



TEACHER APPRAISAL AND CAPABILITY POLICY

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Staff Appraisal & Capability Policy 2018

The Arreton & Oakfield Federation (the Governing Body) adopted this policy on 7th March 2018 following consultation with the recognised teaching unions.

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Preamble

This appraisal and capability policy sets out the broad content of a policy that schools may wish to adapt and/or adopt as their own; the policy aims to comply with the prevailing legislative framework and best practice.

As a reminder to our members, the Teachers' Standards, introduced in September 2012, must be incorporated into a school's appraisal arrangements.

The new arrangements do not apply to academies, free schools or other independent schools. However, these schools are free to adapt and/or adopt this model policy if they wish.

Introduction

Under statutory regulations, appraisal arrangements for all teachers in maintained schools in England were changed from 1 September 2013.

The Education (School Teachers' Appraisal) (England) Regulations 2012, made under the Education Act 2002, came into force on 1 September 2012 and replaced *The Education (School Teacher Performance Management) (England) Regulations 2006*. The 2012 regulations can be found at www.legislation.gov.uk/ukxi/2012/115/pdfs/ukxi_20120115_en.pdf.

The 2012 regulations apply to any teacher employed for one school term or more, in a community, voluntary, foundation, community special or foundation special school or a maintained nursery school, whether employed by the governing body of that school or by the local authority to work in that school.

The regulations place a legal obligation on qualifying schools to have an appraisals procedure in place for all teachers and a capability procedure in place for all staff.

The regulations do not apply to a teacher whilst that teacher is undergoing an induction period or whilst a teacher is the subject of a formal capability procedure.

Support staff are not covered by the regulations but it would be both prudent and practicable for the governing body to agree and the head of school to implement the same or a broadly similar staff appraisal policy for non-teaching staff.

Guiding principles

In its oversight of the appraisal system, the governing body is committed to ensuring consistency of treatment and fairness and to stay within the prevailing legal framework applicable to all employers; for example, the Equality Act 2010, the Employment Rights Act 1996, the Part-Time Workers Regulations 2000, the Fixed Term Employees Regulations 2002 and the Data Protection Act 1998.

The executive headteacher will moderate a sample of the planning statements (more on those later) to check that the agreed plans are consistently weighted between employees who have similar levels of responsibility and that the plans comply with the school's appraisal policy.

The appraisal process and the supporting documentation will be treated with strict confidentiality at all times. Only those who need access to such information will be granted access to enable them to discharge their responsibilities as directed by the school. The governing body will monitor the operation of the appraisal system and review it at appropriate intervals.

Purpose

This policy sets out the framework for a clear and consistent assessment of the overall performance of teachers and support staff and for supporting their development needs within the context of the school's improvement plan.

The appraisal

The governing body of a school must appraise the performance of the executive headteacher. In turn, the executive headteacher is responsible for ensuring the review of the performance of head of school, the head of each school is responsible for the performance management of teachers and members of support staff employed at the school.

Appraisal meetings should be held during normal working hours and should be scheduled for at least one hour or longer if necessary.

The purpose of the appraisal meeting is to review the employee's current job, their performance and their future plans. More specifically, the meeting will also be an opportunity to discuss how the employee can contribute to the wider work of the school and to agree and set a number (typically three) of objectives (there is no minimum or maximum number of objectives however). Mid-Year reviews, whilst not mandatory, are highly recommended as a means of ensuring that progress is being made and obstacles to progress are being dealt with effectively.

The appraisal period

The appraisal period will be for 12 months and will begin on 1 September; the appraisal itself should ideally be completed by 31 October for teachers, support staff and middle leaders and by 31 December for the executive headteacher. The cycle will begin with a planning meeting and will end with a review meeting. Mid-year review meetings may also be held if agreed and considered necessary.

Where a teacher starts their employment or transfers to a new post within the school part way through a performance management cycle, the head of school, or in the case where the employee is the executive headteacher, the governing body, shall determine appraisal arrangements for the remainder of the appraisal period, with a view to bringing their appraisal arrangements into line with the cycle for other school leaders, teachers and support staff as soon as possible.

Where a school leader or teacher is employed on a fixed term contract for a period less than 12 months, the length of the appraisal period will be determined by the duration of the contract.

The appraisers

All appraisers, including allocated members of the governing body, should be provided with appropriate training.

For the Executive Headteacher

The governing body is the appraiser for the Executive Headteacher, and to discharge this particular responsibility on its behalf, will (typically) appoint three governors. The executive headteacher can raise an objection to the chair of governors, in writing, and with good reason, outlining why an appointed governor should be excluded from the appraisal process.

The governing body of a school must appoint an external adviser for the purposes of providing it with advice and support in relation to the appraisal of the executive headteacher. The qualifications and experience required of an external adviser are not set by regulation. It is for the governing body to decide who they wish to use as an external adviser, ideally with the agreement of the executive headteacher.

The external adviser is not responsible for determining a recommendation to the pay committee on whether an increment should be paid to the executive headteacher, following the review; this is a matter for the governor's panel alone. However, governors can ask for advice and should take account of any advice offered.

For all other employees

The Executive Headteacher is responsible for the appraisal of the Head of School, whilst the head of schools is responsible for the appraisal of all other employees but may delegate this responsibility to others who will normally have line management responsibility for those that they appraise.

Teaching staff should be able to object to the appointment of an appraiser, on professional grounds, in writing to the head of school, who will consider the objection and make a decision. Where the objections are rejected by the head of school, the teacher should be advised in writing.

Objective setting

The setting and agreement of objectives is fundamentally important to the effective operation of a performance management system that aims to link individual performance to pay progression. The job description can be a particularly useful place to begin the process of identifying relevant objectives for each individual jobholder. However, the job description is just one 'reference document' that can be helpful context to the process of setting and agreeing objectives. Other useful 'reference documents' may include the school improvement plan, the school's business plan, the Ofsted school inspection report and the Teachers' Standards.

In addition, it may be prudent to allow for some flexibility in the setting and agreement of objectives to enable objectives to be set and agreed around issues that are emerging for the school and that require some dedicated attention that is best articulated as one or as a set of objectives. On the grounds that emerging issues are unlikely to be known at the outset of an appraisal period, objectives may need to be adjusted throughout the appraisal period so that they remain relevant to the performance of the individual and to the priorities of the school. This is considered to be perfectly standard practice and strengthens the case for having Mid-Year reviews during which objectives can be discussed and adjusted where this is deemed to be appropriate and agreed; the

ideal outcome for all parties is that the overall weight of objectives is broadly or proportionately the same at the conclusion of any subsequent 'objectives' discussion.

Objectives should be SMART

S = Specific
M = Measurable
A = Achievable
R = Relevant
T = Timed

Objectives should also be fair and equitable when judged across employees with similar roles and responsibilities. However, appraisal objectives will normally become more challenging as a teacher progresses up the main pay scale.

The governing body of a school must, before, or as soon as practicable after, the start of each appraisal period, in relation to the executive headteacher, inform the executive headteacher of the standards against which their performance will be assessed and set objectives for the executive headteacher for the appraisal period. The executive headteacher will follow the same procedure for each head of school.

The head of school must, before, or as soon as practicable after, the start of each appraisal period, in relation to every teacher employed at that school, inform the teacher of the standards against which their performance will be assessed and set objectives for the teacher for the appraisal period. Head of schools may delegate this responsibility to the line manager cohort.

The objectives must be set such that they will contribute to the improvement of a school's educational provision and performance and appraisers will therefore be expected to align individual objectives with the school's priorities.

Every effort should be made to achieve agreement on the head of school objectives; only in the last resort, should targets be imposed on the head of school. Similarly, all appraisers and appraisee should look to agree objectives; where agreement cannot be reached, the appraiser will make the final determination.

Objectives should focus on the priorities for the school or individual for the duration of the appraisal cycle. Normally, staff should expect to have no more than (typically) three objectives but there is no actual minimum or maximum number.

Objectives will be set out in a planning statement, along with details of any training and support, which have been agreed. The planning statement should also specify the evidence that will be collected to support the review of performance including details of the arrangements for task or classroom observation, where relevant.

Objectives may be revised if circumstances change.

A final word on objectives...

On the understanding that pay decisions must be directly related to the performance of individual teachers, it is important to acknowledge that agreed performance objectives are within the working scope and remit of each individual teacher.

Whilst it may be entirely appropriate to agree a subject-related target with a teacher who is the subject lead, it would not, for example, be appropriate to set and agree whole pupil progress targets

for a teacher who is clearly not wholly responsible for the aggregated educational progress of individual pupils or groups of pupils that they coincidentally teach.

A robust moderation process should ensure that teachers have set and agreed performance objectives that are not beyond but are within their reach, albeit with a little stretch.

Teachers' Standards

From appraisal arrangements that took effect from 1 September 2013, the performance of all teachers, regardless of their career stage, will be assessed against the Teachers' Standards. The standards define the minimum level of practice expected of trainees and teachers from the point of being awarded QTS.

The standards against which performance must be assessed in respect of a teacher are the set of standards articulated in the Teachers' Standards document and any other set of standards relating to teachers' performance published by the Secretary of State as the governing body or head of school determine as being applicable.

In order to meet the Teachers' Standards, a teacher will need to demonstrate that their practice is consistent with the definitions set out in part one (teaching) and part two (personal and professional conduct).

Applying the Teachers' Standards

Teachers make the education of their pupils their first concern and are accountable for achieving the highest possible standards in their work and their conduct. Teachers act with honesty and integrity, have strong subject knowledge and are self-critical. They forge positive professional relationships with those around them and work with parents and carers in the best interests of their pupils.

Teachers

The Teachers' Standards effectively set out a 'code' of good teaching practice and professional conduct, and as such, it would seem to be perfectly reasonable for schools to expect all teaching staff to meet the expectations set out in the standards document. Teachers should therefore be evaluated against all the elements set out in the teachers' standards and it is for schools to put appropriate arrangements in place to achieve a fair and equitable process of evaluation.

Head of School

Teachers' Standards must also be applied to the executive headteacher and the head of each school as well as to all other teachers. However, on the grounds that only a proportion of the executive headteacher, head of school and school leaders spend part of their scheduled week teaching, governing bodies should exercise particularly careful judgement when assessing such staff against the teachers' standards. Support from the external adviser will be important in this respect.

A full version of the Teachers' Standards can be found at <http://media.education.gov.uk/assets/files/pdf/t/teachers%20standards%20information.pdf>.

After an 11-years' absence, National Standards of Excellence for head teachers' were reintroduced in January 2015. Unlike the teachers' standards, the standards for head teachers are non-mandatory and can be found at <http://www.naht.org.uk/welcome/news-and-media/key-topics/government-policy/national-standards-of-excellence-for-head-teachers/>

These standards are intended to be used to inform the appraisal for the executive headteacher and head of school.

Use of the standards in academies and free schools will depend on the arrangements of those schools. Independent schools are not required to use the standards but may do so if they wish.

Gathering the evidence

As part of the overall appraisal process, it will be critically important for all members of staff who are subject to the school's staff appraisal policy to be clear about the evidence that will be required by their appraiser to enable the appraiser to assess their performance and make a substantiated and evidence-based pay recommendation to the 'decision maker'.

Judgements relating to performance should be supported by evidence, agreed at the beginning of the performance cycle. Evidence should show and demonstrate a contribution towards:

- a positive impact on pupil progress;
- a positive impact on wider outcomes for pupils;
- improvement in specific elements of practice, e.g. lesson planning; and
- a positive contribution to the work at the school.

The evidence gathered by the school and the member of staff will largely be determined by the nature and scope of the agreed objectives and/or the Teachers' Standards. Examples of evidence may include:

- Classroom observations
- Task observations
- Reviews of assessment results
- Reviews of lesson planning records
- Internal tracking
- School Improvement and Departmental / Faculty Plans
- Moderation within and across schools
- Pupils' voice
- Parents' voice
- Head of school walkabouts
- Evidence supporting progress against Teachers' Standards

Any classroom or task observations will be carried out in accordance with the school's classroom and task observation protocol. Classroom observation will be carried out by qualified teachers. At least five working days' notice of the date and time of the observation will be given and verbal feedback will be provided by the end of the next school day in a suitable private environment. Written feedback will be provided within five working days. The appraisee has the right to append written comments to the feedback document.

For appraisal purposes, the governing body is committed to ensuring that classroom and task observation is developmental and supportive and that those involved in the process will:

- carry out the role with professionalism, integrity and courtesy;
- evaluate objectively;
- report accurately and fairly; and
- respect the confidentiality of the information gained.

The arrangements for classroom/task observation will be stated in the appraisal planning statement and will include the amount of observation, specify its primary purpose, any particular aspects of the employee's performance which will be assessed, the duration of the observation, when, during the appraisal cycle, the observation is likely to take place and who is likely to conduct the observation.

Where evidence emerges about the appraisee's performance, which gives rise to concern during the cycle, additional observations may be arranged during the cycle.

The three hours' statutory limit on classroom observations for appraisal no longer applies; the government believes that the executive headteacher, head of school and other appraisers should be free to decide how much observation is necessary for them to form an accurate assessment of a teacher's performance.

An executive headteacher and head of school has a duty to evaluate the standards of teaching and learning and to ensure proper standards of professional performance are established and maintained throughout the school and may therefore determine that it is necessary to collect additional evidence to help inform the evaluation of teaching standards and school improvement strategies. This additional evidence may include learning walks, task observation, reviews of assessment results and lesson planning records. It may not be practicable to provide advance notice of these additional monitoring activities.

Ofsted

As part of their overall inspection framework, Ofsted will want to see evidence, in schools, that the appraisal procedure is being used effectively and facilitates school improvement; if appraisal evidence is not available, this is likely to impact negatively on the Ofsted inspection grade for leadership and management.

It is therefore prudent for schools to generate and retain as much reasonable 'appraisal system' evidence as practicably possible and discharge the school's budget to differentiate appropriately between high and low performers. Where a teacher's performance is less than good, inspectors will seek evidence that this is rigorously managed and that appropriate training and support are provided. Where a teacher's performance is good, inspectors will expect to see evidence that this is recognised through the appraisal system.

Ofsted inspectors may ask to have sight of anonymised data from the last three years that illustrates the numbers of teaching staff who have:

- progressed along the main pay range;
- progressed to and through the upper pay range;
- progressed along the leadership scale; and
- received additional responsibility payments such as TLRs and SEN allowances.

Inspectors will expect to see a correlation between the pattern of pay progression and the improvements made to the overall quality of teaching and learning; where there is no or little correlation, inspectors are likely to investigate the reasons for this. However, inspectors will take account of the length of time the executive headteacher has been in post.

Reviewing performance and the annual assessment

At the end of the cycle, assessment of performance will be on the basis agreed at the beginning of the cycle.

In determining an appraisal, the governing body, executive headteacher or head of school must assess the performance in the appraisal period, apply the relevant 'standards', assess performance against the agreed objectives and assess the professional development needs and identify any action that should be taken and, finally, include a recommendation relating to pay.

It will be for individual schools to establish their own arrangements for determining the overall evaluation and rating of individual performance. Many schools may wish to continue to use their existing arrangements for evaluating and rating individual performance, applying the Teachers' Standards where appropriate. In their school inspection handbook, Ofsted also provide some useful 'grade descriptors' that schools may find helpful in determining the overall assessment of teachers' performance.

A written appraisal report must be provided at the conclusion of the appraisal process – ideally by 31 October for middle leaders, teachers and support staff and, again, ideally by 31 December, for executive headteacher; the report must record the overall performance assessment and pay recommendation.

Good progress towards the achievement of a challenging objective, even if the performance criteria have not been met in full, may still be assessed favourably. If agreement cannot be reached, especially on the outcomes of an appraisal meeting, the teacher may appeal to the head of school or the executive headteacher may appeal to the chair of the governing body, whose decisions will be final.

The overall assessment of performance and its subsequent performance rating for individual members of staff will be subject to a process of moderation, arrangements for which will be put in place by the executive headteacher with the approval of the governing body.

The final version of the appraisal documentation will be placed on the employee's file and a copy of their CPD made available to the school's CPD coordinator. The sharing of such information is governed by the data protection principles set out (currently) under the Data Protection Act 1998.

The governing body and teacher will ensure that all written appraisal records are retained in a secure place for 6 years and then destroyed.

Continuing professional development

The school's CPD programme will be informed by the training and development needs identified through the appraisal procedure. The governing body will ensure in the budget planning, that, as far as possible, appropriate resources will be made available for any agreed training, support and continuing professional development.

Support to meet individual or collective development needs should be provided within the context of the school's improvement plan.

Conflict of interest

In any circumstances where an individual believes that their participation in any part of the appraisal process amounts or may amount to a 'conflict of interest', they should declare this to their appraiser

and/or absent themselves from any part of the appraisal process where they believe that a 'conflict of interest' would or is likely to prevail.

Pay progression linked to performance

The governing body must consider, annually, whether or not to increase the salary of teachers who have completed a year of continuous employment since the previous annual pay determination and, if so, to what salary within the relevant pay ranges.

All pay recommendations should be clearly attributable to the performance of an employee.

The relevant body must decide how pay progression will be determined, subject to the following:

- a. The decision, whether or not to award pay progression, must be related to a teacher's performance
- b. A pay recommendation must be made in writing as part of a teacher's annual appraisal report
- c. Continued good performance, as defined by an individual school's pay policy, should give a classroom or an unqualified teacher an expectation of progression to the top of their respective pay ranges
- d. A decision may be made not to award pay progression, whether or not the teacher is subject to capability proceedings

The relevant body must set out clearly in the school's pay policy how pay progression will be determined. The executive headteacher will be responsible for ensuring that appropriate arrangements are put in place to support the links between performance and pay and that agreed rates of pay progression are affordable and comply with prevailing legislation (e.g. equal pay).

Where teachers are eligible for pay progression, the recommendation made by the appraiser will be based on an assessment of performance against agreed performance objectives. The decision made by the relevant decision-making body will be based on the statutory criteria and guidance set out in the STPCD and the relevant teachers' standards.

To move up the main pay range, one point at a time, teachers will need to have made good progress towards achieving their objectives and have demonstrated that they are competent in all elements of the Teachers' Standards. Teaching should be consistently 'good', as defined by Ofsted (however, this does not necessarily mean that every lesson observed needs to be rated as 'good').

If the overall appraisal evidence shows that a teacher has demonstrated exceptional performance, the governing body will consider awarding enhanced pay progression. Teaching should be 'outstanding', as defined by Ofsted.

The executive headteacher will consult with staff and union representatives on the establishment of appraisal and pay policies and will ensure that appraisers have the knowledge and skills to apply procedures fairly.

Teachers will work with their appraisers to ensure that there is sufficient evidence to support pay recommendations. Teachers will also keep records of objectives and review them throughout the appraisal period.

Applications to be paid on the upper pay range

From 1 September 2013, any qualified teacher can apply to be paid on the upper pay range. All applications should include the results of two appraisal cycles; where such information is not available, a written statement and summary of evidence that sets out how the applicant has met the assessment criteria will be sufficient. Teachers who have been absent through sickness, disability or maternity may cite written evidence from previous years in support of their application.

To be assessed successfully, a teacher will be required to meet the criteria set out in the schoolteachers' pay and conditions document (STPCD):

- The teacher is 'highly competent' in all the elements of the Teachers' Standards
- The teacher's achievements and contribution to the school is 'substantial' and 'sustained'

Highly competent

The teacher's performance is assessed as having excellent depth and breadth of knowledge, skills and understanding of the Teachers' Standards in the particular role they are fulfilling and the context in which they are working.

Substantial

The teacher's achievements and contribution to the school are significant, not just in raising standards of teaching and learning in their own classroom but also in making a significant wider contribution to school improvement, which impacts on pupil progress and the effectiveness of staff and colleagues.

Sustained

The teacher must have had two consecutive successful appraisal reports and have made good progress towards their objectives; they will have been expected to have shown that their teaching expertise has grown over the relevant period and is consistently good to outstanding.

Leading practitioner role

Typically, the additional duties of a leading practitioner role will include:

- A leadership role in developing, implementing and evaluating policies and practices in a school that contribute to school improvement
- The improvement of teaching within school which impacts significantly on pupil progress
- Improving the effectiveness of staff and colleagues, e.g. lesson planning

The leading practitioner must demonstrate that they:

- have made good progress towards their objectives;
- are an exemplar of teaching skills which should impact significantly on pupil progress within school and within the wider school community;
- have made a substantial impact on staff and colleagues, including any specific elements of practice that have been highlighted as in need of improvement;
- are highly competent in all aspects of the Teachers' Standards; and
- have shown strong leadership in developing, implementing and evaluating policies and practices in their workplace that contribute to school improvement.

Staff, especially teachers, experiencing difficulties

When a member of staff is experiencing difficulties, support and guidance will be provided through the appraisal process. Where it is clear that a member of staff's personal circumstances are leading to difficulties at work, appropriate support should be offered at the earliest opportunity.

If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be referred to the occupational health service who will assess the member of staff's health and fitness for continued employment and whether either continuing with informal monitoring or formal procedures is deemed to be appropriate.

If the appraiser identifies through the appraisal process or through other sources of information, parental complaints for example, that the difficulties experienced by a teacher are such that, if not rectified could lead to the capability procedure, the appraiser will, as part of the appraisal process, meet the member of staff to:

- give clear written feedback to the teacher about the nature and seriousness of the concerns;
- give the teacher the opportunity to comment on and discuss the concerns;
- give the teacher at least five working days' notice that a meeting will be held to discuss targets for improvement alongside a programme of support and remind the teacher that they have the right to be accompanied by a work colleague or trade union representative at any future meetings where capability will be discussed;
- agree and establish, in consultation with the teacher, an action plan with support that will help to remedy specific concerns;
- make clear, how progress will be monitored and when it will be reviewed; and
- explain the implications and process if no, or insufficient, improvement is made.

The teacher's progress will continue to be monitored as part of the appraisal process and a reasonable time given for the teacher's performance to improve. During this monitoring period, the teacher will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate.

If sufficient progress is made, the teacher should be informed of this at a formal meeting and the appraisal process will continue as normal.

If no, or insufficient improvement has been made, the teacher will be invited to a transition meeting to determine whether formal capability proceedings will be invoked.

As a final check and balance to invoking the capability procedure, it is advised that line managers ensure that the following have been put in place:

- The employee has undergone an appropriate period of induction to their role
- An up to date job description has been issued to the employee
- Professional standards and overall expectations of performance have been made clear
- The employee's performance has been monitored and feedback has been provided

Transition to capability

Performance concerns should be dealt with through the staff appraisal policy but if progress towards addressing performance concerns is insufficient or the concerns are sufficiently serious, a 'transition meeting' should be held; the expectation is that this meeting will reduce the likelihood of invoking the capability procedure or triggering a prolonged period of sickness absence. In this event, further support should be granted through the appraisal procedure.

A meeting of this nature does not amount to part of the formal capability procedure.

The employee, their line manager and the executive headteacher (or chair of governors where the capability of the head of school is in question) will be present at the meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a work colleague or a trade union representative.

Guiding principles to the overall approach to the meeting:

- Ensure that practical support, advice and guidance is provided to the employee
- Training should be provided where this is a reasonable expectation
- Performance criteria should be clear and monitored within agreed time schedules
- The employee's shortcomings are clearly set out in writing

The meeting will consider the following matters:

- The evidence that has given rise to the specific concerns about the employee's performance
- The seriousness of the concerns and their impact on the performance of the school
- The support that has been provided to date
- The time for which the concerns have persisted
- The degree of improvement that has been achieved and whether or not this has been sustained
- The extent to which the employee has shown insight and has engaged with the support provided throughout the appraisal process
- Any mitigating factors

Once these matters have been considered, the chair should close the meeting and reflect on the findings, take advice and reach a decision. The employee will be informed of the decision in writing and normally within five working days. The decision will be either to continue with the appraisal process or to invoke the capability procedure by convening a formal capability meeting.

The transition to the capability procedure will not normally be made unless there is evidence that:

- under-performance against agreed objectives and / or standards has prevailed for some time; and
- the underperformance is either serious or has persisted despite the provision of support.

Capability procedure

The principal purpose of a capability procedure is to support and ensure that staff are able to perform their duties and to deal with under-performance on a formal basis. The aim is to deal with those cases, where, despite appropriate management support (normally provided through the appraisal process), a member of staff is deficient in key areas of ability, skill, competence or knowledge and is consequently unable to carry out their required duties to an acceptable standard.

It is important that under-performance is managed to ensure that the quality of teaching and learning is unaffected and that the overall performance of the school is not compromised. The overall approach to capability should be supportive, constructive and helpful to the employee.

This procedure complies with the provisions of the ACAS code of practice.

The capability procedure applies only to teachers and head of school where there are serious concerns about their performance that are not able to be addressed by the appraisal procedure. The purpose of a capability meeting is to establish the facts and will usually be chaired by either the chair of governors or the executive headteacher. The employee, subject of the capability meeting, will be able to respond to concerns about their performance and to present any relevant evidence.

Employees should be made aware that whilst they are and remain the subject of the capability procedure; the normal appraisal arrangements will be suspended. Employees are expected to cooperate constructively with arrangements that are put in place to address under-performance. Where an employee believes that they are being unfairly treated, they may raise an informal complaint or a formal grievance as appropriate.

As is the case in all formal procedures, the chair of each meeting should ensure that clear written records are kept, in particular, the management concerns about the employee's performance.

Timescales

Under the procedure, timescales may be adjusted as appropriate:

- this model procedure proposes a period of between four and ten weeks for the implementation of the informal stage where a member of staff is typically supported by a support plan or what may also be known as an action plan. The agreed period may be adjusted to suit the merits and circumstances in each individual case; for example, you would expect an experienced teacher or other member of staff to make improvements in a shorter period of time whereas you may wish to grant a longer period of time to an employee at early career stage
- In particularly serious cases where the education, health or wellbeing of pupils may be at risk, a shorter period for monitoring is, in all likelihood, going to be more appropriate (e.g. where a teacher's control of the class is poor or where pupil progress is inadequate, despite support)
- If the implementation of the capability procedure triggers an episode of sickness absence, the case should be immediately referred to the school's occupational health service to assess the employee's health and fitness for continued employment; the length of time a school should wait for an employee's health to improve before considering whether to terminate the employment on health grounds should be subject to ongoing occupational health guidance

Formal capability meeting

The first meeting under the capability procedure, often referred to as the formal interview initiates the capability procedure. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about performance concerns and the possible consequences to enable the teacher to prepare to present their case at the meeting. The notification of a capability meeting will be accompanied by copies of written evidence, details of the date and time of the meeting and will confirm the teacher's entitlement to be accompanied by a companion who may be a work colleague or a trade union representative.

The chair of the capability meeting will aim to:

- a) identify the teacher's professional shortcomings;
- b) give clear guidance on the improved standard of performance needed;
- c) explain any support that will be available to help the teacher improve to a point where they can be removed from the capability procedure;
- d) set out the timetable for improvement and explain how performance will be monitored and reviewed; and
- e) warn the teacher formally that failure to improve within the set period could lead to dismissal (in very serious cases, the warning could be a final written warning).

Notes will be taken of the formal meeting and a copy sent to the member of staff.

There are three possible outcomes from the formal capability meeting:

1. A return to the appraisal process, where it is determined that there is insufficient evidence to progress the matter further within the capability procedure
2. A first written warning
3. A final written warning

Options two and three are relevant to any case where continued concern/s about the standards of performance is justified. The level of warning should be determined by the seriousness of the concerns that relate to the performance of the teacher or other member of staff. Lower level concerns are likely to lead to a first written warning and a period of up to 6 - 8 weeks may be granted for improvement; conversely, higher-level concerns would normally lead to a final written warning and a shorter monitoring period of no more than 4 weeks.

The employee will be notified of the decision arising from the meeting and of the timescales for monitoring and the anticipated next steps in the process.

An employee may appeal against the decision arising from the first formal meeting within five working days of receiving notification of the decision and will normally be heard within a period of ten working days, unless alternative timescales are agreed between the parties to the dispute.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. This period will include regular task/classroom observation, performance evaluation and monitoring, training, management support and guidance.

Formal review meeting

Following the conclusion of a monitoring and review period, the member of staff will be invited to a formal review meeting. At the formal review meeting, if the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will end and the appraisal process will re-start. If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period. If no or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

A further monitoring period will be set and a subsequent and final review meeting will be scheduled. If, following a final written warning, performance does not improve to an acceptable standard; the case will be referred to an appropriate panel of, typically, three governors.

Decision meeting

At the decision meeting, if an acceptable standard of performance has been achieved during the monitoring and review period, the capability procedure will end and the appraisal process will re-start.

If performance remains unsatisfactory (ie where sufficient improvement cannot be achieved despite comprehensive support or where performance concerns are of particular gravity), a decision, or recommendation to the governing body, will be made that the teacher should be dismissed or required to cease working at the school as soon as possible (consulting the local authority in those schools where the Local Authority is the teacher's employer).

Dismissal

Once the decision to dismiss has been taken, the governing body will dismiss the teacher with notice or once the governing body has decided that the teacher should no longer work at the school, it will notify the local authority of its decision and the reasons for it. The local authority must dismiss the teacher within 14 days of the date of the notification.

Appeal

If a teacher feels that the decision to dismiss them is wrong or unjust, they may appeal in writing against the decision, setting out the grounds of the appeal. The teacher will be informed in writing of the results of the appeal hearing without unreasonable delay.

The appeals panel should be made up of three impartial governors who have had no involvement or have no knowledge of the case in which the appeal has been brought.

The decision of the appeals panel is final.

Management guidance: applying the procedures

Role of governors

Governors should not normally be involved in a capability procedure before the dismissal stage unless the executive headteacher is the subject of the capability procedure.

Role of the executive headteacher

The executive headteacher will be responsible for taking the decision to invoke the capability procedure, unless of course, they are the subject of the procedure.

Role of advisers

Local authority and other advisers may be invited to participate in the capability procedure or with the monitoring process or with providing support.

Employee representation

If the employee's chosen companion is not available at the time proposed for the interview, meeting or hearing and the employee proposes an alternative date and time that is reasonable and falls within 5 working days of the original date, this should be given careful consideration and advice should be sought to ensure that revised arrangements can be made.

Monitoring arrangements

Any monitoring undertaken should be across the range of principal job responsibilities so that a balanced view can be reached to support the evaluation of performance.

Written records

Formal warnings should be disregarded after a specified period of satisfactory performance.

First written warning - 12 months

Final written warning - 24 months

Grievances

Where an employee raises a grievance that relates to the capability procedure and its management and/or implementation, it may be appropriate to suspend the capability procedure until the grievance can be considered but such a delay should only be considered where there is a strong indication that the employee has been mistreated.

Appraisal – getting it right and avoiding the pitfalls

In this last short section, we've set out some of the more critical points of knowledge based on members' calls in recent years, from matters that we know cause head teachers the most concern and areas which executive headteacher and governing bodies regularly find themselves challenged on.

- **Who is appraised and who is exempt?**

The current regulations that provide the statutory framework for teacher's appraisal in England came into force in 2012 and apply to all maintained schools in England, including maintained special schools and to local authorities in respect of unattached teachers. The regulations do not, however, apply to teachers in maintained schools who are serving a statutory period of induction, teachers employed for less than a period of one term or any teacher who is the subject of capability procedures. The regulations in Wales came in a year earlier than England, in 2011.

- **Evidence, evidence, evidence...**

Schools should ideally set out, in their appraisal policies, what evidence they will take into account when making judgements about whether teachers' performance has met the relevant standards and their individual objectives. Evidence should provide all teachers with a fair opportunity, in their appraisal, to demonstrate that they have met the relevant standards and their individual objectives.

- **Minimise workload for yourself and others...**

A fundamental principle that schools must take into account when developing and implementing appraisal policies is the need to minimise the impact of workload on individual teachers, line managers and executive headteacher.

- **Equalities considerations – The Equality Act 2010 and the Public Sector Equality Duty**

To discharge this statutory duty, schools must have due regard to the need to:

- (i) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (ii) Advance equality of opportunity between people who share a protected characteristic and those that don't;
- (iii) Foster good relations between people who share a protected characteristic and those that do not.

Compliance with the duty will help schools to avoid direct and / or indirect discrimination.

Schools should ensure that all staff are treated fairly and should take particular care in respect of those staff who have different working patterns or those with particular 'protected characteristics' under equality legislation – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

An employee will be discriminated against if they can argue that they have been or have good reason to believe that they are likely to be treated less favourably (than a comparator employee) and the less favourable treatment can be attributed to reasons directly or

indirectly associated with a protected characteristic. At the same time, schools should ensure that part-time and fixed terms employees are not treated less favourably. Appraisers, pay recommendations and decisions in schools should be assessed to establish whether there are implications for people with particular protected characteristics. So, for example, to avoid discrimination, schools should consider how objectives can be fairly weighted, how pay progression can be made fairly available to all eligible employees irrespective of their individual circumstances and how pay decisions and appeals against pay decisions can be supported by a narrative that reflects the fair treatment of employees.

A pay audit of the school will help to not only monitor and evaluate pay decisions and practices but it will also help to remedy identified anomalies and patterns that are emerging and that have been created by the pay decisions that have been taken over time.

Finally, a pay audit will help to ensure that the rate of pay for each job is equitable and that equal pay principles can be fulfilled – men and women doing the same job should be paid the same, or broadly the same, and any differences, whilst permitted, must be capable of being objectively justified.

The creation of a pay profile of staff by age, disability, race and gender; the reasons that employees with different protected characteristics are rewarded differently, if that is the case; and whether employees who share particular protected characteristics are being treated less favourably than comparator employees are all areas that schools must consider in the event that they wish to avoid a challenge of discrimination.

- **No surprises!**
Teachers should receive feedback on their performance throughout the year at agreed intervals – there should be no surprises at the end of the year.
- **Appraisal determines pay**
Schools should set out in their appraisal policy how the outcome of the appraisal process will feed into pay decisions.
- **Difficult conversations**
There is a clear expectation set out in the STPCD that good performance will lead to pay progression. However, where a teacher does not qualify for pay progression, the line manager or executive headteacher must be able to explain the evidence that was taken into account to support this decision. This, potentially difficult conversation, is made much easier if such shortfalls are signalled to individual employees at intervals throughout the appraisal period.
- **Clear communication**
Not only do shortfalls in performance need to be made clear to the individual employee, but, in equal measure, the employee must have a clear understanding of what is needed for a positive appraisal outcome and should be supported, in so far as possible, to achieve a positive outcome.
- **Training for appraisers**
Schools should ensure that all appraisers are suitably prepared for carrying out all elements of the appraisal process and that training is made available if necessary.
- **Accountability for the appraisal process**
Whilst executive headteachers can and do delegate the appraisal of teachers to others, executive headteachers remain fully accountable for the appraisal process under the regulations.

- **Career-stage expectations**
Teachers' performance should be assessed against the relevant standards to a level that is consistent with what should reasonably be expected of a teacher at the relevant stage of their career. Teachers, however, should not be routinely expected to provide evidence that they meet all the standards.
- **Long-term absentees**
There is nothing in the statutory provisions that prevents a school from making performance-related pay decisions for teachers who are on long-term absence or that would mean that doing so would place schools in breach of the provisions of the Equality Act 2010.
- **Avoiding discrimination**
In relation to absence due to maternity leave, the NAHT holds that if a woman is denied an appraisal, because of her maternity, this will amount to discrimination. Similarly, employees returning from a career break may be unintentionally discriminated against because they have been absent from the workplace – if their absence is, say, related to their caring responsibilities, this is likely to be vulnerable to discrimination
- **How to deal with appraisals for employees on maternity leave**
To mitigate the risk of discriminating against pregnant employees or employees on maternity leave, schools should consider conducting appraisals before the employee leaves to go on maternity leave, even if this is early in the appraisal year and then base any assessment of performance on the evidence to date in the relevant appraisal period. Account could also be taken of performance in previous appraisal periods if there is very little to go on in the current appraisal period. Assessment based on actual service will be easier to defend against criticism than speculative assessment based on what a teacher might have achieved during the year. Alternatively, an employee should be given the opportunity to attend school during their maternity leave (on a 'keep-in-touch' day) or to make written representations so that a reliable appraisal can take place and be recorded as usual.
- **Employees with a disability**
Finally, The federation will design their policies (As far as practically possible) to ensure that any disadvantage suffered by a disabled teacher, due to their disability, is mitigated, by incorporating adjustments which can be reasonably made to accommodate a teacher in that position.