

# Managing Performance of Staff Policy

## Part 1: Managing Performance of Staff

## Part 2: Capability Policy and How to Guide

<b>Date Reviewed:</b>	October 2021
<b>Next Review:</b>	October 2024
<b>Reviewing committee:</b>	Full Governing Body
<b>Reviewers:</b>	Lynn McCulloch
<b>Linked Policies:</b>	Pay Policy Equality Policy Recruitment Policy Teaching and Learning Policy Assessment for and of Learning Policy Staff Absence Policy Safeguarding Policy Code of Conduct
<b>Policy is based upon:</b>	HCC MOPP model Policy
<b>Ratification Date:</b>	
<b>Signed by Headteacher:</b>	Lynn Martin
<b>Signed by Chair of Governors:</b>	Gareth Evans

<b><u>Contents</u></b>	<b><u>Page</u></b>
Introduction	3
Purpose	3
Application	3
<b>Part 1 Performance Management Policy</b>	<b>4</b>
2. Performance Management Cycle	4 - 5
3. Appointing Reviewers	6
4. Setting Objectives	6 - 7
5. Reviewing Performance	7 - 11
6. Dealing with performance concerns	11 - 15
<b>Part 2 – Capability Policy</b>	
1. Purpose	16
2. Scope	16
3. Performance Management	17
4. Managing Capability	17 - 18
5. Stages of the Policy	18 - 21
6. Appeal Stage	21 - 22
7. Gross incompetence	22 - 23
8. Other policy requirements	23 - 26
Appendix One – Managing capability for employers with less than 2 years’ service	27
<b>Part 3 - Capability How to Guide</b>	
1. Purpose	28
2. Scope	28
3. Principles – How to Use Guide	28 - 29
4. Introduction	30
5. Performance Management	30
6. Managing Capability	31
7. Stages of the Policy	32 - 40
8. Appeal	41 - 44
9. Gross Incompetence	44 - 48
10. Other Policy requirements	48 - 52
11. Support	52
12. Toolkit	52
13. Related documents	52
14. Roles and responsibilities	52 - 54
Appendix One - Managing capability for employees with less than two years' service	55
Appendix Two - Gross incompetence	56

## **Introduction**

This policy and procedure have been consulted upon with the recognised trade unions and professional associations for Hampshire maintained schools. Where Hampshire maintained schools wish to localise this policy and procedure further, consultation will need to take place with staff and representatives of the recognised unions and professional associations. This policy and procedure are commended to academies and other schools which have freedom to develop their own policy and procedure, although such schools which wish to adopt this policy and procedure are advised to take this through their own negotiation/ consultation framework.

This procedure does not form part of any employee's contractual terms and conditions. Any links within this document to other documents are for ease of use and do not form part of this procedure.

This policy and procedure have been written in accordance with the Model Pay Policy contained in the Manual of Personnel Practice. Schools that have chosen to adopt an alternative pay policy will need to make relevant adjustments.

Schools should ensure that employees clearly understand the ethos of the school and that performance management arrangements are in place to support employees to achieve their individual and school aspirations. It should be recognised that there is a collective responsibility to achieve these goals. The Capability Policy and How to Guide is a supportive process aimed at generating sustained improvement.

## **Purpose**

This document sets out the framework for a clear and consistent assessment of the overall performance of employees, including the Headteacher, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected of teachers and other staff. It also sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.

## **Application**

The Model Performance Management Policy is for all employees working within a school/school managed provision or establishment (which for ease of reference are referred to throughout this document as 'schools'), with the exception of those employees on contracts of less than one term, those undergoing formal induction (i.e., ECT's), and those who are subject to the Capability Policy.

## Performance Management Policy

### 1. Principles

- 1.1 Performance management in this school will be a **supportive and developmental** process designed to ensure that all employees have the skills and support they need to carry out their role effectively. It will help to ensure that all employees are able to continue to improve their professional practice and to develop in their careers.
- 1.2 The process of setting and reviewing performance objectives for staff in schools is an integral part of the school's overall approach to school improvement and development. Performance objectives will be written in such a way that they complement and link to the targets expressed in the school improvement/development plan.
- 1.3 It is important to recognise that the objectives set for any member of staff will not represent the complete job that the individual is expected to perform. Reviewing performance is about measuring the progress made against the objectives set with appropriate support, which will represent key priorities for that individual, and in addition, assessing and recognising the overall performance of that person in the job, including an assessment against any relevant standards/accountabilities.
- 1.4 There is no correct number of objectives to set for any member of staff. The number will depend on the role they undertake, the relevant priorities for that person at that time and the nature and complexity of each objective set.
- 1.5 The process of performance management will be carried out in accordance with this policy, which is underpinned by the statutory regulations for teachers and local agreements for support staff.
- 1.6 Performance management will be carried out in such a way to ensure consistency of treatment and fairness.
- 1.7 The Governing Body and Headteacher will monitor the operation and effectiveness of the school's performance management arrangements.
- 1.8 The performance management process will be treated with confidentiality. Normally only the reviewer, reviewee and the Headteacher will have access to performance management information and documentation relating to the reviewee. However, to enable moderation of objectives and assessments to take place, paperwork may be shared with members of the Senior Leadership Team in accordance with the school's Pay Policy. In the event of an Ofsted inspection taking place, Ofsted inspectors may request that anonymised information about the school's performance management arrangements, including the most recent performance management outcomes and their relationship to salary progression, is provided. Governors may also request an

anonymised sample of performance management statements to enable them to perform their role in monitoring the effectiveness of the school's performance management system.

- 1.9 The Governing Body and Headteacher will ensure that all written performance management records are retained securely for six years and then destroyed.
- 1.10 Where an employee's performance is affected by a health problem and/or sickness absence, the matter will normally be dealt with in accordance with the school's Absence Policy and How to Guide. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work.
- 1.11 When assessing an employee through the performance management process, factors such as any periods of ill health, or maternity leave, will be taken into account as this may affect an employee's ability to meet their objectives.
- 1.12 Text in italics denotes areas where schools may wish to exercise discretion.
- 1.13 The audio or video recording of any meetings held under this procedure is not normally permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. Only in exceptional cases may an employee request an audio or video recording of the meeting as an alternative. In such cases, consideration will be given as to whether recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.

## **2. The Performance Management Cycle**

- 2.1 The performance management cycle for the Headteacher and all teachers will run for twelve months, with the end of year review being completed by October for teachers, and by December for the Headteacher, in reference to the previous academic year. The performance management cycle for support staff will run for twelve months with the end of year review being completed by December, in reference to the *previous academic year or current financial year [use whichever applies]*.
- 2.2 Employees who are employed on a fixed-term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the period will be determined by the duration of their contract.
- 2.3 The performance management cycle will link to the pay arrangements for employees. In the case of teaching staff, the end of year review and the annual pay determination will take place by the end of October each year (December for the Headteacher) and is informed by the performance management cycle concluding at the end of the previous academic year (31 August). In the case of support staff who are

performance managed via the Individual Performance Planning (IPP) process, the end of year review will be completed by December in order for decisions about pay to be made, effective from 1 April each year.

### **3. Appointing reviewers**

- 3.1 The Headteacher's performance will be reviewed by the Governing Body, supported by a suitably skilled external adviser who has been appointed by the Governing Body for that purpose.
- 3.2 In this school the task of reviewing the Headteacher, including the setting of objectives, will be delegated to a sub-group consisting of *two/three [delete as appropriate]* members of the Governing Body. The appointed governors will be known as the Headteacher Performance Management Committee (HPMC).
- 3.3 Given the close working relationship between the Headteacher and the Chair of Governors, it would not normally be appropriate for the Chair of Governors to be part of the HPMC.
- 3.4 The Headteacher will decide who will review the performance of other teachers and support staff, however this will normally be the employee's line manager. The Headteacher will determine whether the reviewer also makes a recommendation about pay progression, in accordance with the school's Pay Policy. The Headteacher has the discretion to delegate the review process to other employees who will normally be line managers. Reviewers will have the necessary knowledge and training in order to undertake this role.
- 3.5 Where performance concerns arise ([see section 6](#)), the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role of reviewer themselves.

### **4. Setting Objectives**

- 4.1 The Headteacher's objectives will be set by the Governing Body after consultation with the external adviser. At least one of the targets for the Headteacher will relate to outcomes for pupils.
- 4.2 Objectives for each employee will be set before, or as soon as practicable after, the start of each performance management cycle. In setting objectives, reviewers will have regard to what can reasonably be expected given the employee's role and level of experience, as communicated in the school's Pay Policy. The level of expectation of an employee's performance must also be communicated at the outset of the performance management cycle. For example, where the School has been explicit that to achieve their improvement plans teaching needs to be good or above, this

expectation must be clearly communicated to all staff through the school's ratings of performance as defined in the school's Pay Policy.

- 4.3 The objectives set for each teacher will, if achieved, contribute to the school's plans for improving educational provision and performance and improving the education of pupils at the school, and will take into account the outcomes for pupils. Objectives will also take into account the professional aspirations of the employee.
- 4.4 Objective setting will have regard to a reasonable level of expectations of the employee in the context of work/life balance.
- 4.5 Before, or as soon as practicable after, the start of each performance management cycle, each teacher will be informed of the standards, objectives and success criteria against which their performance in that performance management cycle will be assessed. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year.
- 4.6 Before, or as soon as practicable after, the start of each performance management cycle, each member of support staff will be informed of the key accountabilities against which their performance in that performance management cycle will be assessed, for example those contained within the role profile applicable to that employee. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year.

## **5. Reviewing Performance**

### **5.1 Evidence**

A number of methods will be used in order to obtain evidence by which to assess an employee's performance. These include those detailed below. Such evidence will be triangulated in order to undertake an overall assessment of the employee's performance. This will include their performance against their objectives and against the relevant standards/key accountabilities for their role.

#### **5.1.1 Observation**

This school believes that observation of classroom practice and other responsibilities is important both as a way of assessing the performance of classroom-based employees in order to identify any particular strengths and areas for development they may have, and of gaining useful information which can inform school improvement more generally. Therefore, feedback from lesson observations will be developmental and not simply a judgement. All observation will be carried out in a supportive manner.

In this school classroom-based employees' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the employee and the overall needs of the school at that time. Classroom observation of teachers will normally be carried out by those with QTS. In addition to formal observation, the Headteacher or other leaders with responsibility for standards in the classroom may "drop in" in order to evaluate the standards of teaching and to check that high standards of professional performance are established and maintained. The length and frequency of "drop in" observations will vary depending on specific circumstances.

Observations are a snapshot in time and reviewers will use the information gathered from these alongside other types of evidence to make judgements about performance.

As soon as practicable after an observation and within \_\_\_ *working days*, verbal feedback will be given to the employee. This will be followed up with written feedback within \_\_\_ *working days* of the observation taking place. Where it is not reasonably practicable to provide feedback within these timescales, feedback will be provided at the earliest opportunity thereafter.

Teachers (including the Headteacher) who have responsibilities outside the classroom, and support staff who are not classroom-based, will also have their performance of those responsibilities observed and assessed.

Observations undertaken by Ofsted inspectors or as a result of local authority monitoring will not, in themselves, be used for performance management purposes. However, these observations may highlight the need for the school to undertake separate observations for performance management purposes, for example if a lesson is rated as inadequate by Ofsted. Observations undertaken by a local authority officer may be used in performance management where this has been planned and communicated to all parties in advance.

### **5.1.2 Pupil progress and attainment**

Rates of pupil progress and levels of attainment as pertinent to the teacher's role will be used in assessing a teacher's performance against the Teachers' Standards and, where relevant, against objectives.

The HPMC, with advice from the External Adviser, will review levels of pupil attainment, rates of pupil progress and whole school performance in their assessment of a Headteacher's performance in addition to other objectives that may have been set.



Where support staff are providing support to groups or individual pupils, the progress and attainment of those pupils may be taken into account in assessing the performance of the employee. This will only be used alongside other evidence which supports the level of contribution of the employee to the progress and attainment of pupils.

### 5.1.3 **Work sampling**

Work sampling may be used in assessing teacher performance against the standards for the role, and where relevant, against objectives.

### 5.1.4 **Other evidence**

Other evidence may be considered, where it is pertinent to the objectives set and the standards/accountabilities for the role.

Examples of such evidence may include (but are not limited to):

#### Teachers

- Short, medium and long-term planning.
- Effective deployment and management of classroom-based support staff.

#### The Headteacher

- Evidence from reports from external sources such as Ofsted, the local authority, or other reviews.
- Other performance data (for example from DfE).

#### Support staff

- A sample of written correspondence produced (administrative staff).
- A sample of budget correspondence (finance staff).
- A sample of health and safety monitoring (site staff).
- Examples of displays and resources prepared (classroom-based support staff).

It may also be appropriate to consider evidence such as feedback from colleagues, including peers, and for line managers, their staff.

## 5.2 Feedback

- 5.2.1 Employees will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength and celebrate success, as well as any areas that need development and support. Where there are

concerns about any aspects of an employee's performance, this will be managed in accordance with [Section 6](#) of this policy.

### 5.3 Annual Assessment

5.3.1 Every employee's performance will be formally assessed in each performance management cycle. In assessing the performance of the Headteacher, the Governing Body will consult the external adviser.

5.3.2 This assessment is the end point of the annual performance management process, but performance and development priorities will be reviewed and addressed on a regular basis throughout the year in interim meetings which will take place *[insert frequency, e.g., once per term]*.

5.3.3 An employee will receive a written performance management statement as soon as practicable following the end of each performance management cycle. The employee will have the opportunity to comment on this. Teachers will receive their written performance management statement by 31 October (31 December for the Headteacher). Support staff will receive their performance management statement by *[date]*. The performance management statement will include:

- an assessment of the employee's performance of their role and responsibilities against their objectives in the last performance management cycle;
- an assessment of the employee's performance of their role and responsibilities against the standards/accountabilities for their role in the last performance management cycle;
- summary of the evidence considered to support the decisions made;
- a recommendation on pay based on performance in the last performance management year (where staff are eligible for progression).

The employee will also receive a new performance management statement for the new performance management cycle. This will include:

- details of the employee's objectives for the new performance management cycle;
- details of the standards/accountabilities to apply in the new performance management cycle;
- an assessment of the employee's current training and development needs and identification of any action that should be taken to address them in the new performance management cycle;
- an indication of when monitoring will take place.

5.3.4 The assessment of performance against the objectives and standards will inform the planning process and training and development needs for the next performance management cycle.

- 5.3.5 All staff and reviewers are encouraged to also use performance management meetings to discuss other matters pertinent to their employment.
- 5.3.6 With the exception of the Headteacher pay recommendation, all pay recommendations arising out of the performance management process must be approved by the Headteacher before being shared with the individual member of staff to whom the recommendation relates and before being referred to the governors' pay committee. The HPMC must also refer their recommendation to the governors' pay committee.
- 5.3.7 Pay progression for all staff will be as set out in the school's Pay Policy.

#### 5.4 Moderation of Performance Management Statements

- 5.4.1 The Headteacher will take responsibility, where the reviewer role has been delegated, for ensuring there is an appropriate system in place to moderate performance management statements and pay recommendations, to ensure consistency and equality of treatment.

### **6. Dealing with performance concerns**

- 6.1 The majority of employees are competent in their role for the majority of the time. On occasions, however, an individual's performance can be deemed to be below accepted standards and support is needed to help them re-attain and sustain the required level of performance.

There may be reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent. Consideration must be given to whether reasonable adjustments are appropriate

- 6.2 Concerns about performance will be addressed at the time they are identified and not left to the employee's next performance management meeting. This will assist the employee to recognise issues at an early stage.
- 6.3 Performance concerns may be identified by the reviewer or by a Senior Manager/Headteacher. Where a concern is identified that is likely to require structured managerial support (see 6.10), the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role themselves. A reviewer must notify the Headteacher where they identify performance concerns and agree with the Headteacher how to proceed.

- 6.4 Concerns about the performance of the Headteacher may be identified by an individual or combination of sources. Where a concern is identified via the HPMC, the Chair of the HPMC must notify the Chair of Governors. Where the initial concern is identified by the Chair of Governors, he or she must notify the Chair of the HPMC. In both circumstances, the Chair of the HPMC will review the evidence available with the School Improvement provider to determine how to proceed.
- 6.5 Where it is necessary to take forward a performance concern in respect of the Headteacher, this will be undertaken by the HPMC, with professional advice from the School Improvement provider, and the Chair of Governors will be kept apprised of the situation.
- 6.6 When raising performance concerns with an individual, the Headteacher/Senior Manager/HPMC will take into account any factors which may be having an impact on the employee's ability to perform their duties. However, such factors in themselves do not negate the need to address performance concerns.
- 6.7 Whilst there are no formal rights of representation at this stage, employees are encouraged to contact their professional association or trade union representative for advice and support.
- 6.8 Identifying when performance is below accepted standards
- 6.8.1 The Headteacher/Senior Manager/HPMC may consider a member of staff to be underperforming where:
- the standard of performance falls below that which is required to meet or make progress towards a specific performance management target; and/or
  - the standard of performance falls below that which is required to meet the expectations of a particular role in their school; and/or
  - the performance falls below the relevant standards/accountabilities for the role; and/or
  - the overall school performance falls below that which is required (in the case of the Headteacher).
- 6.8.2 If the Headteacher/Senior Manager has evidence to show that an employee is no longer meeting the expectations of their role, these concerns will be addressed with the individual promptly.
- 6.8.3 Where the school has clearly communicated a level of expectation, the Headteacher and senior managers may consider a member of staff to be underperforming if they are not reaching this level of expectation.

## 6.9 Determining possible initial courses of action

6.9.1 Depending on the severity of the underperformance, the Headteacher/Senior Manager/HPMC need to take a view as to the proportionate response. This may include:

- an early conversation to confirm the expected standards of the role;
- coaching/mentoring support;
- structured managerial support;
- consideration of application of the Capability Policy (exceptional circumstances or concerns).

An early conversation and coaching/mentoring support will only be used on their own to support low level or early stage concerns where these may be an effective measure. Where the performance concern is more significant or continues, structured managerial support will normally be put in place.

## 6.10 Structured managerial support

6.10.1 Where a performance concern has been identified that requires additional support, a discussion will be held between the Headteacher/Senior Manager/HPMC and the employee. The outcome of the meeting will be to identify what steps will be taken to assist the employee to improve their performance and move to the required standard. (In cases involving the Headteacher, the HPMC will normally invite the School Improvement provider to give support at this meeting.) The discussion will include:

- what area(s) of performance is/are of concern;
- what improvement is required/the standard the employee needs to meet;
- the timescales in which this is to be achieved (these will vary depending on the issues identified);
- the support that will be provided to assist the employee;
- how frequently the performance/progress will be monitored and reviewed;
- the seriousness of the issue and potential consequences of improvement not being achieved, including potential impact on pay progression.

6.10.2 The employee will be invited to provide his/her point of view on the shortfall in performance and whether they believe there is an underlying reason. The employee will also be asked to identify what support they feel they need in order to achieve the required improvement, and the Headteacher/Senior Manager/HPMC will indicate what support they intend to put in place.

6.10.3 The key outcomes of the discussion will be recorded in writing and shared with the individual. The written record of the discussion will be placed on the individual's personal file and a copy given to the employee.

6.10.4 Review meetings will be held at the agreed timescales to review progress towards targets set and the appropriateness of the support being given. At these meetings, any improvements will be communicated to the individual as well as the remaining gap between their current level of performance and the expectations set. The outcome of these meetings will also be recorded in writing and a copy shared with the individual.

6.10.5 The purpose of any structured managerial support programme is to assist the employee to achieve the necessary improvement within the agreed timescales. Where this is successful the Headteacher/Senior Manager/HPMC will confirm this at the relevant review meeting and record this in writing to the employee. The employee will be informed that the improvement in their performance must be sustained.

6.10.6 If the employee is not making the necessary progress towards the required improvement, the employee will be informed that failure to achieve this may lead to the Capability Policy being applied and that there may be an impact on their pay progression. The Headteacher/Senior Manager/HPMC will make a judgement about when to communicate this given that it may not be appropriate to do so during the first discussion. However, if a move to the Capability Policy is a likely outcome, the potential for this must be communicated to the member of staff in good time. It must be recorded in writing that the employee has been informed of the potential consequences should their performance not meet the required standard. If the necessary improvement is then not achieved within the agreed timescales, the Headteacher/Senior Manager/HPMC will need to consider use of the formal stages of the Capability Policy.

6.10.7 Where the employee has initially made the required improvement, but this performance has not been sustained independently over a six month period, the Headteacher/Senior Manager/HPMC will need to consider use of the Capability Policy.

#### 6.11 By-passing structured managerial support

6.11.1 in most circumstances a structured managerial support programme will be put in place prior to the Capability Policy being used. However, the Headteacher/Senior Manager/HPMC may determine after taking advice from Education Personnel Services that it is appropriate to move straight to the formal stages of the Capability Policy, in exceptional circumstances, for example:

- the employee's performance is putting the health and safety of pupils and/or staff at risk;
- the employee's performance is putting the education of pupils in serious jeopardy;
- the employee's performance has not been sustained independently for 6 months at an accepted level following an earlier managerial support programme.

## 6.12 Transition to the Capability Policy

6.12.1 At any time during provision of structured managerial support, the Headteacher/Senior Manager/HPMC may consider transition to the Capability Policy. The Headteacher/Senior Manager/HPMC will have specific regard to:

- the nature and severity of the underperformance;
- the impact on pupils and colleagues both in the short and longer term;
- the likely and required timescale for improvements to be made;
- the engagement of the employee in the programme.

6.12.2 In a typical case, if a structured management support programme has been in place and the issues have not resolved after a period between four school weeks and half a term then it would be appropriate to consider moving onto the Capability policy. However, when determining how long to allow before moving onto the Capability policy, the Headteacher/Senior Manager/HPMC will give consideration to the circumstances of the case, in particular the factors listed under paragraph 6.12.1 above.

6.12.3 To move to the Capability Policy the Headteacher/Senior Manager/HPMC will follow the process outlined in the Capability Policy and How To Guide, inviting the employee to attend a meeting under stage one of the Capability Policy where all the relevant information will be considered and a decision made about next steps.

6.12.4 Should the Capability Policy commence, performance management will be suspended.

# Capability Policy

## 1. Purpose

This School expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role. The School acknowledges that there may be circumstances when an employee does not perform to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

This policy aims, through advice and support, to improve to an acceptable level as set by the school, the performance of the employee who is causing concern.

This policy defines how the School will manage an employee if they are unable to perform to the required standards. Where poor work performance is assessed to be due to a deliberate or wilful failure to fulfil the duties of an employee's role and/or a deliberate lack of care, the matter will be dealt with under the School's Disciplinary Procedure as this is a conduct concern.

Further guidance is available in the How to Guide and this must also be referred to. Please note that the section numbering in the Capability policy and the How to Guide – Capability are not aligned.

## 2. Scope

This policy applies to:	<ul style="list-style-type: none"><li>• Teachers including Leadership, Upper Pay Range, Main Pay Range and Unqualified Teachers</li><li>• Support Staff.</li></ul>
This policy does not apply to:	<ul style="list-style-type: none"><li>• Volunteers</li><li>• Contractors</li><li>• Agency workers.</li></ul>

This policy is non contractual and does not form part of any employee's terms and conditions.

Employees that have been subject to a TUPE into the School may be excluded from this policy where they have transferred under a contractual policy. In such cases, the employee should refer to their own contractual policies and procedures.

Employees with less than two years' service may be subject to a shortened procedure.

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point



during this procedure.

The School expects all parties to maintain confidentiality throughout the application of the policy.

### **3. Performance management**

<b>Performance management</b>	The School will manage an employee's day to day performance with the Performance Management Policy.
<b>Annual review of performance</b>	Every employee will have an annual review of their performance. The review process enables an employee's performance to be monitored and assessed.
<b>Pay progression</b>	If an employee is unable to perform to the required standards of the role, this may have an impact on their annual pay progression.

### **4. Managing capability**

**Considerations** The manager must consider whether to start the capability process if an employee does not perform the duties of their role to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/or experience. The employee may not demonstrate the appropriate behaviours that are required.

There may be other reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent.

There may be exceptional circumstances when the manager and/ or employee anticipate a long term capability concern. This may happen due to the employee's health or a disability. In these circumstances, it is anticipated it is unlikely that the employee can achieve the required level of performance. Consideration must be given to whether reasonable adjustments are appropriate. The line manager must seek advice from Education Personnel Services in such cases.

Poor performance due to health problems and/or sickness absence will normally be dealt with via the School's Sickness Absence Policy and Procedure. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work. In some cases it may be appropriate for the Capability Policy to continue during a period of sickness absence, however the Headteacher/Senior Manager/Headteacher Performance Management Committee (HPMC) will have regard to the

views of Occupational Health.

Where an employee wilfully and unreasonably refuses to cooperate with the application of the Capability policy, the matter will be dealt with under the Disciplinary policy.

Prior to the implementation of this policy, the Headteacher/Senior Manager/ HPMC will normally need to be able to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the employee and, as appropriate, provide structured managerial support designed to facilitate improvement.

This procedure aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:

- from within the school;
- through accessing expertise in another school;
- via the local authority's advisory services;
- from other expert sources external to the school;
- through training courses or events.

### **Policy stages and principles**

The possible stages are:

- stage one
- stage two
- stage three - may result in dismissal
- appeal after each stage.

There is a shortened procedure for employees with less than two years service as detailed in [Appendix One](#).

In exceptional circumstances, it may be appropriate to move into the Capability policy without having provided a period of structured managerial support. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

The employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed within the hearing and appeal process detailed below.

Responsibility for decision-making within this procedure rests with the Headteacher/Senior Manager/HPMC, and the Headteacher/Governors' Committee where convened. If the

governing body has delegated to the Headteacher the power to dismiss, the Headteacher will not normally be able to fulfil that role where he/she has had substantial involvement in the earlier stages of the procedure.

Where this procedure is used in relation to Headteacher poor performance, the HPMC will undertake the role of Headteacher/Senior Manager. In such cases, an additional professional adviser from the School's School Improvement provider will be present, at any stage, to provide governors with professional advice.

The time periods in this procedure will also apply to part-time employees.

## 5. Stages of the Policy

**Reference must be made to the How to Guide - Capability for the full procedural information.**

<b>Stages</b>	At each stage of the policy, the employee must be invited to attend a meeting/ hearing.
<b>Meetings/ hearing arrangements</b>	<p>The employee must receive in writing the invitation to the meeting/ hearing.</p> <p>The letter must give the employee <b>5 working days'</b> notice of the meeting/ hearing.</p>
<b>Formal record of the meeting/ hearing</b>	<p>A formal record must be taken during the meeting/ hearing. This may be made by audio recording the meeting/ hearing or by a note taker. It is the School's responsibility to make the appropriate arrangements.</p> <p>If an audio recording takes place, a copy of the recording must be retained by the School. The School must comply with all relevant retention and storage requirements.</p> <p>For governor hearings in maintained schools, there remains a legal requirement to have a written record of the meeting of the Governor Committee.</p>
<b>Alternative date</b>	<p>The School expects that the employee and their representative will make all reasonable efforts to attend the first scheduled meeting/ hearing date and time.</p> <p>If it is not possible, the employee may propose an alternative date and/ or time. This should be within <b>5 working days</b> of the original meeting/ hearing.</p> <p>The meeting/ hearing will be rescheduled.</p>
<b>Sharing of information</b>	The manager and employee are required to exchange all relevant papers and supporting evidence in advance of the

meeting/ hearing. Management documents will be supplied with the invitation letter. The employee will be provided with a copy of this policy.

The employee or their representative must submit all relevant papers and supporting evidence to arrive with the chair at least **3 working days** before a meeting/ hearing.

### **Right of representation**

The employee has the right to be represented/ accompanied at a formal meetings/ hearings or appeal meetings. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the formal meeting/ hearing or appeal meeting date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

### **Attending meetings/ hearings**

If the employee is not well enough to attend the meeting/ hearing, it may be deferred until they are able to attend. A meeting/ hearing will not be deferred indefinitely because the employee is unable to attend.

### **Outcome of a meeting/ hearing**

The chair of the meeting/ hearing must fully consider all evidence presented and decide on an outcome.

A written warning may be issued and this can be:

- a first written warning of 12 months OR
- a final written warning of between 12 – 24 months
- **For employees with less than two years service** - a final written warning of between 12 – 24 months.

At a stage three hearing the employee may be dismissed on the grounds of performance capability.

The chair must confirm the outcome in writing within **5 working days** of the meeting/ hearing. A copy of the outcome letter and any warning must be placed on the employee's personnel file.

If the outcome is dismissal, any sums owing to the School from the employee will normally be deducted from their final pay.

### **Review meetings**

Following a meeting/ hearing under stage one or two, the manager must hold scheduled review meetings with the employee.

### **Progression through the stages**

The manager can progress to the next stage and re-enter the stage at the appropriate point if:

- the employee's performance does not meet the

- standard required
- there is a further performance concern even though this may be different to a performance concern(s) referred to in a previous stage
- if an improvement is not sustained for a 12 month period following a stage one meeting
- if an improvement is not sustained for a 12 - 24 month period following a stage two meeting
- the employee has not found an alternative role

### Written warnings

A first formal warning given as part of the application of this procedure will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within 12 months from the date of such a decision, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 1.

Where a final warning has been issued, this will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within a period of two years (six terms) from the date of issue, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 2 at any time during this two-year period.

## 6. Appeal stage

**Reference must be made to the How to Guide - Capability for the full procedural information.**

**Appeal stage** The employee has the right to appeal against the outcome of a meeting/ hearing under any stage of this policy.

**Right of appeal** The employee must submit their appeal in writing within **10 working days** following receipt of the written outcome of the meeting/ hearing. This must include the full reasons for the appeal.

Following an appeal of a first stage three hearing, there is no further right of internal appeal.

**Appeal meeting** The employee must be invited to attend a meeting. The employee must be given **7 working days** notice of the meeting.

**Meeting arrangements** The principles of [meeting arrangements](#) will apply.

**Formal record of the** The principles of the [formal record of the meeting/ hearing](#) will

<b>meeting</b>	apply.
<b>Alternative date</b>	The principles of <a href="#">alternative date</a> will apply.
<b>Sharing of information</b>	The principles of <a href="#">sharing of information</a> will apply.
<b>Right of representation</b>	The principles of the formal stage <a href="#">right of representation</a> will apply.
<b>Outcome of the appeal meeting</b>	<p>The chair must fully consider all evidence presented and decide on an outcome.</p> <p>The outcome cannot impose a higher sanction than issued at the original meeting/ hearing.</p> <p>The chair must advise the employee of the outcome at the appeal meeting unless otherwise agreed. The outcome must be confirmed in writing within <b>5 working days</b> of the meeting.</p> <p>A copy of the outcome letter must be placed on the employee's personnel file.</p>

## 7. Gross Incompetence

**Reference must be made to the How to Guide – Capability for the full procedural information.**

**Definition**

**Gross incompetence** - occurs where an investigation identifies that an employee has failed, either by a single error or series of errors, to perform the duties of their role. The outcome is that this causes or has caused serious harm or puts others (colleagues, general public or service users) or the School's reputation and performance at serious risk.

Gross incompetence only applies in exceptional circumstances. The manager must seek advice from Education Personnel Services in such cases.

**Policy stages**

The possible stages are:

- stage three hearing - may result in dismissal
- appeal.

**Suspension or alternative arrangements**

Before making a decision about suspension or alternative arrangements, the appropriate manager must seek advice from Education Personnel Services.

Suspension or alternative arrangements are neutral and precautionary acts. They may be considered at any point during this policy once it is established that the circumstances may be gross incompetence.

The appropriate governance arrangements must be adhered to in deciding whether suspension or alternative arrangements are appropriate.

During suspension or alternative arrangements the employee must adhere to all relevant requirements.

Written confirmation of the decision regarding suspension must be provided to the employee.

Suspension or alternative arrangements must be regularly reviewed.

There is no right of appeal against the decision to apply alternative arrangements or suspension.

<b>Stage 3 hearing</b>	The principles of the Stages of the Policy will apply.
<b>Hearing arrangements</b>	The principles of <a href="#">meeting/ hearing arrangements</a> will apply.
<b>Formal record of the hearing</b>	The principles of the <a href="#">formal record of the meeting/ hearing</a> will apply.
<b>Sharing of information</b>	The principles of <a href="#">sharing of information</a> will apply.
<b>Alternative date</b>	The principles of <a href="#">alternative date</a> will apply.
<b>Right of representation</b>	The principles of the formal stage <a href="#">right of representation</a> will apply.
<b>Attending a Stage 3 hearing</b>	The principles of <a href="#">attending meetings/ hearing</a> will apply.
<b>Outcome of the Stage 3 hearing</b>	The principles of <a href="#">outcome of the meeting/ hearing</a> will apply.
<b>Appeal</b>	The principles of the <a href="#">appeal stage</a> will apply.

## 8. Other Policy Requirements

**Reference must be made to the How to Guide – Capability for further information relating to this section.**

**Confidentiality**

It is expected that all parties involved in the capability process will maintain confidentiality as appropriate. This is both within and outside of the School (including social media). Governors will be notified in the event that the formal Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.

If any party does not maintain confidentiality action may be taken under the Disciplinary policy.

**Right of Representation**

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The employee has the right to be represented/ accompanied at a formal stage meeting/ hearing or appeal meeting. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the meeting/ hearing or appeal meeting date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

**Referral to Occupational Health/ medical practitioner**

It may be necessary to refer the employee to Occupational Health/ medical practitioner to obtain medical advice and information.

If an employee does not co-operate with the referral, any assessment or decision taken will be based on the information available.

**Alternative roles**

Reasonable support to find an alternative role can be offered to an employee as a means of helping them to find alternative employment, either within the school, Hampshire County Council or externally.

**Requirement for the School to pass on information about a teacher's capability to a new employer**

A Headteacher or teacher may apply for a job with an alternative employer. The employee may have been subject to the Capability policy within two years prior to starting a job with a new employer. In such cases, the School must notify the new employer.

**Safeguarding concern (relating to vulnerable adults, children and young people)**

The School may take action under the Capability policy for reasons that relate to a safeguarding concern. Such cases must be dealt with in accordance with Hampshire's Child Protection procedures. This ensures that a child, young person or vulnerable adult is not at risk or that a police or social care investigation is prejudiced.

Advice must be sought from Education Personnel Services.

**Referral to relevant bodies**

In the following circumstances it may be necessary to make a referral to the relevant body:



- if a dismissal takes place
- in circumstances where a f process regarding a capability concern has not concluded and the potential outcome may have resulted in dismissal.

Where there is a requirement to make a referral to a relevant body, the employee must be notified in writing that a referral has taken place.

For further guidance please contact Education Personnel Services.

**Mutual agreement**

As an alternative to a meeting/ hearing under this policy, the School and the employee may discuss a mutual agreement. The contract of employment may be ended by mutual agreement between the employee and the School.

There is no right to appeal a mutual agreement as it is entered into with the consent of both parties.

**Fast track procedure**

In very serious cases, a final warning may be issued at a stage one meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the manager can proceed to a stage three hearing.

Further advice must be sought from Education Personnel Services.

**Action – professional association/ trade union representative**

Where there are concerns involving a professional association/ trade union representative, must notify and seek advice from Education Personnel Services before taking action.

**Representation from EPS and/or the Local Authority**

The School will have the right to request that an officer from Education Personnel Services attends any meetings under Stages 1 or 2 of the Capability procedure, in order to provide support to the Senior Manager/ Headteacher/ HPMC.

Education Personnel Services will have the right to attend a meeting held under Stage 3 of the Capability Procedure in Hampshire Maintained Schools (other than in Voluntary Aided or Foundation Schools unless such rights exist) on behalf of the Local Authority.

**Mutual agreement**

As an alternative to a meeting/ hearing under this policy, the School and the employee may discuss a mutual agreement. The contract of employment may be ended by mutual agreement between the employee and the School.

There is no right to appeal a mutual agreement as it is entered into with the consent of both parties.

<b>Fast track procedure</b>	<p>In very serious cases, a final warning may be issued at a stage one meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the manager can proceed to a stage three hearing.</p> <p>Further advice must be sought from Education Personnel Services.</p>
<b>Action – professional association/ trade union representative</b>	<p>Where there are concerns involving a professional association/ trade union representative, must notify and seek advice from Education Personnel Services before taking action.</p>
<b>Representation from EPS and/or the Local Authority</b>	<p>The School will have the right to request that an officer from Education Personnel Services attends any meetings under Stages 1 or 2 of the Capability procedure, in order to provide support to the Senior Manager/ Headteacher/ HPMC.</p> <p>Education Personnel Services will have the right to attend a meeting held under Stage 3 of the Capability Procedure in Hampshire Maintained Schools (other than in Voluntary Aided or Foundation Schools unless such rights exist) on behalf of the Local Authority.</p>

## Appendix One - Managing Capability for employees with less than two years' service

Reference must be made to the How to Guide – Capability for further information relating to this section.

### Managing Capability

#### Policy stages

The possible stages are:

- formal meeting – may result in dismissal
- appeal only against a dismissal.

As a general principle the manager will seek to provide structured managerial support under the Performance Management policy, before using the Capability policy

In exceptional circumstances, it may be appropriate to move into the Capability policy without having provided a period of structured managerial support. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

#### Formal Meeting

The principles of the [Stages of the policy](#) will apply.

#### Appeal stage

The principles of the [appeal](#) section will apply. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

### Gross Incompetence

**Gross incompetence** The principles of [gross incompetence](#) will apply.

# Capability – How to Guide

## 1. Purpose

This School expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role. The School acknowledges that there may be circumstances when an employee does not perform to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

This policy defines how the School will manage an employee if they are unable to perform to the required standards.

Further guidance is available in the Capability Policy and this must also be referred to. Please note that the section numbering in the Capability policy and the How to Guide – Capability are not aligned.

## 2. Scope

The policy and this how to guide apply to:	<ul style="list-style-type: none"><li>• Teachers including Leadership, Upper Pay Range, Main Pay Range and Unqualified Teachers</li><li>• Support Staff.</li></ul>
The policy and this how to guide do not apply to:	<ul style="list-style-type: none"><li>• Volunteers</li><li>• Contractors</li><li>• Agency workers.</li></ul>

This policy is non contractual and does not form part of any employee's terms and conditions.

Employees that have been subject to a TUPE into the School may be excluded from this policy. In such cases, the employee should refer to their own contractual policies and procedures.

Employees with less than two years service may be subject to a shortened procedure as detailed in [Appendix One](#).

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The School expects all parties to maintain confidentiality throughout the application of the policy.

## 3. How to use this document

**Principles** This How to Guide provides information about the procedure to follow when applying the Capability policy. The document has been written in the second

person to address the line manager, referred to throughout the document as 'you'.

Throughout this guide, the word 'must' is used as a 'requirement' of the policy and procedure. The word 'should' is used to indicate actions or processes that are considered to be best practice.

Please note that the section numbering in the policy and this how to guide are not aligned.

If there are concerns about a Headteacher's performance concerns, a relevant Governor must consult Education Personnel Services.

**How do I address my concern?**

<b>Type of concern</b>	<b>Refer to the...</b>
Conduct or behaviour which is considered to be wilful, negligent or a breach of the Code of Conduct	Disciplinary policy and how to guide
Performance concerns that relate to a possible underlying medical condition or disability	Education Personnel Services team for advice and Occupational Health/ medical practitioner.  It may be more appropriate to manage the concern using the Managing Sickness Absence policy.
Absence from work due to sickness	Managing Sickness Absence policy and how to guide
Annual performance review for employees	Performance Management policy
Sickness absence whilst action under the Capability policy has started	In some cases it may be appropriate for action under the Capability policy to continue during a period of sickness absence. In such cases consideration must be given to any medical advice from Occupational Health/ medical practitioner.
An employee's concern(s) about a decision or action taken when applying the policy	Education Personnel Services team for advice.  If matters are related - use the meetings and appeals process within the policy.  If matters are unrelated - run the policy and the Grievance policy concurrently.  Or, in certain cases action under the policy may pause to address the grievance.

If you are unsure which policy to use please contact Education Personnel Services.

## 4. Introduction

This School expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role.

The School acknowledges that there may be circumstances when an employee does not perform to the required standards. If a performance concern is identified, this should be addressed early on to help the employee to improve. The School will work with an employee to support them to achieve the required standards of performance.

### Policy aims

The aims of the policy and this how to guide are to:

- improve and maintain performance
- manage capability positively
- provide a framework for managing capability
- ensure the employee is made aware of performance concerns in a timely manner
- support the employee to perform successfully in their role
- support a culture of high performance within the School to facilitate school improvement.

### Key definitions (shown in alphabetical order)

**Equality Act 2010** - a person has a disability for the purposes of the Equality Act 2010 if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

**Suspension or alternative arrangements** – are neutral and precautionary acts. They may be considered at any point during the Capability policy once an investigation has established that the circumstances may be gross incompetence.

**Timescales** - all references to 'days' in this how to guide refer to working days, regarded as Monday to Friday, excluding public holidays. Periods of notice that are specified indicate the number of clear days between (and exclusive of) the day the letter is issued and the day of the meeting/ hearing.

## 5. Performance management

### Performance management

The School will manage an employee's day to day performance with the Performance Management Policy.

The performance management cycle enables a manager to address any concerns promptly with the employee. It allows for appropriate support to be put into place to support an employee to improve their performance. Sometimes despite having supported the employee to improve, performance concerns can continue. In these circumstances, you should consider whether it is appropriate to commence the Capability policy.

### Annual review of performance

Every employee will have an annual review of their performance. The review process enables an employee's performance to be monitored and assessed.

### Pay progression

If an employee is unable to perform to the required standards of the role, this may have an impact on their annual pay progression.

For further advice, please contact Education Personnel Services.

## 6. Managing capability

**Considerations** You must consider whether to start the capability process if an employee does not perform the duties of their role to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

There may be other reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent.

There may be exceptional circumstances when you and/ or employee anticipate a long term capability concern. This may happen due to the employee's health or a disability. In these circumstances, it is anticipated it is unlikely that the employee can achieve the required level of performance. Consideration must be given to whether reasonable adjustments are appropriate. You must seek advice from Education Personnel Services in such cases.

If an employee's performance is causing concern, you must consider whether:

- appropriate training and support has been provided to the employee through the Performance Management Policy. This will normally include a period of structured managerial support, demonstrating that reasonable efforts have been made to identify performance concerns, discuss them with the employee and put in place support to facilitate improvement
- reasonable adjustments are necessary
- it is a [performance or conduct issue](#)
- the employee has an underlying medical condition and a [referral to Occupational Health/ medical practitioner](#) may be appropriate
- it is appropriate to hold a formal meeting/ hearing
- it is [a gross incompetence](#) matter.

The Capability policy aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:

- from within the school;
- through accessing expertise in another school;
- via the local authority's advisory services;
- from other expert sources external to the school;
- through training courses or events.

### **How to distinguish between performance and conduct**

You will need to consider whether it is appropriate to use the Capability policy. In some circumstances it may be more appropriate to apply the Disciplinary policy.

To help decide which policy to apply, you will need to consider the following:

- does the employee have the necessary skills?
- has the employee completed relevant training to develop the necessary skills?
- does the employee have the necessary knowledge for the role?

- has the employee previously been able to perform to the required standards?

In considering the above questions, this will help you to decide whether the employee has the necessary skills, knowledge and/ or experience. If the employee does not have the necessary skills, knowledge or experience, it would be appropriate to apply the Capability policy.

If you consider that an employee's behaviour or conduct is deemed to be wilful or negligent, it would be appropriate to apply the Disciplinary policy.

If you are unsure about which policy to apply, you must seek advice from Education Personnel Services.

### Identifying a capability concern

Examples of unsatisfactory performance are described in the Performance Management Resource Pack and examples of gross incompetence are included in [Appendix Two](#).

### Policy stages and principles

The possible stages are:

- stage one
- stage two
- stage three – may result in dismissal
- appeal after each formal stage.

There is a shortened procedure for employees with less than two years service as detailed in [Appendix One](#).

In exceptional circumstances, it may be appropriate to use the stages of the Capability policy without a period of structured managerial support (provided under the Performance Management policy).

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

An employee may have a disability classified by the Equality Act 2010. You must refer to the Reasonable Adjustments guidance before progressing to the I stages of this policy.

## 7. Stages of the Policy

**Stages** At each stage of the policy, the employee must be invited to attend a meeting/ hearing.

**Meeting/ hearing arrangements** The employee must receive in writing the invitation to the meeting/ hearing.  
The letter must give the employee **5 working days** notice of the meeting/ hearing. The timescales for the meeting/ hearing can be varied by mutual agreement.

Meeting/ hearing arrangements should ensure that:

- the date is set in consultation with the employee's representative and Education Personnel Services, where applicable
- a suitable venue is sourced



- consideration is given to access to refreshments (water)
- there are adequate break out rooms reserved for relevant parties
- reasonable adjustments are considered if applicable
- appropriate arrangements are made to enable a [formal record of the meeting/ hearing](#) to be made.

**Formal record of the meeting/ hearing**

A formal record must be taken during the meeting/ hearing. This may be made by audio recording the meeting/ hearing or by a note taker. It is the School's responsibility to make the appropriate arrangements.

Copies of the notes or audio recordings will be provided on request. Audio recordings will not be transcribed.

If an audio recording takes place, a copy of the recording must be retained by the School. The School must comply with all relevant retention and storage requirements.

The notes/ audio recording and documents shared within the formal meeting/ hearing are confidential to those present in that meeting/ hearing.

In some cases, it may be necessary as is reasonable in the circumstances to circulate documents to other School employees, in connection with the matter. Any information communicated to other School employees in connection with the matter must be treated as confidential.

For governor hearings in maintained schools, there remains a legal requirement to have a written record of the meeting of the Governor Committee.

**Alternative date**

The School expects that the employee and their representative will make all reasonable efforts to attend the first scheduled meeting/ hearing date and time.

If it is not possible, the employee may propose an alternative date and/ or time. This should be within **5 working days** of the original meeting/ hearing.

The meeting/ hearing will be rescheduled.

If the employee is unable to attend or does not attend the re-arranged meeting/ hearing, the chair must decide whether to proceed in their absence. Further advice should be sought from Education Personnel Services.

**Sharing of information**

The manager and employee are required to exchange all relevant papers and supporting evidence in advance of the meeting/ hearing. The employee will be provided with a copy of the Capability policy.

Management documents will be supplied with the invitation letter. This will include any appeal information from the previous formal stage.

A record about the situation with details of any informal discussion(s) and details of the structured managerial support provided, would normally be required.

A template management report is available to help you compile relevant information

in more complex cases and at stage three.

The employee will be provided with two copies of all documents that will be provided to the chair/ panel in advance of the meeting/ hearing. One copy is for their reference and the other is for their representative.

You can arrange for a copy of the management documents to be sent directly to the representative, if consent is given by the employee.

The employee or their representative must submit all relevant papers and supporting evidence to arrive with the chair at least **3 working days** before a meeting/ hearing.

In exceptional circumstances, additional information may need to be submitted to the chair/ panel outside of the above timescales. If this happens, the information should be shared with all parties as soon as possible.

If additional documents are submitted on the day of the meeting/ hearing, time must be given to allow all parties to read the documentation.

Governors will be notified in the event that the Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.

### **Right of representation**

The employee has the right to be represented/ accompanied at formal stage meetings/ hearings or appeal meetings. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the formal meeting/ hearing or appeal meeting date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

### **Who chairs the meeting/ hearing**

#### **For Teachers and Support Staff**

<b>Stage</b>	<b>Chair/ Panel</b>	<b>HR Adviser</b>	<b>Right to be represented/ accompanied</b>
Stage one	Line manager	If required	Yes
Stage two	Line manager or other manager	HR Adviser	Yes
Stage three/ less than two years service	Headteacher (where they have delegated powers of dismissal) OR a Governors' Committee	HR Adviser	Yes

### **Who chairs the For a Headteacher**

**meeting/  
hearing**

Stage	Chair/ Panel	HR Adviser	Right to be represented/ accompanied
Stage one	Headteacher Performance Management Committee (HPMC)	If required	Yes
Stage two	Headteacher Performance Management Committee (HPMC)	HR Adviser	Yes
Stage three/ less than two years service	Governors' Committee	HR Adviser	Yes

The chair of the HPMC will commission an advocate from the School Improvement Service and an HR Adviser from Education Personnel Services to present the management case. The chair of the HPMC will usually be called as a witness.

If required, an additional professional adviser from the School Improvement Service will be present, at any stage to provide the Governors with professional advice.

**Other meeting/  
hearing  
conditions**

The chair/ panel should not have had previous involvement in the case.

If the Headteacher has heard an appeal at stage one and/ or stage two, they must not be part of the stage three hearing panel.

The chair/ panel must declare any conflict of interest or involvement in the matters prior to the meeting/ hearing so that an alternative chair/ panel can be found.

The HR Adviser to the chair does not perform a decision making role. Their function is to provide advice on legal issues, correct application of the policy and how to guide and procedural matters.

**Other meeting/  
hearing  
attendees**

Other meeting/ hearing attendees may include:

- the manager/ alternative manager with an HR Adviser if required to present the case/ respond to the appeal
- the chair of a meeting/ hearing (at an appeal hearing only)
- a professional association/ trade union representative or work colleague
- witnesses (which may include the line manager or chair of the previous meeting/ hearing)
- a note taker
- an observer for training purposes with the consent of all parties.

**Witnesses**

Witnesses are not normally required to be involved or attend a meeting/ hearing in performance cases.

The manager and the employee can request witnesses to attend the meeting/ hearing. It is the responsibility of either party to arrange their own witnesses. The chair of the meeting/ hearing must be notified in advance of the meeting/ hearing of the witnesses who will be called.

Witnesses should only be called if they can provide significant information regarding the case. Witnesses must be given due notice to attend the meeting/ hearing by the person who wishes to call them.

If a witness is unable or refuses to attend the meeting/ hearing then the chair can use the witness's statement contained within the management report.

A witness may find it difficult or distressing to attend a meeting/ hearing. You can provide information about support that is available to the witness during the process. If the professional association/ trade union representative requests a witness it is their responsibility to provide the witness with support.

**Attending formal meetings/ hearings**

If the employee is not well enough to attend the meeting/ hearing, it may be deferred until they are able to attend. Every effort should be made to make it possible for the employee to attend if they wish to do so. A meeting/ hearing will not be deferred indefinitely because the employee is unable to attend.

If the employee does not attend, the chair will need to decide whether to defer the meeting/ hearing or to continue in the employee's absence.

If the employee is unable to attend, their professional association/ trade union representative may attend the meeting/ hearing. The professional association/ trade union representative would represent the employee. Alternatively the employee can submit a written statement.

**How to manage a meeting/ hearing**

The meeting/hearing will be conducted in accordance with the Procedure for Headteacher and Governor Committee Hearings.  
<https://www.hants.gov.uk/educationandlearning/education-personnel-services/manual/managing-staff/hearings-committees>

**Outcome of a meeting/ hearing**

The chair of the meeting/ hearing must fully consider all evidence presented and decide on an outcome.

Any outcome given will apply from the date of the meeting/ hearing.

If the employee is issued with a warning, the chair must make a clear statement to the employee about the importance of improving their performance. The employee should understand that if they are unable to improve their performance, further action under the stages of the Capability policy may be necessary. If sufficient improvement is not made within the review period or if an improvement is not sustained as follows:

- **at stage one** - for a 12 month period following the meeting, the employee may be required to attend a formal stage two meeting
- **at stage two** – for at least 12 – 24 months following the meeting, the employee may be required to attend a stage three hearing.

Stage	Possible outcomes
At any stage	<ul style="list-style-type: none"> <li>• no formal action (in which case it may be</li> </ul>

(including employees with less than two years service)	<p>appropriate to continue to address the concerns through the Performance Management policy)</p> <ul style="list-style-type: none"> <li>•</li> <li>• reaching an agreement with the employee about how to improve their performance</li> <li>• an <a href="#">action plan</a> is issued and a review period agreed</li> <li>• any additional support, action plan or development/ training required to help the employee</li> <li>• setting a realistic timescale within which an improvement needs to take place and review meetings are scheduled</li> <li>• whether a <a href="#">referral to Occupational Health/ medical practitioner</a> is appropriate</li> <li>• whether reasonable adjustments need to be considered and/ or implemented where appropriate to do so</li> <li>•</li> </ul>
Stage one	<ul style="list-style-type: none"> <li>• No formal action (in which case it may be appropriate to continue to address the concerns through the Performance Management policy)</li> <li>•</li> <li>• a first written warning of 12 months</li> <li>• to refer the concern to a higher stage of the policy (this would take place as a stage two or stage three meeting/ hearing)</li> <li>• in serious cases, a final warning is issued</li> <li>• in exceptional cases, the matter is deemed to be potential gross incompetence. This will be managed under the <a href="#">Gross Incompetence</a> stage of the Capability policy.</li> </ul>
Stage two	<ul style="list-style-type: none"> <li>• the Stage 1 first written warning remains in force for a further specified period</li> <li>• a first written warning of 12 months</li> <li>• a final written warning of between 12 - 24 months</li> <li>• to progress to a stage 3 hearing of which a potential outcome could be dismissal</li> </ul>
Stage three	<ul style="list-style-type: none"> <li>• a first written warning of 12 months</li> <li>• a final written warning of between 12 – 24 months</li> <li>• to refer the employee back to a stage 2 meeting with a final written warning and a further review period</li> <li>• to explore the possibility of <a href="#">alternative roles</a></li> <li>• to dismiss on the grounds of performance capability with contractual notice.</li> <li>• The employee is dismissed summarily (without notice) in gross incapability cases only – see <a href="#">Gross Incompetence</a>)</li> </ul>
Stage for an	<ul style="list-style-type: none"> <li>• No formal action (in which case it may be</li> </ul>

employee with less than two years service	<p>appropriate to continue to address the concerns through the Performance Management policy)</p> <ul style="list-style-type: none"> <li>• a final written warning is issued (with an action plan and review meetings) and is valid for between 12 – 24 months</li> <li>• to dismiss on the grounds of performance capability with contractual notice.</li> </ul>
---	---

The length of the warning depends on:

- the nature of the unsatisfactory performance
- whether there is a belief that the unsatisfactory performance may reoccur
- whether a warning at the same stage has previously been issued.

If a dismissal takes place the School must make arrangements to complete the necessary leaver actions including:

- cancelling the employee’s IT account
- obtaining the employee’s identity card
- completing the other leaver requirements.

If the outcome is dismissal, any sums owing to the School from the employee will normally be deducted from their final pay.

The chair of the meeting/ hearing must also explain to the employee that:

- a copy of the letter detailing the outcome will be placed on their personnel file
- they have the right of appeal.

**Previous warnings**

A performance concern may arise whilst a warning is still live. The chair will take the previous warning into account. This may lead to a higher sanction being imposed.

Expired warnings may be taken into consideration. This would be in circumstances where the employee has a history or pattern of the same or similar performance concern(s) over a prolonged period of time which continues to give cause for concern.

The chair must seek advice from Education Personnel Services.

**Confirming the outcome**

The chair will normally advise the employee verbally of the outcome at the meeting/ hearing, unless agreed otherwise with the employee.

The chair must confirm the outcome in writing within **5 working days** of the meeting/ hearing. The outcome letter will include details of any warning and/ or sanction issued. A template letter is available to ensure all of the necessary information is included.

A copy of the outcome letter and any warning must be placed on the employee’s personnel file.

**How to develop an action plan**

An action plan is a tool for you and the employee to use to assist with improving performance. The aim of an action plan is to identify and record any activity that will enable the employee to demonstrate their ability to meet and maintain the expected standards of performance.

The action plan can be used to record key outcomes from a formal meeting/ hearing including any associated timescales.

The action plan should include:

- the expected standard(s) of performance and timescale in which this should be achieved
- the action/ support that will be put in place
- the associated action(s) to be taken
- who is responsible for arranging or providing any relevant support, training or guidance as appropriate
- dates of review meetings.

You should develop an action plan jointly with the employee. Working with the employee, you should seek to agree the action plan if possible. You must ensure that the employee has the tools/ support that they need to improve their performance.

You must share the action plan with the employee and keep a copy for your records.

## **Review meetings**

Following a meeting/ hearing, you must hold scheduled review meetings with the employee. These must be followed by a final review meeting before the end of a warning period.

You should agree a series of dates and times to meet with the employee throughout the duration of the length of the warning issued.

The School recommends that review meetings should be held every 4 weeks. Once the employee is sustaining an improvement in performance, together you can agree to decrease the frequency of the meetings.

The purpose of the meetings are to provide an opportunity to:

- review the employee's performance
- review any action plan as appropriate
- discuss any other support that may be relevant
- establish whether there is a need to progress to the formal stages of the policy.

A record must be made of each discussion. You should:

- seek to agree the record with the employee if possible
- share the record with the employee
- keep a copy on the employee's personnel file.

The principles of the right of representation will apply.

## **Improvement in performance**

If the employee's performance improves as required, the Headteacher/Senior Manager/HPMC will meet the employee to tell them this. This will be confirmed in writing to the employee and the letter will be placed on the employee's file. The Capability Procedure will cease at this point and Performance Management will restart. If the employee was at Stage 1 of the Capability procedure, their improvement in performance will need to be sustained for at least 12 months, at Stage 2 the improvement would need to be sustained for at least 24 months. If the

employee's performance declines during this period of time, the Headteacher/Senior Manager/HPMC will have the option to re-enter the procedure at the appropriate point.

### **Progression through the stages**

The employee must be given a reasonable period of time to achieve the required standard of performance at each of the formal stages.

If you have any concerns about the employee's performance, you should discuss these as soon as possible. There is no need to wait until a scheduled review meeting.

Progression through the stages normally occurs where performance continues to be a concern whilst a written warning remains active. If there are concerns, you should speak to the employee at the earliest opportunity. You do not have to wait until a scheduled review meeting, the end of the review period or warning.

There may be circumstances when an employee has a history and pattern of performance concerns over a prolonged period of time which causes concern, despite there not being an active warning. A history of performance concerns may be identified by a record of previous written warnings and/ or where there are examples to show that the employee has been unable to sustain the required standard of performance.

You can progress to the next stage and re-enter at the appropriate point if:

- the employee does not achieve the required improvement
- there are further performance concerns which may be for a different reason
- if an improvement is not sustained for a 12 month period following a stage one meeting
- if an improvement is not sustained for a 12 - 24 month period following a stage two meeting
- the employee has not been successfully redeployed and/ or has refused a reasonable offer of alternative employment.

You must contact Education Personnel Services for advice prior to commencing any formal stage.

### **How to manage anticipated long term performance concerns**

In exceptional circumstances the employee's personal situation or health may change. This may mean they are no longer able to perform the duties of their role. In these circumstances it is anticipated that this will become a long term or permanent performance concern.

You must consider whether there is any support and/ or reasonable adjustments that could be put into place to help the employee.

In these circumstances, the employee is unable to perform to the required standards. The following options may apply:

- to complete an [Occupational Health/ medical practitioner referral](#)
- to consider reasonable adjustments
- to explore medical redeployment
- to explore ill health retirement
- to initiate the Managing Sickness Absence policy.

Please contact Education Personnel Services for further advice and to discuss



the above options before progressing.

## 8. Appeal

**Appeal stage** The employee has the right to appeal against the outcome of a meeting/ hearing.

**Right of appeal** The employee must submit their appeal in writing within **10 working days** following receipt of the written outcome of the formal meeting/ hearing. This must include the full reasons for the appeal.

The employee must send their appeal letter as follows:

<b>Stage of the original meeting/ hearing</b>	<b>Appeal letter sent to</b>
Stage 1	Chair of the original meeting
Stage 2	Chair of the original meeting
Stage 3	Clerk to Governors

The appeal is not a repeat of the original meeting/ hearing. It seeks to address the specific issues raised by the employee in their appeal letter.

The grounds for appeal are (this is not an exhaustive list):

- finding/ outcome was unreasonable
- emergence of new evidence which could have a material effect on the outcome
- terms of a warning are unreasonable (duration or conditions imposed with the warning)
- unfair/ incorrect application/ breach of the policy which could have had a material effect on the outcome.

A complete re-hearing is only permitted in exceptional circumstances where the chair determines that the submitted grounds of appeal identify:

- there was a defect in the procedure
- new evidence has to come to light since the meeting/ hearing which may have an impact on the decision
- there is a dispute about evidence given by one or more witnesses at the original meeting/ hearing. In these cases, it may be necessary to rehear the witness's evidence at the appeal.

Following an appeal of a stage three hearing, there is no further right of internal appeal.

**Appeal meeting** The employee must be invited to attend a meeting.

**Meeting arrangements** The employee must receive in writing the invitation to the meeting.

The letter must give the employee **7 working days** notice of the meeting. The timescales for the meeting can be varied by mutual agreement.

Meeting arrangements should ensure that:

- the date is set in consultation with the employee's representative and Education Personnel Services, where applicable
- a suitable venue is sourced

- consideration is given to access to refreshments (water)
- there are adequate break out rooms reserved for relevant parties
- reasonable adjustments are considered if applicable appropriate arrangements are made to enable a [formal record of the meeting](#) to be made.

**Formal record of the meeting** The principles of a [formal record of the meeting/ hearing](#) will apply.

**Alternative date** The principles of an [alternative date](#) will apply.

**Sharing of information** You and the employee are required to exchange details of any additional papers and supporting evidence in advance of the appeal meeting. The original papers will normally be sent with the invitation letter. Education Personnel Services will advise you on the collation and distribution of papers.

The principles of [sharing of information](#) will apply.

**Right of representation** The principles of the formal stage [right of representation](#) will apply.

**Who chairs the appeal meeting** **For Teachers and Support Staff**

Stage	Chair/ panel members	HR Adviser	Right to be represented/ accompanied
Appeal against a formal warning	Headteacher/ Governors' Committee	If required	Yes
Appeal against dismissal	Governors' Committee	HR Adviser	Yes

**For a Headteacher**

Stage	Chair/ panel members	HR Adviser	Right to be represented/ accompanied
Appeal against a formal warning	Governors' Committee	If required	Yes
Appeal against dismissal	Governors' Committee	HR Adviser	Yes

**Other appeal meeting conditions** If a first or final written warning has been issued by a senior manager the appeal may be heard by the Headteacher. If the Headteacher issued a first or final written warning, the appeal will be heard by a Governors' Committee.

The principles of [other meeting/ hearing conditions](#) will apply.

**Other appeal meeting** The principles of [other meeting/ hearing attendees](#) will apply.

## attendees

**Witnesses** The principles of [witnesses](#) will apply.

## How to manage an appeal meeting

The meeting/hearing will be conducted in accordance with the Procedure for Headteacher and Governor Committee Hearings.

<https://www.hants.gov.uk/educationandlearning/education-personnel-services/manual/managing-staff/hearings-committees>

## Outcome of the appeal meeting

The chair must fully consider all evidence presented and decide on an outcome.

The possible outcomes are:

- the appeal is not upheld and the previous decision remains. The chair must be able to justify that there is insufficient evidence to overturn the decision of the original meeting/ hearing
- the appeal is upheld. This is likely to occur when:
  - new evidence has been presented
  - a review of the process has uncovered flaws in how the Capability policy was applied
  - there are flaws in how the formal stage meeting/ hearing was conducted
  - if mitigating circumstances have been uncovered which were not previously taken into account
- to impose a different outcome in place of the original decision
- to reinstate the employee. The employee's service remains continuous and any loss of pay between dismissal and reinstatement will be paid. The School is responsible for contacting their payroll provider to make the arrangements to ensure the employee receives their pay. The School must also make the necessary arrangements for the employee to have their IT account reinstated.

The outcome cannot impose a higher sanction than issued at the formal meeting/ hearing although a lower sanction can be applied.

There is no further internal right of appeal.

## Confirming the outcome

The chair will normally advise the employee verbally of the outcome at the meeting, unless agreed otherwise with the employee.

The chair must confirm the outcome in writing within **5 working days** of the meeting. A template letter is available to ensure all of the necessary information is included.

A copy of the outcome letter must be placed on the employee's personnel file.

## 9. Gross Incompetence

### Definition

**Gross incompetence** - occurs where an investigation identifies that an employee has failed, either by a single error or series of errors, to perform the duties of their role to such an extent that this causes or has caused serious harm or puts others (colleagues, general public or service users) or the School's reputation and

performance at serious risk.

Gross incompetence only applies in exceptional circumstances. You must seek advice from Education Personnel Services in such cases. Some examples are given in [Appendix Two](#).

### **Policy stages**

The possible stages are:

- stage three hearing - may result in dismissal
- appeal.

### **Suspension or alternative arrangements**

Before making a decision about suspension or alternative arrangements, the appropriate manager must seek advice from Education Personnel Services.

Suspension or alternative arrangements are neutral and precautionary acts. They may be considered at any point during the Capability policy once an investigation has established that the circumstances may be gross incompetence.

If the potential gross incompetence investigation establishes that the employee entering the workplace places them, or the School, at risk, alternative arrangements must be put in place to reduce or remove that risk. This must be a considered response to the specific issues/ risks in the investigation.

Issues/ risks may be identified at the start of an investigation, or new evidence may mean that alternative arrangements become appropriate part way through the case.

The risks may arise from:

- the seriousness of the potential issues, in that they could amount to gross incompetence
- interference with the investigation which may impact on the fairness of the investigation
- a health and safety risk to the employee or others in the work place.

The alternative arrangements that could be made include:

- temporary placement into another role, or
- amended duties in the employee's current role, or
- temporary placement in an alternative location
- another action identified which would reduce or remove the risk
- suspension.

Alternative arrangements to suspension are only appropriate where the new duties or role are not linked in any way to the alleged gross incompetence.

The appropriate manager must refer the case to the Headteacher or the Chair of the Governing Body to make a decision as to whether alternative arrangements or suspension are appropriate. The Governing Body should be informed as soon as possible of any cases of suspension. The information must be limited so as not to prevent the governors from involvement in a future hearing, if this is necessary.

The decision regarding whether alternative arrangements or suspension is necessary and the rationale must be recorded in writing. The appropriate manager must also seek advice from Education Personnel Services before communicating the outcome to the employee.

If a Headteacher is to be suspended, Education Personnel Services will support the Chair of the Governing Body in making the necessary arrangements. For maintained schools this will involve the School Improvement Manager or County Education Manager as necessary.

**Suspension** – this requires the employee to stay away from the workplace whilst on full contractual pay. Suspension is a neutral act and does not imply guilt or innocence. Advice must be sought from Education Personnel Services when considering whether suspension is necessary. Suspension must be a last resort after other alternatives have been considered.

### **Documenting and reviewing alternative arrangements/ suspension**

The reason for any alternative arrangements must be documented. In the case of suspension, the reason why other alternatives were not appropriate must be documented.

Arrangements must be regularly reviewed to determine whether they are still appropriate. This will be undertaken by the Headteacher. If the Headteacher has been suspended, then the arrangements must be regularly reviewed by the Governing Body (who may delegate the responsibility to a Committee or identified member).

In reviewing the suspension arrangements, a decision may be made that suspension is no longer required and the employee can return to work. In maintained schools a decision to lift suspension can only be reached by the Governing Body.

In an Academy, the Academy's scheme of delegation should describe who has the authority to decide whether suspension arrangements are no longer required.

If the arrangements are to continue, or change, the reason for this must be documented and communicated to the employee.

### **Communicating alternative arrangements/ suspension**

Once confirmation that suspension or alternative arrangements are approved, the Headteacher or Chair of the Governing Body must meet face to face (where possible) with the employee immediately to inform them of the decision.

The employee has no statutory right to be accompanied. However this will normally be accommodated where it does not cause any unnecessary delay. This meeting should be handled sensitively and acknowledge this is likely to be a difficult time for the employee.

The alternative arrangements/ suspension must be confirmed to the employee in writing.

There is no right of appeal against the decision to implement alternative arrangements or suspension.

### **Support during suspension**

The terms of the suspension often involve the employee being instructed not to contact colleagues during the suspension. Colleagues can still remain friends but the employee must refrain from discussing the investigation with colleagues.

It is important to identify one or more people they are able to communicate with, in

order to ensure that contact can be maintained. Ideally this should be agreed with the employee and their representative.

The contact person should usually be a member of staff from the School. It must not be a member of the School's Governing Body. It is essential that the contact shall have no part whatsoever to play in any subsequent investigation, nor any other connection with, or vested interest in, the outcome of the case.

The nomination of a contact will need to be dealt with sensitively as it is not intended to replace the role of the employee's representative or line manager but rather to reinforce the support/ contact available for the employee concerned.

The employee can also seek support from their professional association/ trade union representative.

The principles of support for the employee will apply.

**For cases of suspension only** - during suspension the employee must:

- remain away from the workplace for a period of time with the purpose of enabling the investigation to take place and protecting both the School and the employee
- continue to receive full pay and all allowances applicable to their role unless they become sick in which case their pay will be in accordance with the sick pay scheme
- fulfil the requirements of their suspension. If the employee fails to maintain contact, their whereabouts are unknown, or they breach the terms and conditions of the suspension, their pay and any allowances may be suspended
- be available for hearings
- be provided with the details of the contact that will be assigned to them during the suspension or alternative arrangements
- follow normal reporting procedures such as sickness absence and annual leave. Sickness absence and annual leave must be requested and recorded in line with required protocols.

The Headteacher or Chair of Governors must decide how to inform other colleagues to explain the situation. It is important that all parties maintain confidentiality. It is important for the Headteacher or Chair of Governors to carefully consider how workplace messages will be managed during any period of suspension or alternative duties.

**Stage three hearing**

The employee must be invited to attend a formal stage hearing.

**Stage three hearing arrangements**

The principles of [meeting/ hearing arrangements](#) will apply.

**Formal record of the hearing**

The principles of a [formal record of the meeting/ hearing](#) will apply.

**Alternative date**

The principles of an [alternative date](#) will apply.

**Sharing of**

The principles of [sharing of information](#) will apply.

**information**

**Right of representation**

The principles of [right of representation](#) will apply.

**Who chairs the stage three hearing**

**For Teachers and Support Staff**

Stage	Chair	HR Adviser	<a href="#">Right to be represented/ accompanied</a>
Stage three	Headteacher (where they have delegated powers of dismissal) OR Governors' Committee	HR Adviser	Yes

**For a Headteacher**

Stage	Chair	HR Adviser	<a href="#">Right to be represented/ accompanied</a>
Stage three	Governors' Committee	HR Adviser	Yes

**Other hearing conditions**

The principles of [other meeting/ hearing conditions](#) will apply.

**Other hearing attendees**

The principles of [other meeting/ hearing attendees](#) will apply.

**Witnesses**

The principles of [witnesses](#) will apply.

**Attending the stage three hearing**

The principles of [attending formal meetings/ hearings](#) will apply.

**How to manage a stage three hearing**

The principles of [how to manage a formal meeting/ hearing](#) will apply.

**Outcomes of a stage three hearing**

The chair of the formal stage hearing must fully consider all evidence presented and decide on an outcome.

Any outcome given will apply from the date of the hearing.

The chair/ panel must decide whether:

- there is no further action
- to manage the concern under the Performance Management policy
- to reach an agreement with the employee about how to improve their performance
- an action plan is issued and a review period agreed including scheduling review meetings
- any additional support, action plan or development/ training required to help the employee

- setting a realistic timescale within which an improvement needs to take place and review meetings are scheduled
- a referral to Occupational Health/ medical practitioner is appropriate
- reasonable adjustments need to be considered and/ or implemented where appropriate to do so
- alternative roles/opportunities will be explored
- a first written warning is issued (if the panel consider that there has been unsatisfactory performance and not gross incompetence) and is valid for 12 months
- a final written warning is issued (if the panel consider that there has been unsatisfactory performance and not gross incompetence) and is valid for between 12 - 24 months
- to dismiss on the grounds of performance capability with immediate effect.

If the outcome is not dismissal, the chair must make it clear to the employee that if they are unable to make and maintain an improvement, further action under the Capability policy may be taken.

The length of the warning depends on:

- the nature of the unsatisfactory performance
- whether there is a belief that the unsatisfactory performance may reoccur
- whether a warning at the same stage has previously been issued.

If a dismissal takes place the School must make arrangements to complete the necessary leaver actions including:

- cancelling the employee's IT account
- obtaining the employee's identity card
- completing the other leaver requirements.

Any sums owing to the School from the employee will normally be deducted from their final pay.

The chair of the hearing must also explain to the employee:

- the outcome
- the reasons for the decision
- that a copy of the letter detailing the outcome will be placed on their personnel file
- that they have the right of appeal.

**Confirming the outcome** The principles of [confirming the outcome](#) will apply.

**Right of appeal** The principles of the [appeal stage](#) will apply.

## 10. Other policy requirements

**Confidentiality** It is expected that all parties involved in the capability process will maintain confidentiality as appropriate. This is both within and outside of the School (including social media). If any party does not maintain confidentiality action may be taken under the Disciplinary policy.

**Right of** Employees are actively encouraged to contact their professional association/ trade



**representation** union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The employee has the right to be represented/ accompanied at a formal stage meeting/ hearing or appeal meeting. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the formal meeting/ hearing or appeal meeting date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

**Referral to Occupational Health/ medical practitioner**

It may be necessary to refer the employee to Occupational Health/ medical practitioner to obtain medical advice and information. This will help you to understand:

- the health issues
- the possible impact on the employee's performance
- whether any reasonable adjustments are required.

You should meet with the employee to discuss the reasons for the referral and the process. You can use the template letter to confirm the arrangements for making a referral if appropriate.

The School expect the employee to attend any medical appointments and to co-operate with the referral.

You must explain to the employee that:

- it is important for them to attend the medical appointment(s) so relevant information relating to their health can be shared with you and any needs at work can be supported
- they must tell you as soon as possible if there is any reason that prevents them from attending an appointment, so you can discuss ways to resolve any issues
- they must contact Occupational Health/ medical practitioner immediately if they wish to rearrange an appointment for an alternative date/ time
- they must inform you of a change of date/ time.

You should contact the employee 2 days before any medical appointment to remind them about the appointment.

If an employee does not co-operate with the referral, any assessment or decision taken will be based on the information available.

If the employee provides consent, you can attend at the end of the medical appointment. The purpose would be to enable you to be part of the discussions about possible outcomes and next steps.

Once you are in receipt of the referral advice from Occupational Health/ medical

practitioner, you must make arrangements to discuss this with the employee.

Depending on the circumstances, it may be appropriate to write to the employee advising them that the information has been received. You should invite them to discuss the referral advice with you. You can use the template letter to ensure all of the relevant information is included.

Once you have discussed the referral advice with the employee, you should confirm the outcome of your discussions in writing.

### **Alternative roles**

Reasonable support to find an alternative role can be offered to an employee as a means of helping them to find alternative employment, either within the school, Hampshire County Council or externally. Typically, it may involve help with searching for vacancies, applications / CVs and interview techniques. There is no right to redeployment or priority status and individuals will be treated as with any other individual applying for roles and must demonstrate their suitability.

### **Requirement for the School to pass on information about a teacher's capability to a new employer**

A Headteacher or teacher may apply for a job with an alternative employer. The employee may have been subject to the Capability policy within two years prior to starting a job with a new employer. In such cases, the School must notify the new employer.

An employee may have been invited to a stage one meeting. The outcome may be that no formal action is required. In such cases, as the performance concern(s) will be managed through the Performance Management policy, the Capability policy does not apply.

As the employee has not been issued with a formal warning, this does not have to be passed onto a new employer.

### **Safeguarding concern (relating to vulnerable adults, children and young people)**

The School may take action under the Capability policy for reasons that relate to a safeguarding concern. Such cases must be dealt with in accordance with Hampshire's Child Protection procedures. This ensures that a child, young person or vulnerable adult is not at risk or that a police or social care investigation is prejudiced.

In the case of safeguarding allegations, it is only appropriate to use the Capability policy once there is written confirmation from the Local Authority Designated Officer (LADO), or their representative that the School may proceed with an internal investigation.

Advice must be sought from Education Personnel Services.

### **Referral to relevant bodies**

Some professions are required to be registered with a professional body in order to practice. During, or upon completion of the Capability process, in the following circumstances it may be necessary to make a referral to the relevant body:

- if a dismissal takes place
- where there are concerns about the employee's fitness or competence to practice
- in circumstances where a process regarding a capability concern has not concluded and the potential outcome may have resulted in dismissal.

If a referral is necessary, the School is responsible for initiating and completing it.

The School must work in conjunction with Education Personnel Services and the Local Authority Designated Officer (LADO)/ Adult Services safeguarding team where appropriate.

If the capability concern(s) relate to a safeguarding matter, the employer is required to make a referral to the Disclosure and Barring Service (DBS). Further guidance is available on the [Disclosure and Barring Service](#) website. The DBS may take action under their statutory powers. Alternatively the DBS may refer the case to the Teaching Regulation Agency (TRA) for consideration where the matter concerns a teacher.

If the capability concerns relate to a teacher, the employer may make a referral to the Teaching Regulation Agency (TRA). The TRA may take action under their statutory powers.

Where there is a requirement to make a referral to a relevant body, the employee must be notified in writing that a referral has taken place.

Further guidance is available on the relevant professional body websites.

For further advice please contact Education Personnel Services.

### **Mutual agreement**

As an alternative to a formal stage meeting/ hearing, the School and the employee may discuss a mutual agreement. The contract of employment may be ended by mutual agreement between the employee and the School.

The School must respect the employee's decision as it has to be agreed by both parties. If the employee does not wish to enter into a mutual agreement, then it is likely a formal stage meeting/ hearing will be arranged.

A mutual agreement is an alternative approach for the employee rather than attending a formal stage meeting/ hearing. This can help the employee to avoid the stress and pressure of a formal meeting/ hearing. This can be particularly helpful if the employee is unable to achieve the required standards of performance.

A mutual agreement is neither a dismissal nor a resignation. It is a letter setting out an agreed end date of employment, and other related arrangements. It is signed by both parties.

There is no right to appeal a mutual agreement as it is entered into with the consent of both parties.

The employee is encouraged to seek advice from their professional association/ trade union representative before entering into any discussions.

You must contact Education Personnel Services for further advice.

### **Fast track procedure**

In very serious cases, a final warning may be issued at a stage one meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, you can proceed to a stage three hearing.

Further advice must be sought from Education Personnel Services.

**Action concerning a professional association/ trade union representative**

Where there are concerns involving a professional association/ trade union representative, you must notify and seek advice from Education Personnel Services before taking action.

The professional association/ trade union representative is encouraged to seek advice from their professional association or trade union branch.

## 11. Support

**Support for the employee**

Employees:

A professional association or trade union representative can offer information and workplace support as well as signposting to useful support organisations. **Support is also available from Employee Support if the school subscribes to this service** <https://extra.hants.gov.uk/employee/policy-guidance/occupational-health/employee-support>

**Support for the manager**

Any queries can be directed to Education Personnel Services on 02380 383500 or [eps.consultants@hants.gov.uk](mailto:eps.consultants@hants.gov.uk).

For Schools which subscribe to Hampshire County Council's Occupational Health service, the manager can access the Occupational Health Advice Line <https://extra.hants.gov.uk/employee/policy-guidance/occupational-health> The Advice Line can support with any health related query prior to making a referral or during management of a case.

## 12. Toolkit

A number of template documents are provided in the Manual of Personnel Practice <https://www.hants.gov.uk/educationandlearning/education-personnel-services/manual/managing-staff/performance-management>

- action plan
- record of review meetings
- invite letters to meetings under the procedure
- outcome letters of formal meetings under the procedure
- management report

## 13. Related documents

To help with the application of this document it may be useful to read the following:

- Managing Sickness Absence policy and How to Guide
- Performance Management policy
- Performance Management Resource Pack

## 14. Roles and responsibilities

Everybody

- adopting a pro-active approach to induction, general development and continuing professional development
- applying and complying with the Performance Management cycle and

	<ul style="list-style-type: none"> <li>policy</li> <li>• apply the Capability policy accurately</li> <li>• maintaining confidentiality.</li> </ul>
<b>The Headteacher/ manager</b>	<ul style="list-style-type: none"> <li>• setting clear and achievable standards that the employee can work to within their role</li> <li>• identifying concerns and deciding on appropriate action within a timely manner</li> <li>• tracking and progressing cases through case management</li> <li>• informing Education Personnel Services of all performance concerns that may potentially be managed under this policy if there has not been previous involvement in the case</li> <li>• seeking advice from Education Personnel Services about gross incompetence concerns</li> <li>• considering adjustments and deciding whether to implement them where reasonable to do so</li> <li>• arranging meeting/ hearings as necessary</li> <li>• drafting and issuing of letters, reports and documentation with Education Personnel Services support as necessary</li> <li>• ensuring the School completes the e-leaver form and completing the other leaver requirements if a dismissal takes place or the employee resigns during the process.</li> </ul>
<b>All employees</b>	<ul style="list-style-type: none"> <li>• seeking to improve their performance</li> <li>• identifying support that is helpful to their particular development needs</li> <li>• engaging and co-operating with the Occupational Health/ medical practitioner referral process, including attending all medical appointments</li> <li>• arranging their own professional association/ trade union representative or work colleague if desired and advising management of this.</li> </ul>
<b>The Education Personnel Services caseworker</b>	<ul style="list-style-type: none"> <li>• advising on policy application and best practice</li> <li>• supporting with case management</li> <li>• advising on the completion of letters, reports and relevant documentation</li> <li>• attending meetings where appropriate in an advisory capacity</li> <li>• The Education Personnel Services HR Adviser does not perform a decision making role.</li> </ul>
<b>Occupational Health/ medical practitioner</b>	<ul style="list-style-type: none"> <li>• receiving referrals from management and reviewing employees as appropriate</li> <li>• requesting medical information</li> <li>• making recommendations in line with the needs of the School.</li> </ul>

**The  
professional  
association,  
trade union  
representative  
or Hampshire  
County  
Council work  
colleague**

- advising/ supporting their member/ colleague/ manager
- attending arranged meetings/ hearings and/ or appeal meetings. If this is not possible, then arrangements should be made so that meetings/ hearings and/ or appeal meetings are covered by an alternative representative and are not delayed
- making representations, advocating and mitigating on behalf of the employee, submitting papers if appropriate, asking questions and addressing a meeting/ hearing on behalf of the employee.
- They may not answer questions on behalf of the employee.

# Appendix One – Managing capability for employees with less than two years’ service

This procedure will be used for managing capability if the employee has less than 2 years’ continuous service.

## Managing capability

### Policy stages

The possible stages are:

- formal meeting – may result in dismissal
- appeal only against a dismissal.

As a general principle the manager will seek to provide structured managerial support under the Performance Management policy, before using the Capability policy

In exceptional circumstances, it may be appropriate to move into the Capability policy without having provided a period of structured managerial support. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

### Formal Meeting

The principles of the [stages of the policy](#) will apply.

### Appeal stage

The principles of the [appeal stage](#) will apply. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

## Gross Incompetence

### Gross incompetence

The principles of the [gross incompetence](#) stage will apply.

### Appeal

The principles of the [appeal stage](#) will apply. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

## Appendix Two - Gross incompetence

### Definition

**Gross incompetence** - occurs where an investigation identifies that an employee has failed, either by a single error or series of errors, to perform the duties of their role to such an extent that this causes or has caused serious harm or puts others (colleagues, general public or service users) or the School's reputation and performance at serious risk.

Gross incompetence only applies in exceptional circumstances. You must seek advice from Education Personnel Services in such cases.

### Examples

The following list provides some examples of when a performance concern may need to be managed under the gross incompetence section of the Capability policy. This list is not exhaustive and other examples can be managed under this section of the Capability policy. Some examples on the list may also be more appropriately dealt with under the Disciplinary Policy, depending on the circumstances.

The employee has:

- been using equipment in a dangerous or unsafe manner
- a complete lack of knowledge and professional expertise
- a complete lack of understanding of the health and safety aspects relevant to the role
- a complete lack of understanding of the professional standards required within the role
- a complete lack of knowledge of School policies or procedures
- been unable to perform in all of their role, therefore making the improvement required too great
- failed to obtain a qualification that is an essential criteria of their role
- misadvised in a professional capacity which may have a direct implication on the School's reputation.