

Name of School	The Toynbee School
Date of Policy Issue/Review	November 2020 / November 2021
Name of Responsible Manager/Headteacher	Matthew Longden
Governors' Sub-Committee	Finance & Staffing

Managing Performance of Staff in Schools

Part 1: Performance Management Policy

Part 2: Capability Procedure

November 2020

Performance Management Policy

I. Principles

- 1.1 Performance management in this school will be a **supportive and developmental** process designed to ensure that all staff have the skills and support they need to carry out their role effectively. It will help to ensure that all members of staff 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 a member of staff'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 a member of staff 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 the members of staff'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 a member of staff is unable to take his or her own notes of a meeting due to a physical, sensory or mental impairment, it is expected that a colleague or friend of the staff member 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 a staff member 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.
- 2.2 Members of staff 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 e.g. Fixed Term Contract 1 year in the first instance.
- 2.3 The performance management cycle will link to the pay arrangements for members of staff. 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 three 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 member of staff 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 staff member's role and level of experience, as communicated in the school's Pay Policy. The level of expectation of an staff member'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 member of staff 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 member of staff. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year e.g. each person would have a target or time frame with performance criteria and supporting evidence.

5. Reviewing Performance

5.1 Evidence

A number of methods will be used in order to obtain evidence by which to assess a staff member's performance. These include those detailed below. Such evidence will be triangulated in order to undertake an overall assessment of the member of staff'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, the performance of classroom-based members of staff will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the member of staff 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 1 working day, verbal feedback will be given to the employee. This will be followed up with written feedback within 5 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.

The school uses an online line feedback form through 'Blue Sky.'

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 staff member. This will only be used alongside other evidence which supports the level of contribution of the member of staff 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 Staff members 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 staff member'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 during the Spring Mid-Year Review

5.3.3 A staff member will receive a written performance management statement as soon as practicable following the end of each performance management cycle. The member of staff 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 31 October. The performance management statement will include:

- an assessment of the staff member's performance of their role and responsibilities against their objectives in the last performance management cycle;
- an assessment of the staff member'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 staff member will also receive a new performance management statement for the new performance management cycle. This will include:

- details of the member of staff'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 staff member'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 staff members 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.

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 member of staff 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 informal 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 Lead Learning Provider (LLP) 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 member of staff'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, staff members 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 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;
- informal managerial support;
- consideration of application of the formal stages of the Capability Policy (exceptional circumstances or concerns) (see below).

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, informal managerial support will normally be put in place.

6.10 Informal managerial support

6.10.1 Detailed information on informal managerial support is given in the Capability Policy and How to Guide.

6.10.2 Where a performance concern has been identified that requires additional support, a discussion will be held between the Headteacher/Senior Manager/HPMC and the member of staff. 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.)

6.10.3 If the member of staff is not making the necessary progress towards the required improvement, the employee will be informed that failure to achieve this may lead to the formal stages of 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 formal stages 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.

6.10.4 Where the member of staff 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 formal stages of the Capability Policy.

6.11 By-passing informal managerial support

6.11.1 In line with the Capability Policy, in most circumstances informal managerial support programme will be put in place prior to a formal stage 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 member of staff's performance is putting the health and safety of pupils and/or staff at risk;
- the member of staff's performance is putting the education of pupils in serious jeopardy;
- the member of staff'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 formal stages of the Capability Policy

6.12.1 At any time during provision of informal managerial support, the Headteacher/Senior Manager/HPMC may consider that the performance concerns justify use of the formal stages of 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 member of staff in the programme.

6.12.2 In a typical case, if an informal managerial support programme has been in place and the issues have not partially or fully resolved after a period between four school weeks and half a term then it would be appropriate to consider moving onto the formal stages of the Capability Policy. However, when determining how long to allow before moving onto the formal stages, 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 formal stages of the Capability Policy the Headteacher/Senior Manager/HPMC will follow the process outlined in the Capability Policy and 'How To' Guide, inviting the staff member to attend a formal meeting where all the relevant information will be considered and a decision made about next steps.

6.12.4 Should the formal stages of 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 staff members 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 member of staff does not have the necessary skills, knowledge and/or experience. The staff member may not demonstrate the appropriate behaviours that are required.

This policy defines how the School will manage a staff member if they are unable to perform to the required standards.

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

This policy is non contractual and does not form part of any staff member’s terms and conditions.

Members of staff 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 staff member should refer to their own contractual policies and procedures.

Members of staff with less than two years-service may be subject to a shortened procedure.

Staff members 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

Performance management The School will manage a member of staff's day to day performance with the Performance Management Policy.

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

Pay progression If an member of staff 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 a staff member does not perform the duties of their role to the required standards. This may happen because the member of staff does not have the necessary skills, knowledge and/or experience. The member of staff may not demonstrate the appropriate behaviours that are required.

There may be other reasons to explain why a staff member 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. In these cases, the school would make reasonable adjustments for those with a disability.

There may be exceptional circumstances when the manager and/or staff member 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 staff member 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.

Policy stages and principles The possible stages are:

- informal stage
- formal stage one
- formal stage two
- formal 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](#).

As a general principle the manager will seek to use the informal stage prior to progressing to the formal stages.

In exceptional circumstances, it may be appropriate to start at the formal stage without using the informal stage. The manager must seek advice from Education Personnel Services in such cases.

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

4. Informal stage

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

Informal stage The manager should speak to the staff member by having an informal discussion known as a managerial support discussion. Depending on the circumstances, this could become a series of informal discussions.

Right of representation The staff member is not usually accompanied at any discussions within the informal stage of the policy. There may be circumstances when the staff member asks to be accompanied by a colleague or friend and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

Outcome(s) of informal stage The manager undertaking the managerial support discussion(s) must decide on the outcome.

A record must be made of each discussion. The manager must share the record with the member of staff. A copy must be kept on the staff member's personnel file.

5. Formal stage

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

Formal stage At each formal stage of the policy, the member of staff must be invited to attend a meeting/hearing.

Meetings/hearing arrangements The member of staff must receive in writing the invitation to the meeting/hearing.

The letter must give the member of staff **5 working days'** notice of the meeting/hearing.

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.

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.

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 member of staff and their representative will make all reasonable efforts to attend the first scheduled meeting/ hearing date and time.

If it is not possible, the member of staff 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.

Sharing of information The manager and member of staff 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 member of staff 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 member of staff 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 staff member'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 formal meetings/ hearings If the member of staff 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 staff member is unable to attend.

Outcome of a formal meeting/ hearing The chair of the formal stage 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 members of staff with less than two years-service** - a final written warning of between 12 – 24 months.

At a stage three hearing, the member of staff 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 staff member's personnel file.

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

Review meetings Following the formal stage meeting/ hearing the manager must hold scheduled review meetings with the member of staff.

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

- the staff member'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 formal stage one meeting
- if an improvement is not sustained for a 12 - 24 month period following a formal stage two meeting
- the staff member has not been successfully redeployed and/or has refused a reasonable offer of alternative employment.

6. Appeal stage

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

Appeal stage The member of staff has the right to appeal against the outcome of a formal meeting/ hearing.

Right of appeal The staff member 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.

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

Appeal meeting The staff member 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 meeting	The principles of the formal record of the meeting/ hearing will apply.
Alternative date	The principles of alternative date will apply.
Sharing of information	The principles of sharing of information will apply.
Right of representation	The principles of the formal stage right of representation will apply.
Outcome of the appeal meeting	<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 formal meeting/ hearing.</p> <p>The chair must advise the member of staff of the outcome at the appeal meeting unless otherwise agreed. The outcome must be confirmed in writing within 5 working days of the meeting.</p> <p>A copy of the outcome letter must be placed on the staff member'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 a member of staff 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:

- formal 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 member of staff.

Suspension or alternative arrangements must be regularly reviewed.

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

Formal stage 3 hearing

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

Hearing arrangements

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

Formal record of the hearing

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

Sharing of information

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

Alternative date

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

Right of representation

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

Attending a formal stage 3 hearing

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

Outcome of the formal stage 3 hearing

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

Appeal

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

8. Other Policy Requirements

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

Confidentiality	<p>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).</p> <p>If any party does not maintain confidentiality action may be taken under the Disciplinary policy.</p>
Right of Representation	<p>Members of staff 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..</p> <p>The staff member is not usually accompanied at any discussions within the informal stage of the policy. There may be circumstances when the staff member asks to be accompanied and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.</p> <p>The member of staff 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.</p> <p>It is the staff member's responsibility to:</p> <ul style="list-style-type: none">• 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. <p>There is no right to legal representation at any stage of this policy.</p>
Referral to Occupational Health/ medical practitioner	<p>It may be necessary to refer the member of staff to Occupational Health/ medical practitioner to obtain medical advice and information.</p> <p>If a staff member does not co-operate with the referral, any assessment or decision taken will be based on the information available.</p>
Redeployment	<p>Redeployment can be considered at any stage in this policy and:</p> <ul style="list-style-type: none">• must not be used as a sanction• should result in satisfactory performance in the new role• is subject to a suitable opportunity being available.
Requirement for the School to pass on information about a teacher's capability to a new employer	<p>A Headteacher or teacher may apply for a job with an alternative employer. The staff member may have been subject to the formal stages of 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.</p>
Safeguarding concern (relating to	<p>The School may take action under the Capability policy for reasons that relate to a safeguarding concern. Such cases must be dealt with in</p>

vulnerable adults, children and young people) 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 formal 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 formal stage meeting/ hearing, the School and the staff member 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 formal 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 formal stage three hearing.

Further advice must be sought from Education Personnel Services.

Formal 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 formal action.

9. 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:

- informal stage
- formal stage – may result in dismissal

- appeal only against a dismissal.

As a general principle the manager will seek to use the informal stage prior to progressing to the formal stages.

In exceptional circumstances, it may be appropriate to start at the formal stage without using the informal stage. The manager must seek advice from Education Personnel Services in such cases.

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

Informal stage The principles of the [informal stage](#) will apply.

Formal stage The principles of the [formal stage](#) will apply.

Appeal stage The principles of the [appeal](#) section will apply. A member of staff 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.

10. Policy Governance

SharePoint ID	HRDOCID-561776108-79916
Version:	V1 23 April 2019 V1.0.1 6 August 2019
Owner:	Education Personnel Services