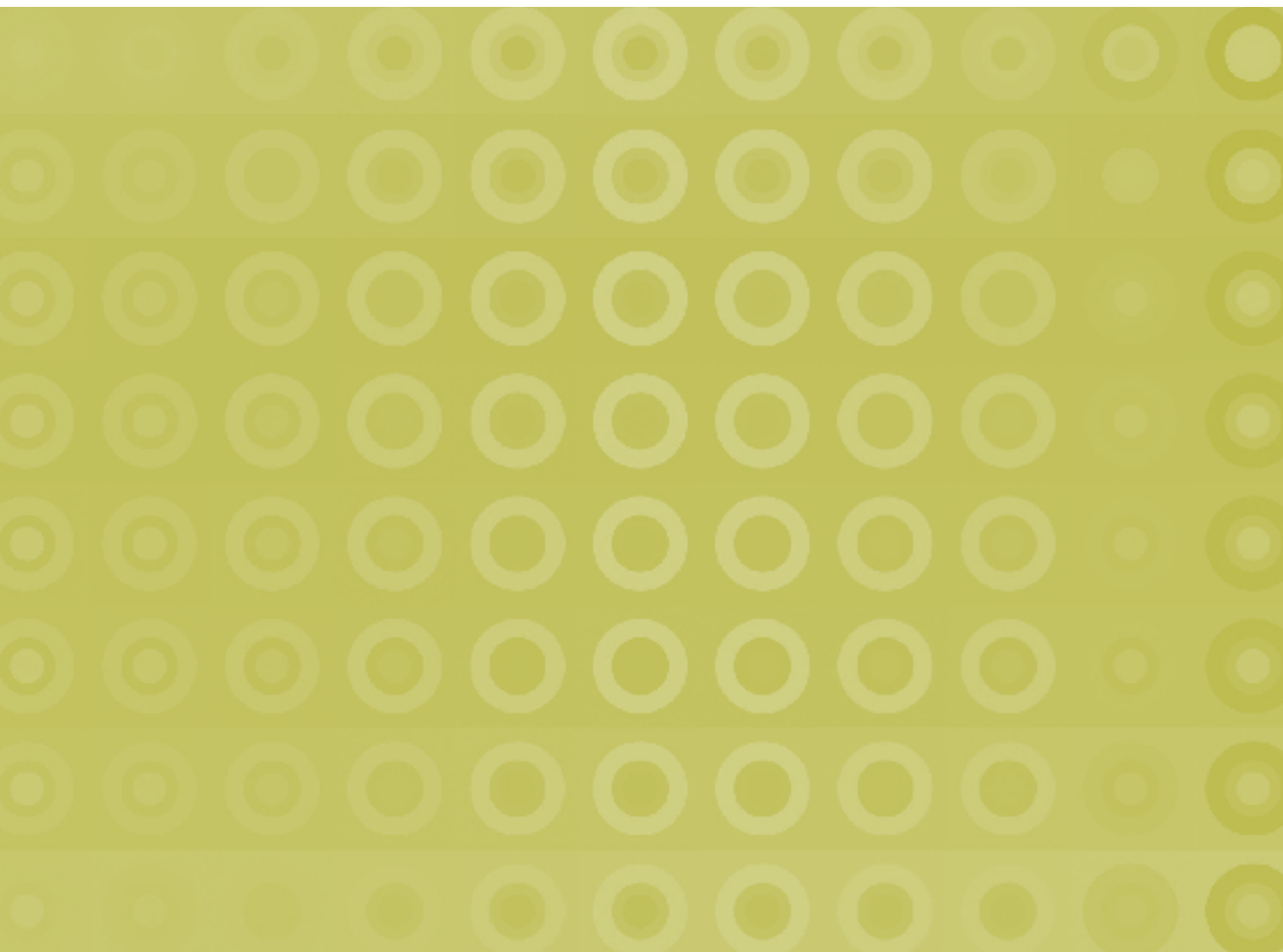




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Capability of headteachers – guidance for schools



Guidance

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Capability of headteachers – guidance for schools

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

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

Action required Each governing body must establish procedures for dealing with lack of capability on the part of staff at each school. This guidance sets out a model procedure for dealing with a headteacher's lack of capability. Each governing body must have regard to this guidance when considering and determining a headteacher's lack of capability. The effect of a duty to have regard to guidance is that the person or persons to whom it is addressed must include it in the criteria applied in making the relevant decision or taking the relevant action. This guidance is made under section 35(8) and 36(8) of the Education Act 2002, and regulation 7 of the Staffing of Maintained Schools (Wales) Regulations 2006.

Further information Enquiries about this document should be directed to:
Workforce Team
Department for Education and Skills
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
e-mail: WorkforceTeamMailbox@wales.gsi.gov.uk

Additional copies This document can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations

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Introduction

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

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

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

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

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

Context

Responsibility for considering and where necessary applying capability procedures for Headteachers rests with the school governing body. This document seeks to clarify the respective role and obligations of regional consortia and Local Authorities to deliver the support and advice necessary for governors to achieve fair, rigorous and effective delivery of their responsibilities.

The document seeks to reflect the National model for regional working. This clarifies that

Local Authorities retain statutory responsibilities for school standards. Management and delivery of operational arrangements for school improvement rests with regional consortia operating on behalf of and accountable to Local Authorities. From the perspective of schools, the key requirement is to ensure that advice is clear, consistent and of the high quality necessary to enable the governing body to effect change and deliver improvement.

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

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

These procedures include the requirement to design, resource and implement tailored programmes to support Headteachers to meet required standards of performance. This should be Headteacher led but supported by consortia and local authorities, consistent with the principle that the purpose and commitment of all parties is to raise standards and improve outcomes.

Governors should respect confidentiality and the potential impact of inappropriate release of information on the reputation of the Headteacher and school.

Managing performance

Performance management

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

Effective performance management procedures demonstrate a school's commitment to develop the Headteacher, ensure job satisfaction and a high level of expertise. It will also help Headteachers to meet the needs of pupils and raise standards.

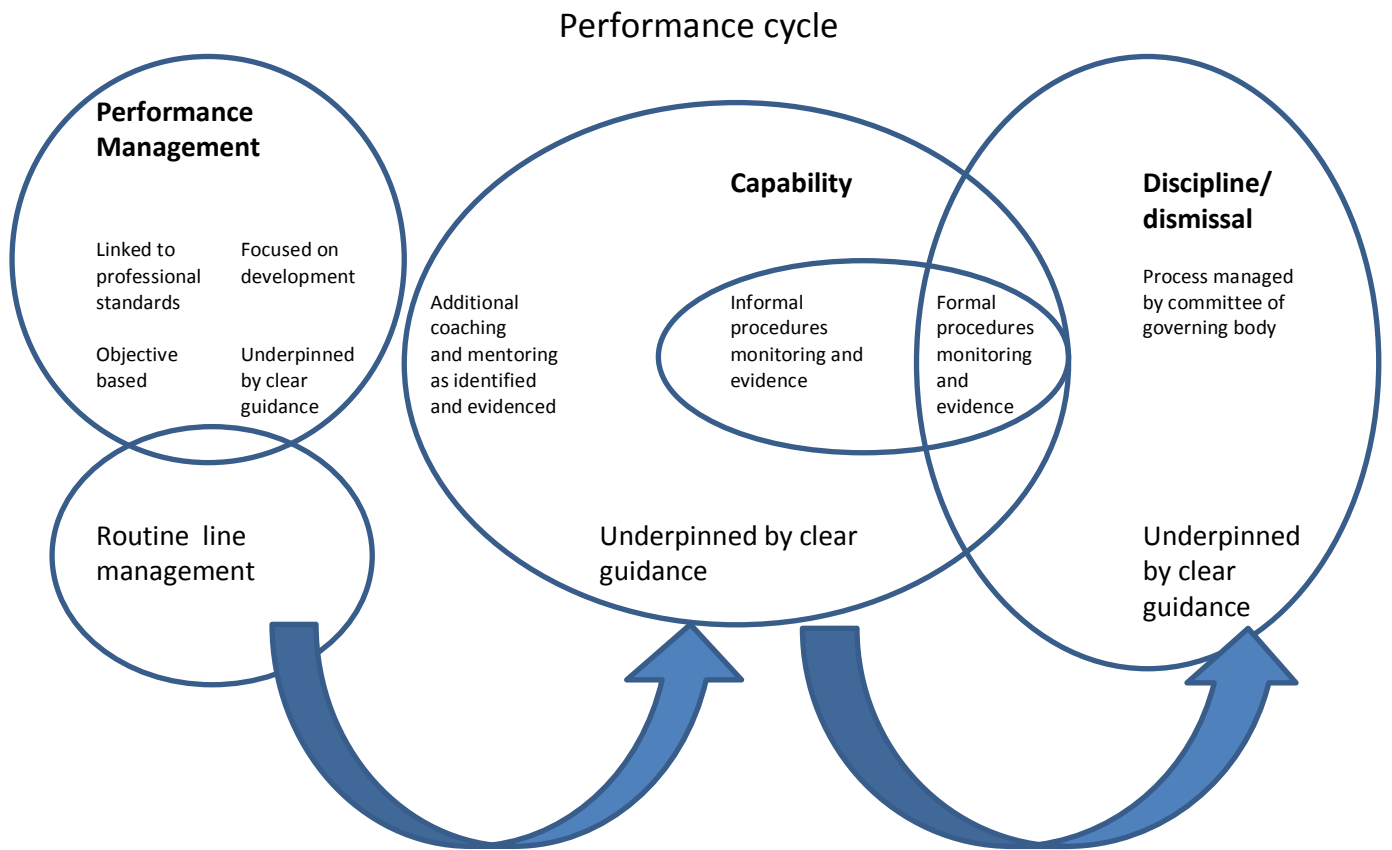
Effective performance management means paying continuous attention to monitoring progress during the year, intervening early and providing tailored support to address Headteacher development needs. Guidance on performance management arrangements for Headteachers in Wales is available at <http://learning.wales.gov.uk/yourcareer/performancemanagement/pmguidance/?lang=en>

It should be noted that 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 capability.

Professional dialogue and appropriate support, targeted through effective performance management will help to avoid the need for capability procedures at a later date. In many cases improvement should be achieved through existing review processes, with appropriate and tailored support where necessary. In instances where concerns are identified in terms of potential unsatisfactory Headteacher performance, these procedures should be initiated at the earliest opportunity.

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

Figure 1: Performance cycle



Raising unsatisfactory performance

Raising unsatisfactory performance as an issue

The purpose of raising unsatisfactory performance is to enable:-

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

Clarifying the issue

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

Governing Bodies are responsible for initiating any investigation, developing support programmes, issuing warnings and any decision to dismiss.

Capability or misconduct?

If concerns are raised about the unsatisfactory performance of a Headteacher it is important to establish the facts and to apply the appropriate procedures. A clear understanding of what is deemed to be unsatisfactory performance needs to be established including whether the issue is a lack of capability due to ill health, lack of capability due to lack of competence or a matter of professional misconduct. 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 contractual obligations of the Headteacher, the rules laid down by the particular employer and/or the General Teaching Council for Wales (GTCW) Code of Professional Conduct and Practice.

General principles

The overall purpose behind the management of unsatisfactory performance of Headteachers is to secure improvement - this is a joint obligation between the governing body, the Headteacher and, where appropriate, the trade union. Throughout the capability process the underlying principles are as follows.

Values

Headteachers should be treated with respect, consistency and fairness.

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

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

Procedures

- Headteachers subject to formal capability procedures will continue to be responsible for the performance management process of the school
- Headteachers subject to these capability procedures should be given five working days' notice in writing of the time and place of any formal meeting
- Where a Headteacher's representative cannot attend a formal meeting which may potentially lead to a formal warning, an alternative date, normally within five working days, should be offered by the teacher's representative. Should the Headteacher's representative subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted
- All meetings at the various stages of the capability procedure should be arranged as soon as possible within the time limits specified. If the time limits cannot be met for any justifiable reason they can be extended by agreement on both sides
- Headteachers will not normally be dismissed for performance reasons without previous warnings. However in serious cases of gross negligence or in any case involving a Headteacher who has not yet completed their probationary period, dismissal without previous warnings may be appropriate
- Headteachers subject to these capability processes will be advised in writing of what is deemed to constitute unsatisfactory performance and the concerns raised against them in advance of any meeting and will be given the opportunity to state their case and present relevant evidence before any decision is made
- Headteachers will have the right of appeal to the governing body at all stages of the formal (Stage 2) capability procedures.

Actions

- In preparation for formal meetings any evidence that is to be presented by either party is to be provided in advance of the meeting
- At all stages of the capability process Headteachers have the right to be accompanied by a work colleague or their trade union representative. Please note that this does not include a right to representation at review meetings held with the appointed adviser for the purposes of monitoring and reviewing performance (unless otherwise stated). 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 improvements identified as necessary and the support and development to be provided. Timescales should be sufficiently reasonable for the Headteacher to demonstrate that they are capable of achieving and sustaining acceptable and improved levels of work performance. 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 may vary, taking into consideration the circumstances of each case and may be extended with the agreement of both parties. However, unnecessary delay should be avoided
- If at any stage of the capability procedure the Headteacher 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. Headteachers should 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 headteacher')
- Appeals against formal warnings will be allowed under the Capability process (please see 'Annex B: Grievance and appeals') but they should 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 is to be distinct from the routine performance management processes in the school. While performance management procedures cannot form part of this capability process relevant evidence collected, including that from monitoring, can be used. All data and evidence collected is to be shared between all relevant parties including the provision of written copies.

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

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

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

- Formal warning – 130 working days
- Final warning – one year.

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

Progress towards improving performance

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

If, however, following this successful conclusion the Headteacher fails to sustain the required standard of performance, the Chair of Governors will recommence the capability procedure as follows:-

- at the same stage where the previous capability process concluded; if concerns regarding unsatisfactory performance reoccur within one term of that conclusion
- if unsatisfactory performance is judged to have reoccurred after one term has elapsed following the conclusion of the capability process, the process will recommence at Stage 2, the formal warning stage.

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 Chair of Governors may consider that there is sufficient cumulative evidence indicating serious performance issues that require the capability procedures to recommence at Stage 3 (Disciplinary and Dismissal procedures).

Misconduct

Where it emerges during this capability procedure that the issue causing concern is one of misconduct because the Headteacher has failed to do something as a result of his or her own negligence or by refusal to act, then the issue is not one of lack of capability and it is to be dealt with in line with the school's Discipline/Dismissal policy. The school's Staff Disciplinary and Dismissal committee of the governing body will therefore consider it as a formal matter; they should 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 Chair of Governors may become aware that a Headteacher has a disability that falls under the Equality Act 2010. The Chair of Governors must consider whether the poor performance may be caused by or related to the individual's disability and should be treated in accordance with provisions of the Equality Act 2010. In such circumstances a referral should be made to the Local Authority's Occupational Health Team or an appropriately Qualified Health Professional for further advice.

A Headteacher will not necessarily be exempted on grounds of disability from having the capability procedure applied. However, consideration will be given to whether there are 'reasonable adjustments' that could be made to their working arrangements including changing duties or providing additional equipment or training. Adjustments to the capability procedure may be appropriate in some cases. If poor performance is caused by the disability providing a warning under this procedure could constitute an act of discrimination. In such circumstances advice should be sought from an appropriate HR adviser.

Confidentiality

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

The Headteacher and anyone accompanying them are to not make electronic recordings of any meetings or hearings conducted under capability procedures.

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

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

Representative

The Headteacher 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 Headteacher should inform the Chair of the Governor Capability panel who their chosen companion is in good time before any hearing.

A companion is allowed reasonable time off from duties without loss of pay but no one is obliged to act as a companion if they do not wish to do so.

If the Headteacher'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 Headteacher to bring a companion who is not a colleague or union representative where this will help overcome a particular difficulty caused by a disability.

Exceptional circumstances

In the exceptional case where the Chair of Governors has overwhelming evidence that the continued employment of the Headteacher will jeopardise the school, pupils' education or puts the pupils or staff at risk of harm, it may be appropriate to move directly to issue a final written warning or to refer the matter to Stage 3 Disciplinary and dismissal procedures.

For this to occur the Headteacher's performance should fall so far short of what is required that improvement to the required standard of performance may be deemed impossible or the Headteacher's failure in performance has a seriously detrimental effect in the school. The Chair of Governors may also consider suspending the Headteacher where it is considered necessary for the protection of pupils, staff or property. Reference to the GTCW may be necessary, the appointed HR representative will advise.

Roles and responsibilities

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

Role of the headteacher

Headteachers should:

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

Role of the representative

The representative should:

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

Role of the governing body

The Governing Body should:

- be fully aware of the requirements of the Practising Teacher Standards and the GTCW Code of Professional Conduct and Practice
- to be fully aware of the Leadership Standards
- be fully familiar with the relevant policies relating to performance management
- ensure that the policies relating to the management of the performance and unsatisfactory performance of Headteachers are implemented and are working effectively alongside other relevant policies (Please refer to 'Annex A')

- ensure that all relevant policies are available to the Headteacher and are reviewed on a regular basis
- ensure that the appropriate committees of the governing body are established, that governors are aware of their responsibilities and receive appropriate training to support them in their roles

Role of the governor capability panel

- take action and a considered approach in all cases when there are concerns about a Headteacher's performance
- ensure standards of fairness, objectivity and consistency of treatment of the Headteacher in all cases
- initiate the formal investigation of the issues and take appropriate action at any stage in the management of unsatisfactory performance
- appoint, where appropriate, a designated member of the Local Authority/consortium to investigate the issues and/or provide appropriate support
- ensure that an appropriate programme of support and guidance is put in place for the Headteacher whose performance is deemed to be unsatisfactory
- seek the advice and support of the consortium/Local Authority (or the diocesan authority or provider of human resources support)
- seek the advice and support of the consortium and 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 chair of governors

- to ensure Governing Body adopts appropriate procedure to manage Headteacher capability
- to establish and maintain effective arrangements and good communications with the Headteacher in relation to performance and school priorities,
- to obtain Local Authority/consortium advice in the event of any concerns about Headteacher underperformance
- to undertake the informal stage(Stage 1) of this procedure
- to appoint, where appropriate, a designated member of the Local Authority/consortium to investigate the issues and/or provide appropriate support during the informal stage
- to reach a view, at the end of the informal stage, whether the identified concerns have been addressed or if the formal Capability procedures need to be invoked.

Role of the appropriate authority

- to commission the Consortium to provide advice and support to the chair of governors and governing body, whether the Local Authority or diocesan authority
- 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 would

- have the same advisory rights as those given to the chief education officer
- in foundation schools it would normally be appropriate to award those same rights to the provider of human resources support.

Role of the consortium

The Consortium should:-

- Appoint a suitably experienced officer to support the governing body, acting on behalf of the relevant Local Authority
- Offer advice and support to the governing body to ensure fair, effective and consistent implementation of Capability procedures
- Secure and allocate an experienced Challenge Adviser to work with the school to help raise standards
- Agree, broker and ensure appropriate support for the Headteacher
- Ensure effective communication with, and involvement of the Local Authority in capability matters to enable that authority to fulfil effectively its statutory functions
- Deliver training for governing bodies to enable them to undertake their obligations fairly, effectively and consistently.

Capability procedures

The capability procedures will apply to all Headteachers.

Stage 1: Informal stage

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

The purposes of the informal stage are:-

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

Once unsatisfactory performance has been identified, the time period for improvement should be reasonable and proportionate, but not excessively long, usually between 20 to 30 working days. It is for the Chair of Governors advised by Local Authority/consortium representative to set the improvement period.

At the informal stage it is for the Chair of Governors, with appropriate Local Authority/consortium support, to raise the issues with the Headteacher. The Governor Capability panel would not normally be convened unless and until the initiation of the formal Capability procedures are considered.

Unsatisfactory performance is raised as an issue

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

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

Clarify the issue

Before commencing the formal Capability procedure, the Chair of Governors is to ensure it is satisfied that appropriate tailored and enhanced support has been provided to the Headteacher to assist them in improving their performance in a supportive environment, so that they achieve and maintain an adequate standard of performance.

The Chair of Governors, advised by Local Authority/consortium representative is to listen to what the Headteacher has to say and consider any steps which should be taken to address identified concerns. This may include providing training, working in a professional learning community, mentoring, coaching, shadowing another Headteacher, closer monitoring and support and a review of workload priorities.

There may be instances where the unsatisfactory performance of a Headteacher is considered to be so serious that the formal procedure should commence immediately (Stage 2). Should the Chair of Governors have such concerns, advice should be sought from the regional consortium and the Local Authority informed (or the diocesan authority or provider of human resources support).

Investigating the issue

A Local Authority/consortium adviser not previously involved with the school will be responsible for gathering and collating written evidence regarding the concerns. They can draw upon the outcomes of routine line management performance data and other evidence, contextualised.

For this reason the designated member of the Local Authority/consortium is to meet with the Headteacher 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 misconduct.

An interview with the Headteacher should be conducted by the Chair of Governors and Local Authority/consortium representative so that an opportunity is provided to present the evidence of the concerns regarding the unsatisfactory performance so that a mutual understanding of the performance issues can be established.

The Headteacher 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 Headteacher should be provided at least two working days in advance of the meeting. Similarly any evidence that the Headteacher wishes to present should be made available to the Chair of Governors within the same timescale.

The interview should determine the facts, whether there 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 Headteacher).

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 Headteacher'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*).

The interview may also decide that no further action is required if the Chair of Governors is satisfied with the Headteacher's response.

The time period set for performance to improve should be reasonable and proportionate, but not excessively long e.g. between 20-30 working days. It is up to the Chair of Governors to decide the improvement period.

The Headteacher should be provided with a copy of the Capability of Headteachers Procedure.

Support plan

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

During this stage the support to be provided to the Headteacher should be specific, time limited and help them achieve an improvement in their performance. They should be told what is required, how performance will be reviewed, the review period, and that the formal stage of the capability procedure will commence if there is no improvement. Success criteria and agreed expected outcomes should be established. Support and monitoring should be conducted in a sympathetic and non-threatening way with the objective of improving the Headteacher's performance.

At the end of the agreed period of time the Local Authority/consortium representative will be responsible for gathering and collating any further evidence.

An interview with the Headteacher should be conducted by the Chair of Governors (in the presence of a trade union representative or companion if the Headteacher so wishes) so that an opportunity is provided to review progress.

If the evidence from the informal support programme indicates that the Headteacher's performance remains unsatisfactory the Chair of Governors will establish a Governor panel to address the issues.

Stage 2: Formal stage

Stage 2a: Warning Stage

In circumstances where actions taken during the informal stages have failed to achieve the desired improvement in Headteacher performance, the Governing body panel, supported by Local Authority/consortium representative and in consultation with the Local Authority will consider whether to trigger the formal stage of the procedure.

A formal report on Headteacher performance will be presented by the Local Authority/consortium representative to a specially convened panel of the governing body. The report should identify the performance shortfall, detail the actions taken at the informal stage and the impact or otherwise of those interventions. The report should be provided to the Headteacher and representative at least 2 working days in advance and the Governing body panel should consider the Headteacher's response to the report before reaching a view on the actions necessary to secure improvement.

The purposes of the formal stage are:-

- To evidence performance standards against requirements
- To seek to remedy continued underperformance
- To allow the Headteacher and representative to respond to evidence presented
- To determine whether to invoke the formal stages of the Capability procedure
- To identify causes of continued underperformance
- To agree actions to improve performance standards
- To review and renew the Headteacher support arrangements
- To set targets for improvement with clear success criteria and timescales
- To determine whether to issue a formal warning to the Headteacher to address under performance within agreed timescales
- To offer the Headteacher a right of appeal against any warning issued.

The Headteacher should be notified of the date and arrangements for the meeting of the Governor panel in writing and advised of their right to be represented. Appropriate notice of the meeting should be given.

The Governor panel will comprise 3 members of the governing body. Advisors from the consortium and Local Authority may attend with the consent of the Chair of the Governor panel (or the diocesan authority or provider of human resources support).

A copy of any new evidence relating to the performance of the Headteacher should be forwarded to the Headteacher at least two working days in advance of the meeting. Similarly any new evidence that the Headteacher wishes to present should be presented to the Chair of the Governor panel within the same timescale.

The Governor panel will consider relevant reports provided by the Local Authority/consortium to determine whether a formal warning should be issued under the Capability procedures. Considerations should include:-

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

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

- the performance problems that were discussed and the standard of performance which is required
- the ways to support the Headteacher to attain a satisfactory level of performance, i.e. details of any training and support to be provided
- the timescale within which this is expected to happen, usually within 20 to 30 working days except in exceptional circumstances, and a date on which the Headteacher's performance will be reviewed
- the consequences if the Headteacher does not reach the required standard including that formal action including consideration of dismissal are potential options
- that the current performance management cycle for the Headteacher will be suspended now that a formal warning has been issued
- the warning will remain on the Headteacher's record for 130 days
- the right to appeal (which should not stop the on-going Capability procedure)
- a note that the Headteacher has acknowledged the warning orally or in writing and any observations that the Headteacher wishes to make at that time.

The Headteacher will have a right of appeal against the issue of the formal warning in accordance with Annex B: Grievance and appeals.

If the Governor panel, advised by Local Authority/consortium representative, determines that the Headteacher 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 Chair of the Governing panel should seek the advice and support of the Local Authority/consortium (or the diocesan authority or provider of human resources support) if the capability process moves to Stage 3 (Disciplinary and dismissal procedures).

Support

The Governor panel will:

- specify the support for the Headteacher in achieving the targets
- identify who will monitor performance and progress following the formal meeting

- ensure that the monitoring process includes periodic structured meetings, informal discussion and direct support
- specify how improvement will be monitored, e.g. pupil attainment data, review of documentation, scrutiny of pupils' work, interviews with relevant staff, including Local Authority and consortium staff. The use of external expertise to judge
- standards and provide support may be considered
- ensure that the monitoring process is conducted in a sympathetic and non-threatening way with the objective of improving the Headteacher's work performance
- ensure that throughout the monitoring process the Headteacher is given the opportunity of commenting upon the proposed plan of support and its implementation.

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

In the case of capability due to ill health, where the physical or mental health of the Headteacher 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. An adviser from the Local Authority/consortium ((or the diocesan authority or provider of human resources support) will be responsible for brokering the agreed support for the Headteacher.

Review

During the review period an appointed advisor will support the Headteacher and monitor performance against the targets set.

At the end of the agreed period of time, the Local Authority/consortium representative should gather evidence and undertake an assessment of the Headteacher's performance, against the identified targets, during the timescale allocated for improvement.

If the Governors panel judge that sufficient progress has been made and the Headteacher is now achieving the required standard of performance that is sustainable then the review meeting will reflect this by acknowledging the improvement made and formally concluding the Capability process. This will be confirmed in writing and the Headteacher will be reminded of the expectation of sustaining an adequate standard of performance and of the consequence of failure to sustain this standard.

If, however, insufficient progress has been made and the Headteacher is still not achieving the required adequate standard of performance the Governors panel will

invite the Headteacher to attend a formal interview to consider whether to issue a Final Warning.

Stage 2b: Final Warning Stage

In circumstances where the formal Capability procedures have been invoked and a formal warning issued, the Governing body panel will seek a further report from the Local Authority/consortium representative on the progress achieved during the timescales established at the previous stage of the procedure. A meeting will be convened to discuss the evidence presented in that report with the Headteacher and their representative.

The formal report on Headteacher performance will be presented by the Local Authority/consortium representative to the specially convened panel of the governing body. The report should detail the actions taken following the formal warning stage with particular emphasis on progress achieved and the impact or otherwise of those interventions.

The report should evidence achievement against the defined success criteria and it is to be provided to the Headteacher and representative 2 days in advance of the meeting. The Governing body panel should consider the Headteacher's response to the report before reaching a view on the actions necessary to secure improvement.

The purposes of the Final Warning stage are:-

- To evidence and review progress achieved during the formal warning period
- To enable the Headteacher and representative to comment on the report findings and make representations to the Panel
- To enable the panel, with appropriate advice, to reach a view on whether performance standards have improved sufficiently
- For the Panel to determine whether to issue a further and final warning to the Headteacher
- To review the support arrangements and if appropriate to explore the potential for alternative employment
- To provide the Headteacher with a right of appeal against any final warning issued
- To ensure that the Headteacher is formally warned about the seriousness of the issues and the potential employment consequences of continued failure to improve.

The Headteacher should be notified in writing of the date and arrangements for the meeting and advised of their right to be represented.

A copy of any new evidence relating to the performance of the Headteacher should be forwarded to the Headteacher at least two working days in advance of the meeting. Similarly any new evidence that the Headteacher wishes to present should be presented to the Chair of the Governor panel within the same timescale.

The Chair of the Governor panel will give the Headteacher appropriate written notice for the meeting and compile an agenda that includes provision for:

- identifying the shortcomings in the Headteacher's performance
- providing an opportunity for the Headteacher to respond and to 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 detailing success criteria and expected outcomes
- establishing a timescale for assessment 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
- consider reasonable adjustments such as reviewing responsibilities or relinquishing job roles where appropriate
- Consideration of a final warning to the effect that if there is insufficient improvement within the defined review period the issues will be referred to the Disciplinary and Dismissals Committee of the governing body.

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

- the description of the unsatisfactory performance
- the standard of performance that is required
- a timescale for improvement (normally between 20 to 30 working days except in exceptional circumstances)
- support that will be given
- the warning will remain on their record for 1 year
- the 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 i.e that it will result in the matter being referred to the Staff Disciplinary and dismissal Committee of the governing body. The outcome of the process could be formal disciplinary action or dismissal
- a note that the Headteacher has acknowledged the warning orally or in writing and any observations that they wished to make at that time.

The Headteacher will have a right of appeal against the issue of the formal warning in accordance with Annex B: Grievance and appeals.

Support

The same support arrangements as set out in Stage 2a above will apply in relation to Stage 2b.

Review

During the review period, the appointed adviser will support the Headteacher and monitor their performance against the objectives/targets set.

At the end of the review period, the Local Authority/consortium representative should gather evidence and undertake an assessment of the Headteacher's performance against the identified targets during the timescale allocated for improvement.

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

If, however, insufficient progress has been made and the Headteacher is still not achieving the required adequate standard of performance the governor panel will refer the issues to the Disciplinary and Dismissal Committee of the governing body. The governors should seek the advice and support of the consortium and local authority (or the diocesan authority or provider of human resources support) if the process moves to Stage 3 (Disciplinary and dismissal Committee).

Stage 3: Disciplinary and dismissal procedures

Stage 3: Disciplinary and dismissal procedures – referral to the Staff Disciplinary and Dismissal Committee of the governing body.

In instances where the required improvement has not been reached following the issuing of a final written warning and the continued employment of the Headteacher is in question, the matter of their unsatisfactory performance should be referred to the Staff Disciplinary and Dismissal Committee of the governing body.

The Chair of Governors should seek the advice and support of the Local Authority and consortia (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*).

There may be circumstances where the Chair of Governors 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 Headteacher in the school could have a detrimental effect on the running of the school.

Professional duties

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

Reporting to the GTCW

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

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

Annex A: Guidance and other documents relevant to preventing underperformance

Revised professional standards for education practitioners in Wales

www.wales.gov.uk/docs/dcells/publications/110830profstandardsen.pdf

Performance management for Headteachers: Revised performance management arrangements

2012 <http://learning.wales.gov.uk/yourcareer/performancemanagement/pmguidance/?lang=en>

Performance management for teachers: Revised performance management arrangements 2012

www.wales.gov.uk/docs/dcells/publications/120510performteachen.pdf

Performance management for unattached teachers: Revised performance management arrangements 2012

www.wales.gov.uk/docs/dcells/publications/121008unattacheden.pdf

Code of Professional Conduct and Practice for Registered Teachers

www.gtcw.org.uk/gtcw/images/stories/downloads/professional_standards/GTCW_Professional_Code.pdf

Professional learning communities

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

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

www.wales.gov.uk/topics/educationandskills/publications/guidance/staff-disciplinary-and-dismissal/?lang=en

Annex B: Grievance and appeals

Grievance

Where a Headteacher 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 person leading on the issue of unsatisfactory performance then the Chair of Governors should allocate an alternative person to the role. If the grievance is against the Chair of Governors then advice should be sought from the Local Authority (or the diocesan authority or provider of human resources support).

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

Appeals

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

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

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

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

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

All appeals to the governing body should be heard before capability matters are referred to the Staff Disciplinary and Dismissal Committee. The decision on the appeal may, where possible, be given orally at the end of the hearing, otherwise it will be provided in writing as soon as possible after the end of the hearing. There will be no further right of appeal.

Annex C: Sickness and absence of a headteacher

It is possible that a Headteacher will become absent through ill health either before or during the process. While it may be reasonable for the Chair of Governors or governing body to wait for the Headteacher's recovery, the Headteacher should immediately 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 Headteacher concerned. The occupational health team or an appropriately qualified health professional should then be able to give advice on whether the:

- sickness absence is related to the Headteacher's performance issues
- if the capability process can continue (where the body of evidence is strong enough and the Headteacher is afforded the opportunity to present the case themselves or have it presented on their behalf).

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

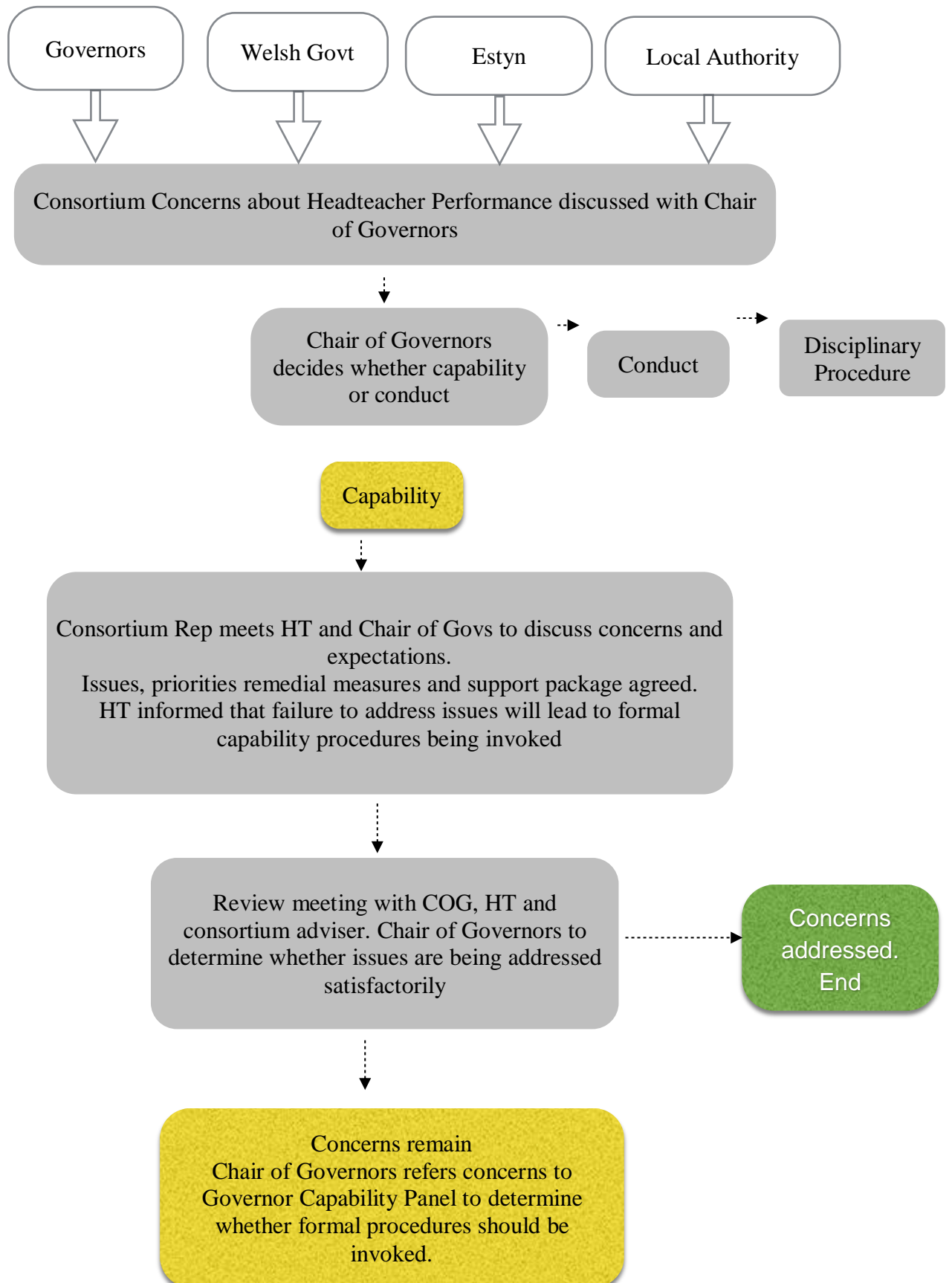
- conclude the proceedings on the basis that the Headteacher has achieved the required standard of performance in a way that it is sustainable
- continue the capability procedure to the next stage on the basis that the evidence shows that the Headteacher has not consistently achieved the required standard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

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

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

Annex D: Managing underperformance flowchart

Headteacher Capability – Informal Stage



Headteacher Capability Procedure – Formal Stages

