

Proposed changes to performance management and capability arrangements for teachers

Analysis of responses to the consultation document

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Introduction

This report has been based on 250 responses to the consultation.

As some respondents may have offered a number of options for questions, total percentages listed under any one question may exceed 100 per cent. Throughout the report, percentages are expressed as a measure of those answering each question, not as a measure of all respondents.

The organisational breakdown of respondents was as follows:

Options	Responses	
Head Teacher:	105	42%
Teacher:	44	18%
Local Authority:	41	16%
Other:	32	13%
Governor / Chair of Governors:	16	6%
Union / Professional Association:	11	4%
Parent / Carer:	1	0%
Total:	250	100%

The Annex lists all respondents to the consultation, excluding those who expressed a wish for confidentiality.

Overview

1. Do you agree that regulations should require schools and LAs to establish a written policy that sets out their approach to managing teacher and head teacher performance?

95 per cent of respondents agreed with this question. The most common additional comment was that a written policy was essential to ensure fairness and/or consistency.

2. Do you agree that regulations should require that there is an annual appraisal cycle which supports decisions on pay, including recommendations on pay progression where relevant?

89 per cent of respondents agreed with this question. Some respondents commented that clear criteria would be needed if the annual appraisal cycle is to support pay progression decisions

3. Do you agree that regulations should require that each teacher and head teacher's development needs are identified and there is clarity about how they will be addressed?

95 per cent of respondents agreed. Various comments were made, including many about the affordability of relevant training, and teachers' entitlements to training.

4. Do you agree that regulations should require that the objectives agreed with each teacher and head teacher should be such that, if they are achieved, they will contribute to school improvement and to improving the progress of pupils?

93 per cent of respondents agreed that objectives, if achieved, should contribute to school improvement and pupil progress. Some felt this to be an essential element of the performance management process. Others expressed the view that the purposes of performance management should range beyond school improvement and the improvement of pupil progress.

5. Do you agree that regulations should require that teachers and head teachers should receive a written assessment of their performance: against their objectives for the relevant period; the relevant standards expected of teachers; and having regard to their role in the school?

84 per cent of respondents agreed with the proposal that teachers and head teachers should receive a written assessment of their performance against their objectives and the relevant standards, having regard to their role in the school.

6. Do you agree that regulations should require that the governing body receives support and challenge from an external adviser when appraising the performance of the head teacher?

83 per cent of respondents supported the proposition that governing bodies should

receive support and challenge from an external adviser when appraising the performance of the head teacher. The most common comment was that such advisers must be suitably qualified and/or experienced to undertake the role, in order to assure the quality of the support and challenge that is offered.

7. Do you agree that regulations should require schools to make teachers' two most recent written appraisal reports available on request to any other schools to which the teachers concerned apply for work?

50 per cent of respondents agreed that regulations should require schools to make teachers' two most recent written appraisal reports available on request to any other schools to which the teachers concerned apply for work. The most common comments were about the need for confidentiality and the impact the proposal would have on the operation of the appraisal process.

8. What barriers do schools face in tackling underperformance, including any created by aspects of current employment law?

Of the 186 responses to this question, nearly half identified delays as a barrier to tackling underperformance. 37 per cent of respondents cited the long-term sickness absence of a teacher – often stress-related – as a barrier.

9. Please comment on the role played by local authorities in helping schools to manage poor performance and handling staff dismissals. Is this different for those schools who employ their staff directly and for those who do not, and are there advantages for schools in directly employing their staff?

There were 156 responses to the invitation to comment, and the subsequent question. Of these, over half felt that LA involvement in the capability process was helpful, while over a quarter expressed a contrary view. Some respondents felt that schools themselves were better placed to manage underperformance, though a similar number expressed concern that schools might lack the resources to be able to do so. Some respondents raised issues relating to academies and free schools.

10. Please comment on the extent to which it would make sense for schools to make changes to their performance management arrangements and/or their capability procedures in advance of September 2012.

Of the 179 responses to this question, nearly a half opposed the suggestion that schools should make changes to their performance management and/or capability procedures ahead of September 2012. Conversely, almost as many felt that some changes could be made in advance of September 2012. Only eight per cent argued for changes to begin in September 2011.

11. Please use this space to comment on the new model policy on appraising and managing teacher performance.

There were 172 responses to the invitation to comment on the new model policy on appraising and managing teacher performance. A range of both positive and negative comments was made, with many respondents presenting a balanced range of viewpoints. The most common views expressed related to capability and conduct,

appraisal and capability, the observation of teachers including the 'three hour rule', consistent application of the policy across schools, the tone of the proposed policy, and issues relating to sickness.

12. Please use this space for comments on any other aspects of the proposals, including their likely impact, or to make any suggestions for other changes that might help tackle the issue of underperformance.

94 respondents expressed a wide range of viewpoints. Suggestions for other changes included those relating to:

- initial teacher training (ITT);
- teacher standards;
- free schools and academies

Further details are provided below.

Analysis

1. Do you agree that regulations should require schools and LAs to establish a written policy that sets out their approach to managing teacher and head teacher performance?

There were 237 responses to this question, the vast majority of which agreed with the proposal.

Yes	225	95%
No	9	4%
Don't know	2	1%

Most respondents did not make further comment. Those who did, offered the following observations.

Clarity and transparency

11 per cent of respondents commented that the written policy should be clear and/or transparent.

Respondents noted that while there must be sufficient detail to enable a policy to be understood by its stakeholders, it should nonetheless be sufficiently brief in order to be user-friendly and fit-for-purpose. In order for underperformance to be satisfactorily addressed, it was suggested that policies should be clearly written and comprehensible, roles and responsibilities clearly defined, processes for recording identified, and timescales set out.

Fairness and consistency

Six per cent of respondents indicated that a written policy was essential to ensure fairness and/or consistency

Respondents alluded to employment law, and suggested that a clear policy, consistently applied, would mitigate the risk of a rise in employment tribunals and other forms of grievance. This was reinforced by responses that suggested a need for consultation on locally agreed performance management policies, and approval by the school’s governing body to ensure that policies comply with employment law. Respondents suggested that policies should be developed in partnership with, and agreed by, teachers and their representative associations.

In the context of achieving fairness and consistency, some respondents suggested that the application of locally agreed policies should be monitored by, for example, the LA and/or Ofsted.

Other Comments

Smaller numbers of respondents also suggested that:

- new performance management arrangements should apply to academies and free schools;
- policies should mitigate the risk of performance management being used to remove teachers due to personal differences;
- schools’ performance management arrangements should encompass both teaching and support staff;
- training in the performance management process should be available.

2. Do you agree that regulations should require that there is an annual appraisal cycle which supports decisions on pay, including recommendations on pay progression where relevant?

There were 237 responses to this question.

Yes	213	89%
No	20	8%
Don't know	5	2%

There was a clear majority in favour of the proposal, with most respondents making no further comment. Those who did offered the following observations.

Clear criteria needed

Five per cent of respondents commented that clear criteria would be needed if the annual appraisal cycle was to support pay progression decisions. Respondents felt that the current standards were an important element of the criteria that should support decisions on pay progression, and that performance objectives should be linked explicitly to these. The link between pupil performance and teacher impact was identified as an important factor underpinning decisions on pay progression. Some respondents noted the usefulness of exemplification materials, such as those provided by the LA.

Other Comments

Small numbers of respondents also suggested that:

- greater clarity was needed on how performance management should link to threshold assessment;
- schools striving to achieve 'best value for money from their pay bill' might lead to the rationing of teacher pay according to budgetary constraints that were unrelated to teacher performance;
- where the head teacher was not the reviewer, any recommendation on pay should be referred to the head teacher for moderation, monitoring and quality assurance purposes, in order to ensure consistency across the school;
- the framework of the School Teachers' Pay and Conditions Document (STPCD) was complex and middle managers would not necessarily have sufficient knowledge to make robust pay recommendations;
- where PM was related to pay progression, clear records should be established and maintained;
- further discretionary elements should be added to teachers' pay arrangements;
- performance-related pay mechanisms were unfair, opposed by teachers, and undermined teachers' morale;
- progression on the main pay scale should be an automatic right and unrelated to performance management outcomes.

3. Do you agree that regulations should require that each teacher and head teacher's development needs are identified and there is clarity about how they will be addressed?

There were 237 responses to this question.

Yes	226	95%
No	10	4%
Don't know	1	0%

There was a clear consensus in favour of this proposal, with 95 per cent of respondents in agreement. Most respondents did not make further comment. Those who did, made the following observations.

Affordability of relevant training

A small number of respondents felt that insufficient resources were made available for teacher development in terms both of time and funding, and that this sometimes led to school-based training that was generic, and lacked relevance to the individual teacher. Others, however, focused on the needs of the whole school, and the importance of linking teacher development to wider school needs such as securing pupil progress and the raising of standards.

An entitlement to training for teachers

Some respondents were of the opinion that teachers should have an entitlement to development opportunities, suggesting that teachers should be able to agree their professional development needs with their appraisers, and to expect that high quality professional development would be funded and available within and beyond the school. This, it was argued, would require a national approach to meeting teachers' continuing professional development (CPD) needs. Others, however, argued that individual schools should determine development needs, without prescription from government or LAs. One respondent felt that access to the National College's National Professional Qualification for Headship (NPQH) was too limited, and that the new National Scholarship Fund for Teachers would concentrate resources on too few staff.

Other comments

Respondents also suggested that:

- teachers' development needs should be linked to the new standards;
- identification of needs should not be a time-consuming bureaucratic process;
- school leaders should be encouraged to make better use of non-pupil days;
- the identification and recording of training needs was important in the event of any future capability procedures.

4. Do you agree that regulations should require that the objectives agreed with each teacher and head teacher should be such that, if they are achieved, they will contribute to school improvement and to improving the progress of pupils?

There were 235 responses to this question.

Yes	218	93%
No	14	6%
Don't know	3	1%

A clear majority of respondents (93 per cent) agreed that objectives should contribute to school improvement and pupil progress. 6 per cent disagreed with this proposal. 12 per cent of respondents felt this to be an essential element of the performance management process, while 8 per cent expressed the view that objectives should range beyond school improvement and the improvement of pupil progress.

Essential

Twelve per cent of respondents felt this to be an essential element of the performance management process. One head teacher described how her teachers' individual objectives were already very clearly linked to pupil progress - based on hard data - and to priorities identified within the annual school improvement plan.

Other respondents focused on the need for the performance management process to establish measurable outcomes, linked to pupil progress.

Some respondents viewed the question to be unnecessary, suggesting that the link between performance management and pupil progress was self-evident.

Not only about pupil progress

Some respondents (including those who both agreed and disagreed with the proposal) suggested that there were other factors that should be taken into account when framing objectives, such as the individual teacher’s personal and career aspirations; “soft” teacher skills; pupil safety and well-being; and pupil behaviour.

Some argued that the use of specific targets for pupil progress was inappropriate and thought that teachers could not be reasonably expected to be in control of all aspects that might affect pupil outcomes, so no individual teacher ought to be held accountable for pupil progress over the longer term.

Other comments

Respondents also suggested that:

- it would be better to focus on making progress towards an objective rather than achieving it, which might encourage the setting of more challenging objectives;
- there should be provision for an objective to be set over a longer timescale than a year;
- schools should be required to establish an appeal mechanism for teachers who did not agree that their appraisal targets were fair or achievable;
- head teachers should be required to moderate teacher objectives to ensure that they represented a realistic and achievable level of challenge;
- where a school was outstanding, objectives might also include improvements to other schools as part of local partnership models;
- objectives should adhere to the SMART principle (Specific, Manageable, Attainable, Relevant and Time-bound), though some respondents argued that this was outdated and unnecessary.

5. Do you agree that regulations should require that teachers and head teachers should receive a written assessment of their performance: against their objectives for the relevant period; the relevant standards expected of teachers; and having regard to their role in the school?

There were 237 responses to this question.

Yes	200	84%
No	25	11%
Don't know	12	5%

84 per cent of respondents agreed that teachers and head teachers should receive a written assessment of their performance against their objectives and the relevant standards, having regard to their role in the school. Eleven per cent of respondents disagreed. Most respondents did not offer further comment. The small number of those who did, offered the following suggestions.

Use of Standards

A number of respondents commented specifically on the use of standards for performance management. Some felt that assessment against the standards would contribute to a more robust system, and would help head teachers to deal with underperformance more effectively. Others, while agreeing, expressed caution, and suggested, for example, that there would need to be guidance and clarity on how the standards should be used in this way. A number of respondents argued that teacher standards should continue to be used as a 'backdrop' to performance management and were concerned that the use of standards in performance management might become a 'tick-box' exercise rather than a useful tool to support judgements of teachers' performance.

Others suggested that leadership standards should be developed to reflect all levels of responsibility across the school.

Eleven per cent commented that the standards should not be used in performance management at all, arguing that this would add unnecessary prescriptive and bureaucratic detail to the process, that pupil progress measures were more important, and that the use of standards should be confined to the capability process.

Other comments

Small numbers of respondents also suggested that:

- objectives should be accompanied by identified and agreed success criteria;
- any underperformance issues should be identified at the earliest opportunity to allow for support to be in place before underperformance was allowed to escalate;
- teachers should have the right of appeal against any entry on a written record that they did not believe was a true or accurate reflection of their performance at the school;
- self-assessment and self-review should be emphasized in the performance review process;
- the written report should be brief, and guidance or exemplars would be helpful;
- teachers' objectives and development needs should be revisited throughout the year so that they could be updated or amended.

6. Do you agree that regulations should require that the governing body receives support and challenge from an external adviser when appraising the performance of the head teacher?

There were 241 responses to this question.

Yes	199	83%
No	34	14%
Don't know	8	3%

83 per cent of respondents supported the argument that governing bodies should receive support and challenge from an external adviser when appraising the performance of the head teacher. 14 per cent of respondents, but almost a quarter of head teachers, disagreed.

Qualifications and experience

The most common comment made by respondents (15 per cent) was that such advisers should be suitably qualified and/or experienced. Some suggested that individuals appointed to undertake such a role should be subject to careful selection, regulation and quality assurance, in order to ensure that they are of high quality, and able to demonstrate the right mix of skills, abilities and experience. Many of these respondents suggested that guidance, perhaps in the form of criteria, should be published. Others argued that individuals undertaking this role should be accredited. Some felt that without clear regulation, some governing bodies might appoint individuals unsuited to the role and unable to fulfil their responsibilities.

The main reasons why respondents disagreed with the proposals were that they believed:

- such a process represented an increase in bureaucracy and a waste of money;
- the school improvement partner (SIP) arrangements had not contributed to improving schools and outcomes, nor to dealing effectively with head teacher performance;
- that governing bodies should be free to determine whether they wished to obtain such advice, taking account of the skills and experience of governors represented on the school's governing body. There was a suggestion that a self-assessment guide for governing bodies would be helpful in determining whether or not they needed an external adviser.

Other comments made included:

- the loss of local authority advice and challenge would lead to an increase in costs to the school;
- governors should be required to undertake performance management training to support them in fulfilling their responsibilities when reviewing head teacher performance;
- there was a risk of poor quality advice from 'private providers' and local authorities should be required to undertake the role;

- the reference to ‘challenge’ was inappropriate as the role of an external adviser should be about advice and *support*.
- governing bodies should not employ other local head teachers as advisers, as advice might not be objective;
- external advisers should be given the additional brief of advising governors on pay progression;
- a qualified teacher should be involved in the assessment of any teaching undertaken by the head teacher.

7. Do you agree that regulations should require schools to make teachers' two most recent written appraisal reports available on request to any other schools to which the teachers concerned apply for work?

There were 239 responses to this question.

Yes	119	50%
No	96	40%
Don't know	24	10%

This proposal elicited the least support. Nevertheless, a majority of those who expressed a view agreed with the proposal. 50 per cent agreed, 40 per cent disagreed, and 10 per cent were unsure. Head teachers were more likely to support the proposal than teachers. Over 70 per cent of head teachers who expressed a view welcomed the proposal while two-thirds of teachers opposed it.

The proposal prompted strong responses on both sides. Those in agreement tended to embrace the proposal emphatically. Respondents who supported the proposal described the proposal as “excellent” and “very helpful”. Many believed that it would deal with the issue of inaccurate references often written as a result of ‘compromise agreements’ and one respondent noted that it would bring an end to the ‘dance of the lemons’. Some respondents shared the concerns about “recycling” that had prompted the proposal, but did not agree that the sharing of appraisals was the right way forward.

Those who opposed it did so mainly because of the potential impact on the appraisal process and/or on the grounds of privacy and confidentiality. Respondents commented that making appraisal reports available to future employers would run the risk of undermining a process which they felt should be focused on achieving open, honest and respectful dialogue. They suggested that bland performance management reports would result, with appraiser and appraisees less willing to use the performance management process to identify professional development needs. Comments on this proposal included that it “would be disastrous for good quality performance management”, that it “runs the risk of making the performance management system within a school ineffective”. Many respondents commented on the quality of reports and on the current system of providing references.

Privacy and confidentiality

Twelve per cent of respondents, including those who both agreed and disagreed with

the proposal, made reference to privacy and confidentiality. Some of these felt that the appraisal report should remain a confidential document between the appraiser and the appraisee. Others argued that teachers ought to have to agree before an appraisal report was made available to a potential future employer.

Quality of process/reports

A similar number of respondents (eleven per cent) expressed concerns about the potential negative impact on the performance management process, and the quality of the reports that might be produced. It was suggested that the proposal, if implemented, would constrain the performance management process and that appraisal reports might become 'bland' if the reports were to be used in the way proposed. There was some concern that the proposal might discourage teachers from taking risks and agreeing to stretching targets.

Respondents also noted that while a well-written report might support the selection process, poorly written reports might adversely affect recruitment decisions.

Candid appraisals

Seven per cent of respondents commented on the potential impact of this proposal on the openness and honesty of the process. They argued that performance management discussions should be frank and open, but that the communication of appraisal reports to future employers would lead to appraisees becoming guarded and defensive, or even dishonest. It was suggested that appraisees would be less willing to use performance management to identify and address genuine weaknesses. Equally, it was argued that any development needs identified on the appraisal report might be misinterpreted by prospective employers as suggesting serious weaknesses.

Internal use

Eight percent of respondents to this proposal expressed the view that appraisal reports should be for internal use only, to support professional development rather than the appointments process.

Standardised system

Seven per cent of respondents suggested that consistency and/or standardization would be required for this proposal to be effective. This, it was argued, should involve both the training of appraisers, quality assurance of the appraisal process, and the standardization of documentation.

References

Five per cent of respondents commented on the current system of providing references. In most cases, respondents were critical of the quality and accuracy of references, suggesting that they often failed to highlight weaknesses. Some suggested that regulations should require fair and accurate references to be provided, and that there should be clear sanctions if references were not honest. One

respondent noted that the provision of a dishonest reference would represent failure on the part of a school leader, potentially undermining the quality of pupils' education.

Other comments

Some respondents suggested alternative approaches, for example that:

- employers should establish robust recruitment and assessment processes, rather than depending on references and appraisal reports;
- head teachers might provide a balanced summary of the main issues raised in previous performance reviews as a basis for their reference, with a requirement on them to disclose if the teacher had been subject to the capability process;
- that teachers should produce a portfolio of previous appraisal and professional development records detailing performance and professional development over time;
- the provision of reports should be automatic rather than on request;
- it might be more sensible for appraisal reports to be supplied, along with a reference, upon offer of a job, rather than at the application stage, thus reducing the risk of short-listing decisions being based predominantly on the snapshot of two appraisal documents.

Other comments made were that:

- there was a risk that unresolved disagreements might result in litigation;
- the proposal had potential to damage the relationship between appraiser and appraisee, leading to an undermining of professional trust.

8. What barriers do schools face in tackling underperformance, including any created by aspects of current employment law?

Of the 186 responses to this question, nearly half identified delays as a barrier to tackling underperformance. 37 per cent of respondents cited the long-term sickness absence of a teacher – often stress-related – as a barrier. Other barriers cited by respondents included:

- union involvement;
- managers being unable or unwilling to address underperformance;
- the complexity of current performance management and capability arrangements;
- the bureaucracy involved in dealing with underperformance, including the amount of evidence required;
- current employment law;
- Ofsted's 'satisfactory' rating.

Delays

Nearly half of all respondents cited delays as a barrier to tackling teachers' underperformance. Respondents felt that the time needed to monitor and support

under-performing teachers under current regulations was too lengthy and time consuming, and was exacerbated by many teachers taking – often stress-related – sick-leave (see below). Many respondents argued that the process was weighted in favour of the employee, and pointed out the negative effects of such delays both in terms of the resource costs of maintaining incompetent teachers in employment, and the costs to pupils subjected to poor teaching.

Long term sickness absence

A significant proportion of respondents (over a third) cited long-term sickness absence as a barrier to dealing with teachers' underperformance. Many respondents made reference to their own experiences of delays to the process of tackling underperformance, expressing frustration that capability proceedings were stalled as a result of long term sickness absence. There was also a comment that entitlements to long periods of paid sick leave meant that teachers' sickness was often prolonged. In the context of stress-related illness, some respondents made reference to the Disability Discrimination Act, citing this as a factor contributing to some managers' reluctance to tackle underperformance.

While some respondents welcomed the suggestion that sickness absence should not necessarily result in suspension of capability action, others argued that it would, nonetheless, be difficult to continue such action in the absence of the individual. One respondent felt that the model policy should offer further guidance as to how to continue with capability procedures in cases of teacher sickness absence.

Lack of clarity; complexity, bureaucracy, and evidence required

A little over a quarter of respondents felt that existing teacher performance and capability regulations were too bureaucratic, complicated and over-prescriptive, and that the long-winded procedures that were required disempowered head teachers endeavouring to deal with underperformance. One head teacher expressed frustration at the need to follow a range of different and sometimes overlapping policies and procedures – such as those relating to capability, disciplinary and sickness absence. Others felt that the amount of evidence required, combined with the time needed to gather it, were constraining factors in tackling underperformance.

Union involvement

A quarter of respondents to this question cited unions as being a barrier to tackling teacher underperformance. Head teachers felt that the unions placed the protection of their members' interests above that of the interests of the children that they taught, and that in some cases unions encouraged members to take sick leave as a 'delaying' tactic, often accompanied by negotiations to reach 'compromise agreements'.

Head teachers / governors / LAs unable or unwilling to address

Twelve percent of respondents to this question cited an inability and/or unwillingness on the part of managers to tackle underperformance as a barrier.

Some respondents suggested that head teachers might in some cases be reluctant to tackle underperformance through fear of being accused of bullying and harassment, or through concern at the increased workload that capability proceedings might generate. Others felt that school leaders, particularly inexperienced ones, might lack the training (see below), skills, strength of character and confidence to deal effectively with underperformance, particularly when faced with skilled and experienced union representatives. Some head teachers felt that local authority human resource (HR) personnel were risk adverse, concerned more about the possibility of an expensive tribunal than protecting the interests of pupils.

Lack of resources and support

A similar number of respondents suggested that a lack of resources and support presented a hindrance to tackling underperformance. Many of these highlighted the need for relevant training – including in the regulatory framework – both for school leaders and governors.

Employment law

Eight per cent of respondents suggested that employment law was a barrier to tackling underperformance as it discouraged school leaders from taking action. One local authority respondent pointed out that there was a fear amongst schools, rightly or wrongly, that employment legislation often favoured the employee rather than the employer. As a result, they were afraid to embark upon a path that could ultimately lead to dismissal and legal challenge from an employee.

Conversely, others argued that current employment law created no barriers to tackling under performance; rather it protected employees from discrimination by ensuring that they were treated fairly and in accordance with established procedures.

Deeming Ofsted 'satisfactory' as acceptable performance

Six per cent of respondents, mainly head teachers, felt that Ofsted's 'satisfactory' rating presented a barrier to dealing with underperformance, particularly where that teaching was judged to be 'just satisfactory'. It was felt difficult to take capability action against a teacher whose teaching had been assessed by Ofsted as 'satisfactory'. Some head teachers were emphatic in their view that satisfactory was 'not good enough'. One argued that all teachers should be expected to be able to teach consistently 'good' lessons.

Other issues

Some respondents felt that the 'three hour rule' presented a barrier to tackling underperformance because it restricted opportunities to monitor teachers' performance, and, in turn, the ability of the school leadership to gather sufficient evidence to 'build a case'.

A few respondents made reference to underperforming teachers in leadership roles. Some felt that a proportionate response to such underperformance might be the loss of leadership responsibilities (and associated pay), Others felt that dismissal was more appropriate (with a possible offer of re-employment if there was a suitable

vacancy and if it was only the individual's leadership and management skills that were lacking.

Similarly, there were a number of comments about underperforming teachers on the upper pay scale and the inflexibility of teachers' pay arrangements. Respondents commented that teachers on the upper pay scale should revert to the main pay scale if their teaching performance no longer met threshold standards.

Respondents also suggested that:

- the process could become even slower if schools were challenged on decisions based on local policies rather than a national protocol;
- it was right to make reference to ACAS Codes - teachers should receive no more protections than those working in other public and private organisations;
- compromise agreements could achieve a positive outcome for both employer and employee in terminating employment in a mutually agreed way;
- occupational health providers were often reluctant to give clear unequivocal advice on capability issues;
- the combination of the QTS and core standards into a single set of teacher standards had removed the progressive step from trainee to qualified teacher;
- severe performance issues were not the main problem as they were easier to tackle. Rather it was "the low-level under performance that drains resources in school - the staff who do just enough to get by but pick up their game when Ofsted hover or during a planned observation".

9. Please comment on the role played by local authorities in helping schools to manage poor performance and handling staff dismissals. Is this different for those schools who employ their staff directly and for those who do not, and are there advantages for schools in directly employing their staff?

There were 156 responses to the invitation to comment, and the question. Of these, over half felt that LA involvement in the capability process was helpful, while over a quarter expressed a contrary view. Head teachers were split almost exactly down the middle – 33 had found LA involvement helpful, compared with 31 who had found it unhelpful. Some respondents felt that schools themselves were better placed to manage underperformance, though a similar number expressed concern that schools might lack the resources to be able to do so. Some respondents, including those representing academies, raised issues relating to academies and free schools.

LA/HR advice and support is good / necessary

Many head teacher respondents commented on their experience of receiving high quality advice and support from their LA. Respondents identified a number of roles that LAs currently played in supporting schools to deal with underperformance. These included:

- training opportunities to support reviewers;
- developing policies and procedures, negotiated with unions, for adoption by schools;

- the provision of advice and expertise in interpreting regulations and employment law;
- funding, e.g. to cover resource costs;
- brokering high quality support for schools;
- moderating and sometimes challenging performance judgements;
- providing distanced and more objective views;
- managing risk.

One head teacher respondent made reference to a member of staff who, with LA support during the capability process, had developed into an innovative and professional teacher, ready for deputy headship. Another respondent from an academy commented that the LA had proven to be responsive and supportive. Some respondents felt that if LA support and advice was not available, schools would need to seek such support from elsewhere, and argued that this might lead to errors and, as a potential consequence, litigation.

LAs not helpful or supportive

Conversely, many respondents reported finding LAs unhelpful and/or unsupportive. Criticisms of LAs included:

- they tended to be risk-averse, fearing constructive dismissal or bullying claims that might lead to employment tribunals;
- they often tried to 'manage away the problem' rather than tackle it head on, e.g. through 'compromise agreements' with unions;
- their involvement often resulted in delays;
- their advice often favoured the employee and failed to deal with performance issues.

Schools themselves better at managing underperformance

A number of respondents felt that schools rather than LAs were better placed to deal with underperformance issues. Some of these respondents suggested that consortia of schools would be able to share expertise, resources and capacity. One academy leader reported that independent HR advice and support had enabled individual cases to be dealt with more quickly and robustly.

Schools lack resources to manage underperformance

One in ten of respondents to this question made reference to schools' lack of resources that would otherwise enable them to deal with underperformance, particularly in the case of small schools who might struggle to afford expert advice and support. Respondents also noted that LA advice and support was often less expensive than obtaining independent advice. Others indicated that LA involvement included indemnifying schools against tribunals and other associated legal costs.

Academies/free schools issues

A number of respondents, including those from academies, made specific reference to academy and free school factors.

One respondent, from an academy, reported issues of teacher performance, some serious, arising once schools had left LA control. Another recorded concerns that staff might be treated inconsistently when they moved into, out of, or between academies.

Direct employment of staff

Many respondents commented in response to the question relating to schools' direct employment of staff.

Those in support of this argued, for example, that schools would be empowered to make more robust decisions, and that this would resolve the tension between the interests of the school and the interests of the LA. One respondent representing a converted academy felt that independent HR advice and support obtained outside of the LA had enabled the school to deal more quickly and robustly with individual cases of teacher underperformance.

However, the majority of respondents were cautious. Concerns expressed included that high-quality applicants might be discouraged from working in schools which employed staff directly; that many head teachers and governors struggled in their understanding of complex employment law; and that contracted suppliers might not have the specific expertise they needed in dealing with schools.

An LA suggested that while direct employment of staff by all schools would help to clarify the employment relationship, it would not diminish the need for the kind of advice and support that an LA could offer.

Other comments

Some respondents mentioned equality issues, arguing that:

- consistent support and advice was needed, particularly with respect to the treatment of older and disabled teachers;
- without expert support and advice, head teachers and school governors might be at risk of dismissing teachers unfairly or of committing acts of unlawful discrimination.

Other comments included:

- LAs were often able to support the relocation of a struggling teacher to a different school within the authority where the reason for their poor performance was identified as being relevant only to their current school;
- the removal of LA involvement in capability proceedings might open the door to harassment and/or bullying of teaching staff.

10. Please comment on the extent to which it would make sense for schools to make changes to their performance management arrangements and/or their capability procedures in advance of September 2012.

Of the 179 responses to this question, nearly half opposed the suggestion that schools should make changes to their performance management and/or capability procedures ahead of September 2012. However, almost as many felt that some changes could be made in advance of September 2012. Eight per cent argued for changes to begin in September 2011. Others were less concerned about the date of implementation, but commented that the key thing was for the new appraisal and capability arrangements to come into force together. 12 per cent of respondents ranging across the three categories above felt that additional training and/or guidance would be helpful, or should be provided.

Does not make sense before September 2012

46 per cent of respondents expressed the view that it would not make sense for schools to make changes to arrangements and procedures ahead of September 2012. The reasons given were:

- that changes should not be implemented when staff were part-way through the current cycle (2011/2012);
- the introduction of new performance management arrangements should be aligned with the proposed introduction of new teacher standards in September 2012;
- the need to align the new arrangements with the school teachers' pay and conditions document (STPCD);
- that time was needed to undertake local consultation both with staff and professional associations before any new processes, procedures and policies were introduced.

Prior to 2012 acceptable

41 per cent of respondents felt that some changes could be implemented ahead of September 2012. Many suggested that the performance management arrangements should not change until September 2012 (for the reasons given above), but that it would be worth implementing the changes on capability procedures earlier.

Should begin in 2011

A small number of respondents (eight per cent) favoured changes to performance management arrangements and capability procedures being implemented as soon as possible. Some of these respondents commented that this would protect the life-chances of pupils who might otherwise suffer as a result of poor teaching.

Training and / or guidance needed

Twelve per cent of respondents made specific reference to the need for training and/or guidance ahead of the implementation of any changes to performance management arrangements and capability procedures. Some argued that both appraisers and those being appraised should receive such training ahead of the introduction of any changes being introduced; others suggested that school governors should be trained, particularly where they had responsibilities relating to head teacher performance.

11. Please use this space to comment on the new model policy on appraising and managing teacher performance.

There were 172 responses to the invitation to comment on the new model policy on appraising and managing teacher performance. A range of both positive and negative comments was made, with many respondents presenting a balanced range of viewpoints. The most common views expressed related to capability and conduct, appraisal and capability, the observation of teachers including the 'three hour rule', consistent application of the policy across schools, the tone of the proposed policy, and issues relating to sickness including stress.

Positive comments

48 per cent of respondents made positive comments about the new model policy describing it variously as “simpler and fairer”, “superb”, “straightforward and succinct”, “clearer and less complex” and “a foundation for meaningful performance management”. Respondents commented that:

- it provided a framework for schools and LAs;
- the lack of prescription meant that it could be adapted to local needs;
- The removal of the informal stage of the current capability procedure was particularly welcomed, as the performance management process should provide sufficient opportunities for improvement.

Negative comments, including tone

Half that number (24 per cent) made negative comments about the policy, describing it as “dangerously threatening”, “unnecessary and ill thought out” and “a knee-jerk reaction”. As well as specific issues identified below, respondents commented that:

- it was too general, reading more as a statement of intent;
- without further guidance, schools might simply adopt it with little adaptation;
- it took insufficient account of employment law;
- it was a threat to teachers' well-being.

Some respondents felt that the tone of the policy did not emphasise sufficiently the benefits of performance management, and was too heavily focused on capability and conduct matters. Respondents felt that this would contribute to the performance management process becoming adversarial rather than focused on achieving improvements in teacher performance through development and support.

Capability and conduct

Eighteen per cent of respondents expressed concern that the model policy explicitly linked teacher capability with teacher conduct, arguing that, despite both being covered together in the ACAS Code of Practice on Disciplinary and Grievance Procedures, these were different processes and should be dealt with separately. References to “discipline” and “disciplinary meetings”, gave the wrong impression about underperforming teachers.

Appraisal and capability matters

A similar proportion of respondents expressed the view that the policy linked appraisal and capability too closely, and that there should be greater demarcation between the two processes and clarity that, whilst the appraisal processes should apply to all teachers, the capability procedures should apply only to those who were underperforming.

A smaller number of respondents felt that combining appraisal and capability policies was a positive step.

Observation of teachers

14 per cent of respondents made reference to the observation of teachers, including the ‘three hour limit’. While some respondents welcomed the removal of the three hour limit and suggested that there was a need for greater flexibility, a similar number opposed its removal, and expressed concerns that observation might become burdensome for some teachers or groups of teachers, giving rise to issues of fairness and equity among a school’s staff. Some of these suggested that lesson observation might be used as a punitive measure, tantamount to the harassment and/or bullying of teachers. They felt that the purposes of lesson observation should be made clear, and that the outcomes of observations should remain confidential among those involved.

New policy must be consistent across all schools

One in ten respondents commented that consistency across schools, including Academies and Free Schools, was important. Respondents argued that:

- while greater flexibility might be appreciated, a clear national framework would achieve fairness of application;
- the non-statutory nature of the model policy could lead to a lack of consistency;
- the exclusion of free schools and academies from new arrangements might create a two-tier system, with very different processes and procedures emerging;
- a consistent policy was more likely to ensure compliance with employment law;
- the model policy nonetheless provides a national benchmark.

Issues relating to sickness and stress

Five per cent of respondents made reference to teacher sickness and/or stress. Some commented on the long periods of paid sick leave to which teachers were entitled. Respondents felt that additional guidance would be helpful, particularly on how the capability process might continue during the sickness absence of the teacher.

Other issues

In response to the invitation to comment on the model policy, a very wide range of other issues was identified. These included:

- concern that the capability process might be stalled as a result of the teacher lodging a grievance;
- the way in which the governing body should carry out the review of the head teacher's performance, including the suggestion that this should be undertaken by a sub-group;
- the view that there should continue to be a national referral process for the most serious cases of incompetence;
- the need for clarity in indicating where a teacher may be accompanied, such as by a union representative, and where legal representation might be required;
- the view that maximum timescales should be included for various stages of the capability process;
- a feeling that the terms 'satisfactory' and 'unsatisfactory' when applied to teacher performance were ambiguous;
- the absence in the model policy of a mechanism by which teachers might appeal against any aspect of the appraisal statement;
- the absence of a requirement for schools' policies to be reviewed;
- issues related to pay recommendations.

A number of respondents felt that it was neither fair nor lawful for teachers to be dismissed on capability grounds without first receiving a formal warning, and having the opportunity to demonstrate improvement.

12. Please use this space for comments on any other aspects of the proposals, including their likely impact, or to make any suggestions for other changes that might help tackle the issue of underperformance.

There were 94 responses to this invitation.

Positive comments

Over a third (38 per cent) of respondents who made additional comments to the proposals expressed positive views. Head teachers were particularly positive. Respondents felt that the proposals would be welcomed by head teachers, particularly those heads that had encountered barriers previously to dealing with

teacher underperformance. One commented that “Any head teacher who has seen the damage which an inadequate teacher can do to children and their learning will welcome these proposals.” A number of respondents referred to the need to ensure that pupils should not be subject to poor teaching, and to the need to improve pupils’ life chances. A streamlining of current processes was welcomed. Respondents felt that this would provide the opportunity for school leaders to deal more quickly with underperforming staff which, in turn, was likely to improve pupils’ progress.

Others respondents commented that the proposals would bring the management of teachers’ performance more into line with the management of other professionals. Some respondents welcomed the comments in the consultation document about the importance of head teachers providing accurate references and the suggestion that schools should offer probationary periods. An academy respondent reported that they had included a six month probationary period in all staff contracts.

Negative comments

Over a quarter (28 per cent) of respondents who made additional comments expressed negative views. Some respondents argued that the proposals would be detrimental to the performance management process, and that this would make the task of head teachers and school leaders more difficult. Others argued that a negative impact on teacher morale would lead to a detrimental impact on teacher performance and pupil progress. Some respondents argued that the proposals would lead to inconsistent approaches across schools, and a consequent increase in case workload for both unions and local authorities. A number of respondents felt that the proposals would lead to punitive action, confrontation and adversarial performance management practices, and thought the proposals should be framed in a more supportive manner. Some noted that the proposals focused disproportionately on what was felt to be a relatively small number of underperforming teachers, to the detriment of the majority.

Some respondents expressed the view that the new proposals, if implemented, would have a disproportionately negative impact on minority groups, including older teachers, black and minority ethnic (BME) teachers, and those with a disability, and argued that teachers from these groups were already disproportionately represented in capability and conduct proceedings.

Suggestions for other changes

In response to the invitation to make suggestions for other changes that might help tackle the issue of underperformance, respondents suggested that there should be:

- improvements in initial teacher training (ITT) ;
- a strengthening of the link between performance management and national standards, and that there should be new national standards for school leaders to help with the appraisal of those with leadership responsibilities;
- an extension of the new arrangements across all schools, including free schools, academies, and the independent sector;

- relevant training for teachers, school leaders and governors ;
- a possibility of reversing threshold and upper pay scale progression for higher paid teachers whose performance had deteriorated;
- the option to offer a retraining programme for underperforming teachers;
- retention of the ability to refer cases of professional incompetence to a national regulator, such as the new teaching agency, which could bar teachers from teaching on capability grounds;
- an ability to “demote” teachers into other roles in the school;
- a national system of quality assurance of new arrangements, such as by Ofsted;
- better and more targeted use of the five non-pupil days.

Next steps

New arrangements for teacher and head teacher appraisals in maintained schools in England, and for dealing with underperforming teachers were announced on 13 January 2012. Details are available at:
<http://www.education.gov.uk/schools/leadership/deployingstaff>

List of respondents to the consultation

A, Catherine (Bury LA)
 Adair, Ann (Hollyfield Primary School)
 AMiE (ATL) (Yvonne Fleming)
 Anders, Amanda (Roscoe Primary School)
 ASCL (Joe Liardet)
 Ascot Heath CE Junior School (Sarah Theaker)
 Association of Teachers and Lecturers (ATL) (Simon Stokes)
 Babcock 4S (Nicole Evans)
 Backhouse, Ian (Castle Bromwich Junior School)
 Baker, Vivien (Primary School HT)
 Balfe, Kieran
 Barr, Jon (Meadowbrook Primary School)
 Bateson, David (Ash Field School and Federation of Leaders in Special Education)
 Beatbullying (Thaddaeus Douglas)
 Beer, Alison (Worthing High School)
 Birmingham City Council (Sarah Wager)
 Bishop-Rowe, David (Sutton school)
 Blackpool Council (Lynn Barugh)
 Bowcher, Philip (Hardwick Middle School Chair of Governors)
 Brady, Claire (Wilthorpe Infant School)
 Brearley, Cathy (Croydon LA)
 Breed, Barbara
 Bright, Steve (George Green's School)
 Brighton & Hove City Council (Annie McCabe)
 Brooksbank, Chris (Flookburgh CE Primary School)
 Brown, Ed
 Buckinghamshire County Council (Steve Edgar)
 Castleton Primary School (L Torrance)
 Catholic Education Service for England & Wales (Marian Moynihan)
 Cheshire West and Chester Council (Janis Maloney)
 Chaucer Technology School (Simon Murphy)
 Cheshire East Council (Craig Hughes)
 Chick, Denise (Felpham Community College)
 Children, Education & Social Care (Eric Jewitt)
 Church of England Education Division and National Society (Liz Carter)
 City of York Council (Jill Hodges)
 Claxton, Charles (George Green's School)
 Clayton, Robert (Campion School)
 Collier, Vaughan (Buttsbury Junior School)
 Collins, Anna (School)
 Consultation Response Team, The British Psychological Society, (Suzanne Jefford)

Cook, Clare
Corbett, Rob (Tideway School)
Cotton, Ged (Davigdor Infants)
Cowan, Hugh
Cowland, Mary (Burlington Infant and Nursery School)
Crawshaw, Ann (Feversham College)
Cuckoo Hall Academies Trust (Patricia Sowter CBE)
Davie, John (Harden Primary School)
Davies, Mary (Maiden Erlegh School)
De La Salle School (Mike Curnock)
Denham, Jean (Victoria Park Primary School)
Derbyshire County Council (Teresa Potter)
Donaldson, Lynda (Kates Hill Community Primary School)
Dougan, Lee (School)
Dowling, Tony (Thomas Rotherham College)
Duckles, Sharron (Ryelands Primary School)
Dudley MBC (Sam Webb)
Earnshaw, Andrew (Mount Hawke Academy)
Ellis, Martin
Foss-Clark, Peter (Staple Hill Primary School)
Foster, June (Federation of Arthur's Hill Primary Schools)
FSNA (Barry Featherstone)
Furness, Elizabeth (Equipped for Success Limited)
Gayler, Christine (Norman Gate School)
General Teaching Council for England (Dawn Samwell)
Gibson, Stephanie (St. Catherine's Primary School)
Gloucestershire County Council (Elizabeth Mitchell)
Goddard, Julie (Alexandra High School)
Gooch, Rachel (Woolpit CP School)
Gornall, Debbie (Ribblesdale Children's Centre)
Goulden, Roger (Educational Consultant)
Grady, Phil (Bury CE High School)
Graham, Samantha (Ryelands Primary School)
Green, Jo (Brookwood Primary School)
Groves, Bernadette (Big Wood School)
Grylls, Eleanor (Biddenham International School and Sports College)
Gumn, Simon (Burnholme Community College)
Haberdashers' Aske's Federation (Adrian Percival)
Halford, Anna (St Andrews Primary School)
Haringey Council (Carmelina Tona)
Harley, Julia
Harrison, John (Tunbridge Wells Grammar School for Boys)
Henry Tyndale School (Rob Thompson)
Hesketh, Katherine
Heyes, Warren (South Wirral High School)

Higgins, Maria
Holmer Lake Primary School (Sian Deane)
Hughes, Sarah (Hampshire County Council)
Hull City Council, C&YPS (Herrick Sharon)
Incorporated Society of Musicians (ISM) (Henry Vann)
Iredale, Alison (University of Huddersfield)
Jarman, Shane (Denaby Main Primary)
Jenner, Alan
John Kyrle High School (Nigel Griffiths)
Johnson, Km (Bradfields School)
Johnson, Sonia (TDA)
Joice, Adrian
Jones, Diane (St Thomas Catholic Primary School)
Katner, Kevin (North Somerset Council)
Kent County Council (Rob Semens)
Kineton High School (Julia Morris)
King, Jodie (IES)
Kingham, Peter (All Saints' Academy, Cheltenham)
Lancashire QCI (Danny Pentecost)
Lauckner, Sarah
Lodge Park Technology College (Guy Shearer)
London Borough of Enfield, Schools' Personnel Service (S. Fryer and B. Banks)
Lowen, Garry
Luker, Richard (Marden Lodge Primary School)
Mackereth, Andrew (Heart of England School)
Martin, Brian
Martin, Maureen
Matthews, Margaret (Malden Manor Primary and Nursery School)
McDonough, Jenni (Fagley Primary)
McGregor, Andrew (Salehurst CE Primary School)
McNally, John (Shelley College)
McVeigh, Merna (Education Consultant)
Meadgate Primary School (Sally Masters)
Mirfield Free Grammar and Sixth Form, The (Jennifer Ryan)
Moore, Jonathan (Aston Tower Primary School)
Moynihan, Daniel
NASUWT (Emma James)
National Association of Head Teachers (NAHT) (Kathryn James)
National Employers' Organisation for School Teachers (NEOST) (Anita Jermyn)
National Governors' Association (Gillian Allcroft)
National Union of Teachers (NUT) (Sarah Lyons)
Newcastle City Council (Jill Jaffray)
Newell, Thomas
Newman, Carla (Prendergast vale college)
N'Guessan, Teresa (Camelot Primary School)

Norfolk County Council (Bob Hedley)
North Tyneside Council (Paul Stewart)
North Yorkshire County Council (Susan McGinn)
Northamptonshire County Council (Rose Kinley)
Oulton, Brian (Chesterfield High School, Crosby, Liverpool)
Owen, Carole (Bankfield School, The)
Palmer, Carmen (St Richard's School)
Peer, Caroline
Pembleton, Adrian (State Primary)
Pleasants, A
Portsmouth City Council (Anna Buxcey)
Price, Richard Patrick David
Quayle, Vince
Ramplin, Jacci (Backwell School)
Randall, Gerry (University of Bradford)
Randall, Joanna
Reddiford, Jon
Reeves, Stuart (Mascalls School)
Robbins, Michele (Robbins T and C Ltd)
Roberts, Lindsay
Robinson, Marilyn
Rushcliffe School (Phil Crompton)
Sainsbury, Jacqueline (School and nursery)
Scutt, Victor (Light Hall School)
Sheffield City Council (Karen Myers)
Simm, Mike
Sirr, Robert (Griffin Primary School)
Smart, Pauline (The Federation of Abbey Infant & Abbey Junior Schools)
Smith, Alyson (Bromley Pensnett Primary School Dudley)
Smith, Jo
Smith, R
Smith, Tony (Priory School)
Southwark diocesan Board of Education (Colin Morton)
Spiers, Eugene
Spurgeon, Neil (Spurgeon Training)
St Andrew's C of E Aided Primary School, Crawley (Derek Lawrence)
St John Fisher Catholic College (Fionnuala Hegarty)
St Joseph's Catholic Primary School (Stephen Phillips)
St Neots Community College (Scott Preston)
St Helens Council (Steven Rigby)
Staffordshire County Council (Darren Willetts)
Storrie, David (Hammond Community Junior School)
Suffolk County Council (Libby Wragg)
Surrey Secondary Phase Council (M J Oddie)
Sweeney, Sam (Cedar Mount High School)

Thames Ditton Infant school (Julie McCallum-Allen)
Thompsons Solicitors, (Jennie Walsh)
Tomlinson, C (Rushcliffe School)
United Learning Trust (ULT) (Laura Williams)
Unsworth, Raj
Voice the Union (Denise Litchfield)
Wakefield LA (Steve Houlahan)
Wakely, Virginia
Walton, Colin (Ryelands Primary School)
Watkinson, Emma (Longfield Junior School)
Weiland Jones, Cornelia
Westwood Primary School (Julie Martin)
Wheeler, Matthew (Hodge Hill Sports and Enterprise College)
White, John
White, Stephen
Whitmore, Chris
Wickford C of E (Debbie Rogan)
Wilkins, Caroline (Children's Services)
Williams, Annemarie (Humberstone Junior School)
Wiltshire Council (Lorraine Nowlan)
Winsombe Primary School (L.J Grogan)
Wright, Tom (Educate4Change Limited)

There were also 18 anonymous responses and 34 confidential responses.

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