

# *Brynhafren C.P. School*



## *Capability Procedure for Teachers and Headteachers*

**Reviewed: March 2022/ October 2023**

**Signed.....Headteacher**

**Signed.....Chair of Governors**

# Capability Procedure for Teachers and Headteachers

<b>Policy name</b>	Capability Procedure for Teachers and Headteachers
<b>Department</b>	Human Resources
<b>Reviewing Officers</b>	ERW HR Group on behalf of the 6 constituent local authorities

## REVISION HISTORY

<b>Version 1</b>	November 2016
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## CONSULTATION PROCESS

The following Trade Unions have been consulted in respect of this Procedure:

- ASCL
- ATL / AMiE
- NAHT
- NASUWT
- NUT

- UCAC

**The Governing Body of Brynhafren School**  
 formally adopted this Procedure on \_\_\_\_\_

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## **SECTION A: GENERAL PRINCIPLES**

### **1. INTRODUCTION**

- 1.1 This Local Authority is committed to providing a first-class education for children and young people. In order to ensure this, school leaders and governing bodies must recognise the importance of addressing performance issues in a fair, transparent and efficient manner. The Governing Body of this School is therefore committed to ensuring that all staff possess the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively.
- 1.2 Effective performance management procedures demonstrate a school's commitment to develop all employees to ensure job satisfaction, high levels of expertise and progression of employees in their profession. It will also help employees to meet the needs of pupils and raise standards. Effective performance management requires line managers to pay continuous attention to monitoring progress during the year, intervening early and providing support if there are concerns about the performance of an employee. It sets a framework for staff, school leaders and governors to agree and review priorities and objectives in the context of professional development and the School's improvement plans<sup>1</sup>.
- 1.3 The purpose of this Procedure is to help schools secure improvement – this is a joint effort between the employee, the Headteacher or line manager and the Governing Body. Early identification of underperformance and appropriate intervention and support through effective performance management will help to avoid the need for formal capability procedures at a later date. In many cases, improvement may be achieved through existing review processes - often with a minimum of support and attention. In those instances, where serious concerns are identified in terms of unsatisfactory performance, a more formal approach may be required.
- 1.4 The commencement of capability procedures should not come as a surprise to the employee, as there should have been regular and effective communication with his/her line manager during the performance management process.
- 1.5 This Procedure applies to all teachers and Headteachers, except for Newly Qualified Teachers (NQTs) who are subject to separate procedures.
- 1.6 If concerns are raised about an employee's performance, it is important to establish the facts and to apply the appropriate procedures. A clear understanding needs to be established as to whether the issue is a lack

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<sup>1</sup> Under the School Teacher Appraisal (Wales) Regulations 2011 there is a statutory requirement to undertake Performance Management procedures for teaching staff. Performance Management procedures are separate and distinct from Capability Procedures

of capability due to lack of competence, a lack of capability due to ill health or a matter of professional conduct.

- 1.7 Where unsatisfactory performance is as a result of an employee's lack of skill or aptitude, this Procedure will apply.
- 1.8 Where it emerges that the issue causing concern relates to any inadequacy in health or any other physical or mental quality which results in unsatisfactory performance, the School's Sickness Absence Policy will apply and consideration should be given to any reasonable adjustments that might be required.
- 1.9 Where it emerges that the issue causing concern is one of misconduct because the employee has failed to do something as a result of his or her own negligence or by refusal to act, then the issue is not one of lack of capability and it is to be dealt with in line with the School's Disciplinary Policy.
- 1.10 This Procedure should be read in conjunction with the Welsh Government's 'Capability of school teaching staff: Guidance for schools' (guidance document no: 111/2013) and 'Capability of Headteachers - Guidance for schools' (guidance document no: 153/2014).

## **2. PURPOSE**

- 2.1 The purpose of this Procedure is to enable:
  - all employees to ensure that they achieve, sustain and improve on the levels of skill, knowledge and aptitude required of them, in order to improve standards and achieve better outcomes for pupils;
  - all employees to access an appropriate programme of monitoring, support, guidance and training, to achieve and sustain a satisfactory level of performance; and
  - employees to be made aware of circumstances where there is evidence that a satisfactory level of performance is not being maintained and of the process to be followed in such circumstances.
- 2.2 Sections B and C of this Procedure represent a set of stages that will provide teachers and Headteachers, respectively, with opportunities to hear how or why their performance is considered unsatisfactory and to offer any explanation that they wish to put forward.
- 2.3 This Procedure is written with the presumption that the Headteacher will have the lead decision-making role when dealing with performance issues involving teachers and that line managers or other senior leaders may be designated with the responsibility of gathering and collating written evidence regarding the concerns.

- 2.4 Where the term “designated manager” is used in this Procedure, it means the Headteacher, senior leader, line manager or (where the Headteacher’s performance is concerned) the Chair of Governors managing the process.

### **3. PRINCIPLES**

3.1 The main principles behind this Procedure are that:

- all employees 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 process;
- where reference is made in this Procedure to “the required / satisfactory standard of performance”, this means the requirements of the employee’s job description and person specification and the relevant Professional Standards;
- all meetings at the various stages of this procedure should be arranged as soon as possible within the time limits specified. If the time limits cannot be met for any justifiable reason, they can be extended by agreement on both sides;
- employees subject to these procedures should be given between 5 and 10 working days’ notice, in writing, of the time and place of any meeting set up to hear the capability matter or any appeal that may follow. At least 10 working days’ notice will be given in the case of a Stage 4 capability hearing or Stage 5 capability appeal hearing;
- employees will be advised of the performance concerns raised against them in advance of any interview, performance review or capability hearing and will be given the opportunity to state their case and present relevant evidence before any decision is made;
- employees will have the right to appeal against any decision to issue a warning or against their dismissal as part of this procedure;
- employees have the right to be accompanied by a work colleague or their trade union representative at all stages of this procedure. Please note this does not include a right to representation at review meetings held with the designated manager for the purposes of monitoring and reviewing performance outside of this Procedure;
- Where an employee’s trade union representative cannot attend a formal meeting which may lead to a formal warning, an alternative date, normally within 5 working days, should be offered by the

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

- all stages of this procedure should be fully recorded, with the designated manager or Governing Body Committees keeping a record of all interviews and reviews with employees giving the date, time and explanation (if any) provided at all stages of the procedure. A copy of such records should be given to the employee; and
- Where the process proceeds to the hearing and appeal hearing stages, the disciplinary and dismissal procedures apply.<sup>2</sup>

- 3.2 If, at any stage during the procedure, the employee consistently achieves the required standard of performance and there is evidence to suggest that this improvement is sustainable, these procedures will conclude. At this point, the normal performance management process will recommence. The designated manager will inform the employee of this both verbally and in writing. The employee must also be encouraged to sustain and improve their performance in the future. If, however, following conclusion of the Capability Procedure, the employee fails to sustain the required standard of performance within 60 working days of that conclusion, the procedure will recommence at the point where it was concluded previously.
- 3.3 Where it is necessary to recommence this Procedure on more than two occasions, the Headteacher (or Chair of Governors, in the case of the Headteacher) may consider that there is sufficient, cumulative evidence indicating serious performance issues that require the procedures to start at Stage 3 immediately.
- 3.4 The roles and responsibilities of all parties involved in this procedure can be found at Appendix 3 (for teachers) and Appendix 4 (for Headteachers) of this Procedure, as per the Welsh Government guidance documents.
- 3.5 Compliance with the requirements of equalities legislation should be maintained. The designated manager may need to seek further assistance to ensure reasonable adjustments are considered where an employee has a disability that falls under the Equality Act 2010.

#### **4. EXCEPTIONAL CIRCUMSTANCES**

- 4.1 In the exceptional case where the Headteacher (or Chair of Governors, in the case of the Headteacher) has overwhelming evidence that the continued employment of the employee will jeopardise the School, pupils' education or put the pupils or staff at risk of harm, it may be

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<sup>2</sup> A formal meeting should be instigated with the Staff Disciplinary and Dismissal Committee of the Governing Body, following the Welsh Government's 'Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies' (2013)



appropriate to move directly to issue a final written warning, or to refer the matter to the Staff Disciplinary and Dismissal Committee, in accordance with this procedure.

- 4.2 For this to occur, the employee'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 employee's underperformance has a seriously detrimental effect in the School.
- 4.3 The Headteacher, in consultation with the Chair of Governors (or Chair of Governors, in the case of the Headteacher's capability), may also consider suspending the employee where it is considered necessary for the protection of pupils, staff or property, or where the employee's continued presence is likely to have a seriously detrimental effect in the School. This is only likely to occur in exceptional circumstances and where all alternative options have been explored. It is therefore strongly recommended that HR advice is sought in such instances.

## **5. EMPLOYEE ABSENCE DURING THE PROCEDURE**

- 5.1 It is possible that an employee will become absent through ill health either before or during the Capability Procedure. While it may be reasonable to wait for the employee's recovery, the Headteacher (or Chair of Governors, in the case of the Headteacher) should immediately seek HR advice relating to a referral to the Local Authority's Occupational Health team or an appropriately qualified health professional. The Occupational Health team or appropriately qualified health professional should then be able to give advice on:
  - whether the sickness absence is related to the employee's performance issues; and
  - whether the employee is able to continue to participate in the Capability Procedure.
- 5.2 Whilst it is difficult to continue to assess the performance of an absent employee, if at any stage of the procedure the body of evidence is strong enough to proceed and the employee is afforded the opportunity to offer an explanation or have it presented on their behalf, the Headteacher (or Chair of Governors, in the case of the Headteacher) may decide to:
  - conclude the proceedings on the basis that the employee has achieved the required standard of performance and that it is sustainable; or
  - continue the Capability Procedure to the next stage on the basis that the evidence shows that the employee has not consistently achieved the required standard of performance. This decision should be made in consultation with the Occupational Health team

or appropriately qualified health professional who should be able to advise on whether the employee is well enough to present themselves or take part in the next stage of the process. If the employee is not well enough, the Headteacher (or Chair of Governors, in the case of the Headteacher) may decide to suspend the process until they are.

- 5.3 Where the evidence is strong enough to proceed to Stage 4 of the procedure and the employee is absent from work through ill health, every effort should be made to ensure that the employee can attend the hearing to present themselves. However, if the employee is unable to attend, this should not unduly delay the hearing taking place and written representations or representatives attending in the employee's absence will be allowed instead.
- 5.4 Throughout this procedure, if it is the advice of the Occupational Health team or appropriately qualified health professional that there is no likelihood of the employee returning to work in the foreseeable future, then the Headteacher (or Chair of Governors, in the case of the Headteacher) should consider dealing with the employee's sickness absence through the School's Sickness Absence Procedure. The requirement to notify the Education Workforce Council under the appropriate regulations dealing with professional incompetence will be unaffected by this decision.

## **6. GRIEVANCES**

- 6.1 Where an employee feels that they have been treated unfairly in the application of the Capability Procedure, this would normally be dealt with through the appeal process outlined in this Procedure.
- 6.2 If an employee feels that they have been treated unfairly or have been discriminated against, they may bring a grievance<sup>3</sup> at any stage. The grievance should normally be heard separately and contemporaneously so that the capability procedures are able to continue uninterrupted. A final decision regarding the continuation of the capability procedures will be made on a case-by-case basis, in light of available evidence. .
- 6.3 Where, however, the grievance is against the designated manager (or, in the case of the Headteacher, the designated person leading on the performance issue), the individual to whom the grievance is submitted should seek HR advice and consider whether to allocate an alternative person to the role before continuing with the capability process. If the grievance is against the Chair of Governors, then advice should be sought from the Local Authority (or the diocesan authority) before continuing with the capability process.

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<sup>3</sup> Grievances are concerns, problems or complaints raised by an employee (or somebody acting on their behalf, e.g. their Trade Union representative) which relate to their working conditions or relationships at work. Issues that may cause grievances include work relations, bullying and harassment or discrimination.

- 6.4 Subject to the above, initiation of the Capability Procedure does not in any way affect an employee's right to raise a grievance under the School's Grievance Policy.

## **7. REPORTING PROFESSIONAL INCOMPETENCE TO THE EDUCATION WORKFORCE COUNCIL**

- 7.1 Employers have a legal responsibility to report cases of professional incompetence related to registered teachers directly to the Education Workforce Council where the employer:
- has ceased to use the services of a registered teacher on the ground of his/her professional incompetence; or
  - may have ceased to use the services of a registered teacher on that ground had s/he not ceased to provide those services (e.g. through resigning his/her post).
- 7.2 Where a registered teacher resigns at the informal stage of this Procedure, his/her case would not normally be referred to the Education Workforce Council, other than in the exceptional circumstances referred to in paragraph 4 of this Procedure (e.g. where the matter would have been referred directly to the Staff Disciplinary and Dismissal Committee, had the employee not have resigned).

## **SECTION B: PROCEDURE FOR TEACHERS**

### **8. STAGE 1: INFORMAL SUPPORT**

- 8.1 Where there are concerns regarding a teacher's performance, the teacher should be advised by their line manager that continued failure to improve performance could result in a need to address their performance issues via this procedure. For this reason, the line manager will update the Headteacher regarding the matter, who will then instigate an initial investigation of the issue and appoint a designated manager to undertake the task.
- 8.2 The designated manager must meet with the teacher to ensure that there is complete clarity on where the performance issue lies (including consideration of the issues set out at paragraphs 1.6 to 1.9) and, through discussion, devise a plan to support the teacher to improve their performance to the standard required. The development of a support plan does not signify the start of a formal process.

- 8.3 The Headteacher will also meet with the teacher (in the presence of a trade union representative, if the teacher so wishes) and provide evidence of the concerns regarding his/her performance, having a discussion with the teacher so that a mutual understanding of the performance issue(s) is established.
- 8.4 The teacher should be provided with between 5 and 10 working days' notice of this meeting. At the same time, the teacher will be provided with a copy of this Procedure and with details of the performance concerns.
- 8.5 As a result of that meeting, the Headteacher may determine one of the following actions:
- that no further action is required as the Headteacher is satisfied with the teacher's response; or
  - that a support plan and review period should be established to address the performance concerns.
- 8.6 If a support plan is required, the period for improvement should be no more than 30 working days and the Headteacher should set the review period meeting and establish SMART<sup>4</sup> targets for performance improvement.
- 8.7 The Headteacher will discuss and, wherever possible, agree the content of the support plan with the teacher. In cases where it is not possible to reach agreement, the Headteacher will determine the content of the support plan.
- 8.8 The Headteacher will:
- specify the support for the teacher in achieving the targets. The range of support 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;
  - require the designated manager to monitor performance and progress following this first meeting;
  - ensure that the monitoring process includes a range of supportive interventions;
  - always ensure that the identified support is provided in a timely manner, is specific and time limited, and will help the teacher achieve an improvement in their performance;

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<sup>4</sup> SMART targets should be specific, measurable, achievable, relevant and time-bound.

- ensure that, throughout the monitoring process, the teacher is given the opportunity of commenting upon the proposed plan of support; and
  - ensure that the monitoring process is conducted in a sympathetic and non-threatening way, with the objective of improving the teacher's work performance. However, it must be made clear that Stage 2 of the procedure will be triggered if there is no improvement within the review period.
- 8.9 The designated manager will write to the teacher, confirming the outcome of this meeting, within 5 working days.
- 8.10 During the review period, the designated manager will be responsible for gathering and collating any further written evidence. Progress will be reported to the Headteacher during the review period and presented to the Headteacher at the end of the period.
- 8.11 If at any time in this procedure it is determined that a teacher has not engaged positively and constructively with the process of improvement, then the matter may be considered to be an issue of professional misconduct and may be considered under the School's Disciplinary Policy.

## **9. STAGE 1: REVIEW PERIOD MEETING**

- 9.1 Shortly before the Stage 1 review meeting takes place, the designated manager should prepare for it by undertaking an assessment of the teacher's performance during the agreed timescale for improvement.
- 9.2 The teacher should be notified of the date and arrangements for the meeting in writing between 5 and 10 working days prior to the meeting and should be informed of the right to be accompanied by a trade union representative or work colleague. At the same time, the teacher should be provided with copies of any written evidence to be relied upon by the Headteacher or designated manager at the meeting.
- 9.3 Should the teacher wish to submit any documentation, it should be provided to the Headteacher at least 2 working days in advance of the meeting.
- 9.4 At the meeting, the designated manager will present their report regarding the review period and the teacher will have the opportunity to provide a response to the report.
- 9.5 The Headteacher will then consider all the evidence presented, before determining one of the following outcomes:

- the teacher's performance has improved to a satisfactory level and no further action is necessary. This will be confirmed in writing and the teacher should be reminded of the requirement to sustain the satisfactory standard of performance and of the consequences if this is not achieved; or

the teacher has made insufficient progress and is still not achieving the required standard of performance, and so will be issued with a Stage 1 oral warning.

9.6 If it is determined to issue the teacher with an oral warning, this will also be provided in a written format that will state:

- the performance issue(s) that were discussed and the standard of performance that 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 for improvement (not to exceed 6 weeks) and the 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;
- that the oral warning will remain on their record for 65 working days;
- the right to appeal (which should not stop the on-going capability procedure, as the two processes can run concurrently); and
- a note that the teacher has acknowledged the warning orally or in writing, and of any observations that the teacher wished to make at that time.

## **10. STAGE 2**

10.1 At the end of the agreed review period for Stage 1, the designated manager should gather evidence and undertake an assessment of the teacher's performance against the identified targets during the timescale for improvement.

10.2 A review meeting will take place as per the process for Stage 1 (see 9.1 to 9.3).

10.3 The Headteacher will then consider all the evidence presented before determining one of the following outcomes:

- the teacher has made sufficient progress and is now achieving a satisfactory level of performance that is sustainable, in which case no further action will be taken. This will be confirmed in writing and the teacher will be reminded of the expectation of sustaining the satisfactory level of performance and the consequence of failure to sustain this standard;
- the teacher has achieved partial improvement and the review period should be extended. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion; or
- The teacher's performance is not satisfactory and they should be issued with a Stage 2 written warning.

10.4 If it is determined to issue the teacher with a written warning, this will state:

- the performance issue(s) that were discussed and the standard of performance that is required;
- the timescale for improvement (not to exceed 6 weeks) and the date on which the teacher's performance will be reviewed;
- 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;
- that the warning will remain on their record for 130 working days;
- the consequences of failure to meet the required standard and the potential to move to Stage 3 of the procedure;
- the right to appeal (which should not stop the on-going capability procedure, as the two processes can run concurrently); and
- a note that the teacher has acknowledged the warning orally or in writing, and of any observations that the teacher wished to make at that time.

## **11. STAGE 3**

11.1 At the end of the agreed review period for Stage 2, the designated manager should gather evidence and undertake an assessment of the

teacher's performance against the identified targets during the timescale for improvement.

11.2 A review meeting will take place as per the process for Stages 1 and 2 (see 9.1 to 9.3).

11.3 The Headteacher will then consider all the evidence presented before determining one of the following outcomes:

- the teacher has made sufficient progress and is now achieving a satisfactory level of performance that is sustainable, in which case no further action will be taken. This will be confirmed in writing and the teacher will be reminded of the expectation of sustaining the satisfactory level of performance and the consequence of failure to sustain this standard;
- the teacher has achieved partial improvement and the review period should be extended. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion; or
- The teacher's performance is not satisfactory and they should be issued with a Stage 3 final written warning.

11.4 If it is determined to issue the teacher with a final written warning, this will state:

- the performance issue(s) that were discussed and the standard of performance that is required;
- the timescale for improvement (not to exceed 6 weeks) and the date on which the teacher's performance will be reviewed;
- 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;
- that the warning will remain on their record for one academic year;
- the consequences of failure to meet the required standard and the potential to move to Stage 4 of the procedure;
- the right to appeal (which should not stop the on-going capability procedure, as the two processes can run concurrently); and
- a note that the teacher has acknowledged the warning orally or in writing, and of any observations that the teacher wished to make at that time.



## **12. APPEALS AGAINST FORMAL WARNINGS**

- 12.1 The teacher will have the right to appeal against any decision to issue an oral, written or final written warning as part of this procedure.
- 12.2 In order to do this, the teacher must write to the Clerk to the Governing Body within 5 working days of the date of the formal warning, stating their grounds for appeals.
- 12.3 Upon receipt of the teacher's appeal, the Clerk to Governing Body will arrange for the appeal to be heard by the Teacher Capability Appeals Committee of the Governing Body.
- 12.4 An appeal should be heard promptly, and within 20 working days of the teacher's appeal being lodged, 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 improvements identified with the designated manager, 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.
- 12.5 The teacher will be provided with between 5 and 10 working days' notice of the appeal hearing.
- 12.6 The format of the appeal hearing will be as follows:
  - Introductions and confirmation of the reason for the appeal hearing;
  - Presentation of the case by the teacher or their representative, including cross examination by the Committee and the designated manager;
  - The Headteacher's reply and cross-examination by the Committee and teacher;
  - Final questions and clarification from the Committee;
  - Summing up from the teacher;
  - Summing up from the Headteacher;
  - Adjournment for the Committee to make a decision, taking into consideration the submissions and evidence presented during the course of the appeal hearing and in the supporting documentation; and
  - Reconvene to inform the teacher of the panel's decision, unless agreed that the panel's decision will be conveyed in writing to the teacher.

- 12.7 The Teacher Capability Appeals Committee will have three options open to it:
- confirm the Headteacher's original decision;
  - uphold the teacher's appeal and overturn the Headteacher's original decision; or
  - agree a further assessment period, in the current stage, of no more than six weeks to allow the teacher to achieve the required standard of performance. Where this occurs, the Committee must reconvene at the end of the further assessment period to review the progress of the teacher and if the required standard of performance is still not met confirm the original decision.
- 12.8 The Teacher Capability Appeals Committee must confirm its decision in writing to the teacher, within 5 working days of the appeal hearing, also informing the teacher that there will be no further right of appeal at this stage of the procedure.
- 12.9 All appeals against formal warnings should be heard before capability matters are referred to the Staff Disciplinary and Dismissal Committee under Stage 4 of this Procedure.

### **13. STAGE 4: CAPABILITY HEARING**

- 13.1 Where the procedures detailed at Stages 1, 2 and 3 have been followed (save for in the exceptional circumstances outlined in paragraph 4) and have resulted in a final written warning being issued, but the teacher has not achieved the satisfactory level of performance within the agreed timescale for improvement, it will be appropriate to inform the teacher that the matter will be referred to a hearing before the Staff Disciplinary and Dismissal Committee (SD&DC) of the Governing Body.
- 13.2 The hearing process should be conducted in line with the Welsh Government's 'Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies' (circular 002/2013). The SD&DC should therefore ensure that they refer to that guidance at this stage.
- 13.3 In all maintained schools, the Local Authority's Chief Education Officer or their representative are entitled to attend such a hearing for the purpose of giving advice on all proceedings relating to any decision to dismiss a member of staff. The CEO or their representative must be notified of the meeting at the same time as the teacher and the person presenting the case against the teacher.

- 13.4 In voluntary aided and voluntary controlled schools, 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 with the diocesan authority to award those same advisory rights to the diocesan officer or their representative. The diocesan director should also be notified of the hearing.
- 13.5 At this stage, there may be circumstances where the Headteacher, in consultation with 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 pupils, staff or property, or where the teacher's continued presence is likely to have a seriously detrimental effect in the School. This is only likely to occur in exceptional circumstances and where all alternative options have been explored. It is therefore strongly recommended that HR advice is sought in such instances.
- 13.6 The hearing will be held as soon as it can be arranged by the Clerk to the SD&DC, even if the teacher has subsequently resigned<sup>5</sup>. This may also be the case if the teacher is absent from work due to ill health.
- 13.7 The teacher will be informed in writing, with at least 10 working days' notice, of:
- the date, time and place for the hearing;
  - the purpose of the hearing and the range of possible outcomes, including that a potential outcome of the hearing is dismissal;
  - the right of the teacher to be accompanied by a trade union representative or a work colleague;
  - the membership of the SD&DC;
  - the name of the person presenting the case against the teacher;
  - the full details of the performance concerns, the evidence to be presented and the names of any witnesses to be called, etc.;
  - the name of the adviser to the SD&DC; and
  - the date by which all relevant documentation should be received by the Clerk prior to the hearing.
- 13.8 The Clerk will arrange for the documentation from both parties to be distributed to the teacher and their representative, including up-to-date procedures at the same time as informing them in writing of the hearing.

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<sup>5</sup> In cases where the teacher has already resigned, he/she must still be notified that a hearing is to be held and be invited to attend, in the same way as a current employee. He/she must also subsequently be informed of the hearing's outcome.

- 13.9 Should the teacher wish to submit documentation to support their case, this should be provided to the Clerk at least 5 working days in advance of the hearing.
- 13.10 At the same time as informing the teacher in writing of the hearing and providing them with all relevant documentation, the Clerk will provide the SD&DC with:
- written details of the arrangements for hearing the capability matter;
  - formal written notice of the capability matter and any supporting documentation such as written reports prepared by the designated manager and/or Headteacher at each stage of the Capability Procedure; and
  - written confirmation of the teacher's response to the capability matter with any supporting documentation.
- 13.11 All evidence that will be used at the capability hearing is provided in confidence and this must remain so throughout the proceedings. At no time prior to the capability hearing will members of the SD&DC discuss the capability matter.
- 13.12 No new material should be introduced at the capability hearing, above and beyond that previously issued to the SD&DC.
- 13.13 The format to be followed at the capability hearing is outlined at Appendix 5.
- 13.14 The SD&DC will consider all of the evidence presented, before determining one of the following outcomes:
- the teacher's performance is satisfactory and no further action will be taken. The teacher should be reminded of the requirement to sustain a satisfactory standard of performance and the consequences if this is not achieved;
  - the teacher's performance is unsatisfactory and the teacher should be dismissed on the grounds of capability; or
  - the teacher has made some progress towards improving their performance but has not yet achieved the required satisfactory standard. A further assessment period of no more than six weeks will be agreed, in order to allow the teacher to achieve the required standard of performance. Where this occurs, the SD&DC must reconvene at the end of the further assessment period to review the progress of the teacher and if the required standard of performance is still not met, recommend dismissal with the right to appeal.
- 13.15 The SD&DC will confirm its decision in writing to the teacher, within 5 working days of reaching its decision. Where appropriate, this letter will

inform the teacher of their right to appeal against the decision of the SD&DC.

- 13.16 In maintained schools, where the SD&DC takes the decision to dismiss the teacher, the SD&DC must copy the hearing outcome letter to the Chief Education Officer once the period allowed for the teacher to appeal has expired **and** they have not appealed. The reason for this is that the Local Authority is the employer of staff in maintained schools. The Local Authority is therefore required to dismiss the teacher and should do so within 14 school days of notification of the decision by the SD&DC.
- 13.17 In voluntary aided and foundation schools, the teacher is employed by the Governing Body. The SD&DC should therefore include notification of dismissal and any appropriate period of notice in the hearing outcome letter that it sends to the teacher.

#### **14. STAGE 5: CAPABILITY APPEAL HEARING**

- 14.1 Where the teacher appeals against the dismissal decision of the SD&DC, the appeal will be heard by the Staff Disciplinary and Dismissal Appeals Committee (SD&DAC).
- 14.2 The appeal hearing process should be conducted in line with the Welsh Government's 'Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies' (circular 002/2013). The SD&DAC should therefore ensure that they refer to that guidance at this stage.
- 14.3 The appeal hearing will focus upon the issues set out in the teacher's letter of appeal, therefore the appeal hearing may not always take the form of a complete re-hearing. However, under certain circumstances, i.e. where new evidence comes to light or the first hearing process was flawed or biased, it may be appropriate to re-hear part, if not all, of the case. Two possible formats for the capability appeal hearing are therefore outlined at Appendix 6.
- 14.4 Where a teacher has been dismissed and given the right of appeal, they must notify the Clerk to the Governing Body in writing that they intend to appeal, stating their grounds for appeal, within 10 working days of receiving written confirmation of the decision.
- 14.5 The teacher's grounds for appeal could include:
- that there has been a procedural flaw in the first hearing;
  - that the findings are inconsistent with the evidence produced;
  - that the teacher feels that the sanctions are inappropriate;

- that the capability procedure and/or the first hearing was in some way unfair or biased; and
  - that new evidence has come to light that was not considered at the original hearing.
- 14.6 On receipt of the teacher's written notice of appeal, the Clerk to the Governing Body will arrange for the SD&DAC to hear the capability appeal within 20 working days of the teacher's appeal being lodged.
- 14.7 The Clerk will inform the teacher in writing, with at least 10 working days' notice, of:
- the date, time and place for the appeal hearing;
  - the purpose of the appeal hearing and the range of possible outcomes;
  - the right of the teacher to be accompanied by a trade union representative or a work colleague;
  - the membership of the SD&DAC;
  - the full details of the evidence to be presented and the names of any witnesses to be called, etc.;
  - the name of the adviser to the SD&DAC; and
  - the date by which all relevant documentation should be received by the Clerk prior to the appeal hearing.
- 14.8 The Clerk will arrange for the documentation to be relied upon at the appeal hearing (including any such documentation from the first hearing) to be distributed to the teacher and their representative, including up-to-date procedures at the same time as informing them in writing of the appeal hearing.
- 14.9 Should the teacher wish to submit documentation to support their case, this should be provided to the Clerk at least 5 working days in advance of the appeal hearing.
- 14.10 At the same time as informing the teacher in writing of the appeal hearing and providing them with all relevant documentation, the Clerk will provide the SD&DAC with:
- written details of the arrangements for the appeal hearing;
  - copies of any supporting documentation to be relied upon at the appeal hearing, including copies of any documentation that was considered at the first hearing; and

- copies of any documentation submitted by the teacher, in support of their appeal.
- 14.11 All evidence that will be used at the capability appeal hearing is provided in confidence and this must remain so throughout the proceedings. At no time prior to the capability hearing will members of the SD&DAC discuss the capability matter.
- 14.12 No new material should be introduced at the capability appeal hearing, above and beyond that previously issued to the SD&DAC.
- 14.13 The SD&DAC will have four options open to it:
- confirm the decision of the SD&DC to dismiss the teacher;
  - uphold the teacher's appeal and overturn the SD&DC's decision to dismiss;
  - agree a further assessment period of no more than six weeks to allow the teacher to achieve the required standard of performance. Where this occurs, the SD&DAC must reconvene at the end of the further assessment period to review the progress of the teacher and if the required standard of performance is still not met confirm the dismissal; or
  - recommend that the teacher be redeployed should suitable alternative employment be available.
- 14.14 The SD&DAC will confirm its decision in writing to the teacher, within 5 working days of reaching its decision. Where appropriate, this letter will inform the teacher that the decision of the SD&DAC is final and there is no further right of appeal.
- 14.15 In maintained schools, where the SD&DAC upholds the SD&DC's decision to dismiss the teacher, the SD&DAC must copy the appeal hearing outcome letter to the Chief Education Officer. The reason for this is that the Local Authority is the employer of staff in maintained schools. The Local Authority is therefore required to dismiss the teacher and should do so within 14 school days of notification of the decision by the SD&DAC.
- 14.16 In voluntary aided and foundation schools, the teacher is employed by the Governing Body. The SD&DC should therefore include notification of dismissal and any appropriate period of notice in the appeal hearing outcome letter that it sends to the teacher.

## **SECTION C: PROCEDURE FOR HEADTEACHERS**

### **15. STAGE 1: INFORMAL SUPPORT**

- 15.1 Where concerns in relation to the Headteacher's performance arise, the Chair of Governors should arrange a meeting with the Headteacher to raise the concerns, identify any reasons for the underperformance (including consideration of the issues set out in paragraphs 1.6 to 1.9) and identify support that can be put in place to help the Headteacher to address the concerns. The Chair of Governors would normally be accompanied at this meeting by a Local Authority representative.
- 15.2 In advance of the meeting, the Chair of Governors should secure from the Regional Consortium, via the Local Authority, the support of an individual with appropriate education expertise and no previous direct involvement in the work of the School ("Consortium Adviser"). That person will be responsible for clarifying the concerns and gathering relevant, contextualised evidence in advance of that meeting.
- 15.3 The Headteacher should be provided with details of the performance concerns and a copy of this Procedure, between 5 and 10 working days in advance of the meeting.
- 15.4 At the meeting, the Chair of Governors should present the evidence relating to the performance concerns to the Headteacher, so that a mutual understanding of the issues and causes can be established. The Chair of Governors should listen to the Headteacher's response in order to discuss, consider and, if possible, agree steps to be taken to address the identified concerns. At this point, the performance concerns and the support to be provided should be clearly established.
- 15.5 As a result of the meeting, the Chair of Governors may determine one of the following actions:
- that no further action is required as the Chair of Governors is satisfied with the Headteacher's response; or
  - that a support plan and review period should be established to address the performance concerns.
- 15.6 If a support plan is required, the period for improvement should normally be 20 - 40 working days and the Chair of Governors should set the review period meeting and establish clear targets for performance improvement. These must be reasonable, informed by the Consortium Adviser, discussed with the Headteacher and confirmed in writing.
- 15.7 The Chair of Governors will discuss and, wherever possible, agree the content of the support plan with the Headteacher. In cases where it is



not possible to reach agreement, the Chair of Governors will determine the content of the support plan.

- 15.8 There may be exceptional instances where the identified underperformance of the Headteacher is considered to be so serious that the formal procedure should commence immediately (i.e. Stage 2). Advice must be obtained from the Local Authority and, where applicable, the diocesan authority before such decisions are considered.
- 15.9 Throughout the review period, by working closely with the Consortium Adviser, the Chair of Governors will:
- specify the support for the Headteacher in achieving the targets. The range of support 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.;
  - require the Consortium Adviser to coordinate the implementation of the support plan, be responsible for gathering and collating evidence relating to the Headteacher's performance, and their progress against the performance targets;
  - ensure that the monitoring process includes a range of supportive interventions;
  - always ensure that the identified support is provided in a timely manner, is specific and time limited, and will help the Headteacher achieve an improvement in their performance;
  - ensure that, throughout the monitoring process, the Headteacher is given the opportunity of commenting upon the proposed plan of support; and
  - ensure that the monitoring process is conducted in a sympathetic and non-threatening way, with the objective of improving the Headteacher's work performance. However, it must be made clear that Stage 2 of the procedure will be triggered if there is no improvement within the review period.
- 15.10 Progress will be reported to the Chair of Governors during the review period and presented to the Chair of Governors at the end of the period, by the Consortium Adviser.
- 15.11 At the end of the review period, an interview with the Headteacher should be conducted by the Chair of Governors (in the presence of a trade union representative or work colleague, if the Headteacher so wishes). The Consortium Adviser will present their report and the Chair of Governors may find it helpful to be accompanied at the meeting by a Local Authority representative.

- 15.12 Where the Chair of Governors determines that the Headteacher has achieved partial improvement, they may determine to extend the period of the informal stage. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.
- 15.13 Where the Chair of Governors determines that the evidence demonstrates that the Headteacher's performance has improved to a satisfactory level, they will determine that no further action is necessary and that the procedure will cease. This will be confirmed in writing, with the Headteacher reminded of the requirement to sustain the satisfactory standard of performance and the consequences of failing to sustain this standard.
- 15.14 Where the Chair of Governors determines that actions taken during the informal stages have failed to achieve the required improvement in the Headteacher's performance, they will inform the Headteacher that a review meeting will be arranged, to be heard by a governor panel ("Capability Panel"), who will consider whether to trigger the formal stage of the procedure.

## **16. STAGE 1: REVIEW PERIOD MEETING**

- 16.1 The Capability Panel will comprise 3 non-staff members of the Governing Body, A Local Authority representative (or diocesan representative, where applicable) should attend in an advisory capacity, with the consent of the chair of the Panel.
- 16.2 The Headteacher should be notified of the date and arrangements for the meeting, including their right to be accompanied by a trade union representative or work colleague, in writing between 5 and 10 working days in advance of the meeting. All documentation for the panel, including the report of the Consortium Adviser will be provided at this point.
- 16.3 The Consortium Adviser's report should identify the nature of the Headteacher's underperformance, detail the actions taken at the informal stage and the impact, or otherwise, of those interventions.
- 16.4 Should the Headteacher wish to submit any documentation, it should be provided to the chair of the Panel at least 2 working days in advance of the meeting.
- 16.5 At the meeting, the Consortium Adviser will present their report and the Headteacher and/or their representative will then have an opportunity to respond to the report and the performance concerns raised.

16.6 The Capability Panel will then consider all the evidence presented, before determining one of the following outcomes:

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

16.7 If it is determined to issue the Headteacher with a formal warning, this will be a written warning which will state:

- the performance issue(s) that were discussed and the standard of performance that is required;
- the ways in which the School will help the Headteacher to attain a satisfactory level of performance, i.e. details of any training and support to be provided;
- the timescale for improvement (not to exceed 6 weeks) and the date on which the Headteacher's performance will be reviewed;
- the consequences if the Headteacher does not reach the required standard, including that a final written warning may be issued;
- that the current performance management cycle for the Headteacher will be suspended now that a formal written warning has been issued;
- that the written warning will remain on their record for one year;
- the right to appeal (which should not stop the on-going capability procedure, as the two processes can run concurrently); and
- whilst no response is required, a note should be made of any response made by the Headteacher.

16.8 Where the evidence presented suggests that the Headteacher has not engaged positively and constructively with the procedure, the matter may be considered to be an issue of professional misconduct and will be dealt with under the School's Disciplinary Policy. Before considering this action, the Chair of Governors should seek advice from the Local Authority, diocesan authority (where applicable) or HR.

## **17. STAGE 2**

17.1 At the end of the agreed review period for Stage 1, the Consortium Adviser should gather evidence and undertake an assessment of the Headteacher's performance against the identified targets, during the timescale allocated for improvement. The Consortium Adviser's report will then be presented to the Capability Panel.

17.2 A review meeting will take place as per the process for Stage 1 (see 16.1 to 16.5).

17.3 The Capability Panel will then consider all the evidence presented before determining one of the following outcomes:

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

17.4 If it is determined to issue the Headteacher with a final written warning, this will state:

- the performance issue(s) that were discussed and the standard of performance that is required;
- the ways in which the School will help the Headteacher to attain a satisfactory level of performance, i.e. details of any training and support to be provided;
- the timescale for improvement (not to exceed 6 weeks) and the date on which the Headteacher's performance will be reviewed;

- the consequences if the Headteacher does not reach the required standard, i.e. that the matter may be referred to the Staff Disciplinary and Dismissal Committee of the Governing Body and that the outcome could be dismissal;
- that the final written warning will remain on their record for one year;
- the right to appeal (which should not stop the on-going capability procedure, as the two processes can run concurrently); and
- whilst no response is required, a note should be made of any response made by the Headteacher.

## **18. STAGE 3**

- 18.1 At the end of the agreed review period for Stage 2, the Consortium Adviser will gather evidence and undertake an assessment of the Headteacher's performance against targets during the timescale allocated for improvement. The Consortium Adviser's report will then be presented to the Capability Panel. It is recommended that the Capability Panel secures the services of a Local Authority or diocesan adviser (where applicable) at this stage, to provide support and advice.
- 18.2 If the Capability Panel judge that sufficient progress has been made and that 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 Procedure. This will be confirmed in writing and the Headteacher will be reminded of the expectation of sustaining a satisfactory level of performance and of the consequence of failure to sustain this standard.
- 18.3 If, however, the Capability Panel judge that insufficient progress has been made and there remains concern that the Headteacher is still not achieving the required satisfactory standard of performance, the Capability Panel will refer the issue to the Staff Disciplinary and Dismissal Committee of the Governing Body. The Capability Panel should seek the advice of the Local Authority, diocesan authority (where applicable) or HR if the process moves to Stage 4.

## **19. APPEALS AGAINST FORMAL WARNINGS**

- 19.1 In order to appeal against a decision to issue a written or final written warning, the Headteacher must write to the Clerk to the Governing Body within 5 working days of the date of the formal warning, stating their grounds for appeals.

- 19.2 Upon receipt of the Headteacher's appeal, the Clerk to Governing Body will arrange for the appeal to be heard by the Headteacher Capability Appeals Committee of the Governing Body.
- 19.3 An appeal should be heard promptly, and within 20 working days of the Headteacher's appeal being lodged, 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 improvements identified with the Chair of Governors, Consortium Adviser and Capability Panel, 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.
- 19.4 The format of the appeal hearing will be as follows:
- Introductions and confirmation of the reason for the appeal hearing;
  - Presentation of the case by the Headteacher or their representative, including cross examination by the Committee and the Chair of the Capability Panel;
  - The Chair of the Capability Panel's reply and cross-examination by the Committee and Headteacher;
  - Final questions and clarification from the Committee;
  - Summing up from the Headteacher;
  - Summing up from the Chair of the Capability Panel;
  - Adjournment for the Committee to make a decision, taking into consideration the submissions and evidence presented during the course of the appeal hearing and in the supporting documentation; and
  - Reconvene to inform the Headteacher of the panel's decision, unless agreed that the panel's decision will be conveyed in writing to the Headteacher.
- 19.5 The Headteacher Capability Appeals Committee will have three options open to it:
- confirm the Capability Panel's original decision;
  - uphold the Headteacher's appeal and overturn the Capability Panel's original decision; or
  - agree a further assessment period of no more than six weeks to allow the Headteacher to achieve the required standard of performance. Where this occurs, the Committee must reconvene at the end of the further assessment period to review the progress of

the Headteacher and if the required standard of performance is still not met confirm the original decision.

- 19.6 The Headteacher Capability Appeals Committee must confirm its decision in writing to the Headteacher within 5 working days of the appeal hearing, also informing the Headteacher that there will be no further right of appeal at this stage of the procedure.
- 19.7 All appeals against formal warnings should be heard before capability matters are referred to the Staff Disciplinary and Dismissal Committee under Stage 4 of this Procedure.

## **20. STAGE 4: CAPABILITY HEARING**

- 20.1 Where the procedures detailed at Stages 1, 2 and 3 have been followed (save for in the exceptional circumstances outlined in paragraph 4) and have resulted in a final written warning being issued, but the Headteacher has not achieved the satisfactory level of performance within the agreed timescale for improvement, it will be appropriate to inform the Headteacher that the matter will be referred to a hearing before the Staff Disciplinary and Dismissal Committee (SD&DC) of the Governing Body.
- 20.2 The hearing process should be conducted in line with the Welsh Government's 'Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies' (circular 002/2013). The SD&DC should therefore ensure that they refer to that guidance at this stage.
- 20.3 In all maintained schools, the Local Authority's Chief Education Officer or their representative are entitled to attend such a hearing for the purpose of giving advice on all proceedings relating to any decision to dismiss a member of staff. The CEO or their representative must be notified of the hearing at the same time as the Headteacher and the person presenting the case against the Headteacher.
- 20.4 In voluntary aided and voluntary controlled schools, 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 with the diocesan authority to award those same advisory rights to the diocesan officer or their representative. The diocesan director should also be notified of the hearing.
- 20.5 At this stage, there may be circumstances where the Chair of Governors may consider suspending a Headteacher from duty on full pay where they consider that it is necessary for the protection of pupils, staff or property, or where the Headteacher's continued presence is likely to have a seriously detrimental effect in the School. This is only likely to occur in exceptional circumstances and where all alternative

options have been explored. It is therefore strongly recommended that HR advice is sought in such instances.

- 20.6 The hearing will be held as soon as it can be arranged by the Clerk to the SD&DC, even if the Headteacher has subsequently resigned<sup>6</sup>. This may also be the case if the Headteacher is absent from work due to ill health.
- 20.7 The Headteacher will be informed in writing, with at least 10 working days' notice, of:
- the date, time and place for the hearing;
  - the purpose of the hearing and the range of possible outcomes, including that a potential outcome of the hearing is dismissal;
  - the right of the Headteacher to be accompanied by a trade union representative or a work colleague;
  - the membership of the SD&DC;
  - the name of the person presenting the case against the Headteacher;
  - the full details of the performance concerns, the evidence to be presented and the names of any witnesses to be called, etc.;
  - the name of the adviser to the SD&DC; and
  - the date by which all relevant documentation should be received by the Clerk prior to the hearing.
- 20.8 The Clerk will arrange for the documentation from both parties to be distributed to the Headteacher and their representative, including the Consortium Adviser's reports and a copy of this Procedure at the same time as informing them in writing of the hearing.
- 20.9 Should the Headteacher wish to submit documentation to support their case, this should be provided to the Clerk at least 5 working days in advance of the hearing.
- 20.10 At the same time as informing the Headteacher in writing of the hearing and providing them with all relevant documentation, the Clerk will provide the SD&DC with:
- written details of the arrangements for hearing the capability matter;

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<sup>6</sup> In cases where the Headteacher has already resigned, he/she must still be notified that a hearing is to be held and be invited to attend, in the same way as a current employee. He/she must also subsequently be informed of the hearing's outcome.



- formal written notice of the capability matter and any supporting documentation such as written reports prepared by the Consortium Adviser at each stage of the Capability Procedure; and
  - written confirmation of the Headteacher's response to the capability matter with any supporting documentation.
- 20.11 All evidence that will be used at the capability hearing is provided in confidence and this must remain so throughout the proceedings. At no time prior to the capability hearing will members of the SD&DC discuss the capability matter.
- 20.12 No new material should be introduced at the capability hearing, above and beyond that previously issued to the SD&DC.
- 20.13 The format to be followed at the capability hearing is outlined at Appendix 5.
- 20.14 The SD&DC will consider all of the evidence presented, before determining one of the following outcomes:
- the Headteacher's performance is satisfactory and no further action will be taken. The Headteacher should be reminded of the requirement to sustain a satisfactory standard of performance and the consequences if this is not achieved;
  - the Headteacher's performance is unsatisfactory and the Headteacher should be dismissed on the grounds of capability; or
  - the Headteacher has made some progress towards improving their performance but has not yet achieved the required satisfactory standard. A further assessment period of no more than six weeks will be agreed, in order to allow the Headteacher to achieve the required standard of performance. Where this occurs, the SD&DC must reconvene at the end of the further assessment period to review the progress of the Headteacher and if the required standard of performance is still not met, recommend dismissal with the right to appeal.
- 20.15 The SD&DC will confirm its decision in writing to the Headteacher, within 5 working days of reaching its decision. Where appropriate, the letter will inform the Headteacher of their right to appeal against the decision of the SD&DC.
- 20.16 In maintained schools, where the SD&DC takes the decision to dismiss the Headteacher, the SD&DC must copy the hearing outcome letter to the Chief Education Officer once the period allowed for the Headteacher to appeal has expired **and** they have not appealed. The reason for this is that the Local Authority is the employer of staff in maintained schools. The Local Authority is therefore required to dismiss the Headteacher

and should do so within 14 school days of notification of the decision by the SD&DC.

- 20.17 In voluntary aided and foundation schools, the Headteacher is employed by the Governing Body. The SD&DC should therefore include notification of dismissal and any appropriate period of notice in the hearing outcome letter that it sends to the Headteacher.

## **21. STAGE 5: CAPABILITY APPEAL HEARING**

- 21.1 Where the Headteacher appeals against the dismissal decision of the SD&DC, the appeal will be heard by the Staff Disciplinary and Dismissal Appeals Committee (SD&DAC).
- 21.2 The appeal hearing process should be conducted in line with the Welsh Government's 'Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies' (circular 002/2013). The SD&DAC should therefore ensure that they refer to that guidance at this stage.
- 21.3 In all maintained schools, the Local Authority's Chief Education Officer or their representative are entitled to attend such an appeal hearing for the purpose of giving advice on all proceedings relating to any decision to dismiss a member of staff. The CEO or their representative must be notified of the hearing at the same time as the Headteacher.
- 21.4 In voluntary aided and voluntary controlled schools, 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 with the diocesan authority to award those same advisory rights to the diocesan officer or their representative. The diocesan director should also be notified of the appeal hearing.
- 21.5 The appeal hearing will focus upon the issues set out in the Headteacher's letter of appeal, therefore the appeal hearing may not always take the form of a complete re-hearing. However, under certain circumstances, i.e. where new evidence comes to light or the first hearing process was flawed or biased, it may be appropriate to re-hear part, if not all, of the case. Two possible formats for the capability appeal hearing are therefore outlined at Appendix 6.
- 21.6 Where a Headteacher has been dismissed and given the right of appeal, they must notify the Clerk to the Governing Body in writing that they intend to appeal, stating their grounds for appeal, within 10 working days of receiving written confirmation of the decision.
- 21.7 The Headteacher's grounds for appeal could include:
- that there has been a procedural flaw in the first hearing;

- that the findings are inconsistent with the evidence produced;
  - that the Headteacher feels that the sanctions are inappropriate;
  - that the capability procedure and/or the first hearing was in some way unfair or biased; and
  - that new evidence has come to light that was not considered at the original hearing.
- 21.8 On receipt of the Headteacher's written notice of appeal, the Clerk to the Governing Body will arrange for the SD&DAC to hear the capability appeal as soon as possible and within 20 working days of the Headteacher's appeal being lodged.
- 21.9 The Clerk will inform the Headteacher in writing, with at least 10 working days' notice, of:
- the date, time and place for the appeal hearing;
  - the purpose of the appeal hearing and the range of possible outcomes;
  - the right of the Headteacher to be accompanied by a trade union representative or a work colleague;
  - the membership of the SD&DAC;
  - the full details of the evidence to be presented and the names of any witnesses to be called, etc.;
  - the name of the adviser to the SD&DAC; and
  - the date by which all relevant documentation should be received by the Clerk prior to the appeal hearing.
- 21.10 The Clerk will arrange for the documentation to be relied upon at the appeal hearing (including any such documentation from the first hearing) to be distributed to the Headteacher and their representative, including up-to-date procedures at the same time as informing them in writing of the appeal hearing.
- 21.11 Should the Headteacher wish to submit documentation to support their case, this should be provided to the Clerk at least 5 working days in advance of the appeal hearing.
- 21.12 At the same time as informing the Headteacher in writing of the appeal hearing and providing them with all relevant documentation, the Clerk will provide the SD&DAC with:

- written details of the arrangements for the appeal hearing;
- copies of any supporting documentation to be relied upon at the appeal hearing, including copies of any documentation that was considered at the first hearing; and
- copies of any documentation submitted by the Headteacher, in support of their appeal.

21.13 All evidence that will be used at the capability appeal hearing is provided in confidence and this must remain so throughout the proceedings. At no time prior to the capability hearing will members of the SD&DAC discuss the capability matter.

21.14 No new material should be introduced at the capability appeal hearing, above and beyond that previously issued to the SD&DAC.

21.15 The SD&DAC will have four options open to it:

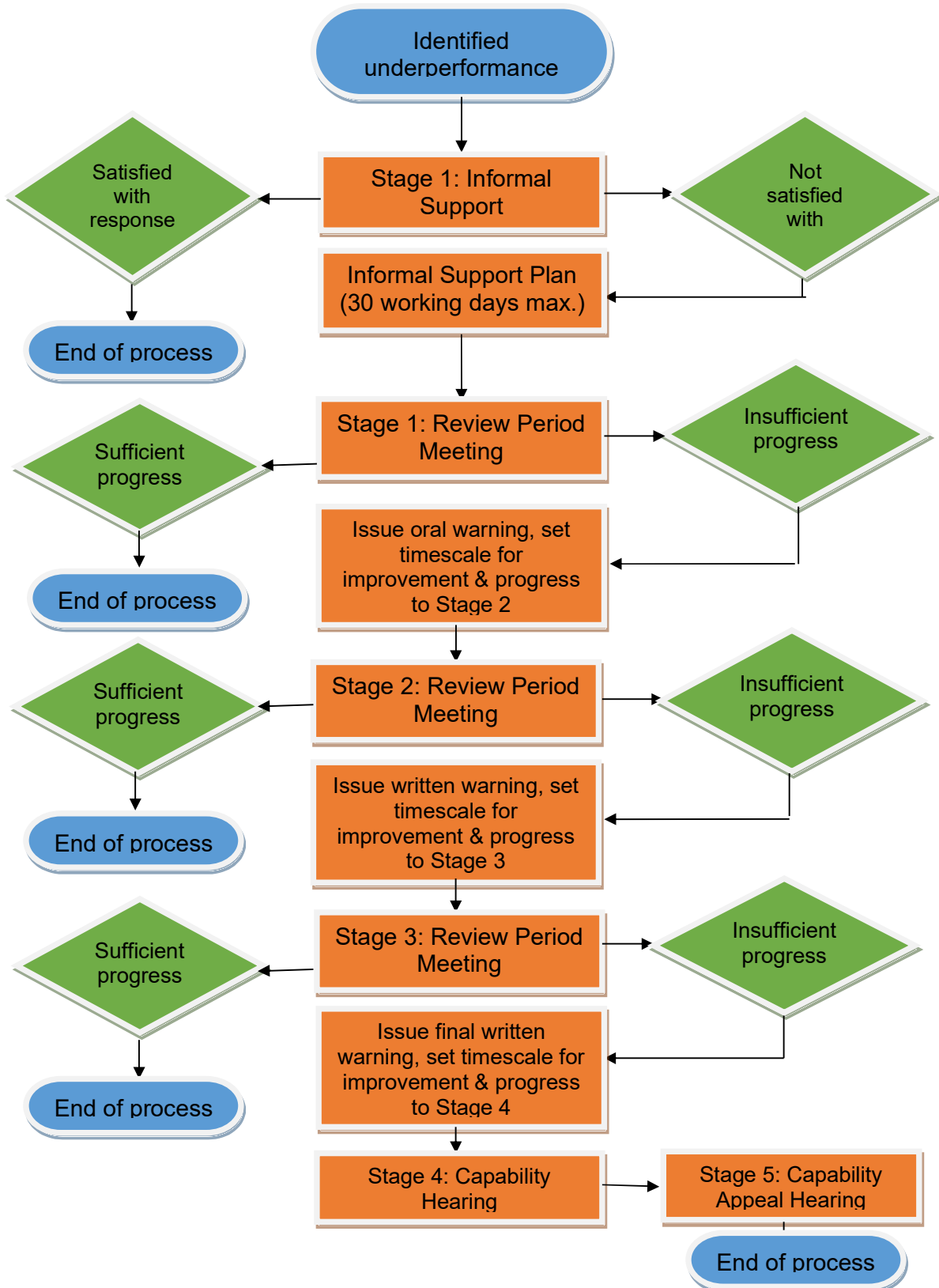
- confirm the decision of the SD&DC to dismiss the Headteacher;
- uphold the Headteacher's appeal and overturn the SD&DC's decision to dismiss;
- agree a further assessment period of no more than six weeks to allow the Headteacher to achieve the required standard of performance. Where this occurs, the SD&DAC must reconvene at the end of the further assessment period to review the progress of the Headteacher and if the required standard of performance is still not met confirm the dismissal; or
- recommend that the Headteacher be redeployed should suitable alternative employment be available.

21.16 The SD&DAC will confirm its decision in writing to the Headteacher, within 5 working days of its decision being reached. Where appropriate, this letter will inform the Headteacher that the decision of the SD&DAC is final and there is no further right of appeal.

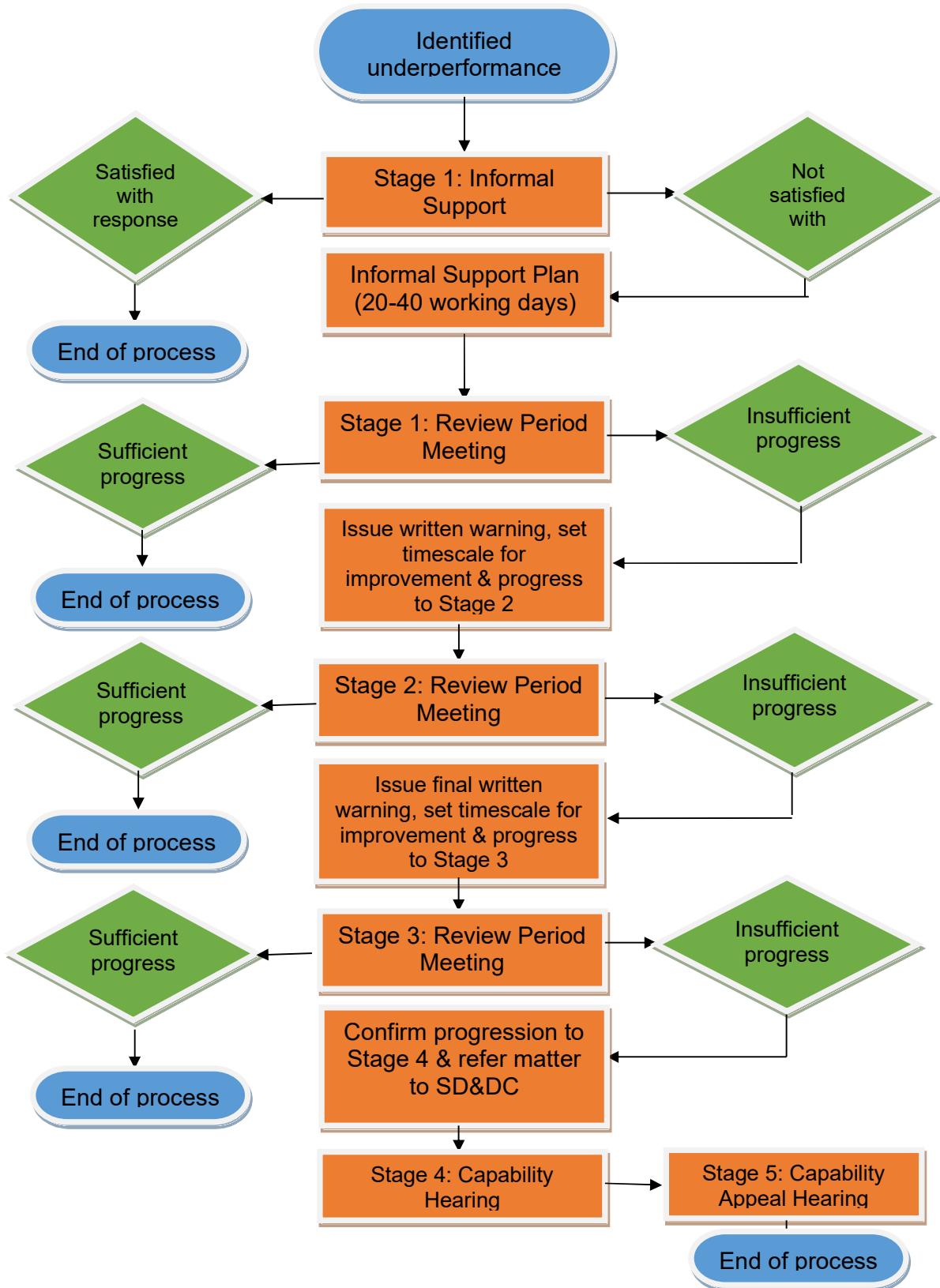
21.17 In maintained schools, where the SD&DAC upholds the SD&DC's decision to dismiss the Headteacher, the SD&DAC must copy the appeal hearing outcome letter to the Chief Education Officer. The reason for this is that the Local Authority is the employer of staff in maintained schools. The Local Authority is therefore required to dismiss the Headteacher and should do so within 14 school days of notification of the decision by the SD&DAC.

21.18 In voluntary aided and foundation schools, the Headteacher is employed by the Governing Body. The SD&DC should therefore include notification of dismissal and any appropriate period of notice in the appeal hearing outcome letter that it sends to the Headteacher.

# APPENDIX 1: FLOWCHART OUTLINING PROCEDURE FOR TEACHERS



## APPENDIX 2: FLOWCHART OUTLINING PROCEDURE FOR HEADTEACHERS



## **APPENDIX 3: ROLES AND RESPONSIBILITIES (TEACHER CAPABILITY)**

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.
- 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, where applicable.

### **Role of the representative**

- To accompany the teacher at all stages of the capability procedure, should the teacher wish. The teacher should be advised that they have the right to be represented by a work colleague or 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.

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

- To be fully aware of the requirements of the Practising Teacher Standards.
- 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 HR 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.



- 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 HR support) if the capability process is to move to Stage 4 (Capability Hearing).

### **Role of the appropriate authority (i.e. the Local Authority or diocesan authority)**

- To provide advice and support to the Headteacher and Governing Body through the Local Authority, the diocesan authority or provider of HR 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 or voluntary controlled 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 HR support.

## **APPENDIX 4: ROLES AND RESPONSIBILITIES (HEADTEACHER CAPABILITY)**

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**

- To be fully aware of the requirements of the Practising Teacher Standards and the Leadership Standards.
- To cooperate with the Chair of Governors to agree performance objectives.
- To cooperate with the Chair of Governors to achieve a satisfactory level of overall performance.
- To take responsibility for their training and development and be proactive in seeking to improve their performance where needs have been identified.
- To draw the attention of the Chair of Governors to any external factors that may be impacting adversely on their performance.
- To make every reasonable 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, where applicable.

### **Role of the representative**

- To accompany the Headteacher at all stages of the Capability Procedure, where the Headteacher so wishes.
- To support the Headteacher in presenting their evidence and seek clarification on any issues raised during the meeting.
- To confer with the Headteacher, if necessary, during any meeting.
- To ensure they are familiar with the content of the Capability Procedure.
- To make themselves available to meet the timescales defined within the Procedure.

## **Role of the Governing Body**

- To be fully aware of the requirements of the Practising Teacher Standards and the Leadership Standards.
- To be fully familiar with the relevant policies relating to performance management.
- To ensure that the policies relating to the management of the performance and unsatisfactory performance of the Headteacher are implemented and are working effectively alongside other relevant policies.
- To ensure that all relevant policies are available to the Headteacher and are reviewed on a regular basis.
- To ensure that the appropriate committees of the Governing Body are established, that Governors are aware of their responsibilities and receive appropriate training to support them in their roles.

## **Role of the Chair of Governors**

- To ensure the Governing Body adopts appropriate procedures 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 HR advice in the event of any concerns about Headteacher underperformance.
- To initiate 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 as to whether the identified concerns have been addressed or to convene the Capability Panel to determine whether formal capability procedures should be invoked
- To consult the Local Authority as necessary to secure sufficient governor capacity to support delivery of this Capability Procedure.

## **Role of the Capability Panel**

- To take action and a considered approach in all cases when there are concerns about a Headteacher's performance.
- To ensure standards of fairness, objectivity and consistency of treatment of the Headteacher in all cases.
- To determine whether the formal stages of the Capability Procedure should be invoked.
- To initiate the formal investigation of the issues and take appropriate action at any stage in the management of unsatisfactory performance appoint, where appropriate, designated members of the Local Authority or Consortium staff to investigate the issues and provide appropriate support.
- To ensure an appropriate programme of support is put into place for a Headteacher whose performance is deemed to be unsatisfactory.
- To seek the advice and support of the Local Authority (or the diocesan authority or provider of HR support) at every stage of the Procedure.

## **Role of the appropriate authority (i.e. the Local Authority or diocesan authority)**

- To work with the Consortium to provide advice and support to the Chair of Governors and Governing Body.
- To ensure accessible, high quality HR advice is available to the Chair and Governing Body.
- To exercise, as appropriate the right to attend all formal meetings of the Governing Body and its Committees, for the purpose of giving advice.
- To exercise, as appropriate, powers of intervention in order to ensure the appropriate procedures are adopted and followed.
- To deliver or commission appropriate training to equip the Chair of Governors and Governing Body to fulfil effectively their obligations under this Procedure.
- To liaise with the Governing Body to ensure that there is sufficient governor capacity for implementation of the various stages of the capability and appeals processes.

## **Role of the Consortium**

- To appoint a suitably experienced officer to support the Governing Body, acting on behalf of, and accountable to, the relevant Local Authority.
- To secure and allocate an experienced Challenge Adviser to work with the School to help raise standards.
- To agree, broker and ensure appropriate support for the Headteacher.
- To ensure effective communication with, and involvement of, the Local Authority, to enable that Authority to fulfil effectively its statutory functions.

## APPENDIX 5: CAPABILITY HEARING FORMAT

The order of proceedings for a capability hearing involving a teacher or Headteacher is as follows<sup>7</sup>:

- The Chair introduces the members of the SD&DC and the Clerk;
- The presenting officer sets out the case, presents any written or other evidence and calls and questions witnesses;
- The employee and/or their representative asks questions of the presenting officer and/or witnesses. Members of the SD&DC question the presenting officer and/or any parties called to give evidence against the employee;
- The employee and/or their representative presents their case, including any relevant written or other evidence, and calls witnesses;
- The presenting officer and/or members of the SD&DC question the employee and any witnesses called on behalf of the employee;
- Witnesses leave the room after they have given evidence and been questioned by both parties, but should remain on hand in case of further questioning by the SD&DC;
- The presenting officer and the employee and/or their representative each sums up their case. If these persons do not wish to hear the advice from the advisors to the SD&DC, they should leave the hearing at this point;
- All parties hear any advice which the Chief Education Officer and, if applicable, diocesan director or their representatives, may wish to offer to the SD&DC. These advisers, together with the presenting officer and the employee and/or their representative, then leave the hearing;
- The SD&DC continues in private, without advisers, other than the Clerk, to make its decision; and
- The SD&DC can adjourn the hearing at any time for all parties to consider any new evidence or for private discussion. In addition, all parties should be able to request an adjournment at any point.

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<sup>7</sup> The SD&DC and Clerk to the SD&DC must refer to the Welsh Government's 'Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies' (Circular 002/2013) to ensure that the correct process is followed at this stage (e.g. that the panel's deliberations are correctly recorded, etc).

## APPENDIX 6: CAPABILITY APPEAL HEARING FORMAT

The order of proceedings for a capability appeal hearing involving a teacher or Headteacher will take one of the following forms, depending upon whether it is a re-hearing or a review<sup>8</sup>.

### Format for a re-hearing

- The Chair introduces the members of the SD&DAC and the Clerk;
- The employee and/or their representative presents their case, including any relevant written or other evidence, and calls witnesses;
- The presenting officer and/or members of the SD&DAC question the employee and any witnesses called on behalf of the employee;
- The presenting officer sets out the case, presents any written or other evidence and calls and questions witnesses;
- The employee and/or their representative asks questions of the presenting officer and/or witnesses. Members of the SD&DAC question the presenting officer and/or any parties called to give evidence against the employee;
- Witnesses leave the room after they have given evidence and been questioned by both parties, but should remain on hand in case of further questioning by the SD&DAC;
- The presenting officer and the employee and/or their representative each sums up their case. If these persons do not wish to hear the advice from the advisors to the SD&DAC, they should leave the appeal hearing at this point;
- All parties hear any advice which the Chief Education Officer and, if applicable, diocesan director or their representatives, may wish to offer to the SD&DAC. These advisers, together with the employee and/or their representative, then leave the appeal hearing;
- The SD&DAC continues in private, without advisers, other than the Clerk, to make its decision; and
- The SD&DAC can adjourn the appeal hearing at any time for all parties to consider any new evidence or for private discussion. In addition, all parties should be able to request an adjournment at any point.

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<sup>8</sup> The SD&DAC and Clerk to the SD&DAC must refer to the Welsh Government's 'Disciplinary and dismissal procedures for school staff: Revised guidance for governing bodies' (Circular 002/2013) to ensure that the correct process is followed at this stage (e.g. that the panel's deliberations are correctly recorded, etc).

## **Format for a review**

- The Chair introduces the members of the SD&DAC and the Clerk;
- The employee and/or their representative presents their case, including any relevant written or other evidence;
- The members of the SD&DAC question the employee;
- The members of the SD&DAC may call the presenting officer from the first hearing to attend as a witness, if it is deemed necessary in order for the SD&DAC to reach a decision regarding the employee's appeal. If that occurs, the employee will have the right to ask questions of the presenting officer after the SD&DAC have asked their questions. The presenting officer would then leave the room after they have given evidence and been questioned;
- The employee and/or their representative sums up their case. If they do not wish to hear the advice from the advisors to the SD&DAC, they should leave the appeal hearing at this point;
- All parties hear any advice which the Chief Education Officer and, if applicable, diocesan director or their representatives, may wish to offer to the SD&DAC. These advisers, together with the employee and/or their representative, then leave the appeal hearing;
- The SD&DAC continues in private, without advisers, other than the Clerk, to make its decision; and
- The SD&DAC can adjourn the appeal hearing at any time for all parties to consider any new evidence or for private discussion. In addition, all parties should be able to request an adjournment at any point.