Capability of headteachers – guidance for schools

Guidance

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Audience
Governing bodies of maintained schools in Wales; regional consortia; local authorities; diocesan authorities; headteachers and teacher unions.

Overview
This document offers guidance to schools, governing bodies, local authorities, regional consortia, diocesan authorities and trade unions on the management of headteachers who may be subject to capability procedures. Teaching staff and support staff are subject to separate capability procedures.

Action required
Each governing body must establish procedures for dealing with lack of capability on the part of staff at each school. This guidance sets out a model procedure for dealing with a headteacher’s lack of capability. Each governing body must have regard to this guidance when considering and determining a headteacher’s lack of capability.

The effect of a duty to have regard to guidance is that the person or persons to whom it is addressed must include it in the criteria applied in making the relevant decision or taking the relevant action.

This guidance is made under section 35(8) and 36(8) of the Education Act 2002, and regulation 7 of the Staffing of Maintained Schools (Wales) Regulations 2006.

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Introduction

This policy applies to the management of headteachers who may be subject to capability procedures. Teaching staff and support staff are subject to separate capability procedures.

The Welsh Government and all partners are committed to providing a first class education for the children and young people of Wales. It is recognised that the professionalism of all the staff who work in our schools is fundamental to the achievement of this goal. Headteachers have a key role in raising standards of teaching and learning in their schools. The Welsh Government is committed to ensure that all headteachers possess the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively. It recognises that the demands on headteachers are both complex and varied because of their accountability to a wide range of stakeholders, including pupils, teachers, parents, governors, local authorities, consortia, Welsh Government and the wider community.

It is the responsibility of the headteacher to commit to continuous professional development and take whatever action is necessary to improve their performance to achieve the high professional standards expected. In the vast majority of cases, headteachers in our schools meet and often exceed the performance requirements of their roles. However, in some circumstances, individual headteachers will experience difficulties for a range of reasons and may not perform their job effectively.

Where headteachers are performing below the standards required, the chair of governors is responsible for bringing this to the attention of the individual and working closely with them to provide support to help improve their performance to an acceptable level. It is the responsibility of the chair of governors and the governing body to support headteachers who are underperforming to reach the required professional standards.

The purpose of this guidance is to set out a constructive approach to achieving improved work performance through effective supervision, mentoring, training, support, review and development and to ensure fairness in responding to those situations where improvement is not achieved.
Context

Responsibility for considering and where necessary applying capability procedures for headteachers rests with the school governing body. This document provides a framework for managing headteacher capability and seeks to clarify the respective role and obligations of governors, local authorities, diocesan authorities and regional consortia to deliver the support and advice necessary for governors to achieve fair, rigorous and effective delivery of their responsibilities. Whilst the accountability for dealing with headteacher capability rests with the governing body, this guidance has been drafted to reflect best practice. This includes an expectation that governors will obtain professional advice and support from the local authority, diocesan authority or the consortium acting on behalf of the local authority, at every stage.

The document reflects the National Model for regional working. This clarifies that local authorities retain statutory responsibilities for school standards. Whilst management and delivery of operational arrangements for school improvement may rest with regional consortia, they operate on behalf of and are accountable to local authorities and it is the local authority which retains the relevant statutory powers and obligations. From the perspective of schools, the key requirement is to ensure that advice is clear, prompt, consistent and of the high quality necessary to enable the governing body to effect change and deliver improvement.

Governing bodies will require professional advice on both education and human resource management processes. Whilst consortia may provide the former on behalf of the accountable local authority, the arrangements to ensure effective and high quality human resource management support will be a matter for local authorities to determine locally. As this may vary between regions, this guidance is constructed on the understanding that the source of such advice has been determined locally by local authorities communicated to all governing bodies and is made available when needed.

Whilst there may be a strong correlation between headteacher performance and school performance, any judgement which leads to these procedures being invoked should be evidence based not assumed. The procedures reflect the expectation that at each stage decisions about headteacher performance will be based on evidence presented and following fair consideration of the headteacher response.

These procedures include the requirement to design, resource and implement tailored programmes to support headteachers to meet required standards of performance. This should be supported by local authorities and consortia, consistent with the principle that the purpose and commitment of all parties is to raise standards and improve outcomes, whilst recognising that the prime obligation to meet required standards rests with the headteacher.

Governors must respect confidentiality and the potential impact of inappropriate release of information on the reputation of the headteacher and school. This is a key obligation in the effective management of capability procedures, reinforced by the consideration that release of confidential information may constitute a breach of the Data Protection Act which exposes the individual responsible to the risk of legal action.
Managing performance

Performance management

Performance management helps schools to improve by supporting and improving the work of headteachers. It sets a framework for headteachers and governors to agree and review priorities and objectives in the context of professional development and delivery of school improvement plans. It focuses attention on making teaching and leadership more effective to benefit pupils, teachers and schools.

Effective performance management procedures demonstrate a school's commitment to develop the headteacher, ensure job satisfaction and a high level of expertise. It will also help headteachers to meet the needs of pupils and raise standards. Effective performance management means paying continuous attention to monitoring progress during the year, intervening early and providing tailored support to address headteacher development needs. Guidance on performance management arrangements for headteachers in Wales is available at http://learning.wales.gov.uk/yourcareer/performancemanagement/pmguidance/?lang=en

It should be noted that these procedures to address unsatisfactory performance are the subject of separate regulations. The performance management review meeting and appraisal statement do not form part of any formal disciplinary or capability procedures. However, any relevant information from appraisal statements may be taken into account by those responsible for taking decisions about capability.

Professional dialogue and appropriate support, targeted through effective performance management will help to avoid the need for capability procedures at a later date. In most cases improvement should be achieved through existing review processes, with appropriate and tailored support where necessary. In instances where concerns are identified in terms of potential unsatisfactory headteacher performance, these procedures should be initiated at the earliest opportunity.
Figure 1 below illustrates the relationship between effective line management with performance management and procedures to prevent underperformance. The purpose of this guidance is to deal with the capability element of the performance cycle illustrated below.

**Figure 1: Performance cycle**
Addressing unsatisfactory performance

Raising unsatisfactory performance as an issue

The purpose of raising unsatisfactory performance is to enable:

- headteachers to be made aware, promptly, of circumstances where there is concern that the required standards are not being met
- governors and headteachers to be clear about expected standards of performance and how this will be evidenced
- headteachers to be supported to improve the levels of skill, knowledge and aptitude required of them to lead their school and achieve better outcomes for learners
- headteachers to access an appropriate programme of monitoring, support, guidance and training to achieve and sustain the required standard of performance
- governing bodies to respond promptly to unsatisfactory performance of headteachers
- a fair and consistent process to be established to seek to eliminate underperformance.

Clarifying the issue

At all stages headteachers are to be provided with opportunities to be informed how or why their performance is considered to be unsatisfactory. Headteachers should be offered the opportunity to seek clarification and provide any explanation that they wish to put forward, with their views being taken into consideration. Headteachers should also be offered tailored and enhanced support, with clear success criteria and agreed expected outcomes.

Governing bodies are responsible for initiating any investigation, developing support programmes, issuing warnings and any decision to dismiss in accordance with this procedure.

Capability or misconduct?

If concerns are raised about the unsatisfactory performance of a headteacher it is important to establish the facts and to apply the appropriate procedures. A clear understanding of what is deemed to be unsatisfactory performance needs to be established including whether the issue is a lack of capability due to ill health, lack of capability due to lack of competence or a matter of professional misconduct. The following definitions are provided for guidance only, it is important that the chair of governors seeks appropriate human resource management advice to ensure that the correct procedure is invoked.

Misconduct: action or inaction which contravenes the contractual obligations of the headteacher, the rules laid down by the particular employer and/or the General Teaching Council for Wales (GTCW) Code of Professional Conduct and Practice. In such cases the agreed disciplinary procedures will apply.
Capability due to ill health: relates to any inadequacy in health or any other physical or mental quality which results in unsatisfactory performance. In these cases the agreed sickness procedures will apply.

Capability due to lack of competence: is a lack of skill or aptitude leading to unsatisfactory performance. In these cases these headteacher capability procedures will apply.
General principles

The overall purpose behind the management of unsatisfactory performance of headteachers is to secure improvement – this is a joint obligation between the governing body and the headteacher.

Throughout the capability process the underlying principles are as follows:

Values

Headteachers should be treated with respect, consistency and fairness.

All matters of managing unsatisfactory performance and related investigations will be treated in confidence by all parties involved throughout all stages of the capability process.

Where reference is made in this procedure to ‘the required standard of performance’ this means the Leadership Standards and the Code of Professional Conduct and Practice for Registered Teachers (GTCW).

Procedures

- Headteachers subject to formal capability procedures will continue to be responsible for the performance management process of the school.
- Headteachers subject to these capability procedures should be given five working days notice in writing of the time and place of any formal meeting.
- Where a headteacher’s representative cannot attend a formal meeting which may potentially lead to a formal warning, an alternative date, normally within five working days, should be offered by the teacher’s representative. Should the headteacher’s 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 the capability 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.
- Headteachers will not normally be dismissed for performance reasons without previous warnings. However in serious cases of gross negligence dismissal without previous warnings may be appropriate.
- Headteachers subject to these capability processes will be advised in writing of what is deemed to constitute unsatisfactory performance and the concerns raised against them, in advance of any meeting and will be given the opportunity to state their case and present relevant evidence before any decision is made.
- Headteachers will have the right of appeal to the governing body at all stages of the formal (Stage 2) capability procedures.
Actions

- In preparation for formal meetings any evidence that is to be presented by either party is to be provided in advance of the meeting.
- At all stages of the capability process headteachers have the right to choose to be accompanied by a work colleague or their trade union representative. Please note that this does not include a right to representation at review meetings held with the appointed adviser for the purposes of monitoring and reviewing performance (unless otherwise stated).
- The timescale for each stage will depend upon the nature of the unsatisfactory performance issue, the improvements identified as necessary and the support and development to be provided. Timescales should be sufficiently reasonable for the headteacher to demonstrate that they are capable of achieving and sustaining acceptable and improved levels of work performance.
- The length of the review period at each stage may vary, taking into consideration the circumstances and complexity of each case and may be extended in accordance with this procedure. As a general rule, review periods will normally be 20-40 working days. A longer review period may be considered but unnecessary delay should be avoided.
- If at any stage of the capability procedure the headteacher is absent due to sickness, human resource advice should be obtained to ensure that the capability process is not unduly delayed. Headteachers should be made aware that the process of managing their unsatisfactory performance will not necessarily cease due to their absence on sickness grounds.
- Appeals against formal warnings will be allowed under the Capability process (please see Annex C: Appeals) but they should not delay the ongoing nature of the process. It is the employer obligation to ensure that the processes adopted are both fair and reasonable in the circumstances and the governing body source of human resource management support will advise. Raising of grievances should be heard separately as no procedure should automatically have precedence over any other (please see Annex E: Grievance).

Records and monitoring

The recording of all evidence, the implementation of monitoring and assessment and the evaluation of the support programme are essential to the implementation of the capability process. The collection of evidence and monitoring is to be distinct from the routine performance management processes in the school. While performance management procedures cannot form part of this capability process relevant evidence collected, including that from monitoring, can be used. All data and evidence collected is to be shared between all relevant parties including the provision of written copies.

All phases of the capability process should be fully recorded with the headteacher having a record of all interviews and reviews giving the date, time and explanation provided at all stages of the procedure.

Where possible the notes of any meetings under the formal stages of the procedure should be agreed with and signed by the headteacher. If the headteacher disputes
the accuracy of any notes they should be asked to alter the notes and return them with a copy of any note taken by them or their representative upon which they base their proposed alterations.

On completion of the relevant stage within the capability process and if the headteacher is re-engaged with the performance management cycle any records should be kept from that date for the following recommended periods of time:

- Formal warning – one year
- Final warning – one year

After the suggested periods of time, warnings should be expunged and therefore cannot be referred to again either informally or formally. If matters proceed to Stage 3 and are dealt with by the staff disciplinary and dismissal committee a written, contemporaneous record should be kept in accordance with school governance regulations.

**Progress towards improving performance**

If at any stage during the capability procedure the headteacher consistently achieves the required standard and there is evidence to suggest that this improvement is sustainable, as identified in the success criteria and agreed expected outcomes, these procedures will conclude. The chair of governors will inform the headteacher of this both verbally and in writing. The headteacher will be encouraged and supported to sustain their performance in the future.

If, however, within one year following this successful conclusion the headteacher fails to sustain the required standard of performance, the chair of governors will recommence the capability procedure at the same stage where the previous capability process concluded.

Where it is necessary to recommence the formal stages of this capability procedure on more than two occasions, the chair of governors may consider that there is sufficient cumulative evidence indicating serious performance issues that require the capability procedures to recommence at Stage 3.

**Misconduct**

Where it emerges during this capability procedure that the issue causing concern is one of misconduct because the headteacher has failed to do something as a result of his or her own negligence or by refusal to act, then the issue is not one of lack of capability and it is to be dealt with in line with the school’s Discipline/Dismissal policy. Wilful disregard of professional standards of performance or refusal to cooperate with fair and reasonable measures designed to improve performance may be considered as misconduct and in extreme cases as gross misconduct.
Disability

It is possible that either prior to or during the course of this capability process, a chair of governors may become aware that a headteacher has a disability that falls under the Equality Act 2010. The chair of governors must consider whether the poor performance may be caused by or related to the individual’s disability and should be treated in accordance with provisions of the Equality Act 2010. In such circumstances human resource management advice must be sought to determine whether a referral should be made to an Occupational Health specialist for further advice, to consider the potential for reasonable adjustments and the impact of disability on the application of the capability procedures. A headteacher will not necessarily be exempted on grounds of disability from having the capability procedure applied.

However, consideration will be given to whether there are ‘reasonable adjustments’ that could be made to their working arrangements including changing duties or providing additional equipment or training.

If poor performance is caused by the disability, providing a warning under this procedure could constitute an act of discrimination. Advice should therefore be sought from an appropriate HR adviser.

Confidentiality

Performance matters should be dealt with sensitively and with due respect for the privacy of the individuals involved. All parties are to treat as confidential any information communicated to them in connection with a matter which is subject to capability procedures.

The headteacher and anyone accompanying them are not to make electronic recordings of any meetings or hearings conducted under capability procedures without agreement.

The headteacher will normally be told the names of any witnesses whose evidence is relevant to their capability hearing unless the witness’s identity should remain confidential.

Governors will be advised as to the importance of confidentiality and the consequences of any breach of confidentiality.

Representative

The headteacher may choose to bring a companion to any capability hearing or appeal hearing under this capability procedure. The companion may be either a trade union representative or a colleague. The headteacher should inform the chair of the governor capability panel who their chosen companion is in good time before any hearing.
A companion is allowed reasonable time off from duties without loss of pay but no one is obliged to act as a companion if they do not wish to do so.

The headteacher's choice of companion must have no conflict of interest which may prejudice the hearing and will be expected to make themselves available for the periods of time necessary to meet the capability procedure timescales.

Consideration may need to be given to allow the headteacher to bring a companion who is not a colleague or union representative where this will help overcome a particular difficulty caused by a disability.

**Exceptional circumstances**

In the exceptional case where the chair of governors has overwhelming evidence that the continued employment of the headteacher will jeopardise the school, pupils’ education or put the pupils or staff at risk of harm, it may be appropriate to move directly to issue a final written warning or to refer the matter to Stage 3 Staff Disciplinary and Dismissal Committee. Human resource management advice must be obtained before any such decision is taken.

For this to occur the headteacher’s performance should fall so far short of what is required that improvement to the required standard of performance may be deemed impossible or the headteacher’s failure in performance has a seriously detrimental effect in the school. The chair of governors may also consider suspending the headteacher where it is considered necessary for the protection of pupils, staff or property. Reference to the GTCW is likely to be necessary, the appointed human resource management representative will advise.
Roles and responsibilities

The roles and responsibilities of the main participants are outlined below. The clear expectation is that all parties work together to seek to improve the performance of the headteacher.

Role of the headteacher

Headteachers should:

- be fully aware of the requirements of the Practising Teacher Standards and the GTCW Code of Professional Conduct and Practice
- be fully aware of the Leadership Standards
- cooperate with their chair of governors to agree performance objectives
- cooperate with their chair of governors to achieve a satisfactory level of overall performance
- take responsibility for their training and development and be proactive in seeking to improve their performance where needs have been identified
- draw to the attention of their chair of governors to any external factors that may be impacting adversely on their performance
- make every reasonable effort to attend any meetings or hearings under this capability procedure
- engage with the local authority’s occupational health team or an appropriately qualified health professional if appropriate.

Role of the representative

The representative should:

- accompany the headteacher at all formal stages of the capability procedure
- support the headteacher in presenting their evidence and seek clarification on any issues raised during the meeting
- confer with the headteacher, if necessary, during any meeting
- represent the headteacher if they are unable to be present
- ensure they are familiar with the content of the capability procedures
- make themselves available to meet the timescales defined within the procedure.

Role of the governing body

The governing body should:

- be fully aware of the requirements of the Practising Teacher Standards and the GTCW Code of Professional Conduct and Practice
- be fully aware of the Leadership Standards
- be fully familiar with the relevant policies relating to performance management
The Role

- ensure that the policies relating to the management of the performance and unsatisfactory performance of Headteachers are implemented and are working effectively alongside other relevant policies (Please refer to ‘Annex B’)
- ensure that all relevant policies are available to the headteacher and are reviewed on a regular basis
- ensure that the appropriate committees of the governing body are established, that governors are aware of their responsibilities and receive appropriate training to support them in their roles.

Role of the chair of governors

The chair of governors should:-

- ensure the governing body adopts appropriate procedures to manage headteacher capability
- establish and maintain effective arrangements and good communications with the headteacher in relation to performance and school priorities
- obtain local authority human resource management advice in the event of any concerns about headteacher underperformance
- initiate the informal stage (Stage 1) of this procedure
- appoint, where appropriate, a designated member of the local authority/consortium to investigate the issues and/or provide appropriate support during the informal stage,
- reach a view, at the end of the informal stage, whether the identified concerns have been addressed or to convene the Governor Capability panel to determine whether formal capability procedures should be invoked
- consult the local authority as necessary to secure sufficient governor capacity to support delivery of this capability procedure.

Role of the governor capability panel

The governor capability panel should:-

- take action and a considered approach in all cases when there are concerns about a headteacher’s performance
- ensure standards of fairness, objectivity and consistency of treatment of the headteacher in all cases
- determine whether the formal stages of the capability procedure should be invoked
- initiate the formal investigation of the issues and take appropriate action at any stage in the management of unsatisfactory performance
- appoint, where appropriate, designated members of the local authority or consortium staff to investigate the issues and provide appropriate support
- ensure an appropriate programme of support is put into place for a headteacher whose performance is deemed to be unsatisfactory
- seek the advice and support of the local authority (or the diocesan authority or provider of human resources support) at every stage of the procedure.
Role of the appropriate authority

The appropriate authority may be the local authority or diocesan authority and should:-

- work with the consortium to provide advice and support to the chair of governors and governing body
- ensure accessible high quality human resource management advice is available to the chair and governing body
- exercise, as appropriate the right to attend all formal meetings of the governing body and its committees for the purpose of giving advice
- exercise, as appropriate, powers of intervention in order to ensure the appropriate procedures are adopted and followed
- deliver or commission appropriate training to equip the chair of governors and governing body to fulfil effectively their obligations under this procedure
- to liaise with the governing body to ensure that there is sufficient governor capacity for implementation of the various stages of the capability and appeals processes.

Role of the consortium

The consortium should:-

- appoint a suitably experienced officer to support the governing body, acting on behalf of and accountable to the relevant local authority
- secure and allocate an experienced Challenge Adviser to work with the school to help raise standards
- agree, broker and ensure appropriate support for the headteacher
- ensure effective communication with, and involvement of the local authority to enable that authority to fulfil effectively its statutory functions.
Capability procedures

The capability procedures will apply to all headteachers.

Stage 1: Informal stage

In accordance with the ACAS Code and recognised best employment practice it is accepted that the preliminary stage in any procedure to manage potential underperformance should be an informal process where the concerns are identified and brought to the attention of the employee before formal capability procedures are invoked.

The purposes of the informal stage are:-

- to flag up concerns at an early stage
- to ensure that expected levels of performance are understood
- to clarify current levels of performance and identify the performance gap
- to explore reasons for the gap and identify remedial actions required
- to establish the additional support needs of the headteacher required to improve performance and how these will be met
- to set a timescale for improvement with clear success criteria for expected outcomes
- to make clear to the headteacher that failure to address the identified concerns will result in the formal capability procedures being invoked.

At the informal stage it is for the chair of governors, with appropriate local authority support, to raise the issues with the headteacher.

Unsatisfactory performance is raised as an issue

It is expected that in most circumstances concerns about performance will be resolved through routine management processes, discussion and clarification of the facts and agreement on remedial actions without the capability procedures being invoked.

Before commencing the capability procedure, the chair of governors is to ensure they are satisfied that appropriate tailored and enhanced support has been provided to the headteacher to assist them in improving their performance in a supportive environment, so that they achieve and maintain an adequate standard of performance.

Where concerns regarding performance have reached a point where the headteacher is failing to respond to feedback which has been given through routine school improvement processes, the headteacher should be advised that it is necessary to clarify the possible reason(s) for their unsatisfactory performance.
Clarifying and investigating the issue

Where concerns in relation to the headteacher's performance arise, the chair of governors should arrange a meeting with the headteacher to raise the concerns and try to identify reasons and the support that can be put into place to help the headteacher to address these. In advance of the meeting the chair of governors should secure from the 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.

Five working days in advance of the meeting the headteacher should be provided with details of the performance concerns and a copy of the capability procedure.

The chair of governors would normally be accompanied at the meeting by a local authority representative. Evidence relating to the performance concerns should be presented to the headteacher so that a mutual understanding of the performance issues and causes can be established.

At the meeting the chair of governors should listen to the headteacher's response in order to discuss, consider and if possible agree steps to be taken to address identified concerns. At this point the performance concerns and support to be provided should be clearly established.

As a result of the meeting the chair of governors may determine one of the following actions:-

- that no further action is required as the chair of governors is satisfied with the headteacher's response
- that a support plan and review period should be established to address the performance concerns.

The time period for improvement should be reasonable and proportionate but not excessively long, e.g. between 20-40 working days (the review period). It is for the chair of governors to set the review period and also to establish clear targets for performance improvement. These must be reasonable, informed by the consortium adviser, discussed with the headteacher and confirmed in writing.

There may be exceptional instances where the identified unsatisfactory performance of the headteacher is considered to be so serious that the formal procedure should commence immediately (Stage 2). Advice must be obtained from the local authority and where applicable the diocesan authority before such decisions are considered.

Support plan

At this stage the school will need to make appropriate support available to enable the headteacher to improve their performance. The range of interventions may include training, coaching, mentoring, counselling, monitoring, working in a professional learning community, learning and development opportunities (as distinct from training), supervision, occupational health, etc.
During this stage the support to be provided to the headteacher should be specific, time limited and help them achieve an improvement in their performance. They should be told what is required, how performance will be reviewed, the review period, and that the formal stage of the capability procedure will commence if there is no improvement. Success criteria and agreed expected outcomes should be established. Support and monitoring should be conducted in a sympathetic and non-threatening way with the objective of improving the headteacher’s performance. However, it must be made clear that Stage 2 of the procedure will be triggered if there is no improvement within the review period.

The consortium representative will, on behalf of the chair of governors, coordinate the implementation of the support plan and will be responsible for gathering and collating evidence relating to the performance of the headteacher and progress against the performance targets throughout the review period. Progress will be reported to the chair of governors during the review period and presented to the chair of governors at the end of the period.

At the end of the review period an interview with the headteacher should be conducted by the chair of governors (in the presence of a trade union representative or work colleague if the headteacher so wishes). The appointed consortium adviser will present their report and the chair of governors may find it helpful to be accompanied at the meeting by a local authority representative.

If the chair of governors determines that the evidence from the informal support programme indicates that the headteacher’s performance remains unsatisfactory, the chair of governors will convene a governor capability panel under stage 2a of the procedure.

Where the chair of governors determines that the headteacher 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.

Where the chair of governors determines that the evidence demonstrates that the headteacher’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 headteacher reminded of the requirement to sustain the satisfactory standard of performance and the consequences of failing to sustain this standard. Support needs will be identified and addressed through routine performance management.

**Stage 2: Formal stage**

**Stage 2a: Warning Stage**

Where the chair of governors determines that actions taken during the informal stages have failed to achieve the required improvement in headteacher performance, the chair of governors will inform the headteacher that a capability
hearing will be arranged, to be heard by a governor panel, who will consider whether to trigger the formal stage of the procedure. The governing body panel should be supported by a local authority/diocesan representative.

The governor panel will comprise 3 non staff members of the governing body. A local authority representative (or diocesan representative) should attend in an advisory capacity with the consent of the chair of the panel.

The headteacher 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 officer will be provided at this point.

The report should identify the performance shortfall, detail the actions taken at the informal stage and the impact or otherwise of those interventions.

Should the headteacher wish to submit any documentation, it should be provided at least 2 working days in advance of the meeting of the governing body panel.

The purpose of the hearing is to:-

- assess the evidence performance standards against requirements
- seek to remedy continued underperformance
- allow the headteacher and representative to respond to evidence presented
- determine whether to invoke the formal stages of the capability procedure
- identify causes of continued underperformance
- agree actions to improve performance standards
- review and if necessary, renew the headteacher support arrangements
- set targets for improvement with clear success criteria and timescales
- determine whether to issue a formal warning to the headteacher to address underperformance within agreed timescales
- confirm that the headteacher will have a right of appeal against any warning issued.

At the hearing the report on headteacher performance against required standards will be presented by the consortium representative. The headteacher and their representative will then have an opportunity to respond to the report and performance concerns raised.

The governor panel will then consider all the evidence presented before determining one of the following outcomes:-

- the headteacher's performance is satisfactory and no further action will be taken. The headteacher should be reminded of the requirement to sustain a satisfactory standard of performance and the consequences if this is not achieved
• the headteacher’s performance is unsatisfactory and the headteacher should be issued with a formal warning and advised of expected improvements within a specified timescale
• The headteacher 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 the review period has already been provided under the informal stage.

In making their decision the governor panel will consider the following:-

• the performance evidence presented and the headteacher response
• the impact of headteacher performance on the school, pupils and staff
• the effectiveness of measures introduced to support the headteacher at the informal stage

If it is determined that the headteacher will be issued with a formal warning this will be presented in a written format and will state:

• the performance problems that were discussed and the standard of performance which is required
• the ways to support the headteacher to attain a satisfactory level of performance, i.e. details of any training and support to be provided
• the timescale within which this is expected to happen; this should be reasonable and proportionate recognising the importance of the headteacher achieving satisfactory standards of performance, usually within 20 to 40 working days
• the date on which the headteacher’s performance will be reviewed
• the consequences if the headteacher does not reach the required standard during the review period, including that a final warning may be issued under stage 2b of the procedure
• that the current performance management cycle for the headteacher will be suspended now that a formal warning has been issued
• the warning will remain on the headteacher’s record for one year
• the right to appeal (which should not stop the on-going Capability procedure)
• whilst no response is required, a note should be made of any response made by the headteacher.

The headteacher will have a right of appeal against the issue of the formal warning in accordance with Annex C: Appeals.

Where the evidence presented suggests that the headteacher 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 will be dealt with under the school disciplinary policy. Before considering this action the chair of the governing panel should seek the advice of the local authority (or the diocesan authority or provider of human resources support).
Support

Where a formal warning has been issued the governor panel, in consultation with the headteacher and advisors will establish a support plan specifying:-

- the support to be provided to the headteacher 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, e.g. relevant data, review of documentation, scrutiny of pupils’ work, interviews with relevant staff, including local authority and consortium staff
- the use of external expertise to judge standards and provide support may be considered

The governor panel will also:-

- ensure that the monitoring process is conducted in a sympathetic and non-threatening way with the objective of improving the headteacher’s work performance
- ensure that throughout the monitoring process the headteacher is given the opportunity of commenting upon the proposed plan of support and its implementation

The governors will need to make appropriate support available to the headteacher, offering support to enable the headteacher to improve their performance. The range of interventions may include training, coaching, mentoring, counselling, monitoring, working in a professional learning community, learning and development opportunities (as distinct from training), supervision, occupational health support etc.

Review

During the review period an appointed consortium advisor will coordinate the implementation of the support plan, support the headteacher and monitor performance against the targets set.

At the end of the agreed period of time, the consortium representative should gather evidence and undertake an assessment of the headteacher’s performance, against the identified targets, during the timescale allocated for improvement. This will then be presented to the governor panel at stage 2b.

Stage 2b: Final warning stage

The headteacher 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 at least 5 working days in advance of the meeting. All documentation for the panel, including the report from the consortium representative should be provided at this point. The report should detail the performance of the headteacher against targets set, the actions taken at the warning stage and the impact or otherwise of those interventions.
Should the headteacher wish to submit documentation to support their case this should be provided at least two working days in advance of the meeting.

The purpose of the hearing is to:-

- assess the evidence of performance standards against requirements and the progress achieved during stage 2a of the procedure
- allow the headteacher and representative to respond to the report findings and evidence presented
- enable the panel, with appropriate advice, to reach a view on whether performance standards have improved sufficiently
- identify causes of any continued underperformance
- agree actions to improve performance standards
- enable the governor panel determine whether to issue a final warning to the headteacher to address continued underperformance within clear timescales
- review the support arrangements and if appropriate to explore, jointly, the potential for alternative employment
- confirm that the headteacher will have a right of appeal against any final warning issued.

The governor panel will then consider all the evidence presented before determining one of the following outcomes:-

- the headteacher's performance is satisfactory and no further action will be taken. The headteacher should be reminded of the requirement to sustain a satisfactory standard of performance and the consequences if this is not achieved
- the headteacher's performance is unsatisfactory and the headteacher should be issued with a final warning and advised of expected improvements within a specified timescale
- the headteacher has made some progress towards improving their performance but has not yet achieved the required satisfactory standard and the review period should be extended. The period of the extension should not exceed the length of the original review period. An extension would not normally be agreed in circumstances where an extension was agreed at the formal warning stage.

In making their decision the governor panel will consider the following:-

- the performance evidence presented and the headteacher's response
- the impact of headteacher performance on the school, pupils and staff
- the effectiveness of measures introduced to support the headteacher at stage 2a.

If it is determined that the headteacher will be issued with a final warning this will be presented in a written format and will state:
the performance problems that were discussed and the standard of performance which is required
the proposals to support the headteacher to attain a satisfactory level of performance, i.e. details of any training and support to be provided
the timescale within which this is expected to happen, this should be reasonable and proportionate recognising the importance of the headteacher achieving satisfactory standards of performance, usually within 20 to 40 working days
the date on which the headteacher’s performance will be reviewed
the consequences if the headteacher does not reach the required standard during the review period, i.e. that the matter will be referred to stage 3 of the procedure to be heard by the staff disciplinary and dismissal committee of the governing body and that the outcome could be dismissal
the warning will remain on the headteacher’s record for one year
the right to appeal (which should not stop the on-going capability procedures)
whilst no response is required, a note should be made of any response made by the headteacher.

The headteacher will have a right of appeal against the issue of the final warning.

Where the evidence presented suggests that the headteacher 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 will be dealt with under the school disciplinary policy. When considering this action the chair of the governor panel should seek the advice of the local authority (or the diocesan authority or provider of human resources support)

Support

The support arrangements as set out in Stage 2a above will be reviewed and refined to seek to achieve sustained improvement in relation to Stage 2b.

Review

During the review period the consortium representative will coordinate the implementation of the support plan, support the headteacher and monitor progress against the targets set.

At the end of the agreed period of time the consortium representative will gather evidence and undertake an assessment of headteacher performance against targets during the timescale allocated for improvement. This will be presented to the governor panel. It is recommended that the governor panel secures the services of a local authority or diocesan adviser to provide support and advice.

If the governor panel judge that sufficient progress has been made and the headteacher is now achieving the required standard of performance in a way that is sustainable then they will reflect this by acknowledging the improvement made by the headteacher and by formally concluding the capability process. This will be confirmed in writing and the headteacher will be reminded of the expectation of a
sustained satisfactory standard of performance and of the consequence of failure to sustain this standard. The performance management cycle for the headteacher will be resumed.

If, however, insufficient progress has been made and there remains concern that the headteacher is still not achieving the required adequate standard of performance, the governor panel will refer the issue to the disciplinary and dismissal committee of the governing body. The governors should seek the advice and support of the local authority (or the diocesan authority or provider of human resources support) if the process moves to Stage 3.

**Stage 3: Staff disciplinary and dismissal committee**

In instances where the required improvement has not been reached following the issuing of a final written warning and the continued employment of the headteacher is in question, the matter of their unsatisfactory performance should be referred to the staff disciplinary and dismissal committee of the governing body.

A formal meeting of the staff disciplinary and dismissal committee of the governing body should be convened. (see Welsh Government’s Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies).

The headteacher 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 at least 5 working days in advance of the meeting. The letter should inform the headteacher that a potential outcome of the hearing is dismissal.

All documentation for the committee, including the report from the consortium representative should be provided at this point. The report should detail performance of the headteacher against targets set, the actions taken and the impact or otherwise of those interventions.

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

The purpose of the hearing is to:-

- assess the evidence of performance standards against requirements and the progress achieved during the procedure
- allow the headteacher and representative to respond to the report findings and evidence presented,
- enable the school discipline and dismissal committee, with appropriate advice, to reach a view on whether performance standards have improved sufficiently.

The headteacher and their representative will then have their opportunity to present their response to the report and the performance concerns raised.

The school discipline and dismissal committee will then consider all the evidence presented before determining one of the following outcomes:-
- the headteacher's performance is satisfactory and no further action will be
taken. The headteacher should be reminded of the requirement to sustain a
satisfactory standard of performance and the consequences if this is not
achieved,
- the headteacher's performance is unsatisfactory and the headteacher should
be dismissed on grounds of incapability.
- the headteacher has made some progress towards improving their
performance but has not yet achieved the required satisfactory standard and
the review period should be extended. The period of the extension should not
exceed the length of the original review period.

In making their decision the governor panel will consider the following:-

- the performance evidence presented and the headteacher response
- the impact of headteacher performance on the school, pupils and staff
- the effectiveness of measures introduced to support the headteacher at
stage 2b.

There may be exceptional circumstances where the chair of governors may consider
suspending a headteacher 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 headteacher in the school could have a detrimental effect on the
running of the school.

The headteacher has the right to appeal against the decision to dismiss to the
disciplinary and dismissal appeals committee of the governing body, within 5 working
days of the decision to dismiss. The letter of appeal must be addressed to the clerk
of the governing body and must include the grounds for the appeal.

**Appeal hearing**

The purpose of the appeal hearing is to enable the disciplinary and dismissal
appeals committee to consider the grounds for appeal as submitted by the head
teacher. The appeal should be heard within a specified time and the headteacher
should be given notice of the date and time of the appeal hearing.

The format of the appeal hearing will follow the same procedures as the dismissal
hearing. Appeal hearings will focus on the issues set out in the appeal notification,
therefore the appeal process may not always take the form of a complete rehearing
of the case. However, under certain circumstances, i.e. where new evidence comes
to light or the first hearing process was flawed or biased, it may be appropriate to
rehear part, if not all, of the case.

Following the appeal hearing the headteacher should be notified of the outcome in
writing. In some circumstances it may not be possible to reach a decision during the
hearing process. Should this be the case the headteacher should be notified at the
end of the hearing the expected date by which the decision will be made. This will be
within five working days of the hearing.
The disciplinary and dismissal appeals committee will consider whether the sanction imposed is appropriate.

If the outcome of the appeal is that a lower sanction should be issued, the nature of that sanction should be specified.

Where the disciplinary and dismissal appeals committee upholds the original decision that the headteacher should be dismissed on grounds of capability, this will be confirmed to the headteacher in writing. The headteacher must be informed:

- that their appeal has not been upheld and that the decision that they be dismissed from their employment is therefore confirmed
- That a formal letter giving notice of termination of contract will be sent to them by the appropriate authority (chief education officer or diocesan director)

The clerk to the governing body will formally notify the appropriate authority of the decision to dismiss the headteacher on grounds of incapability. Within ten working days of this notification the appropriate authority will formally give notice of termination of the headteacher’s contract of employment on grounds of capability. The headteacher will also be informed that a referral will be made to the General Teaching Council for Wales.

**Professional duties**

It is the professional responsibility of the chair of governors to comment in any professional reference provided to another educational institution if a headteacher has been subject to a formal written or final written warning which remains on file.

**Reporting to the GTCW**

It is the relevant employer’s legal responsibility under the Education (Supply of Information) (Wales) Regulation 2009, as set out in the schedule of regulations to report cases of professional incompetence related to registered teachers (Headteachers) directly to the GTCW, where the relevant employer:

- has ceased to use the services of a registered teacher (headteacher) on grounds relating to their professional standards
- may have ceased to use the services of a registered teacher (headteacher) on that ground had they not ceased to remain an employee.
Annex A: – Managing underperformance flowchart

**Headteacher Capability - Stage 1**

Concerns about headteacher performance raised with/by chair of governors

Chair of governors, following advice, decides whether capability or conduct

**Capability**

Chair of governors meets HT and local authority adviser to discuss concerns. Expectations, issues, priorities remedial measures and support package agreed. HT informed that failure to address concerns will lead to formal capability procedures being invoked

Partial progress an extension of review period considered

Review meeting with COG, HT and adviser. Chair of governors to determine whether issues are being addressed satisfactorily

**Concerns addressed. End**

Concerns remain. Chair of governors refers concerns to governor capability panel to determine whether formal procedures should be invoked.
Headteacher Capability Procedure - Stage 2

HT Capability Procedure panel established.
Panel consider consortium report on issues
Meet HT and representative to review report.
Determine whether to refer back (to informal process) or trigger formal Capability Procedures.
Clarify issues and concerns, agree priorities, agree support programme
establish timescales,
Determine whether to issue formal warning,
Explain Appeal process, plan implemented.

On conclusion of improvement period review of progress
based on consortium report.
Governor panel and Consortium/ LA Advisors discuss report
with HT and rep.

Concerns Addressed

Partial progress,
an extension of review period considered

Concerns Remain

Review of progress based on consortium report.
Governor panel and Consortium/ LA Advisors discuss report with HT
and rep.

Concerns Addressed

Targets, support plan and timescales for improvement
reviewed.
Final Warning issued. Plan implemented

Appeal

Concerns Addressed

Concerns Remain

Refer to Disciplinary and Dismissal Committee
Headteacher Capability Procedure - Stage 3

Referral from governor capability panel on completion of stage 2

Disciplinary and dismissal panel of governing body convened with appropriate adviser from LA.
Report of progress since stage 2 presented for HT and representative to respond.
Panel to determine whether progress is acceptable, partial or unacceptable

Panel Decision

Partial progress, an extension of review period considered.

Acceptable progress, concerns addressed. End

Unacceptable lack of progress
Dismiss
Advise that decision will be confirmed in writing by appropriate authority and right of appeal.

Dismissal confirmed. End

Appeal
Annex B: Guidance and other documents relevant to preventing underperformance

Revised professional standards for education practitioners in Wales
www.wales.gov.uk/docs/dcells/publications/110830profstandardsen.pdf

Performance management for Headteachers: Revised performance management arrangements 2012

Performance management for teachers: Revised performance management arrangements 2012
www.wales.gov.uk/docs/dcells/publications/120510performteachen.pdf

Performance management for unattached teachers: Revised performance management arrangements 2012
www.wales.gov.uk/docs/dcells/publications/121008unattachededen.pdf

Code of Professional Conduct and Practice for Registered Teachers

Professional learning communities
www.wales.gov.uk/docs/dcells/publications/120112plcen.pdf

Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies
Annex C: Appeals

Intent to make an appeal by a headteacher against the issuing of a warning should be notified in writing within five working days of the date of the warning and include the grounds for their appeal.

An appeal should be heard promptly as the process of managing the capability process will not necessarily cease, pending the outcome of a hearing. The headteacher will be expected to continue to work towards the targets identified with the designated person providing support whilst arrangements are made for the appeal hearing to be held. The appeal should be heard separately so that the capability procedures are able to continue uninterrupted as no procedure should automatically have precedence over any other.

The headteacher will be given written notice of the date, time and place of the appeal hearing and their right to be represented.

If new matters are raised at appeal there may be a need to carry out further investigation. If any new information comes to light the headteacher should be provided with a copy of that information and be given a reasonable opportunity to consider the same before the hearing.

If the appeal is against the Chair of Governors the headteacher should appeal to the Director of Education (or Diocesan Director) and should state the headteacher’s grounds of appeal. A headteacher who wishes to appeal against a formal warning has the right to appeal to an appeal panel and should clearly state the grounds for appeal.

All appeals to the governing body should be heard before capability matters are referred to the staff disciplinary and dismissal committee. The decision on the appeal may, where possible, be given orally at the end of the hearing, otherwise it will be provided in writing as soon as possible after the end of the hearing.

There will be no further right of appeal.
Annex D: Sickness and absence of a headteacher

It is possible that a headteacher will become absent through ill health either before or during the process. While it may be reasonable for the chair of governors or governing body to wait for the headteacher's recovery, the headteacher should immediately seek local authority human resource management advice relating to a referral to the local authority's occupational health team or an appropriately qualified health professional explaining that the management of the capability process has been commenced with the headteacher concerned. The occupational health team or an appropriately qualified health professional should then be able to give advice on whether the:

- sickness absence is related to the headteacher's performance issues
- headteacher is able to continue to participate in the capability process.

Whilst it is difficult to continue to assess the performance of an absent headteacher, if at any stage of the procedure the body of evidence is strong enough to proceed and the headteacher is afforded the opportunity to offer an explanation or have it presented on their behalf, the chair of governors may decide to:

- conclude the proceedings on the basis that the headteacher has achieved the required standard of performance in a way that it is sustainable
- continue the capability procedure to the next stage on the basis that the evidence shows that the headteacher has not consistently achieved the required standard of performance. This decision should be made in consultation with the occupational health team or an appropriately qualified health professional who should be able to provide advice on whether the headteacher is well enough to present themselves or take part in the next stage of the process. If the headteacher is not well enough the chair of governors may or may not decide to suspend the process until they are.

Where the evidence is strong enough to proceed to the dismissal stage of the capability procedure and the headteacher is absent from work through ill health, every effort should be made to ensure that the headteacher can attend the disciplinary and dismissal hearing to present themselves. However, if the headteacher is unable to attend, this should not unduly delay the hearing taking place and written representations or representatives attending in the headteacher's absence should be allowed instead.

Throughout this capability procedure, if it is the advice of the occupational health team or an appropriately qualified health professional that there is no likelihood of the headteacher returning to work in the foreseeable future, then the chair of governors should consider dealing with the headteacher’s absence through the school’s sickness absence policy. The requirement to notify GTCW under the appropriate regulations dealing with professional incompetence will be unaffected by this decision.
Annex E: Grievance

Where a headteacher feels that they have been treated unfairly in the application of the capability procedures this would normally be dealt with through the appeal process outlined at Annex C.

If they consider that they have been treated unfairly or have been discriminated against they may bring a grievance at any stage. The grievance should be heard separately so that the capability procedures are able to continue uninterrupted as no procedure should automatically have precedence over any other. However, where the grievance is against the designated person leading on the issue of unsatisfactory performance then the chair of governors should take advice and consider whether to allocate an alternative person to the role. If the grievance is against the chair of governors then advice should be sought from the local authority (or the diocesan authority or provider of human resources support).

Subject to the above, initiation of capability procedures does not in any way affect a headteacher’s right to raise a grievance under the school’s grievance policy.