school following completion of the Capability Procedure i.e. after the Staff Discipline and Dismissal Committee hearing or if an appeal is lodged, after the appeal stage. It is for the Council to enact the dismissal.

11.2 Where the school is a voluntary aided school the Governing Body is the employer of the staff who work there. The Governing Body, therefore, can enact the decision to dismiss after the Staff Discipline and Dismissal Committee have so decided whilst still giving the member of staff the right to appeal against the decision.

12 EMPLOYEE ABSENCE DURING THE PROCEDURE

12.1 It is possible that an employee will become absent through ill health either before or during the Capability Procedure. Whilst it is reasonable for the Head Teacher or Governing Body to wait for the employee's recovery, the employee should immediately be referred to Occupational Health informing them that the Capability Procedure has been commenced with the employee concerned. The Occupational Health Adviser will then be able to give advice on whether the: -

- sickness absence is related to the employee's performance issues; and
- Capability Procedure can continue (where the body of evidence is sufficiently strong enough and the employee is afforded the opportunity to present the case themselves or have it presented on their behalf).

12.2 Whilst it is difficult to continue to assess the performance of an absent employee, if at any stage of the procedure the body of evidence is sufficiently strong enough to proceed and the employee is afforded the opportunity to offer an explanation or have it presented on their behalf, the Head Teacher, or Chair of Governors may decide to: -

- conclude the proceedings on the basis that the employee has achieved a satisfactory level of performance and that it is sustainable; or
- continue the procedure to the next stage on the basis that the evidence shows that the employee has not consistently achieved a satisfactory level of performance. This decision should be made in

consultation with Occupational Health who will be able to advise on whether the employee is well enough to present themselves or take part in the next assessment process. If the employee is not well enough the Head Teacher, or Chair of Governors, may decide to suspend the process until they are.

- 12.3 Where the evidence is sufficiently strong enough to proceed to Stage 4 of the procedure where a Capability Hearing is held and the employee is absent through ill health, every effort should be made to ensure that the employee can attend the hearing to present themselves. Employees have the right to request a postponement of the hearing, however, this should not unduly delay the hearing taking place and written representations or representatives attending in the employee's absence will be allowed instead. Where a postponement is being requested, medical evidence in support of this request should be submitted.
- 12.4 Throughout this procedure if it is the advice of Occupational Health that there is no likelihood of the employee returning to work in the foreseeable future then the Head Teacher, or Chair of Governors should consider dealing with the employee's sickness absence through the School's Sickness Management of Attendance Policy. The requirement to notify EWC under the appropriate regulations dealing with professional incompetence (as outlined in section 13 below) will be unaffected by this decision.

13 REPORTING PROFESSIONAL INCOMPETENCE TO THE EDUCATION WORKFORCE COUNCIL

13.1 Employers are required to report cases of professional incompetence related to Registrants with the Education Workforce Council directly to the Education Workforce Council where the employer: -

- has ceased to use the services of a registrant on grounds relating to their professional incompetence; or
- may have ceased to use the services of a registrant on that ground had they not ceased to provide these services.

14.0 Capability Procedure relating to Attendance Only

14.1 Inability Hearing

If, after following the [Wellness at Work Policy](#), and all consideration have been exhausted, the employees level of attendance is unsustainable the manager [will arrange a formal inability hearing](#) in order to consider whether the School can continue to sustain the employee's absence. The employee will be given a minimum of seven calendar days' notice of the date of the inability hearing also advising of their right to be accompanied by a trade union representative or work colleague.

The employee will receive [written notification of the details of the Inability Hearing](#) along with a copy of the [Inability Hearing Report](#) and accompanying documents. All information must be sent a minimum of

seven calendar days before the date of the inability hearing. An inability hearing will be chaired by a member of the Staff Discipline or Dismissal Committee of the Governing Body.

The format of the hearing will follow the process outlined in the [Inability Hearing Format Document](#)

The employee will be notified in writing of the outcome of the Inability Hearing, where a decision is taken to dismiss the employee this will be on the grounds of health capability and the employee will be notified of their right of appeal within 7 calendar days of the date of the decision. Where the decision is taken to dismiss the employee, they will receive pay in lieu of notice in line with their contractual / statutory notice period (up to a maximum of 12 weeks), together with any outstanding holiday pay from the current annual leave year.

14.2 Appeals

Employees who are advised that their employment is to be terminated following an Inability Hearing have the right to appeal against the decision *of the School to terminate their employment has the right of appeal to the Governing Body's Staff Discipline and Dismissal Appeal Committee. The letter of appeal must be addressed to the Clerk to the Governing Body, and must state the employee's grounds of appeal.*

14.3 Ill-health retirement

Local Government Pension Scheme

If an employee is a member of the [Local Government Pension Scheme](#) and where an Independent Medical Advisor (IMA) has advised the Council/School that the employee is medically unfit to return to work and is a candidate for ill health retirement, the manager should arrange to meet employee and advise them of their right to be accompanied by a work colleague or Trade Union representative. At the meeting the manager will discuss the recommendation from the IMA and confirm that the employee's contract will be terminated on the grounds of ill health retirement.

In the exceptional circumstance where an employee is unable to meet with a manager to discuss the recommendation of the IMA, the decision to terminate the contract will be confirmed in writing.

Where an IMA advises that an employee is a candidate for ill health retirement, this means that they feel that the employee is permanently incapable of discharging the duties of their current role. In confirming this advice they will also advise what Tier of ill health retirement the employee would satisfy.

Tier 1

Tier 1 will be awarded where the IMA certifies that employee is permanently incapable of performing their duties and there is no reasonable prospect of being capable of undertaking gainful employment anywhere before their normal retirement age (a minimum of 65). In these circumstances the employee will receive an enhancement of 100% of their prospective membership from the date of termination to the age of 65.

Tier 2

Tier 2 will be awarded where the IMA certifies that the employee is permanently incapable of performing their duties and is unlikely to be capable of undertaking any gainful employment within three years but it is likely

that they will before reaching their normal pension age (a minimum of 65). In these circumstances the employee will receive an enhancement 25% of their prospective membership from the date of termination to the age of 65.

Tier 3

Tier 3 will be awarded where the IMA certifies that the employee is permanently incapable of performing their duties but is likely to be capable of gainful employment within three years or before reaching their normal pension age (a minimum of 65) if earlier. In these circumstances the employee's accrued benefits to the date of termination will be released without enhancement and will be paid until either gainful employment is obtained or for a maximum of three years.

The employee's case will be reviewed by the IMA or an Occupational Health Advisor after 18 months to assess if their condition has either improved or deteriorated and again if necessary, after 36 months. If their condition has deteriorated, they may then qualify for a Tier 2 enhancement. If their condition has improved the payment of pension will cease immediately.

The employee must receive written confirmation that they are retiring from work on the grounds of permanent ill health and the Tier Level and of their right to appeal against the termination of employment and the Tier Level of Ill Health Retirement.

Teachers' Pension scheme

If an employee is a member of the Teachers' Pension Scheme (TPS), ill-health benefits may be paid if you have to retire because you are permanently incapable of teaching due to illness or injury.

However, an employee must apply for ill-health retirement to the TPS. This can be done whilst you are still in work. Employees who are considering an application due to ill-health should seek advice from TPS or read their [Ill-health Retirement Guide](#). The Council will complete the necessary elements of your application.

However, only the TPS, and not the Council, can determine whether you qualify for your ill-health retirement benefits.

14.4 Ill-health Retirement Appeals

Employees who are advised that their employment is to be terminated following on the grounds of ill health retirement the right to appeal against the decision of the IMA. This right of appeal will either be against the Tier level that they have been ill health retired under or on the basis that they feel they should have been ill health retired i.e. they are questioning the medical opinion of the IMA. The employee has 6 months to exercise this right. Where an employee wishes to exercise this right of appeal this should be done in writing to the Head of People and Business Change. This only applies to both Council and School employees in the Local Government Pension Scheme. Employees in the Teachers' Pension Scheme will have their application considered by the scheme's Medical Advisors who will approve or reject an application and they may have their own appeal process.

SUMMARY OF HEAD TEACHER CAPABILITY PROCEDURE

APPENDIX A

Procedure for Stage 4 Staff Discipline and Dismissal Committee Hearing

The chair of the SD&DC will:

- Introduce those present and their role
- Explain the process to be followed and confirm that the hearing is being held in accordance with Stage 4 of the Capability Procedure
- Explain that the hearing is to consider the evidence relating to the employee's performance in relation to the performance targets set and the progress achieved during the procedure to enable the committee to determine whether or not the employee's performance has improved sufficiently
- Explain that adjournments may be requested at any stage of the hearing

Role of person advising SD&DC:

- All parties should agree on whether the person(s) advising the SD&DC gives advice in private or in front of all parties and this should be fully recorded in writing by the clerk to the SD&DC.

Presentation of management case:

- The headteacher (or chair of governors) presents their case and supporting evidence.
- The headteacher (or chair of governors) to call the designated manager/consortium representative to present their report and supporting evidence.
- The headteacher (or chair of governors) to have the opportunity to ask questions of the designated manager/consortium representative.
- The employee and/or their representative to have the opportunity to ask questions of the headteacher (or chair of governors) and the designated manager/consortium representative.
- The Committee to have the opportunity to ask questions of the headteacher (or chair of governors) and the designated manager/consortium representative.
- The headteacher (or chair of governors) to call any additional witnesses (if applicable)
- The headteacher (or chair of governors), employee and/or their representative and The Committee to have the opportunity to ask questions of any additional witnesses.

Employee (or trade union representative) presentation:

- The employee (or their representative) presents their case, supporting evidence and any mitigating circumstances.
- The headteacher (or chair of governors) to have the opportunity to ask questions of the employee.
- The Committee to have the opportunity to ask questions of the employee.
- The employee (or their representative) to call any witnesses (if applicable)
- The employee (or their representative) to have the opportunity to ask questions of their witnesses (if applicable)

- The headteacher (or chair of governors) and the Committee to have the opportunity to ask questions of the employee's witnesses (if applicable) **Conclusion:**
- An opportunity to summarise will be given to both parties.
- The person(s) advising the Committee to do so as required above either in private or in open forum.
- The headteacher (or chair of governors), the member of staff and/or their representative and (where applicable) the person advising the Committee to withdraw

SD&DC Decision:

- The SD&DC, with the Clerk to the Governors and person advising the Committee (where agreed) to deliberate in private.

In making their decision the committee should consider the following:

- Have the performance targets been met?
- Has the employee been made aware of the performance concerns and of the performance expectations?
- Has the employee been given the appropriate support and time to improve their performance and meet the performance targets?
- What evidence is available to support the employee's performance improvement/lack of improvement?
- Is the mitigation put forward by the employee justified?

The SD&DC will call both parties back to inform them of the decision and, where applicable, the employee's right of appeal.

Written confirmation to be sent to employee of the decision and right to appeal following the conclusion of the hearing.

APPENDIX B**Procedure for Staff Discipline and Dismissal Appeals Committee Hearing****The chair of the SD&D Appeals Committee will:**

- Introduce those present and their role
- Explain the process to be followed and confirm that the hearing is being held in accordance with the Capability Procedure
- Explain that the hearing is to consider the employee's appeal against the decision of the SD&D Committee
- Explain that it will be a re-hearing of the case and will consider the employee's performance in relation to the performance targets set and the progress achieved
- Explain that adjournments may be requested at any stage of the hearing

Role of person advising SD&DC:

- All parties should agree on whether the person(s) advising the SD&D Appeals Committee gives advice in private or in front of all parties and this should be fully recorded in writing by the clerk to the SD&D Appeals Committee.

Presentation of management case:

- The headteacher (or chair of governors) presents their case and supporting evidence.
- The headteacher (or chair of governors) to call the designated manager/consortium representative to present their report and supporting evidence.
- The headteacher (or chair of governors) to have the opportunity to ask questions of the designated manager/consortium representative.
- The employee and/or their representative to have the opportunity to ask questions of the headteacher (or chair of governors) and the designated manager/consortium representative.
- The Committee to have the opportunity to ask questions of the headteacher (or chair of governors) and the designated manager/consortium representative.
- The headteacher (or chair of governors) to call any additional witnesses (if applicable)
- The headteacher (or chair of governors), employee and/or their representative and The Committee to have the opportunity to ask questions of any additional witnesses.

Employee (or trade union representative) presentation:

- The employee (or their representative) presents their grounds for appeal, supporting evidence and any mitigating circumstances.
- The headteacher (or chair of governors) to have the opportunity to ask questions of the employee.
- The Committee to have the opportunity to ask questions of the employee.
- The employee (or their representative) to call any witnesses (if applicable)

- The employee (or their representative) to have the opportunity to ask questions of their witnesses (if applicable)
- The headteacher (or chair of governors) and the Committee to have the opportunity to ask questions of the employee's witnesses (if applicable)

Conclusion:

- An opportunity to summarise will be given to both parties.
- The person(s) advising the Committee to do so as required above either in private or in open forum.
- The headteacher (or chair of governors), the member of staff and/or their representative and (where applicable) the person advising the Committee to withdraw

SD&DC Decision:

- The SD&D Appeals Committee, with the Clerk to the Governors and person advising the Committee (where agreed) to deliberate in private.

In making their decision the committee should consider the following:

- Have the performance targets been met?
- Has the employee been made aware of the performance concerns and of the performance expectations?
- Has the employee been given the appropriate support and time to improve their performance and meet the performance targets?
- What evidence is available to support the employee's performance improvement/lack of improvement?
- Is the mitigation put forward by the employee justified?
- Having considered the evidence presented and the grounds of the employee's appeal, was the original decision of the SD&DC appropriate?

The SD&D Appeals Committee will call both parties back to inform them of the decision and, confirm that there is no further right to appeal under the Capability Procedure

Written confirmation to be sent to employee of the decision.

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1.1	01/06/2016	Rhiannon Emms	Revised Guidance
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2.3	01/11/2021	Human Resources	Addition of the Inability Process and Wellness at Work links
2.4	20/12/2021	Human Resources	Updated link to Wellness at Work policy
e.g. VI	Click to enter date.	Click to enter text	Click to enter text
e.g. VI	Click to enter date.	Click to enter text	Click to enter text
e.g. VI	Click to enter date.	Click to enter text	Click to enter text
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