

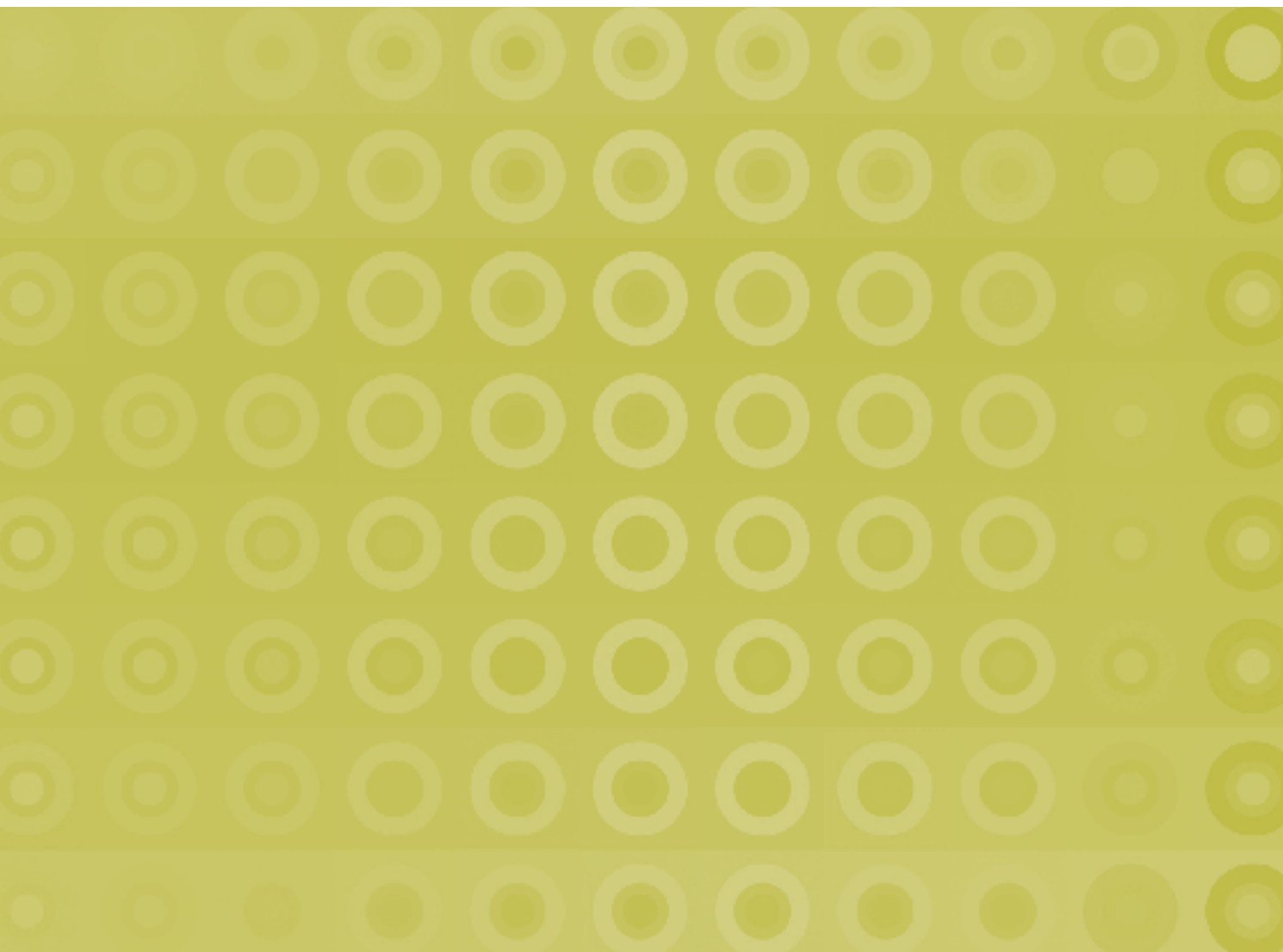


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# Capability of school teaching staff

Guidance for schools



## Guidance

Guidance document no: 111/2013

Date of issue: November 2013

# Capability of school teaching staff

<b>Audience</b>	Governing bodies of maintained schools in Wales, local authorities, diocesan authorities, headteachers, teachers, teacher unions and regional consortia.
<b>Overview</b>	This document offers guidance to schools, governing bodies, local authorities, diocesan authorities, headteachers, teachers and trade unions on the management of teaching staff who may be subject to capability procedures. Headteachers and support staff are subject to separate capability procedures.
<b>Action required</b>	All governing bodies and headteachers shall have regard to this guidance when reviewing and implementing procedures for the management of capability procedures.
<b>Further information</b>	Enquiries about this document should be directed to: Workforce Team Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: <a href="mailto:WorkforceTeamMailbox@Wales.gsi.gov.uk">WorkforceTeamMailbox@Wales.gsi.gov.uk</a>
<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.wales.gov.uk/educationandskills">www.wales.gov.uk/educationandskills</a>

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# Part 1

## **Introduction**

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

The Welsh Government is 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. The Welsh Government is therefore committed to ensuring that all teachers possess the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively.

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

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

## Managing performance

### Performance management

Performance management helps schools to improve by supporting and improving the work of teachers as individuals and in teams. It sets a framework for teachers and leaders to agree and review priorities and objectives in the context of the school's 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 all teachers to ensure job satisfaction, high levels of expertise and progression of staff in the profession. It will also help teachers to meet the needs of pupils and raise standards. Effective performance management means paying continuous attention to monitoring progress during the year by line managers, intervening early and providing support if there are concerns about the performance of a teacher. Guidance on performance management arrangements for teachers in Wales is available at [www.wales.gov.uk/docs/dcells/publications/120510performteachen.pdf](http://www.wales.gov.uk/docs/dcells/publications/120510performteachen.pdf)

It should be noted that the 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, but any relevant information from appraisal statements may be taken into account by those responsible for taking decisions about performance, pay, promotion, dismissal or disciplinary matters.

Early identification of problems and appropriate intervention and support through effective performance management will help to avoid the need for capability procedures at a later date. In many cases improvement may be achieved through existing review processes often with a minimum of support and attention, facilitated by the line manager. In those instances where serious concerns are identified in terms of unsatisfactory performance a more formal approach may be required.

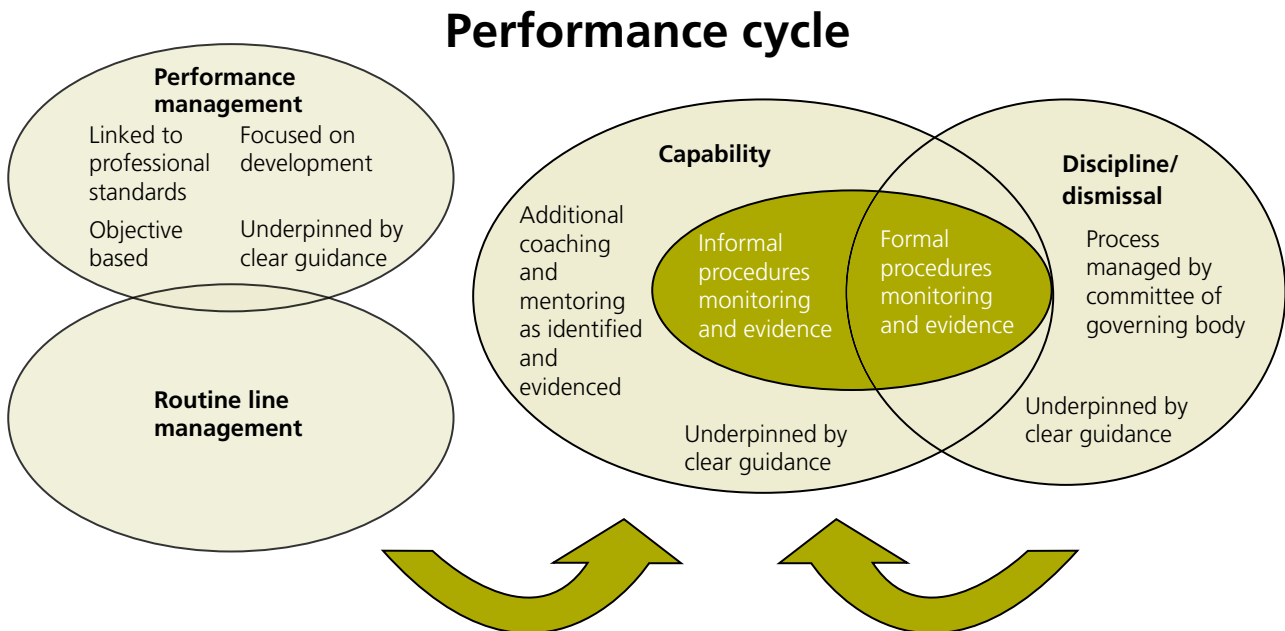
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Figure 1 below illustrates the relationship between effective line management with performance management and, where required, with procedures to prevent underperformance. The purpose of this guidance is to deal with the capability element of the performance cycle illustrated below.

**Figure 1: Performance cycle**



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## **Raising unsatisfactory performance**

### **Raising unsatisfactory performance as an issue**

The purpose of raising unsatisfactory performance is to enable:

- teachers to be effective by ensuring that they achieve, sustain and improve on the levels of skill, knowledge and aptitude required of them to improve standards and achieve better outcomes for learners
- teachers to access an appropriate programme of monitoring, support, guidance and training to achieve and sustain the required standard of performance
- school managers, headteachers and/or governing bodies to respond to unsatisfactory performance of teachers who may be appropriately warned or dismissed where they fail to achieve the level of performance required
- teachers to be made aware of circumstances where there is evidence that the required standards are not being met in full.

### **Clarifying the issue**

At all stages teachers must be provided with opportunities to hear how or why their performance is considered to be unsatisfactory. Teachers must be offered the opportunity to seek clarification and provide any explanation that they wish to put forward to clarify the issue with their views being taken into consideration.

This guidance is written with the presumption that the headteacher will have the lead role when making decisions and dealing with performance issues involving teachers. This does not mean, however, that the headteacher is expected to deal with all levels of the capability procedure because, in most cases, the initial stages can be delegated to qualified teachers with management responsibilities. Headteachers, however, are responsible for initiating any investigation, informal support programmes and formal oral and written warnings.

### **Capability or misconduct?**

If concerns are raised about the unsatisfactory performance of a teacher it is important to establish the nature of the unsatisfactory performance and determine the appropriate procedure. If a teacher's



performance is considered to be unsatisfactory, it is important that it is dealt with under the appropriate procedure and that the correct support is provided. A clear understanding of what is deemed to be unsatisfactory performance needs to be noted 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. For the purpose of this guidance the following definitions are used.

**Capability due to ill health:** relates to any inadequacy in health or any other physical or mental quality which results in unsatisfactory performance.

**Capability due to lack of competence:** is a lack of skill or aptitude leading to unsatisfactory performance.

**Misconduct:** action or inaction which contravenes the rules laid down by the particular employer and/or the General Teaching Council for Wales (GTCW) code of professional conduct and practice.

**Note:** Please refer to: '[Managing underperformance flow chart](#)' for the correct procedure to follow depending upon the nature of the unsatisfactory performance.

## General principles

The overall purpose behind the management of unsatisfactory performance of teachers is to secure improvement – this is a joint effort between the school, the teacher and, where appropriate, the trade union. Throughout the capability process the underlying principles are as follows.

### Values

- Teachers should be treated with respect, consistency and fairness.
- All matters of managing unsatisfactory performance and related investigations should 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 Practising Teacher Standards and the *Code of Professional Conduct and Practice for Registered Teachers* (GTCW) – see links at Annex A (page 30).

### Procedures

- Teachers subject to **formal** capability procedures will cease to be involved in the performance management cycle of the school.
- Teachers 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 teacher’s representative cannot attend a formal meeting which may potentially lead to a formal oral or formal written warning, an alternative date, normally within five working days, should be offered by the teacher’s representative. Should the teacher’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.
- Teachers will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence or in any case involving a teacher who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.

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- Teachers 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.
- Teachers will have the right of appeal to the governing body at all stages of the capability procedures.

### **Actions**

- In preparation for formal meetings any evidence that is to be presented by either party must be provided in advance of the meeting.
- At all stages of the capability process teachers have the right to be represented by a work colleague or their trade union representative. Please note this does not include a right to representation at review meetings held with the designated member of teaching staff for the purposes of monitoring and reviewing performance (unless stated otherwise). Legal representatives are not permitted during the capability process.
- The timescale for each stage will depend upon the nature of the unsatisfactory performance issue, the role of the teacher, the improvements identified as necessary and the support and development to be provided. Timescales should be sufficiently reasonable for the teacher to demonstrate that they are capable of achieving and sustaining acceptable and improved levels of work performance. As a general rule, review periods will normally be 20–30 working days. In exceptional circumstances a longer review period may be considered. The length of the review period at each stage will most likely vary, taking into consideration the circumstances of each case. However, unnecessary delay should be avoided.
- If at any stage of the capability procedure the teacher is absent due to sickness, advice should be sought from the local authority's occupational health team or an appropriately qualified health professional to ensure that the capability process is not unduly delayed. Teachers must be made aware that the process of managing their unsatisfactory performance will not necessarily cease due to their absence on sickness grounds (please see 'Annex C: Sickness and absence of a teacher').

- Appeals against formal oral or all written warnings will be allowed under the capability process but they must not delay the ongoing nature of the process as no procedure should automatically have precedence over any other.
- Raising of grievances should be heard separately as no procedure should automatically have precedence over any other (please see 'Annex B: Grievance and appeals').

### **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 must be distinct from the routine monitoring 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 must 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 and the teacher having a record of all interviews and reviews with the teacher, giving the date, time and explanation provided at all stages of the procedure.

Where possible the notes of any meetings should be agreed with and signed by the teacher. If the teacher 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 alterations.

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

- formal oral warning – 65 working days
- first written warning – 130 working days
- final written warning – one year.

After the suggested periods of time all expunged warnings should be removed from all records 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 must be kept in accordance with school governance regulations.

### **Progress towards improving performance**

If at any stage during the capability procedure the teacher consistently achieves the required standard and there is evidence to suggest that this improvement is sustainable these procedures will conclude. The headteacher will inform the teacher of this both verbally and in writing. The teacher must also be encouraged to sustain their performance in the future.

If, however, following this successful conclusion the teacher fails to sustain the required standard of performance the headteacher will recommence the capability procedure as follows:

- at the same stage where the previous capability process concluded, if concerns regarding unsatisfactory performance reoccur normally within 60 working days of that conclusion, e.g. if it concluded at Stage 2a (Action and Review) the procedure will recommence at Stage 2b or c (Action and Review) with a formal written warning or final written warning
- if unsatisfactory performance is judged to have reoccurred after 60 working days has elapsed following the conclusion of the capability process the formal support process will commence at Stage 2a with a formal oral warning.

Where it is necessary to recommence this capability procedure within the recommended periods of time (see 'Records and monitoring') on more than two occasions the headteacher may consider that there is sufficient cumulative evidence indicating serious performance issues that require the capability procedures to start at Stage 3 (Disciplinary and dismissal procedures).

### **Misconduct**

Where it emerges during this capability procedure that the issue causing concern is one of misconduct because the teacher has failed to do something as a result of their own negligence or by simply refusing to do it, the issue is not one of lack of capability and it must be dealt with in line with the school's discipline/dismissal policy. The school's staff disciplinary and dismissal committee of the governing body will therefore consider it as a formal matter; they must ensure

that it is a matter of conduct and not capability. 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 headteacher may become aware that a teacher has a disability that falls under the Equality Act 2010. The headteacher must consider whether the poor performance may be caused by or related to the individual's disability and must be treated in accordance with provisions of the Equality Act 2010. In such circumstances a referral should be made to the local authority's occupational health team or an appropriately qualified health professional for further advice.

A teacher 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. Adjustments to the capability procedure may be appropriate in some cases.

### **Confidentiality**

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

The teacher and anyone accompanying them must not make electronic recordings of any meetings or hearings conducted under capability procedures.

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

### **Representative**

The teacher may 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 teacher must inform 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.

If the teacher's choice of companion is unreasonable they may be required to choose someone else, for example:

- if the companion has a conflict of interest or may prejudice the hearing
- if the companion is unavailable at the time of the hearing and will not be available for more than five working days.

Consideration may need to be given to allow the teacher 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 headteacher has overwhelming evidence that the continued employment of the teacher will jeopardise pupils' education or puts them or other staff at risk of harm, it will be appropriate to move directly to Stage 2c (Final written warning) and issue a final written warning. If the teacher does not achieve the required standard of performance within the appropriate period it will be appropriate to refer the matter to Stage 3 (Disciplinary and dismissal procedures) of these procedures. For this to occur the teacher's performance must fall so far short of what is required that improvement to the required standard of performance may be deemed impossible or the teacher's failure in performance has a seriously detrimental effect in the school. The headteacher may also consider suspending the teacher where it appears to be necessary for the protection of pupils, staff or property.

## **Roles and responsibilities**

The roles and responsibilities of the main participants are outlined below with the expectation that all parties work together to improve the unsatisfactory performance of the teacher.

### **Teaching staff**

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

### **Role of the representative**

- To accompany the teacher at all formal stages of the capability procedure. The teacher should be advised that they have the right to be represented by a work colleague or an appointed trade union representative.
- To support the teacher in presenting their evidence and seek clarification on any issues raised during the meeting.
- To confer with the teacher, if necessary, during any meeting.
- To represent the teacher if they are unable to be present.

### **Role of the line manager**

- To be fully aware of the requirements of the Practising Teacher Standards and the GTCW code of professional conduct and practice.



- To ensure that members of staff have received a full induction into the school.
- To be fully familiar with the relevant policies relating to performance management and any other relevant underperformance policies.
- To monitor the performance of their staff, making clear the standard of performance the school expects.
- To take action and a considered approach in all cases when there are concerns about a teacher's performance.
- To ensure standards of fairness, objectivity and consistency of treatment of teachers in all cases.
- To provide evidence and advise the headteacher (or those delegated by the headteacher to administer the capability process) at all times during the process.
- To seek further guidance from the headteacher (or those delegated by the headteacher to administer the capability process) where appropriate on any matter related to this policy and procedures.

### **Role of the headteacher**

- To support and advise teachers on effective performance management procedures.
- To support and advise line managers who express concerns about the unsatisfactory performance of a teacher.
- To initiate the formal investigation of the issue and take appropriate action at any stage in the management of unsatisfactory performance.
- To appoint, where appropriate, a designated member of the teaching staff to investigate the issues and/or provide appropriate support.
- To ensure that an appropriate programme of support and guidance is put in place for the teacher whose performance is deemed to be unsatisfactory.
- To ensure that formal oral/written warnings are only issued by the headteacher.

- To seek the advice and support of the local authority (or the diocesan authority or provider of human resources support).
- To ensure that the governing body's policies are enacted and the governing body is involved in the capability process at the appropriate stages.

### **Role of the governing body**

- To ensure that the policies relating to the management of the performance and unsatisfactory performance of teachers are implemented and are working effectively alongside other relevant policies (see Annex A).
- To ensure that all relevant policies are available to teachers and are reviewed on a regular basis.
- To ensure that the appropriate committees of the governing body are established and that governors are aware of their responsibilities and receive appropriate training to support them in their roles.
- To seek the advice and support of the local authority (or the diocesan authority or provider of human resources support) if the capability process moves to Stage 3 (Disciplinary and dismissal procedures).

### **Role of the appropriate authority**

- To provide advice and support to the headteacher and governing body through the local authority, the diocesan authority or provider of human resources support, dependant on the status of the school.
- Where the local authority is the employer the chief education officer or their representative is entitled to attend all formal meetings of the governing body and its committees for the purpose of giving advice.
- In a voluntary-aided school the diocesan officer or their representative has the same advisory rights as those given to the chief education officer.
- In foundation schools, the governing body may agree to award those same rights to the provider of human resources support.

## Part 2: Capability procedures

The capability procedures will apply to all teachers, excluding headteachers who are subject to separate conditions, and newly qualified teachers other than in exceptional circumstances.

A summary of the normal time periods for the operation of the capability procedures are outlined below.

### **Stage 1: Identify, investigate and support**

**Stage 1a: Identify and investigate** – unsatisfactory performance is raised as an issue and investigated.

**Stage 1b: Informal support programme** – commencing when unsatisfactory performance has been investigated and identified – 20–30 working days.

### **Stage 2: Action and review**

**Stage 2a: Formal oral warning** – commencing when the oral warning is confirmed and received in writing by the teacher – 20–30 working days (support and monitoring).

**Stage 2b: Written warning** – commencing when the written warning is received by the teacher – 20–30 working days (support and monitoring).

**Stage 2c: Final written warning** – commencing when the written warning is received by the teacher – 20–30 working days (support and monitoring).

### **Stage 3: Disciplinary and dismissal procedures**

**Stage 3: Disciplinary and dismissal procedures** – referral to the staff disciplinary and dismissal committee of the governors.

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## **Stage 1: Identify, investigate and support**

### **Stage 1a: Identify and investigate**

#### **Unsatisfactory performance is raised as an issue**

Where concerns regarding a teacher's performance have reached a point where the teacher is failing to respond to feedback which has been given to them by their line manager or a member of the senior leadership team, the teacher should be advised that it is necessary to clarify the possible reason(s) for their unsatisfactory performance. At this stage the headteacher will instigate an investigation of the issue and appoint a designated member of the teaching staff to undertake the task.

#### **Clarify the issue**

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

The line manager must listen to what the teacher has to say and consider any steps which should be taken to address any issues such as providing training, working in a professional learning community, mentoring, coaching, shadowing another teacher, closer supervision and support.

Guidance on the provision of appropriate support for teachers where there are concerns about their performance should form part of the normal performance management procedures with support being provided by their immediate line manager.

There may be instances where the unsatisfactory performance of a teacher is considered to be so serious, or there are too many issues to be dealt with informally, that therefore the formal procedure should commence (Stage 2a: Formal oral warning). Should the line manager have these concerns advice should be sought from the headteacher. The headteacher must seek the advice and support of the local authority (or the diocesan authority or provider of human resources support).

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## Investigating the issue

The designated member of teaching staff will be responsible for gathering and collating written evidence regarding the concerns. They can draw upon the outcomes of routine line management and monitoring such as relevant information from the performance management process, classroom observations, data, etc.

For this reason the designated member of the teaching staff must meet with the teacher to ensure that there is complete clarity on where the performance issue lies in terms of capability due to ill health, capability due to lack of competence or a case of professional misconduct.

An interview with the teacher should also be conducted by the headteacher (in the presence of a trade union representative or colleague if the teacher so wishes) so that an opportunity is provided to present the evidence of the concerns regarding their unsatisfactory performance and so that a mutual understanding of the performance issues are established.

The teacher should be notified of the date and arrangements for the meeting in writing and appropriate notice should be given. A copy of all the evidence relating to the unsatisfactory performance of the teacher must be forwarded to the teacher at least two working days in advance of the meeting. Similarly any evidence that the teacher wishes to present must be presented to the headteacher within the same timescale.

The interview should determine whether it is a matter of capability due to ill health, capability due to lack of competence or a case of professional misconduct. If it is found that the poor performance is due to capability because of a problem of ill health a referral should be made to the local authority's occupational health team or an appropriately qualified health professional and, if so advised, dealt with in line with the school's staff absence and sickness policy (please see 'Annex C: Sickness and absence of a teacher').

If it is determined that the matter refers to capability then this guidance applies. However, if the matter is deemed to be in relation to the teacher's professional conduct then the matter should be referred to the staff disciplinary and dismissal committee of the governing body – see Welsh Government's *Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies* (2013).

The interview may also decide that no further action is required if the headteacher is satisfied with the teacher's response.

### **Stage 1b: Informal support programme**

(Normally 20–30 working days.)

At this stage the school will need to make appropriate support available to the teacher to enable the teacher 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 teacher must be specific, time limited and help them achieve an improvement in their performance. They must be told what is required, how performance will be reviewed, the review period, and that the next stage of the capability procedure will commence if there is no improvement. Support and monitoring should be conducted in a sympathetic and non-threatening way with the objective of improving the teacher's performance.

At the end of the agreed period of time the designated member of the teaching staff will be responsible for gathering and collating any further written evidence.

An interview with the teacher should be conducted by the headteacher (in the presence of a trade union representative or colleague if the teacher so wishes) so that an opportunity is provided to present any new evidence of the concerns regarding their unsatisfactory performance and so that a mutual understanding of the performance issues are established.

The teacher should be notified of the date and arrangements for the meeting in writing and appropriate notice should be given. A copy of any new evidence relating to the unsatisfactory performance of the teacher must be forwarded to the teacher at least two working days in advance of the meeting. Similarly any new evidence that the teacher wishes to present must be presented to the headteacher within the same timescale.

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## **Stage 2: Action and review**

Normally a total of 60–90 working days. Formal oral warning: 20–30 working days. Written warning: 20–30 working days. Final written warning: 20–30 working days.

### **Stage 2a: Formal oral warning**

(Normally 20–30 working days.)

If the evidence from the informal support programme indicates that the teacher's performance remains unsatisfactory the headteacher will issue the teacher with a formal oral warning, which will also be presented in a written format that will state:

- the performance problems that were discussed and the standard of performance which is required
- the ways in which the school will help the teacher 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, usually within 20–30 working days except in exceptional circumstances, and a date on which the teacher's performance will be reviewed
- the consequences if the teacher does not reach the required standard, including that formal disciplinary action and dismissal are a potential option
- that the current performance management cycle for the teacher will be suspended now that a formal oral warning has been issued
- the warning will remain on their record for 65 working days
- right to appeal (which should not stop the ongoing capability procedure)
- a note that the teacher has acknowledged the warning orally or in writing and any observations that the teacher wished to make at that time.

If the headteacher determines that the teacher has not engaged positively and constructively with the process of improvement then the matter will be considered to be an issue of professional misconduct and will be automatically referred to the staff disciplinary and dismissal committee of the governing body. The headteacher

must seek the advice and support of the local authority (or the diocesan authority or provider of human resources support) if the capability process moves to Stage 3 (Disciplinary and dismissal procedures).

The performance management cycle for the teacher will be suspended once a formal oral warning is issued.

### **Provision of support**

The headteacher will:

- specify the support for the teacher in achieving the targets
- identify who will monitor performance and progress following this first formal meeting
- ensure that the monitoring process includes periodic structured meetings, informal discussion and direct support
- specify how improvement will be monitored, e.g. lesson observations, review of documentation, scrutiny of pupils' work, records of departmental/other meetings, interviews with relevant staff. The use of external expertise to judge standards and provide support may be considered
- ensure that the monitoring process is conducted in a sympathetic and non-threatening way with the objective of improving the teacher's work performance
- ensure that throughout the monitoring process the teacher is given the opportunity of commenting upon the proposed plan of support and its implementation.

### **Tailored support**

The headteacher will need to make appropriate support available to the teacher, offering support to enable the teacher 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, 'reasonable adjustments', occupational health, etc.

In the case of capability due to ill health, where the physical or mental health of the teacher is seen to be the issue, this will require



the school to contact the local authority's occupational health team or an appropriately qualified health professional and arrange for an assessment and agreement of an appropriate support programme tailored to the teaching profession.

### **Review**

During Stage 1a (Identify and investigate), Stage 1b (Informal support programme) and Stage 2a (Formal oral warning) which includes the support and review stages, the designated member of the teaching staff will support the teacher and monitor their performance against the targets set.

At the end of the agreed period of time, the designated member of the teaching staff should gather evidence and undertake an assessment of the teacher's performance against the identified targets during the timescale allocated for improvement.

If the headteacher judges that sufficient progress has been made and the teacher is now achieving the required standard of performance that is sustainable then the review meeting will reflect this by acknowledging the improvement made by the teacher and by formally concluding the capability process. This will be confirmed in writing and the teacher will be reminded of the expectation of sustaining an adequate standard of performance and of the consequence of failure to sustain this standard. The performance management cycle for the teacher will be resumed.

If, however, insufficient progress has been made and the teacher is still not achieving the required adequate standard of performance the headteacher may decide to extend phases within Stage 2a (Formal oral warning) or invite the teacher to attend a formal interview to consider whether to move to Stage 2b (Written warning).

### **Formal interview**

If, after the period outlined in Stage 1 and Stage 2a where a formal oral warning has been issued, the teacher is still not achieving an adequate standard of performance they should be invited to attend a formal interview meeting (in the presence of a trade union representative or colleague if the teacher so wishes). The teacher should be notified of the date and arrangements for the meeting in writing and given appropriate notice. A copy of any new evidence relating to the unsatisfactory performance of the teacher must be

forwarded to the teacher at least two working days in advance of the meeting. Similarly any new evidence that the teacher wishes to present must be presented to the headteacher within the same timescale.

The headteacher will, therefore, need to give the teacher written notice of the meeting and compile an agenda that includes provision for:

- identifying the shortcomings in the teacher's performance
- providing an opportunity for the teacher to respond and produce and use documentary evidence from earlier meetings or reports monitoring
- reviewing the targets set previously and setting new ones if required
- establishing clear guidance on the required standard of performance needed to end the capability process
- establishing a timescale for assessment of not more than 20–30 days and agreeing a date for the next review meeting
- specifying the support that will be available and how performance will be monitored over the assessment period
- considering reasonable adjustments such as reviewing responsibilities or relinquishing job roles where appropriate.

### **Stage 2b: Written warning**

(Normally 20–30 working days.)

Where the headteacher is not satisfied with the teacher's explanation the formal interview may conclude with the headteacher issuing the teacher with a Stage 2b (Written warning) formal written warning that will state:

- description of the unsatisfactory performance
- standard of performance that is required
- timescale for improvement (normally 20–30 working days except in exceptional circumstances)

- support that will be given
- the warning will remain on their record for 130 working days
- right to appeal (which should not cause the ongoing capability procedure to be interrupted or suspended)
- the consequences of failing to improve to the required standard including that it may result in the matter being referred to the staff disciplinary and dismissal committee of the governing body
- a note that the teacher has acknowledged the warning orally or in writing and any observations that they wished to make at that time.

### Review

During Stage 2b (Written warning) which includes the support and review stages, the designated member of the teaching staff will support the teacher and monitor their performance against the objectives/targets set.

At the end of the review period, the designated member of the teaching staff should gather evidence and undertake an assessment of the teacher's performance against the identified targets during the timescale allocated for improvement.

If the headteacher judges that sufficient progress has been made and the teacher is now achieving the required standard of performance in a way that is sustainable then the review meeting will reflect this by acknowledging the improvement made by the teacher and by formally concluding the capability process. This will be confirmed in writing and the teacher 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 teacher will be resumed.

If, however, insufficient progress has been made and the teacher is still not achieving the required adequate standard of performance the headteacher may decide to extend Stage 2b (Written warning) or invite the teacher to attend a formal interview to consider whether to move to Stage 2c (Final written warning).

### Formal interview

If after the period outlined in Stage 2b (Written warning) where a formal written warning has been issued the teacher is still not achieving an adequate standard of performance, they should be invited to attend a formal interview meeting (in the presence of a trade union representative or colleague if the teacher so wishes). The teacher should be notified of the date and arrangements for the meeting in writing and appropriate notice should be given. A copy of any new evidence relating to the unsatisfactory performance of the teacher must be forwarded to the teacher at least two working days in advance of the meeting. Similarly any new evidence that the teacher wishes to present must be presented to the headteacher within the same timescale.

The headteacher will, therefore, need to give the teacher written notice of the meeting and compile an agenda that includes provision for:

- identifying the shortcomings in the teacher's performance
- providing an opportunity for the teacher to respond and produce and use documentary evidence from earlier meetings or reports monitoring
- reviewing the targets set previously and setting new ones if required
- establishing clear guidance on the required standard of performance needed to end the capability process
- establishing a timescale for assessment of not more than 20–30 days and agreeing a date for the next review meeting
- specifying the support that will be available and how performance will be monitored over the assessment period
- considering reasonable adjustments such as reviewing responsibilities or relinquishing job roles where appropriate.

### Stage 2c: Final written warning

(Normally 20–30 working days.)

Where the headteacher is not satisfied with the teacher's explanation the formal interview may conclude with the headteacher issuing

the teacher with a final written warning seeking improvement in performance and setting out:

- description of the unsatisfactory performance
- standard of performance that is required
- timescale for improvement (normally 20–30 working days except in exceptional circumstances)
- support that will be given
- the warning will remain on their record for one year
- right to appeal (which should not cause the ongoing capability procedure to be interrupted or suspended)
- consequences if the teacher does not improve to the required standard including that the matter will be referred to the staff disciplinary and dismissal committee of the governing body
- a note that the teacher has acknowledged the warning orally or in writing and any observations that they wished to make at that time.

In giving a final written warning the headteacher must make it clear to the teacher both verbally and in writing that if they fail to consistently achieve the required standard of performance by the end of the allocated assessment period the capability procedure will move to Stage 3 (Disciplinary and dismissal procedures) when the issue of capability will be considered by the staff disciplinary and dismissal committee of the governing body. The outcome of this process could be formal disciplinary action or dismissal.

At the end of the period of the final written notice if the headteacher judges that sufficient progress has been made and the teacher is now achieving the required standard of performance that is sustainable then the improvement made by the teacher will be acknowledged and the process formally concluded. This should be confirmed in writing and the teacher will be reminded of the expectation of a sustained adequate standard of performance and the consequence of failure to sustain this standard. The performance management cycle for the teacher will be resumed.

If, however, insufficient progress has been made and the teacher is still not achieving the required standard of performance the headteacher will advise the teacher that at this point the matter of their continuing failure to improve will mean that it will now be placed at Stage 3 (Disciplinary and dismissal procedures) of the process and be referred to the staff disciplinary and dismissal committee of the governing body. The headteacher must 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 (Disciplinary and dismissal procedures).

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### **Stage 3: Disciplinary and dismissal procedures**

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

The headteacher must 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 (Disciplinary and dismissal procedures).

A formal meeting should be instigated in line with the staff disciplinary and dismissal committee of the governing body – see Welsh Government's *Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies* (2013).

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

#### **Professional duties**

It is the professional responsibility of the headteacher/senior leader to comment in any professional reference provided to another educational institution if a member of staff 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 directly to the GTCW, where the relevant employer:

- has ceased to use the services of a registered teacher on grounds relating to their professional standards
- may have ceased to use the services of a registered teacher on that ground had they not ceased to provide these services.

## Annex A: Guidance documents relevant to preventing underperformance

*Revised professional standards for education practitioners in Wales* (Welsh Government, 2011)

[www.wales.gov.uk/docs/dcells/publications/110830profstandardsen.pdf](http://www.wales.gov.uk/docs/dcells/publications/110830profstandardsen.pdf)

*Performance management for teachers: Revised performance management arrangements 2012* (Welsh Government, 2012)

[www.wales.gov.uk/docs/dcells/publications/120510performteachen.pdf](http://www.wales.gov.uk/docs/dcells/publications/120510performteachen.pdf)

*Performance management for unattached teachers: Revised performance management arrangements 2012* (Welsh Government, 2012)

[www.wales.gov.uk/docs/dcells/publications/121008unattacheden.pdf](http://www.wales.gov.uk/docs/dcells/publications/121008unattacheden.pdf)

*Code of Professional Conduct and Practice for Registered Teachers* (GTCW)

[www.gtcw.org.uk/gtcw/images/stories/downloads/professional\\_standards/GTCW\\_Professional\\_Code.pdf](http://www.gtcw.org.uk/gtcw/images/stories/downloads/professional_standards/GTCW_Professional_Code.pdf)

*Professional learning communities* (Welsh Government, 2011)

[www.wales.gov.uk/docs/dcells/publications/120112plcen.pdf](http://www.wales.gov.uk/docs/dcells/publications/120112plcen.pdf)

*Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies* (Welsh Government, 2013)

[www.wales.gov.uk/topics/educationandskills/publications/guidance/staff-disciplinary-and-dismissal/?lang=en](http://www.wales.gov.uk/topics/educationandskills/publications/guidance/staff-disciplinary-and-dismissal/?lang=en)

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## Annex B: Grievance and appeals

### Grievance

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

Initiation of capability procedures does not in any way affect a teacher's right to declare a grievance under the school's grievance policy.

### Appeals

Intent to make an appeal by a teacher against the issuing of an oral, written or final written warning must be notified in writing within five working days of the date of the formal 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 teacher will be expected to continue to work towards the targets identified with the designated member of teaching staff providing support while 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.

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 teacher 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 headteacher's designated member of the teaching staff, the teacher should appeal to the headteacher. The letter of appeal must be addressed to the headteacher, and must

state the teacher's grounds of appeal. A teacher who wishes to appeal against a formal warning has the right to appeal to the chair of governors or nominated governor and must state their grounds of appeal.

All appeals to the governing body must be heard before capability matters are referred to the staff disciplinary and dismissal committee. The decision on the appeal should be given orally at the end of the hearing, or if not possible, in writing as soon as possible after the end of the hearing.

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## Annex C: Sickness and absence of a teacher

It is possible that a teacher will become absent through ill health either before or during the process. While it may be reasonable for the headteacher or governing body to wait for the teacher's recovery, the teacher should immediately be referred to the local authority's occupational health team or an appropriately qualified health professional informing them that the management of the capability process has been commenced with the teacher 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 teacher's performance issues
- capability process can continue (where the body of evidence is strong enough and the teacher is afforded the opportunity to present the case themselves or have it presented on their behalf).

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

- conclude the proceedings on the basis that the teacher 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 teacher 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 teacher is well enough to present themselves or take part in the next stage of the process. If the teacher is not well enough the headteacher 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 where a staff disciplinary and dismissal hearing is held and the teacher is absent from work through ill health, every effort should be made to ensure that the teacher can attend the hearing to present themselves. However, this should not unduly delay the hearing taking place, and written representations or representatives attending in the teacher's absence could 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 teacher returning to work in the foreseeable future, then the headteacher should consider dealing with the teacher's absence solely through the school's sickness absence policy.

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