

DERBYSHIRE COUNTY COUNCIL**APPOINTMENTS AND CONDITIONS OF SERVICE
COMMITTEE**

7 February 2020

**Report of the
Director of Organisation Development and Policy****UPDATED APPRAISAL POLICY & COMPETENCE PROCEDURES FOR
CENTRALLY EMPLOYED TEACHERS****1. Purpose of the Report**

To seek approval for the adoption of a revised appraisal policy and revised competence procedures for teachers employed by the Local Authority and not attached to Schools that reflect the delegations outlined in the revised Derbyshire County Council Constitution.

2. Background Information

The Education (School Teachers' Appraisal) [England] Regulations 2012 requires the Local Authority to adopt an appraisal policy which sets out the appraisal for teachers employed by the Local Authority and not attached to Schools. The regulations that govern teachers' appraisal procedures also incorporate an initial framework for dealing with underperformance prior to invoking the formal competence procedures.

The revised Appraisal Policy and Competence Procedures are intended to be utilised in the management of teachers employed by the Council in the education support services.

The support services are:-

Behaviour Support Service
Out of School Tuition Service
Support Services for Sensory and Physical Impairment
Support Service for children with Special Educational Needs (SSSEN)
Early Years SEN Support Service
Virtual School
Music Partnership

3. Summary of proposals

It is proposed to update the Appraisal Policy and the Competence Procedures for teachers employed by the Local Authority and not attached to Schools as follows:

Appraisal Policy:

- As the policy has not be updated since 2014 general updating has been undertaken to update terminology and formatting where required
- Procedures for making and scrutinising pay progression decisions based on performance appraisal have been amended to reflect the revised delegations outlined in the new Constitution
- Changes have been made to reflect the revised responsibilities of individuals who have a role in the pay progression process including their role in the decision making and scrutiny and in the management and operation of the appeals process. This is to reflect the revised delegations as outlined in the new Constitution.

Competence Procedures:

- As the policy has not be updated since 2017 general updating has been undertaken to update terminology and formatting where required
- Changes have been made to reflect the revised responsibilities of individuals who have a role in the competence procedures. This include responsibilities at the decision making meeting and the appeals process. This is to reflect the revised delegations as outlined in the new Constitution.

4. Legal Considerations

Formal consultation has taken place with the recognised trade unions and professional associations representing teachers, with regard to the proposed Teacher Appraisal Policy and Competence Procedures, at Schools' Joint Consultative Committee. Collective agreement has been reached on the policies as they match the model policies already offered to the Governing Boards of schools for adoption.

In additional to the requirements outlined in the Education (School Teachers' Appraisal) [England] Regulations 2012 the appraisal policy also incorporates the framework given in the DfE model policy 'Teacher Appraisal and Capability', the provisions outlined in School Teachers' Pay and Conditions Document and accompanying statutory guidance, which impose various duties on the Local Authority in relation to the determination of teachers' pay for those teachers employed by the Local Authority and not attached to schools.

The Competence Procedures provide a fair and clear way of addressing concerns about teacher competence with an emphasis on enabling teachers to develop professionally and deliver expected levels of performance, as described in the national Teachers' Standards 2012.

Local authorities must abide by all of the above statutory requirements and must have regard to the guidance issued, as a court or tribunal may take any failure to do so into account in any legal proceedings.

5. Financial Considerations

The costs of any performance pay progression as referenced in the Appraisal Policy will be met by the individual support services existing budgets. Pay progression must be awarded to eligible teachers, unless their performance has not met the relevant criteria.

No specific financial implications have been identified as likely to arise as a consequence of the adoption of a specific procedure to deal with teacher competence.

6. Legal and Human Rights Considerations

The proposed Teacher Appraisal Policy and Competence Procedures incorporate the framework given in the DfE model policy 'Teacher Appraisal and Capability' and the relevant provisions of the Education (School Teachers' Appraisal) [England] Regulations 2012.

The individual pay progression making decisions and scrutiny are compliant with the relevant provisions of anti-discrimination legislation contained in the Employment Relations Act 1999, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. It is also consistent with the principles of public life – objectivity, openness and accountability.

7. Other Considerations

This report does not involve the commissioning or procurement of services or goods so it is not possible to reference the consideration of social value in such a context. However, the economic and social well-being of the stakeholders, including vulnerable young people in a variety of guises served by the teachers will benefit by the implementation of the pay progression methodology, and a robust approach to addressing any concerns about a teacher's performance that is pro-active, supportive and promotes the maintenance of appropriate professional standards. Stakeholders should also benefit from the positive effect on recruitment and retention of the teachers employed in these services within the Council as a consequence of the Council adopting a fair and equitable approach to the management of teachers' performance and pay within a climate of good staff relations.

In preparing this report the relevance of the following factors has been considered: prevention of crime & disorder, equality of opportunity, environmental, health, property, social value and transport considerations.

8. Officer's Recommendation

1. To approve the adoption of the revised Appraisal Policy for Teachers Employed by the Local Authority and not attached to Schools. This policy includes the methodology and scrutiny of managing pay progression for teachers based on their annual performance review as required by the STPCD.

2. To approve the adoption of the revised Competence Procedures for Teachers Employed by the Local Authority and not attached to Schools. The procedure includes the process to be followed should action to dismiss a teacher on the grounds of lack of competence be necessary.

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Director of Organisation Development and Policy

PUBLIC

DERBYSHIRE COUNTY COUNCIL

APPRAISAL POLICY FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS



February 2020

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FOREWORD

The attached Appraisal Policy has been the subject of full consideration and negotiation with the recognised unions and professional associations, representing teachers and headteachers, at Schools Joint Consultative Committee (SJCC). The Local Authority will ensure that relevant staff are fully conversant with the document. In particular, appraisers will be clear of their responsibilities and appraisees will understand the implications for them.

Classroom Observation Protocol

Within this policy is an attached classroom observation protocol which defines the maximum number of observations as 3 per year and each visit limited to one hour in duration. The regulations provide for heads of service to conduct an undefined number of observations, relative to the context of the service and the teacher's circumstances. Account has been taken of feedback that the limit of 3 observations was generally sufficient for appraisal purposes and linked quality assurance processes. This pattern was adopted under the previous regulations and found to be fit for purpose.

Teachers Experiencing Difficulty

The policy makes provision for additional observations to be arranged where there is cause for concern regarding a teacher's practice. Thus, the policy does not constrain schools from addressing issues of performance and, with the addition of the Appendix, 'Teachers Experiencing Difficulty – Advice on Informal Structured Support and Monitoring', it provides a framework and additional guidance for heads of service tackling concerns about teachers' practice. Both the Teachers Experiencing Difficulties process within Appraisal and the Competence Procedures should only be used in cases of genuine, evidence based inadequacy or incompetence and not only as a consequence of an observation, or observations, where teaching is assessed as "requires improvement". If the Teacher is judged as "requiring improvement" this should normally be addressed through the routine appraisal process. The process to be adopted in such circumstances should be determined in relation to an assessment of the teachers overall performance, informed by Teacher Standards.

Monitoring Progress

The policy recognises that there is no requirement to schedule formal meetings to review progress through the year. It is, however, very important to maintain professional dialogue to ensure the appraiser and appraisee are both clear about whether progress is on track or whether any adjustments are advisable. It is advised that heads of service, in consultation with their staff, determine how this is best managed in the context of the service. On the one hand there is a commitment to avoid unnecessary workload and bureaucracy and, on the other, the recognition that the appraisal process is a priority both in enabling teachers to develop/progress and services to improve. Clearly the occasions when teachers receive feedback on observations could provide opportunities for appraiser and appraisee to 'touch base' on the overall progress towards objectives and how planned CPD is impacting. The watch words of the previous performance management regulations are still good advice – there should be 'no surprises'

Appraisal Policy for teachers employed by the Local Authority and not attached to schools

Derbyshire County Council adopted this policy on _____

It will review it two years from the date of adoption or earlier if there is a change in the relevant regulations

1. Purpose

This policy sets out the framework for a clear and consistent assessment of the overall performance of teachers, including the heads of support services who are employed on teachers' pay and conditions of service, and for supporting their development within the context of the Council's, Department's and Services' plans for improving educational provision, performance and the standards expected of teachers. The council is committed to providing high quality professional development that, in turn, supports pupils in achieving their potential. The policy is intended to reflect the principles of fairness, equity, accountability and confidentiality.

This policy is written in accordance with the Education (School Teachers' Appraisal) (England) Regulations 2012. The policy also complies with the School Teachers' Pay and Conditions Document (STPCD). Which states that decisions regarding the pay progression of teachers will be made on the basis of performance, with reference to the teachers' appraisal reports and the pay recommendations they contain.

The policy links to the Pay Policy for Teachers Employed by the Local Authority (LA) and Not Attached to Schools, which details arrangements relating to the determination of teachers' pay, in accordance with the STPCD. The pay policy contains the procedure for appeals against pay decisions.

2. Application of the policy

The policy applies to all unattached teachers employed by the council, except those on contracts of less than one term, Newly Qualified Teachers and those subject to the Formal Competence Procedure. *(Wherever school terms are cited in this policy, this refers to the standard 3 term school year, not the model adopted by Derbyshire County Council of 6 shorter terms.)*

Appraisal in the council will be a supportive and developmental process designed to ensure that all teachers have the skills and support they need to carry out their role effectively. It will contribute to ensuring that teachers are able to continue to improve their professional practice and to develop as teachers.

All appraisal activities will take place within the teacher's directed time, but not within Planning and Preparation (PPA) time.

This policy is complemented by the School's Pay Policy which details arrangements relating to the determination of teachers' pay, in accordance with the STPCD. The pay policy contains the procedure for appeals against pay decisions.

The appraisal procedure will address any concerns that are raised about a teacher's performance. If the concerns cannot be resolved through this process there will be consideration of whether to commence the formal competence procedure. This Appraisal Policy will dovetail with the Council's procedure for dealing with situations where a teacher's level of competence falls below expectations, *as detailed in the appendix 'Teachers Experiencing Difficulty- Advice on Informal Structured Support and Monitoring' and the Formal Competence Procedures for Teachers employed by the Local Authority and not attached to schools.*

3. The Appraisal Period

The appraisal period will run for twelve months in line with the academic year. Each service may decide the exact timing of the review period, for instance whether to hold meetings in July or the beginning of the autumn term. The process of undertaking appraisal reviews and making pay recommendations will be completed by 31 October, except for heads of service where they will be completed by 31 December.

Teachers 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.

Where a teacher begins employment with the service the relevant Assistant Director may determine that the initial appraisal period in respect of that teacher is shorter or longer than 12 months. Where a teacher starts their employment part-way through a cycle, the head of service or, in the case where the teacher is the head of service, the relevant Assistant Director shall determine the length of the first appraisal cycle, with a view to bringing the cycle into line with that for other teachers in the service as soon as possible.

4. Appointing Appraisers

Head of Service

Heads of Service will be appraised by the relevant Assistant Director (AD), or a line manager, delegated by the AD. Where the Appraiser does not hold QTS they will be supported and advised by a suitably skilled and experienced member of the Advisory Service.

The head of service may write to the Assistant Director (or Executive Director if the AD is the Appraiser) if they wish to request that their Appraiser be changed, giving reasons. The AD will reply in writing with their decision and is advised that they consult first with HR for support in considering the request.

Teachers

The head of service will decide who will appraise other teachers. Where teachers have a concern about their nominated appraiser, they may write to the head of service, giving reasons. Where legitimate concerns are raised, these will be carefully considered by the head of service and an alternative appraiser may be offered, if possible. It is anticipated that appraisers will be those who hold some leadership and management role in relation to the teacher. The nominated appraiser will hold an appropriate position in the staffing structure and have the necessary knowledge, skills and experience to undertake the role. If, for any reason, the nominated appraiser is unable to conduct the role, an appropriately experienced alternative colleague will be appointed.

The appraiser will conduct all aspects of the review, including making pay recommendations, for teachers who are eligible.

It is advised that each appraiser allocated no more than 4 teachers to appraise.

Where there are concerns about a teacher's performance, and the head of service is not the appraiser, s/he may consider undertaking the role them self or appoint an alternative senior member of staff.

5. The Planning Meeting

The meeting will include:

- The setting/agreeing of objectives,
- Evidence to be collected,
- Identifying success criteria,
- Deciding the support/training programme,
- Determining the focus and timing of observations.

The head of service's objectives will be set by their appraiser, who may be the appropriate AD or another line manager, after consultation with a nominated member of the advisory service, acting as an external adviser. Should agreement not be reached between the head of service and appraiser, the appraiser may determine the objectives. In line with the section on representation and appeals, if the head of service believes the objectives are not suitable he/she should raise the matter with the appropriate AD in writing, in the first instance.

Objectives for each teacher will be set before, or as soon as practicable after, the start of each appraisal period. The objectives set for each teacher, will be Specific, Measurable, Achievable, Realistic and Time-bound and will be appropriate to the teacher's role and level of experience. In setting the objectives, appraisers will have regard to the context of the teacher and the demands of the objectives. consistent with the LA's approach to promoting staff wellbeing. The Teachers' Standards will inform the objectives set for the teacher

The appraiser and appraisee will seek to agree the objectives. Objectives may be revised if circumstances change. Any amendment to the objectives or supporting requirements will be recorded in writing and the expectations of the teacher clarified. The teacher may add comments on the appraisal planning statement. The head of service will moderate the appraisal process to ensure objectives are consistent between teachers with similar experience and levels of responsibility. If agreement cannot be reached between the appraiser and appraisee, the appraiser will determine the objectives but the final decision rests with the head of service, through the moderation process.

The measures of success for meeting the objectives should be made clear to the teacher and recorded. Teachers and their appraisers may identify expected sources of evidence for achievement of objectives and fulfilment of relevant standards but this will not preclude the addition of other sources of information that may become available, provided they are agreed to be relevant. Appraisers will seek to identify a comprehensive range of sources of information to be utilised as a basis for assessing performance and the achievement of objectives. Sources of evidence should be agreed with the teacher, where possible, and the teacher may record any reservations they hold on the planning statement.

The planning statement will also contain details of any support and development which the teacher will receive to support them in achieving objectives.

The objectives set for each teacher will, if achieved, contribute to the council's plans for improving educational provision and performance and improving the education of pupils within the Local Authority and will take account of the professional aspirations of the teacher. This will be ensured by the head of service (*or for the head of service's objectives, relevant AD*) quality assuring objectives against the relevant council plans. The teacher's professional aspirations will be taken into account when setting objectives.

In the support services 3 objectives will normally be set for each teacher, unless agreed otherwise. It is recognised that some objectives incorporate greater scope and breadth than others. It is expected that objectives will reflect the range of each teacher's role, responsibilities and working time. Objectives will address key areas of core professional practice.

The expected level of performance will be reflected and specified in the wording of the success criteria. These may include a focus on (as appropriate, taking into account the responsibilities of the teacher's post and pay range):-

- Impact on pupil progress (including beyond own teaching groups, where appropriate),
- Impact on wider outcomes for pupils,
- Improvements in specific elements of practice,
- Impact on effectiveness of other teachers/staff
- Wider contribution to the improvement of the service.

There will also be recognition of the quality of actions and effort to progress objectives.

Appraisers will consider whether reasonable adjustments to the objectives are appropriate, in the light of an individual's circumstances, for instance where the teacher has a disability or has experienced long term absence.

Before, or as soon as practicable after, the start of each appraisal period, each teacher/head of service will be informed of the standards against which that teacher's performance in that appraisal period will be assessed. All teachers, including heads of service who teach, must be assessed with reference to the 'Teachers' Standards' which came into effect from September 2012 and, where relevant, against other sets of standards published by the Secretary of State that are relevant to them. Therefore relevant teachers' performance will be considered against the criteria adopted in the Pay Policy for teachers employed by the Local Authority and not attached to schools to be paid on the Upper Pay Range, expectations of Leading Practitioners.

All teachers must still fulfill the Teachers' Standards but those applying to be paid on the Upper Pay Range will need to meet the relevant criteria shown in Appendix B of the Teachers' Pay Policy. The National Standards for Head Teachers may be utilised to inform the objectives and success criteria for heads of service. For Qualified Teaching, Learning & Skills (QTLS) holders, that may include the overarching professional standards for the lifelong learning sector, held by the Learning and Skills Improvement Service. Heads of service will decide whether QTLS holders will be assessed against the Teachers' Standards instead of, or as well as, the lifelong learning sector standards.

6. Observation and Other Evidence

The council believes that teacher observation is important both as a way of assessing teachers' performance, in order to identify any particular strengths and areas for development they may have, and of gaining useful information which can inform service improvement more generally. All observation will be carried out in a supportive fashion, in an atmosphere of constructive engagement, collaboration and co-operation. *(An observation protocol is attached to this policy in Appendix 1.)*

Classroom observation, for those who work directly with pupils, will form an integral part of the review process to inform teachers' performance, identifying strengths and weaknesses and, where good and excellent practice is in evidence, to make use of this to inform service improvement more generally. Classroom observations will not ordinarily exceed 3 per appraisal cycle with single lesson observations lasting a maximum of one hour. Following discussion, the teacher and the appraiser may agree to revisit the amount of lesson observations in order to support the meeting of objectives. The current Teachers' Standards will inform and underpin the objective setting process. Any such changes will be formally recorded within the appraisal documentation and signed by the teacher and appraiser. Further observations may form part of the programme adopted when the 'Teachers Experiencing Difficulty' process is applied.

Observation of teachers' work with pupils or in supporting other teachers will be carried out by those with Qualified Teacher Status.

In general, observations will be multi-purpose and provide information regarding the teacher's strengths, achievement of objectives and standards, development needs as well as contributing to the service quality assurance processes. The services will seek to minimise the total number of occasions on which teachers are observed by using the findings of each observation for other management requirements where possible. It is not a requirement to utilise all 3 observations allowed. Observations will not be arranged as a matter of routine but will have clear purpose, in relation to the teacher's development needs and/or the service's quality assurance programme.

Teachers (including the head of service) who have responsibilities outside of pupil/teacher interaction should also expect to have their performance of those responsibilities observed and assessed.

To be fair and transparent, assessments of performance will be properly rooted in evidence. It is recognised that there are a variety of other sources of evidence to indicate the quality and impact of teaching and learning across the services. The Council aims to utilise a range of data, which is carefully evaluated, to identify progress, attainment and areas for improvement. The evidence to be utilised may include, where agreed, self-assessment, pupil progress, planning documentation, peer review, pupil work analysis, surveys, pupil feedback, school/family feedback, marking and assessments of pupil learning. Observation is particularly important in identifying the specific strengths and areas for development of individual teachers. The council is committed to providing accurate feedback in order for teachers to benefit from support that is tailored to their professional development needs. The planned and focused sharing of staff's strengths, to enhance the skills of colleagues, is believed to be one of the most powerful strategies for continuing professional development, promoting a culture of collaborative reflective practice. Peer observation, arranged for the purpose of professional development and not utilised to provide evidence of a teacher's performance, is not included in the 3 observations allowed for appraisal purposes.

Feedback will be provided, taking account of the Teachers' Standards that are relevant to the particular activities observed (and other standards relevant to the individual) and appropriate development strategies identified. Observations should be utilised, in order for the service leadership to formulate, along with other information indicating quality of teaching across the service, reports for senior officers/members, priorities for service improvement initiatives and training/development activities.

7. Development and support

Appraisal is a supportive process which will be used to inform continuing professional development (CPD). The council wishes to encourage a culture in which all teachers take responsibility for improving their teaching through appropriate professional development. Opportunities for professional development will be linked to service improvement priorities and to the ongoing development needs and priorities of individual teachers. Teachers will be expected to evaluate the impact of their CPD and share their learning with colleagues, where appropriate, in line with the service's approach to CPD. Self-evaluation of performance against the Teachers' Standards and their own objectives will be facilitated.

The service's CPD programme will be informed by the training and development needs identified as part of the appraisal process. The council will take account of the resources needed for the operation of the appraisal process, in setting the service budget annually.

Where there are competing demands on the service budget with regard to the provision of CPD, a decision on the relative priority will be informed by the extent to which:

- a) The training/support will help the service achieve its priorities
- b) The identified CPD is essential for the appraisee to meet their objectives.

Account will be taken in the annual review of performance of whether the support/development recorded in the planning statement has been delivered.

8. Feedback and In-Year Monitoring

The appraiser and teacher will confirm to each other when any piece of evidence to be cited for appraisal purposes is identified.

Teachers will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other relevant evidence has come to light, relating to the performance management planning and review process. Feedback will highlight particular areas of strength as well as any areas that need attention.

There is no requirement to schedule formal meetings. It is important to maintain ongoing professional dialogue to track progress towards the objectives and check on the provision of support and training. Interim review meetings may be held, if significant evidence relating to the planning and review process comes to light and it is impractical/inappropriate to wait for the next scheduled annual review meeting. They may also be held if both appraiser and appraisee agree. Any meetings taking place as part of appraisal will be held in directed time, but not the teacher's PPA time.

If a lack of progress towards objectives or concerns that standards are not being met are such that there is a risk the teacher's annual appraisal may not be successful and, potentially, pay progression not recommended, this will be made clear to the teacher in writing. A meeting should be called directly if an appraiser identifies significant concerns that practice is not sustaining the standards or/and is not on track to meet objectives. The appraiser should not wait for the next scheduled meeting if this is not in the near future.

Relevant support/development activities, with the aim of rectifying the situation will be put in place through the appraisal process.

Please refer to paragraph on teachers experiencing difficulties and Appendix 2 'Teachers Experiencing Difficulties – Advice on Informal Structured Support' and the flowchart attached to the competence procedures for teachers employed by the Local Authority and not attached to schools for the process of dealing with concerns about potential underperformance.

9. Annual Assessment

Each teacher's performance will be formally assessed in respect of each appraisal period. In assessing the performance of the head of service, the AD/Appraiser will consult with a designated Adviser from the Advisory Service.

This assessment is the end point to the annual appraisal process, but performance and development priorities will be reviewed and addressed on a regular basis throughout the year as appraisers maintain ongoing professional dialogue with their appraisee(s). There should be no surprises concerning the overall assessment of a teacher's performance at the annual review meeting.

The council must:

- a) assess the teacher's performance of their role and responsibilities during the appraisal period with reference to:
 - the standards applicable to the teacher, which will not be used as a checklist, Teachers will be assumed to be meeting the Teachers' Standards unless concerns have been raised with them and clear documented evidence to the contrary is provided.
 - the teacher's objectives;
- b) assess the teacher's professional development needs and identify any action that should be taken to address them; and
- c) where relevant, include a recommendation relating to the teacher's pay.

No request to submit additional evidence will be made to the teacher at the review meeting, although the teacher may do so if they wish.

The teacher will receive as soon as practicable, following the end of each appraisal period – and have the opportunity to comment in writing on - a written appraisal report. In the services, teachers will receive their written appraisal reports by 31 October (31 December for the head of service). The appraisal report will include:

- details of the teacher's objectives for the appraisal period in question;
- an assessment of the teacher's performance of their role and responsibilities against their objectives and the relevant standards;
- an assessment of the teacher's training and development needs and identification of any action that should be taken to address them;
- a recommendation on pay where the teacher is eligible (NB – pay recommendations need to be made by 31 December for heads of service and by 31 October for other teachers);
- a space for the teacher's own comments

The appraisal report will be drawn up in discussion between the appraiser and the teacher.

The assessment will clearly relate to the success criteria set for each objective and the standards of performance defined for the teacher's pay range.

The assessment of performance and of training and development needs will inform the planning process for the following appraisal period. It is expected that the discussion will include the utilisation and impact of training and development undertaken and any contribution the teacher has made to the development of a colleague(s). Appraisers may include reference to any significant impact in the appraisal report.

10. Pay Progression

The Local Authority will award pay progression on the basis of successful performance (i.e. that the teacher has met or made significant progress towards their objectives and continued to fulfill relevant standards), with reference to teachers' appraisal reports. Where a teacher is eligible, a recommendation on pay progression will be made by the appraiser based on the assessment of their performance against the agreed objectives and their responsibilities, the Teachers' Standards and any other relevant standards.

The decision of the Local Authority will be made in accordance with the Council's Pay Policy for Teachers employed by the Local Authority and not attached to schools and statutory guidance set out in the STPCD, where applicable.

The Local Authority has set out, in its Pay Policy for Teachers employed by the Local Authority and not attached to schools, the salary scales for the main pay range, upper pay range, unqualified teachers' pay range and leading practitioner pay range. Teachers are eligible for consideration to receive pay progression through the main pay range on an annual basis until the maximum of the scale is reached. The policy sets out the arrangements for teachers to apply to be paid on the upper pay range (UPR) and further progression. Movement through the UPR would normally only be considered on a bi-annual basis.

The process of reporting the outcome of annual appraisal reviews and pay recommendations to the Executive Director, Childrens Services for consideration is set out in Appendix 4

11. Representation and Appeals

Any recommendation on pay will be referred by the head of service to the Executive Director, Childrens Services as referenced in the Teachers' Pay Policy. The procedure for a teacher to make representations concerning a pay decision or to appeal, is also contained in the Pay Policy.

If a teacher wishes to request changes or raise concerns about any other aspect of the appraisal process and documentation they should write to the head of service

setting out their grounds within 10 days of receiving the statement of objectives and appraisal review statement. The head of service will, if necessary, meet with the teacher and then determine whether any action should be taken or changes made. If the head of service is the appraiser of the teacher, the letter should be submitted to the Assistant Director, if the teacher is unable to resolve the matter informally with the head of service. Likewise, a head of service would write to the AD with any concerns. The AD will seek the advice of HR when meeting with the teacher, if necessary, and reaching a decision on the representations. If the teacher (or Head of service, if they have made representations concerning their Appraisal statement) remains unhappy they may appeal using the procedure in the pay policy. The appeal will follow the same process as detailed in the pay policy for pay appeals.

12. Teachers Experiencing Difficulties

When responding to a teacher who is experiencing difficulties in meeting the requirements of their role, action will be taken to provide support and guidance, through the appraisal process, to enable their performance to improve and meet expectations.

(It is important to refer to Appendix 2 'Teachers Experiencing Difficulties – Advice on Informal Structured Support and Monitoring' and the flowchart attached to the competence procedure for Teachers employed by the Local Authority and not attached to schools as what follows is a summary)

If an appraiser identifies through the appraisal process, or through other sources of information, that a teacher is experiencing difficulties such that, if not rectified, there will be detriment to the educational provision delivered to pupils and/or the formal competence procedure may be implemented, the appraiser will inform the head of service, who will review the situation and may consider whether it would be appropriate to appoint a new appraiser.

Where there are concerns about any aspects of the teacher's performance the appraiser will meet the teacher formally to:

- give clear feedback to the teacher about the nature and seriousness of the concerns;
- give the teacher the opportunity to comment and discuss the concerns;
- make mutually suitable arrangements to meet the teacher to discuss targets for improvement and any support (eg coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
- in consultation with the teacher at the above meeting, establish an action plan with clear expectations, success criteria and support to be provided.
- make clear in the plan how, and by when, the appraiser will review progress. It may be decided to revise objectives and it is likely that some priority short term targets will be identified, aimed at enabling the Teachers' Standards to be met. It will be necessary to define sufficient time for the required improvement. *The amount of time will reflect the nature of the improvement required and the seriousness of the concerns;*
- 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 as detailed in the plan. The provision of the support will also be monitored. During this period the teacher will be given feedback on progress and arrangements will be made to adjust the programme if there is good reason to do so. The period identified for the teacher's performance to improve and meet the standards needs to be reasonable and will depend on the circumstances.

When progress is reviewed at the conclusion of the period identified, if the appraiser is satisfied that the teacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process. The teacher should be informed at the formal review meeting that there is no longer consideration of invoking the formal competence procedure.

13. Transition to Capability Procedure

If the appraiser is not satisfied with progress, the teacher will be notified in writing that a meeting to determine whether the formal capability procedure needs to be applied, having followed the process set out in the Appendix 2 'Teachers Experiencing Difficulty – Advice on Informal Structured Support and Monitoring' and the flowchart attached to the competence procedure for Teachers employed by the Local Authority and not attached to schools. They will be informed that if this decision is taken then the appraisal system will no longer apply and that their performance will be managed under the competence procedure. The appraiser will consult with the head of service when contemplating this action (or designated alternative senior staff member).

Please refer to the competence procedure for further details of conducting the formal meeting to consider application of the procedure. The teacher will receive at least 5 working days' notice of the meeting and may be assisted by a trade union representative or work colleague. The head of service will consider whether it would be appropriate to appoint another suitable appraiser, in the circumstances, or perform the role themselves.

14. Monitoring and Evaluation of the Process and Policy

The Appraisal process will be treated with confidentiality. However, the desire for confidentiality does not conflict with the need for Quality Assurance of the operation and effectiveness of the appraisal system. In the services we will ensure fairness through-

- providing clarity on the nature of objectives,
- having higher expectations of teachers on higher pay ranges or with paid responsibilities,
- including clear success criteria and evidence to be utilised,
- ensuring that relevant training and development is provided
- head of service review of teachers' objectives and appraisal records in order to ensure compliance with the policy. (In larger services the head of service may delegate this review to other relevant senior leaders.)

In addition, only the teacher's line manager(s) will be provided with access to the objectives, where it is necessary to enable the line manager to discharge their duties.

The head of service also needs to be aware of any pay recommendations that they have made in order to refer these to the Executive Director.

The head of service will make arrangements for the details of training and development needs to be communicated to anyone with responsibility in the service for the delivery of continuous professional development.

The council will monitor and evaluate the policy. Policy review will be conducted in consultation with the recognised unions and professional associations representing teachers, through the Schools' Joint Consultative Committee (SJCC).

15. General Principles Underlying This policy

Confidentiality

The appraisal and formal competence processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head of service and AD/Council to quality-assure the operation and effectiveness of the appraisal system.

Consistency of Treatment and Fairness

The Council is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Workload

The operation of the appraisal process should not add to the teacher's workload. It will reflect the responsibilities detailed in the teacher's Job Description and the overall duties of a teacher as defined in the School Teachers' Pay and Conditions Document. It will focus on the key priorities of the service and for the individual's role. The process will take place within directed time but not the teacher's PPA.

Definitions

Unless indicated otherwise, all references to "teacher" include the head of service.

Delegation

Normal rules apply in respect of the delegation of functions by local authorities.

Monitoring and Evaluation

The heads of service/ADs will monitor the operation and effectiveness of the services' appraisal arrangements and report to the Executive Director.

Retention

The Council, through the heads of service, will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

Appendix 1

OBSERVATION PROTOCOL

The Local Authority is committed to ensuring that observation is developmental and supportive. The effective and efficient operation of the appraisal process requires observation to be a confidential process of constructive engagement within an atmosphere of professional trust and co-operation. Accordingly those involved in the process will:

- carry out the role with professionalism, integrity and courtesy;
- seek to reach agreement in advance on how classroom observations will be carried out;
- evaluate objectively; taking account of any particular circumstances affecting the observation on the day;
- report accurately and fairly; and
- respect the confidentiality of the information gained.

Planning and Preparing for Observation

In keeping with the council's commitment to supportive and developmental classroom observation the head of service will:

- consult with teachers concerning the overall pattern of observations for the academic year
- leave capacity for appraisers to agree with teachers the timing of any observation particular to that teacher's objectives
- provide for those being observed for all purposes to receive final notice at least 5 working days in advance
- arrange, as far as possible for observations to take place at a time agreed with the teacher
- ensure there is a reasonable amount of time between observations
- ensure classroom observation is undertaken solely by persons with qualified teacher status and the appropriate training and skills to undertake observation, provide constructive oral and written feedback, in the context of professional dialogue. The observer should be able to provide any consequent support for the teacher or ensure this need is addressed by the relevant staff member.

Planning for observation will take place at the start of the appraisal/performance management cycle and will include details of:

- the amount of observation,
- the focus of the observation,
- the maximum duration of the observation,
- when during the appraisal cycle the observation will take place and
- who will conduct the observation.

Information gathered during the observation will be used, as appropriate, for a variety of purposes including to inform service evaluation and improvement strategies, in accordance with the authority's commitment to streamlining data collection and minimising bureaucracy and workload burdens on staff.

Conducting Observation

Time for preparation and feedback for classroom observation will be made available within the teacher's directed time, but not PPA time. The total period for observation arranged for any teacher will not exceed three visits per cycle each of no more than an hour in length, having regard to the individual circumstances of the teacher. There is no requirement to use all of the three hours. The amount of observation for each teacher should reflect, and be proportionate to, the needs of the individual and the service.

In each case 'proportionate to need' will be determined by the particular role of the teacher, and the focus of their objectives.

Observations of practice involving students or of the teacher providing support to other teachers/teaching assistants, when directly engaged in teaching pupils will only be undertaken by persons with QTS (*ie leading meetings/delivering INSET etc. may be observed by an appropriate line manager who does not hold QTS*)

Feedback

Oral feedback will be given as soon as possible after the observation and the appraiser will aim to provide this before the end of the following working day. (It is recognised that, in support service settings, leaders are often travelling to meet with teachers at various bases and a short delay may arise) Feedback will be given during directed time in a suitable, private environment.

The circumstances of the education support services, with teachers not all working in one base, may affect the scheduling of feedback but appraisers will agree with teachers on the earliest suitable arrangement to deliver oral feedback.

Written feedback will be provided within five working days of the observation taking place. If issues emerge from an observation that were not part of the focus of the observation, as recorded in Appraisal plan, these should also be covered in the written feedback and the appropriate action taken in accordance with the policy and guidance.

Records

The written record of feedback will also include the date on which the observation took place, the lesson observed and the length of the observation. The teacher has the right to append written comments on the feedback document. No written notes in addition to the written feedback will be kept. The appraiser will be given sufficient time within the working day to put in written form the conclusions and outcomes of the observation, where possible agreeing these with the teacher.

It is recognised that an observation provides a 'snapshot', not an overview of a teacher's performance. Other information will be utilised to assess the teacher's overall effectiveness and the impact of their quality of teaching. Observation feedback will be formulated with reference to the Teachers' Standards (and any other standards applicable to the teacher) relevant to the activities observed. Any lesson observation outcome is to enable leaders to report generic quality of teaching information to senior officers and members, identify service development needs and prepare for Inspection

Classroom Observation and Formal Capability Procedures

Where evidence emerges about the appraisee's performance which gives rise to concern during the cycle, additional observations to those recorded at the beginning of the cycle may be arranged, subject to a formal review meeting being held in accordance with the policy.

For teachers entering the 'Teachers Experiencing Difficulty' section of the Appraisal Policy or already on a formal capability procedure, an important part of the support offered will be a clearly defined amount of classroom observation, with structured oral and written feedback. The amount of observation will be discussed with the teacher and (where indicated in the Teachers Experiencing Difficulty Appendix) their union representative. Pupils will not undertake classroom observations.

Appendix 2

Appraisal- Teachers Experiencing Difficulties

Advice on Informal Structured Support and Monitoring

The council's appraisal policy details the necessary process and steps to be taken to address any identified underperformance issues within appraisal. This document provides additional advice and guidance for heads of service in implementing informal structured support and monitoring for relevant teachers.

It is important that the 'Teachers Experiencing Difficulties' section of the Appraisal Policy is read first.

Preamble

1. Underperformance or lack of competence may affect teachers at all levels any time in their careers and such teachers are entitled to sympathetic consideration and active support from colleagues in the service. This procedure deals with identifying the nature of the problems, the needs of the teacher and establishing an appropriate support programme.
2. The nature of concern about performance or omission, its level of seriousness and cause(s), must be communicated at the outset to the teacher, investigated and identified by structured information gathering and systematic recording.
3. The Appraiser must inform the Head of Service when they develop concerns about the performance of a teacher, such that they are contemplating a review meeting to consider implementation of a structured support and monitoring programme. Likewise, a Head of Service or senior leader who identifies significant concerns about a teacher's performance should ensure the appraiser is informed and that appropriate measures are taken.
4. The Head of Service (HoS) will need to ensure that the Appraiser has the necessary knowledge, skills and experience to determine an appropriate structured support and monitoring programme and its implementation. The Head of Service should review whether:
 - the appraisal process has been operated fairly and appropriately so far
 - whether the teacher has received appropriate, timely feedback and clarity on the expected standards of performance and
 - relevant CPD, through the performance management process and provision linked to service priorities in recent cycle(s).
5. The HoS should ensure that the teacher is involved in determining an appropriate support programme. It should be stressed that the aim of the support programme is to help the teacher to improve and develop the

performance of his/her duties in the interests of the pupils, teacher and the service as a whole. Ideally the action plan should be agreed with the teacher.

6. Advice on these procedures may be sought from the HR Advice and Guidance Service at this stage.

Identifying the Problems

1. Where there is any concern about a teacher's professional performance it is necessary, at the outset, to identify any specific problems being encountered by the teacher.
2. Where there is evidence from a G.P. and/or the Authority's Occupational Health Physician that health may be a factor impairing work performance, their advice will be sought:
 - To ensure the teacher is fit for work and the duties of a teacher
 - To seek recommendations as to whether any reasonable adjustments should be considered to enable the teacher to fulfil their duties.
3. Consideration should also be given to whether there are any other council policies or procedures which are relevant to the circumstances and that they are applied appropriately. (eg Stress Management, Management of Sickness Absence)
4. The appraisal process will be the key source of information that raises any concern and prompts a decision to investigate further. Annual, ongoing evaluation of a teacher's performance, in the context of the Teachers' Standards, conducted by the appraiser and through the teacher's self-evaluation, will clarify any areas of concern. Teachers will be assumed to be meeting the Teachers' Standards unless clear documented evidence to the contrary is provided.
 - a) Evidence of unsatisfactory teaching from a Service Review or Inspection may provide information about a teacher's performance which raises, or contributes to, the identification of a concern and/or the need to investigate further. It is acknowledged that this is only an example of the teacher's practise and may just relate to an aspect of performance. Therefore the decision to investigate and address a concern would only arise where there is other evidence that suggests there is an ongoing problem.
 - b) Observation within the teaching situation by a senior member of staff and/or an Adviser may assist in clarifying the precise nature and origin of the difficulties. Where this is in addition to the observations identified within the original appraisal programme, these should be arranged in consultation with the teacher concerned wherever possible.

- c) Observation reports will be supplemented by all available information from the service's Quality Assurance systems and, in particular, pupil outcomes.

In assessing how serious are the identified performance concerns, impact on pupils' learning will be a key consideration. The HoS will also have regard for any wider impact on pupils and/or service delivery. Performance concerns, in relation to additional responsibilities of teachers and senior leaders may also arise and would, likewise, need to be identified and evidenced.

5. It is important that the teacher knows at the outset what is expected of them. During the annual appraisal meeting the appraiser should check that the teacher is clear on:

- the responsibilities of their job (is the Job description up to date?)
- the standards expected in the job (Teachers Standards 2012 for all teachers, except QTLS holders, and Upper Pay Range criteria, expectations of leading practitioner post etc., where relevant)
- the person to whom he/she is responsible for the job (line manager)

If the person specification for the job is available this would also help to clarify the competence requirements in terms of knowledge, skills and experience.

Timescale

The timescale adopted will be in accordance with the seriousness of the identified underperformance. The period given within the Appraisal process for significant improvement to take place would normally be 10 weeks and not less than 6 weeks. (see Flowchart within the formal Competence Procedures document for overview)

It is strongly advised that an interim review is scheduled for around 6 weeks into the programme. This will enable the appraiser and teacher to establish whether expected progress is underway and whether any adjustments to the plan should be made. If the appraiser identifies concerns that reasonable progress is not being made they should inform the HoS, who is advised to take action as detailed in paragraph 5 below. This will involve initiating a new 10 week programme or, *in extreme cases, where there are health and safety concerns and the learning of pupils is jeopardised, a maximum of 4 weeks will be allowed for improvement to take place. The level of improvement would need to be such that the health and safety issues are resolved and learning is taking place. Where this is not secured, a meeting will be called to consider the application of the Formal Competence procedure.*

Where there is evidence that sufficient improvement is taking place the programme of structured support and monitoring may continue for, up to, a total of 10 weeks aimed at securing performance at the expected standard.

Action

1. Having identified any concerns about performance through everyday staff management and appraisal, a teacher should have the opportunity to explain the reasons for the concerns and have an opportunity to address the situation.
2. Details of any concern about performance will be brought to the teacher's attention. The Appraiser will record any action taken and the teacher's response when explanation is sought. The teacher will be informed that he or she has a responsibility to achieve a professionally acceptable standard. The teacher will be informed what is required, how their performance will be reviewed, the period of review, what support will be available and that application of the Formal Competence Procedure will need to be considered if there is insufficient improvement. Subsequent advice and support may achieve the desired and agreed changes in performance.
3. It is anticipated that most concerns will be dealt with through this management process and within appraisal.
4. Where the cause of the criticism or complaint concerning a teacher's professional competence continues, further action will be necessary to deal with the specific problems which are being encountered by the teacher and which are a cause of concern. If the teacher has not been willing to co-operate in addressing the concerns this may be regarded as misconduct, leading potentially to action under the authority's established disciplinary procedures.
5. The period of informal support and counselling should not go on for too long. The period of informal support should therefore be no longer than 10 weeks and less may sometimes be appropriate. There should be a clear indication of improvement. As noted above, an interim review should be held around 6 weeks into the plan. Where the appraiser then informs the HoS that little progress has been achieved, the HoS is advised to call a meeting outside of the appraisal process with the teacher, their representative and the appraiser. The HoS may be supported by their HR adviser.

The purpose of the meeting is for the HoS to assess the overall situation, receive the views of the teacher and their representative about the process they are undergoing and consider the wider context of the teacher and the service. As a consequence, the HoS should review the process and plan for improvement. This meeting enables the union representative to be fully informed of their member's situation, to advise their member accordingly and provide their professional input, including seeking to reach agreement on the objectives and monitoring arrangements, ensuring the programme of support is the most effective and relevant possible. As outlined above, two outcomes are possible:-

- a) Taking account of the additional information available, a revised 10 week programme should be adopted. It is good practice for this to be agreed

with the teacher. During the programme for improvement an interim review with the teacher, appraiser, union representative and HR officer is advised. At end of the agreed period (normally 10 weeks), a further meeting outside of appraisal should be held with the same relevant parties to assess whether the changes have enabled the programme of support delivered to have been appropriate and robust. An assessment will be made of the teacher's progress.

If the standards are now being met, the normal appraisal process would then continue. If there has been significant improvement and standards are nearly met, the HoS has the option to instigate a further 6 to 10 week programme of monitoring and review to enable the teacher to fully meet agreed expectations and show these can be sustained.

- b) Alternatively, the HoS may assess that the situation is exceptional and so serious (as described above) that a 4 week programme to seek resolution of Health and Safety concerns and/or ensure that pupil learning is taking place should be applied.

Outcomes

A formal review meeting will be held at the end of the adopted period of review and assessment, involving observation and collection of a range of other information illustrating the quality of performance. A firm conclusion should be reached and the outcome will be one of the following:

- i) Confirmation that the expected standards have been reached and that the normal appraisal cycle will continue.
- ii) Extension to the period of informal support to allow time for further improvement. This would be appropriate where significant improvement has been demonstrated, yet further development in performance is necessary to meet all the required standards and for the teacher to demonstrate they can sustain these independently. The extension would be of 6 to 10 weeks in length. The Appraiser/HoS will take account of any previous extensions to the programme of support and monitoring.
- iii) The calling of a formal meeting to consider the implementation of the Formal Competence Procedure. (details of the requirements to fulfil and guidance on arrangements can be found in both the Appraisal Policy and Competence Procedure)

Making it work

Identifying the Problems

The following may help in determining what exactly is contributing to the performance issues and thus the considerations that should inform any action to address.

- What is the wider context – the service’s situation, turbulence, judgements on overall effectiveness?
- New leadership in the service/team or new Appraiser? How robust/shared are judgements and strength of service’s Quality Assurance processes?
- Individual teacher – new to service or to role? Career stage and previous ‘judgements’/indicators of performance? Is this the first time any issues have been raised in any way? Has something changed suddenly or over time? Has all feedback from various sources been accurate, fair and honest (in terms of what is included or significant omissions)?
- Individual teacher- personal circumstances (where shared by teacher), health issues, commitment demonstrated to their role and the school, self-evaluation?
- What are relationships like between colleagues and what support is available within the service? Are all teachers clearly subject to the same expectations?

Action

- ✓ HoS ensures Appraiser is suitable for the circumstances and has mentor support.
- ✓ Teachers’ Standards are a regular reference point in the service and staff know what meeting the teaching standards looks like in terms of the day to day practice in the service (not treating them as a checklist), using the service’s own systems/policies relating to Teaching & Learning.
- ✓ A richness of data is used to identify specifically what needs to improve.
- ✓ An action plan format would facilitate the detailing of the necessary components of the support and monitoring process, with a range of evidence and concrete success criteria to ensure clarity of expectations for all parties.
- ✓ The original appraisal objectives may be revised or elaborated and broken down into actions.
- ✓ A systematic, incremental approach is recommended.
- ✓ Listen to what the teacher thinks about the type of support/training they find most helpful in determining what, of the available choices, should be incorporated into the plan. Familiarity in the service with self-evaluation, peer working, coaching and the use of leading professionals to develop other’s practise will broaden the strategies available. Other council services, and partnerships may provide sources of support.
- ✓ Strongly advise the teacher to consult with their union/professional association for advice/guidance on making best use of the programme of structured support and monitoring during appraisal. They could share the plan with their representative and bring back any suggestions for consideration. The involvement of the union/professional association is usually very helpful in ensuring the action taken is appropriate and as effective as possible. In exceptional cases the union may have a concern about the way the process is being applied and, in these circumstances should request a meeting with the

HoS. The HoS should then seek advice from HR in assessing whether any revisions should be made. Use of a meeting called by the HoS, outside of the appraisal process enables all information and views to be considered by the head in ensuring the process being applied to the teacher is fair and robust. Should a formal meeting to consider entry into the Competence Procedure then subsequently be necessary, it is less likely that issues will emerge that require the earlier steps to be repeated.

- ✓ Build in regular, constructive feedback throughout the programme so that success is recognised and built upon, the effectiveness of the support is monitored and amendments can be considered as soon as is necessary.
- ✓ Allow time for the support to be digested by the teacher, for reflection with the person providing support and for further development/embedding of the improvement to practise. An initial period for improvement of around 6 weeks should be sufficient to demonstrate whether the process adopted is effective and any outstanding improvement still required is likely to be secured through a short extension to the plan.
- ✓ Ensure the teacher understands that models of good practise are provided to help them and illustrate how the desired learning may be achieved but that it is their responsibility to take ownership of the process, such that their practise is effective in securing the learning of the pupils they teach. (For those not in a direct teaching role the responsibility will be to take ownership of the process, such that their practise is effective in securing the effective delivery of the service)
- ✓ Although the role of the Appraiser, in setting/agreeing the plan with the teacher and assessing improvement, is separate from the teacher's mentor (who provides and manages support) they need to be very consistent in their understanding of the expectations sought.
- ✓ Consider whether further personal/welfare support is required

Appendix 3

Guidance on the arrangement of formal meetings with staff involving Union/Professional Association representatives

The arrangement of a formal meeting with a member of staff is a fairly occasional event in most services. This will particularly be the case in small services.

Such meetings are likely to be in connection with one of the Human Resources policies, e.g. Disciplinary Policy, Absence Management, Competence Procedure. When the need arises to meet with a member of staff in connection with such processes or to arrange a hearing, there is an entitlement for him/her to be accompanied by a chosen representative. This representative will usually be from one of the trade unions or teachers' professional associations.

Senior Leaders are advised to ask for the name/organisation of the representative, where possible, and make contact to ascertain their availability before setting dates and times. It can be very unsettling and disruptive to relationships, at an already difficult time, when a date is set and then has to be postponed owing to the unavailability of the representative:-

The legal position is as follows (The Employment Relations Act 1999 Section 10, paragraph 4)

“If:

- (a) a worker has a right under this section to be accompanied at a hearing,
- (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
- (c) the worker proposes an alternative time which satisfies subsection (5),

the employer must postpone the hearing to the time proposed by the worker.

5 An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer”.

Unions/associations are likely to quote this when they are presented with a date they cannot accommodate. The service will have no choice, at this point, but to make new arrangements. This can cause considerable inconvenience for everyone concerned. A further difficulty is likely to be caused because the legal requirement calls for the representative to set a new date, within 5 days, and this will probably not be convenient for other people involved.

It is best to try and avoid a difficult period where parties struggle to set a mutually suitable date, colleagues (and sometimes pupils) in service may suffer because of the delay and resentment may develop.

Service leaders need to consider the perspective of the employee and their representative. Most employees would not expect to be called to a formal meeting, or any other management process, outside of working hours. The representatives themselves are sometimes employees of the union/association, who have scheduled working time, and branch officials are allocated particular times away from their 'day job' for their union duties. They may struggle to obtain release at other times.

It has been possible, on occasions, to arrange such hearings/meetings in the evenings but Heads of Service should expect to be challenged if making such arrangements. If at all possible, meetings in working hours are also preferable because the participants are more likely to be able to contribute effectively, than at the end of the day.

When informed that a representative cannot attend a meeting and a considerable number of other stakeholders have been assembled (Heads of Service, witnesses, HR Consultant, minute taker), Heads of Service have sometimes challenged the union to send a different representative to facilitate the process and save the impact of further delay on the employee. This is not easy for some associations to accommodate. They may have an agreement where only an individual union representative is authorised to receive the details of the case and to act on the member's behalf.

Heads of Service are advised to take these factors into consideration, in order to enable arrangements to be made in co-operative fashion. Alongside this guidance there has also been correspondence to the unions/associations seeking a similarly collaborative approach from their representatives. For instance, in recognising the requirement to co-operate with the process and offer a reasonable number of possible dates when meetings are needed. We reminded the association that just asserting their rights can foster a defensive response.

The need for formal meetings invariably means that there are challenging situations to manage, not just with the employee concerned but also possibly colleagues and the wider service. The 'tone' of all actions in connection with progressing the issue of concern will play a large part in minimising disruption, negative relationships and the ability to re-establish normal working practice afterwards.

Heads of Service may wish to contact the HR Service, if they are having difficulty in working with the unions on these matters.

Appendix 4

The Appraisal of teachers employed by the Local Authority and not attached to Schools

Reporting Arrangements

1. Appraisers and Area Managers will provide the Head of Service with a standard annual report on the Appraisal Reviews they have carried out in the previous year.
2. This report will include:
 - Total number of employees.
 - Number of Annual Reviews completed.
 - Confirmation that objectives have been set for the following year.
 - Number of teachers who have achieved a successful performance review on each of the pay ranges
 - Number of teachers with unsuccessful appraisal review.
3. The Senior Officers responsible for the performance management of Heads of Service, the leader of the Music Partnership and Heads of Service, will provide the Schools HR Advisory Service with a standard annual composite report on Appraisal.

The Schools HR Advisory Service will provide collate the annual reports and will provide an annual standard composite report to the Executive Director, Children's Services
4. The Executive Director, Children's Services will approve and arrange to action approval of any pay recommendations agreed.

REPORT ON APPRAISAL FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS

Service Name:

Total number of teachers employed

Numbers of Annual Reviews completed

Objectives have been set for all teachers for Year

Number of teachers who have achieved a successful performance review

Number of teachers with unsuccessful appraisal review.

Brief summary of issues and actions required in the 20../20.. cycle, from the reviews in Autumn 20..

A confidential appendix, listing all teachers employed in this Establishment*/Service*/Team* indicating the categorisation of teachers' performance, in my professional judgement is attached to this report.

Signed:

Date:

Position.....

* Delete as appropriate

PUBLIC

DERBYSHIRE COUNTY COUNCIL

FORMAL COMPETENCE PROCEDURES FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS

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FOREWORD

The attached Competence Procedure, with the accompanying flowchart has been the subject of full consideration and negotiation with the recognised unions and professional associations, representing teachers and headteachers, at Schools Joint Consultative Committee (SJCC).

Heads of service should ensure that all relevant staff are made aware and given easy access to this procedure.

Concerns Regarding Teacher Performance within Appraisal

The LA recognises the importance of tackling issues of concern effectively, as early as possible. The 'Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring' outlined in the appraisal policy should be used before any implementation of the competency procedure. This 'Teachers Experiencing Difficulties' guidance seeks to clarify the process that should take place to identify, raise and address significant concerns about a teacher's performance, in the interests of both the teacher and the service. It is of critical importance that best use is made of this process and it is sufficiently robust. This guidance also provides for meetings outside of appraisal, if necessary, where the Head of Service should involve the teacher's union representative and a HR consultant, in addition to the appraiser and teacher. This can be triggered when a teacher is making little or no progress during a structured support and monitoring programme. The aim is to enable all relevant issues and perspectives to be aired, in order for the improvement programme to be as accurately tailored to the teacher's, and service's, circumstances as possible. It is important that the plan for improvement provides the strongest opportunity for the teacher to meet expectations at the earliest stage possible in the process. The inclusion of additional relevant professional colleagues is likely to inform the adoption of the most appropriate, robust and supportive approach. A flowchart is included to illustrate the potential steps included in the application of 'Teachers Experiencing Difficulties' during appraisal and how this should link to the Competence Procedure.

Observation is only one type of evidence of a teacher's effectiveness and needs to be considered alongside other indicators, such as work analysis, pupil progress etc. Therefore, it is recommended that an overall assessment is made of a teacher's performance, through appraisal, which also utilises the service's Quality Assurance information. It is advised that assessment of teachers' performance should be in the light of the Teachers' Standards. Significant concerns about a teacher's practice would be identified when the range of evidence indicates that, generally, the teacher is not meeting the standards. In such circumstances the Appraiser is likely to need to call a meeting with the teacher to consider whether they enter the 'Teachers Experiencing Difficulty' section of the appraisal policy.

Heads of service must use the Teachers' Standards in describing and assessing teachers' performance as these are a requirement of the School Teachers' Pay & Conditions Document (STPCD). They reflect a robust level of teacher effectiveness and support an informed decision on whether a teacher should continue to receive a focused and pro-active, but routine, appraisal process or when concerns are of significant underperformance, where it will be appropriate to consider entry into the 'Teachers Experiencing Difficulties' regime. DfE guidance is clear that teachers

should meet all of the standards across their practice but there is also recognition that the standards support a holistic assessment of a teacher's effectiveness and are not a checklist and should not be used as such.

For teachers who have any areas of practice, or specific teaching groups, where their teaching is a concern the approach would be to highlight these areas for particular, focused development within the routine application of the appraisal process, not the Teachers Experiencing Difficulties process. All teachers are entitled to ongoing feedback on strengths and development areas, plus professional development/support to address their needs. The vast majority of teachers will be able to develop their teaching through the normal, routine appraisal process and successfully address any individual areas of practice that do not always fully meet the standards.

Both the Teachers Experiencing Difficulties process within Appraisal and the Competence Procedures should only be used in cases of genuine, evidence based inadequacy or incompetence and not only as a consequence of an observation, or observations, where teaching is assessed as "requires improvement". If the Teacher is judged as "requiring improvement" this should normally be addressed through the routine appraisal process. The process to be adopted in such circumstances should be determined in relation to an assessment of the teachers overall performance, informed by Teacher Standards.

Timescales

The timescales recommended for tackling concerns about teacher underperformance during Appraisal are best described on the attached flowchart. Periods of between 6 and 10 weeks are proposed for programmes designed to address concerns, with the expectation that usually the maximum period would be adopted. In circumstances where a teacher is making progress, but not yet sufficient to exit the programme and return to the normal appraisal process, progress of the programme should be revised and extended. The process aims to provide the maximum opportunity for the teacher to succeed in meeting expectations, within the appraisal regime and transfer to the competence procedure should only be triggered when there is clear evidence that the teacher is consistently falling below acceptable professional standards, despite appropriate training and support.

Competence Procedure

The procedure provides for 2 stages, each of between 4 and 10 weeks, with the potential for the review period to be extended in relevant circumstances. It is expected that the maximum initial period will usually be adopted to allow sufficient time for the identified support/training to be provided, absorbed and embedded into a teacher's practice.

Although a 2 stage process is detailed in the procedure, the option to institute a 4 week programme, to assess a teacher's capability to continue through the process, remains for use in exceptional cases where the health, safety and welfare of pupils is potentially at risk and/or little or no learning is taking place.

Formal Competence Procedures for teachers employed by the Local Authority and not attached to schools

1. Purpose and Definition

1.1. A teacher's competence can be questioned in various ways and may even call into question the continued employment of the teacher concerned. It is essential, therefore, to have procedures which:

- are soundly based in law, and
- balance the rights of the individual with those of the pupils and with the needs of the Local Authority

1.2. This document is intended to give clear guidance to all concerned where issues of professional competence are to be addressed. The document has been produced after consultation with the recognised Teachers' Associations.

1.3. A definition of competence

It is important at the outset to define "competence" which is regarded as the ability of a teacher to discharge his/her duties to a professionally acceptable standard. Therefore, the competence procedures are appropriate where, due to lack of capability and/or application a teacher fails consistently and over a period of time to discharge his/her duties to the professionally acceptable standard. School Teachers' Pay & Conditions Document (STPCD) incorporates the Teachers' Standards 2012, which define, in Part 1 of the document, the level of practice at which all qualified teachers are expected to perform. A distinction is made between this and "misconduct".

"Misconduct" is an act or omission by a teacher which is considered to be unacceptable professional behaviour. It can also have very serious dimensions, including those involving criminal behaviour. Part 2 of the Teachers' Standards defines the personal and professional conduct expected of teachers and will be utilised by the Teachers Regulation Agency in considering cases of misconduct referred by employers.

Misconduct may be considered so serious as to merit direct application of the disciplinary procedure, and is therefore to be dealt with under the Council's disciplinary procedures. The issue of competence is to be dealt with under the competence procedures, which may lead to dismissal on the grounds of competence.

1.4. Child Protection

Where complaints are made against teachers by parents or others which involve child protection issues, then the Local Authority's Child Protection Procedures must always be followed in the first instance.

2. Scope and application of the Competence Procedure

- 2.1. The procedure should be read in conjunction with the Appraisal Policy for Teachers Employed by the Local Authority and Not Attached to Schools. The guidance on policy and procedure applies to all teachers employed by the Local Authority under the terms of the School Teachers' Pay and Conditions Document (STPCD), including relevant Heads of Service whether they are full-time or part-time, about whose performance there are serious concerns, which the application of the appraisal process has been unable to rectify.
- 2.2. Teachers with health problems or those experiencing stress may also require particular support. Where health may be a factor and it impairs performance through absence from work the Council will apply the Attendance Management Procedure adopted by the Local Authority which applies to teachers employed by the Local Authority and not attached to schools. Specific guidance is included in Appendix 1
- 2.3. These competence procedures are concerned with situations where a teacher is experiencing significant difficulty in discharging his/her professional responsibility to the extent that additional structured support is necessary. This support will be designed to further identify and clarify the causes of the difficulties and to determine an appropriate response.
- 2.4. Concerns relating to the performance of Newly Qualified Teachers will first be addressed through the Statutory Induction Arrangements. In particularly serious cases it may be necessary to instigate the Competence Procedure at a stage before the end of the induction procedure.

3. Introduction

- 3.1. Teachers, as professionals, are constantly striving to improve their knowledge, skills and expertise in order to develop their effectiveness. In this task, they may draw upon support available from the service within which they work, from other LA support services and/or from the school improvement service, other providers and from their own Associations.
- 3.2. The prime responsibility for the assessment of performance and the management of the process rests with the Head of Service. The responsibility of the Local Authority rests in ensuring that the authority has adopted an appropriate competence procedure and for the Executive Director, Children's Services, and/or their nominee, to ensure that the

procedure is implemented appropriately, monitoring, evaluation and review are undertaken.

- 3.3. At service level, teachers may look to the advice, support and encouragement available from colleagues, particularly their appraiser under the Appraisal Policy, those with professional leadership roles such as senior members of staff and Heads of Service.
- 3.4. Within the Local Authority a range of professional support services exist and a programme of in-service training for teachers is available. The strength of ongoing support within the service, and between services, forms of professional development (e.g. coaching, mentoring, peer collaboration, shadowing) are recognised as particularly effective strategies.
- 3.5. Continuing Professional Development (CPD) is recognised as the entitlement and expectation for all teachers regardless of experience, deployment or seniority. It is recognised, however, that there are particular points in a teacher's career where additional or concentrated advice and/or support may be necessary:
 - Teachers entering the profession have special requirements which are met through specific induction arrangements based on guidelines from the Department for Education.
 - Experienced teachers taking up new posts require induction support, particularly where changed or additional responsibility is involved.
 - Further developments in the curriculum which require dissemination and familiarisation/training.
 - To address issues of professional competence, however these may be identified.

These everyday processes of support, training and advice are fundamental to professional effectiveness and wherever possible any difficulties should be resolved informally in the spirit of personal development and advice, including the performance management framework of review, self-evaluation, objective setting, and continuing professional development.

4. Principles

The Local Authority recognises its obligation to pupils, parents and staff to maintain a competent and skilled teaching force. The purpose of the competence procedure is to help and encourage all teachers to achieve and maintain an acceptable standard of performance.

- 4.1. The role of the line manager is to identify any concerns with performance and discuss them with the teacher concerned. Teachers, including heads of service, who are experiencing performance difficulties, will be initially

provided with a programme of support and monitoring through the 'Appraisal Policy'. (Also see the document entitled Appraisal-Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring' contained within the Appraisal Policy and the Appraisal/Competence Procedure Flowchart (Appendix 3))

- 4.2. The aim of that programme is to help a teacher who is experiencing such difficulties to identify and overcome any shortcomings, provide appropriate support, enable them to contribute positively to their own professional development, and thus to circumvent the need for application of the competence procedure. It is expected that any teacher will act positively in refining, developing and expanding his/her skills.
- 4.3. The Local Authority intends that:
- job descriptions will accurately reflect the main purpose and scope of each post and the tasks involved;
 - job descriptions will be consistent with the roles and responsibilities of teachers as determined in the School Teachers' Pay & Conditions Document (STPCD),
 - the services have a process where job descriptions will be the subject of regular review and discussion with the post holder and any variations will normally be by consent;
 - teachers will be made aware from the outset of their employment of the Appraisal Policy and procedures, plus support and review arrangements, as well as the consequences of failing to meet normal standards of competence;
 - the formal procedures which will be used to support and monitor progress operate in a climate where immediate and consistent feedback is accepted as the norm as, not only does positive feedback provide reinforcement of good performance, but also it is easier for a teacher to accept challenging feedback when necessary.
- 4.4 The expectations for teacher performance are set out in the Teachers' Standards, introduced from September 2012 and, for relevant teachers, Post Threshold Standards, National Standards for Headship, Standards for Leading Practitioners.
- 4.5 If an issue of competence arises, it is strongly recommended that the Senior Manager/Head of Service seeks early advice from HR.
- 4.6 Where the formal procedure is ended at any stage, as the required improvement has been reached, but performance subsequently falls below the agreed standard within a term (two Derbyshire Terms), the formal procedure may be reinstated at the point where it stopped.

- 4.7 No action will be taken under the formal procedure in respect of a trade union representative until the circumstances of the case have been discussed with a senior representative or paid official of the trade union, with the consent of the employee. If the employee does not agree to the involvement of the senior union official, a record will be made of this decision and the procedure will be implemented. The Head of Service is advised to seek HR advice before taking any action.
- 4.8 The provisions for the employee's right to be accompanied comply with the ACAS code. The employee has the right to be accompanied at meetings under the formal procedure. The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the employee. In exercising their statutory right to be accompanied, the employee must make a reasonable request. What is reasonable will depend on the circumstances of each individual case.
- 4.9 If an employee's unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning or to the fast track procedure as appropriate. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the authority/pupils
- 4.10 Should the employee persistently be unable or unwilling to attend a formal competence meeting, without good cause, the Local Authority may make a decision based on the evidence available. A postponed meeting should be re-arranged within 5 working days, or as soon as possible, without the employee if they continue to be unavailable.

5. Transfer from Appraisal

It is necessary that where, during the programme for improvement, progress through the 'Teachers Experiencing Difficulties' section of the Appraisal Policy has not been sufficient a consultation meeting with the teacher and their representative, outside of the appraisal process itself, will have been called by the Head of Service to ensure they have provided the best possible opportunity for improvement to be secured and in order for any wider management issues to be identified. (Please see Flowchart (Appendix 3) and document entitled 'Appraisal- Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring' contained within the Appraisal Policy)

When, at the conclusion of a period of support, review and monitoring to address significant concerns about a teacher's performance, insufficient improvement has been secured, the appraiser will inform the teacher in writing that consideration will be given to whether the appraisal system will still apply. The teacher will be invited to a formal meeting where a proposal to manage their performance under the competence procedure will be considered.

The appraiser will consult with the Head of Service to make arrangements for a formal meeting.

6. Meeting to consider entry into Competence Procedure-Stage One

6.1 Depending on the size of the service, staffing structure and specific context, the Head of Service will determine whether the Appraiser or another senior colleague will present, to a formal competence meeting, the evidence of:

- performance concerns,
- support provided,
- targets for improvement and outcomes,
- review period.

6.2 At least 5 working days' written notice will be given of the meeting, including time, place and right for the teacher to be accompanied by a companion who may be a trade union representative or other representative. The notification will include sufficient information about the performance concerns and their possible consequences, for the teacher to prepare to answer the case at the formal competence meeting. Meetings should be planned to ensure that timings and locations are reasonable to both parties. In the event that the employee or their companion is unable to attend the meeting, an alternative date within 5 working days should be arranged. (See guidance on arranging meetings *Appendix 2*).

6.3 Two working days prior to the meeting, the employee should provide the name of their representative. They should also submit any further evidence they wish to present to support their case at least 2 days before the meeting. The Head of Service, or their nominated representative, will conduct the meeting. The meeting is intended to establish the facts and agree a way forward. The Appraiser (or other nominated staff member, which may be the head of service) will present the concerns and evidence. The Head of Service may be advised by a representative of HR. All the documentation to evidence the concerns (e.g. lesson observation feedback, notes of meetings, pupil data etc.) will have been supplied by the Appraiser/Head of Service at least 5 working days before the meeting.

6.4 The teacher, and their representative, will have the opportunity to respond to the concerns about their performance and to make any relevant representations. They may present further information or a different context to the information/evidence already collected.

6.5 The Head of Service may conclude that there are insufficient grounds for pursuing the competence issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the competence procedure will not be implemented. The Head of Service may also adjourn the meeting, for example if they decide

that further investigation is needed, or that more time is needed in which to consider any additional information supplied. Information may be presented by a member of the School Improvement Service, if relevant.

6.6 If there is no adjournment, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- ensure that the employee is fully aware of the expectations of performance, and the professional shortcomings have been identified.
- ensure that the required standards have been set at a reasonable level;
- consider whether the context in which the employee works has altered significantly and whether this has been addressed;
- explore whether there are underlying health problems affecting performance and whether an occupational health referral is appropriate;
- explore whether there are any personal issues or problems affecting performance;
- consider whether necessary training has been given and recap on support already provided.

If the procedure is to be implemented the person conducting the meeting will:

- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal competence procedures (*this may include the setting of new objectives focused on the specific issues that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*):
- Identify any support that will be available to help the teacher improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The length of timetable designed to enable the teacher to meet the relevant standards will depend on the circumstances of the individual case but will be of *between four (exceptional cases only) and ten weeks' duration. It is for the service to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place (it is expected that the maximum period for improvement will be utilised, other than in exceptional cases. It is advised that there is an interim review meeting with all relevant parties at around 5/6 weeks, which may determine necessary amendments to the plan)*; and

- warn the teacher formally, in writing, that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

The teacher should be invited to contribute to and comment upon the content of the programme for improvement, in order that it most effectively meets their development needs. Ideally the action plan to be followed should be agreed with the teacher. The head of service should arrange for an early meeting with the teacher and his/her representative, once the programme has been distributed, to hear any further comment or suggestions from the teacher or their representative. It is important to allow sufficient time for the support to be absorbed by the teacher and to make a difference to their practice.

- 6.7 Where a warning is issued, this will be confirmed in writing to the teacher within 5 working days of the meeting, with information about the procedure and time limits for submitting an appeal.

Details relating to lodging appeals are given below. Where a teacher appeals against a decision to issue a warning, the appeal will be heard by a senior manager of grade 15 (equivalent) or above from the Leadership Job Family and an HR officer will advise. Lodging of an appeal will not delay the commencement of the programme of support and monitoring but will mean that the teacher is not yet deemed to have entered the formal competence procedure.

- 6.8 Notes will be taken of formal meetings and a copy sent to the member of staff. The teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage as soon as possible, and within 10 working days.

7. Monitoring and Review Period following a Formal Competence Meeting

- 7.1 A performance monitoring and review period will follow the formal competence meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Regular feedback will be provided to the teacher on their performance and progress. The provision of the identified support and its impact will be monitored. *Regular review of progress, collaboration on how to address any problems, build on success and adapt the programme to maximise effectiveness is recommended. Heads of Service are advised to hold an interim review meeting with the teacher, their representative and an adviser from HR to share progress and consider whether any changes need to be made to the plan.*
- 7.2 At the end of the review period the member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

- 7.3 At any stage in the competence procedure a review period may be cut short if there is evidence that the concerns about the teacher's performance are so serious that no learning is taking place, or the health, safety or welfare of children is at risk. In these circumstances an early review meeting will take place and consideration will be given to the issue of a final written warning (if not already in place).
- 7.4 The teacher will be reminded of the necessity to cooperate with the process of addressing the concerns about their performance.

8. Formal Review Meeting- Consideration of Progression to Stage 2

- 8.1 As with the formal competence meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. All material to be utilised in the meeting will be provided at least five working days in advance.
- 8.2 The Head of Service will Chair the meeting, unless they have been involved in supporting the teacher during the process, in which case the meeting will be chaired by a manager from the Leadership job family. They will be advised by a HR representative. The appraiser/senior teacher monitoring the competence procedure will present the evidence from the review period.
- 8.3 The teacher will have the opportunity to respond.

If the Chair of the meeting is satisfied that the teacher has made sufficient improvement, the competence procedure will cease and the appraisal process will re-start.

- If some progress/improvement has been made, standards partially met and there is confidence that further necessary improvement is likely, it may be appropriate to extend the monitoring and review period. The programme of support and monitoring will be reviewed. The total period allowed for making the necessary improvement to meet and sustain the required standards may exceed 10 weeks in these circumstances. *(The Chair will take into account whether any previous extensions to programmes for improvement have been implemented, since the current performance concerns were identified and the overall context.)*
- The Chair has the discretion to extend the review period for a further time to ensure that the required level of performance is consistently sustained without support. This should not normally exceed 6 weeks.

- If no, or insufficient, improvement has been made during the monitoring and review period, the procedure will move to Stage Two and the teacher will receive a final written warning, unless there are contextual reasons identified that have prevented the improvement sought.
- If the employee has reached the agreed standard of performance, the procedure may cease at this point and this will be confirmed to the employee within five working days of the review meeting. The warning letter issued at Stage One will remain live for 12 months. If there is a re-occurrence of related performance concerns after 2 Derbyshire terms but within the 12 months, the process will be re-instated with a meeting to consider entry into Stage One of the Formal Competence Procedure.

9. Implementation of Stage Two

9.1. The purpose of the Stage Two meeting is to reiterate the ongoing areas of concern and to agree a way forward. The following may be revised in the light of any progress made or further clarification of the performance concerns:

- Identification of the professional shortcomings, in relation to expected standards and targets previously set.
- Clear guidance on the improved standard of performance required to remove the teacher from the competence procedure (the specific objectives may be revised to focus on the outstanding areas of underperformance, success criteria refined and any further evidence to be utilised in assessing improvement identified)
- Support provided may be reviewed and amended, taking account of the need for teachers to demonstrate that the required standards can be sustained once the programme is completed.
- The timetable for improvement will be set out, monitoring and review arrangements clarified. The timetable will depend on the circumstances of the individual case. The period will be reasonable and proportionate to provide sufficient opportunity for improvement to take place. The review period will be between 4 and 10 weeks in length. It is anticipated that the maximum period for improvement will be utilised unless there are exceptional circumstances. *Heads of Service are advised to hold an interim review meeting with the teacher, their representative and an adviser from HR to share progress and consider whether any changes need to be made to the plan.*

9.2. Where a final written warning is issued it will mirror any previous warnings given and will be provided within five working days. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the

procedure and time limits for appealing against the final warning. Arrangements for lodging appeals are detailed below. Where a teacher appeals against a decision to issue a final written warning, the appeal will be heard by a senior manager of grade 15 (equivalent) or above from the Leadership Job Family.

- 9.3. Notes of the formal review meeting will be taken and a copy sent to the member of staff. The details of the standards to be achieved, relevant support and handling of the further monitoring and review period will be included. This written confirmation will be provided as soon as possible and within 10 working days.
- 9.4. At the end of the review period, a Stage Two review meeting will take place. The teacher will be invited to attend the Stage Two review meeting and has the right to be accompanied and represented by their trade union representative or work colleague. The Head of Service (or an alternative Chair) may be supported by their HR adviser.
- 9.5. If the employee has reached the agreed standard of performance, the employee will be told that the procedure ceases and this will be confirmed by the Head of Service/Chair of meeting in writing within five working days of the meeting. The existing final written warning will remain live for a period of 18 months. If there is a re-occurrence of related performance concerns after 2 terms but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.
- 9.6. The Head of Service/Chair of meeting should make this decision only if there is strong evidence that performance now meets the relevant standards and can be sustained.
- 9.7. The Head of Service/Chair of meeting has the discretion to extend this review period to ensure the required level of performance is consistently sustained without support. This period should not normally exceed 6 weeks.
- 9.8. If the teacher has failed to achieve the agreed standards, the Head of Service/Chair of meeting will advise the employee that the process will move to the final stage and arrange for a Decision Meeting to be held with an appropriate manager of grade 15 (or equivalent) or above from the Leadership Job Family (Hearing Officer).
- 9.9. The Head of Service/Chair of meeting will assess whether any additional arrangements are required to ensure that the education received by relevant pupils remains at least satisfactory during this period.

10. Decision Meeting

The case will be presented by the Head of Service and heard by a senior manager from the leadership Job Family (Hearing Officer).

10.1 As with formal competence meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or trade union representative who has been certified by their union as being competent. The letter will outline the purpose of the Decision Meeting and advise the employee that a possible outcome may be dismissal. All documents to be relied upon at the decision meeting will be provided at least five working days in advance. The teacher should be notified of any witnesses to be called and the authority notified by the teacher of any witnesses he/she proposes to call. The teacher may present further evidence to support their case; this should be submitted at least 2 working days before the meeting.

If the teacher, or their companion is unable to attend the meeting, an alternative date within five working days of the original meeting should be arranged. (see guidance on arranging meetings *Appendix 2*) At least two working days prior to the meeting, the teacher should provide the name of their companion.

10.2 The Hearing Officer will conduct the meeting. The Head of Service will be advised by HR and the meeting Chair will be advised by a HR or legal /adviser.

- The Head of Service will present the case and may call any senior member of staff who conducted the support and monitoring procedure as a witness. Other witnesses may be called if appropriate. (e.g. School Improvement Advisers who have evaluated performance)
- The teacher/representative will have the opportunity to ask questions.
- The Chair will have the opportunity to ask questions. (Any witness to then withdraw)
- The teacher/representative will present their response to the performance concerns and any other relevant information. They may call witnesses, if appropriate.
- The person presenting the case will have the opportunity to ask questions.
- The Chair will have the opportunity to ask questions. (Any witness to then withdraw)
- The person presenting the case and the teacher (or representative) will each have the opportunity to sum up.
- The person presenting the case, the teacher and their representative, will all withdraw. The Chair will consider the case and reach a decision. The HR/legal representative will provide advice and guidance.

10.3 If the Chair decides that the employee will not be dismissed, the final written warning will remain in place for 18 months and the employee will be

expected to sustain the agreed level of performance. The Chair will indicate whether there should be a further review period within the Formal Competence procedure. If there is a re-occurrence of related performance concerns after 2 Derbyshire Terms, but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.

If the Chair decides to dismiss the teacher, they will be informed in writing as soon as possible, within five working days, of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. It is expected that the teacher will be suspended from teaching duties, pending outcome of any appeal.

11. Decision to Dismiss

Once the decision to dismiss has been taken, the Local Authority will dismiss the teacher with notice

12. Appeal

If a teacher feels that a decision to dismiss them, or other action taken against them under this policy, is wrong or unjust, they may appeal in writing against the decision within five working days of the written notification of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply, as with formal competence meetings and review meetings. As with other formal meetings, notes will be taken and a copy sent to the teacher.

An appeal will be dealt with impartially and, by persons who have not previously been involved in the case. The Executive Director will be advised by a representative of legal services.

- An appeal against dismissal is to Executive Directors and this must be registered in a letter to the Director of Organisational Development & Policy within five working days of receipt of the written notification of the hearing decision.
- An appeal against any other outcome must be registered in a letter to the Executive Director, Children's Services within the same timescales
- Appeals will be heard by an Executive Director or a member of their Senior Management Team, normally from a different Department to that in which the original hearing was heard.

The employee will receive a reply to the appeal letter within five working days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of five working days' notice of the appeal date.

Any statements of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeal Panel and other party at least five working days prior to the hearing.

Legal and HR Advisors may attend the appeal.

A legal adviser will be present at any appeal against dismissal.

The employee has a right to be accompanied at the appeal by a colleague or trade union colleague.

The employee will be informed of the outcome of the appeal in writing within five working days. That outcome is the final stage within the Council's procedures.

13. Appeal Procedure

- The Head of Service - accompanied by the Chair of the Decision Meeting, where appropriate (The Presenting Officer) will present the case for dismissal and explain the reasons for their decision. Other witnesses may be called.
- The teacher/representative may ask questions of the presenting officer or any other witnesses called.
- The Executive Director may ask questions of the presenting officer or any other witnesses called. (Witnesses will then leave)
- The teacher/representative will present their case and may call witnesses
- The presenting officer may ask questions of the teacher and any witnesses called.
- The Executive Director, may ask questions of the teacher and any witnesses called. (Witnesses will then leave)
- The presenting officer may sum up
- The teacher/representative will have the opportunity to sum up.
- The presenting officer, teacher and representative will all withdraw. The Executive Director, will reach a decision and will be advised by a member of legal services.

The teacher will be recalled and informed of the outcome of the appeal hearing in person where possible. The appeal may be upheld in the employee's favour, the

original decision confirmed or different sanctions applied. The outcome will be confirmed to the teacher in writing within five working days. The decision is final.

****If the teacher's grounds of appeal are confined to certain aspects of the case or are procedural, then the teacher will be asked to present their appeal first and the Head of Service or chair of decision meeting present their response second, following the same pattern as set out above.***

14. Competence Procedure for Heads of Service (employed on School Teachers' Pay & Conditions)

14.1. Where a senior officer undertaking the Head of Service's appraisal has concerns about their performance or evidence of concerns has been referred to them, they will first follow the Appraisal Policy to address these concerns. The Appraiser is advised to call an interim review meeting with the Head of Service, during the programme of improvement within appraisal. If there are concerns about progress through the plan, a meeting outside of the Appraisal process, where the Head of Service's representative and a HR officer are also invited, is advisable. This meeting can address any wider context and seek to ensure that the plan for improvement is as robust as possible (*Please see Appraisal Policy, Teachers Experiencing Difficulties section and additional advice*).

14.2. If it is assessed that there has been insufficient improvement and the programme of support and monitoring has been delivered, The Head of Service will either be informed that the issues will continue to be addressed through the appraisal process or receive written notification that a formal meeting will be held to consider whether the Appraisal Policy should no longer apply and that their performance should be managed through the Competence Procedure.

15. Meeting to consider entry into Competence Procedure – Stage One

15.1 When it has been assessed to be necessary to consider entry into the Formal Competence Procedure, the Head of Service will be given at least five working days' notice of a meeting to consider the application of the formal competence procedure. The notification will contain sufficient information about the performance concerns and their possible consequences to enable the Head of Service to prepare to answer the case at a formal hearing. It will contain:

- copies of any written evidence of performance concerns;
- support provided and review period
- the details of the time and place of the meeting;

and will advise the Head of Service of their right to be accompanied by a companion, who may be a colleague, trade union official, or a trade union representative who has been certified by their union as being competent.

Meetings should be planned to ensure that timings and locations are reasonable for all parties. In the event of the employee or their representative being unable to attend the meeting, an alternative date within five working days should be arranged (see advice on arranging meetings – *Appendix 2*).

- 15.2 A manager from the Leadership Job Family (of appropriate seniority) will conduct the meeting. The Appraiser will present the case, a relevant LA Adviser may be called to provide a further professional assessment of the evidence giving rise to concerns and the expected standards of performance.

In addition, the Chair of the hearing will be advised by a representative of HR, on the conduct of the meeting.

- 15.3 The formal Competence Meeting will be conducted as detailed in paragraphs 6.1 to 6.8 of the Competence Procedure, including notification of right of appeal.
- 15.4 Local Authority Adviser(s) may be commissioned to undertake support/monitoring and evaluation roles in the programme adopted in order to bring about the necessary improvement. All details of the review period, formal warning and appeal information will be provided to the Head of Service in writing as described above.

16. Monitoring and Review Period Following a Formal Competence Meeting

- 16.1. A performance monitoring and review period will follow the formal competence meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Regular feedback on performance, progress towards meeting the appropriate standards will be provided. The delivery of any support detailed in the programme, and its impact, will be monitored. It is advised that an interim review meeting with all parties is held to share progress and consider whether any amendments should be made to the programme for improvement. At the conclusion of the review period, the Head of Service will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting.
- 16.2. At any stage in the competence procedure, a review period may be cut short if there is evidence that the concerns about performance are so serious that no learning is taking place or the health, safety and welfare of children is at risk. In these circumstances an early review meeting will take place and consideration given to the issue of a final written warning (if not already in place).

- 16.3. The Head of Service will be reminded of the necessity to co-operate with the process of addressing the concerns about their performance.

17. Formal Review Meeting

- 17.1. Any evidence to be considered at the meeting will be provided at least five working days in advance of the meeting. The manager from the Leadership Job Family (grade 15 equivalent or above) will chair the meeting and will be advised by a representative of HR. If a Local Authority Adviser has been commissioned to monitor and evaluate progress and improvement, they may present their findings in person.
- 17.2. The Head of Service may be accompanied by a companion who may be a colleague, trade union official or a trade union representative who has been certified by their union as being competent.
- 17.3. After the evidence has been presented by the Appraiser (and Adviser where involved), the Head of Service will have the opportunity to respond. The Chair will withdraw to consider their decision, advised by HR.

If the chair is satisfied that the Head of Service has made sufficient improvement, the competence procedure will cease and the appraisal process will restart.

- If some significant progress/improvement has been made and there is confidence that there is the capacity and likelihood that this will continue, it may be appropriate to extend the monitoring and review period (*Account will be taken of any previous extensions to the timetable for improvement, since the performance concerns were first identified*)
- The programme of support and monitoring will be reviewed. The total period allowed for making the necessary improvement to meet and sustain the required performance may exceed 10 weeks in these circumstances;
- if the Chair of the meeting exercises the discretion to extend the review period to ensure that the required level of performance is consistently sustained without support, this should not exceed 6 weeks.
- If no, or insufficient, improvement has been made during the monitoring and review period, the procedure will move to Stage Two and the Head of Service will receive a final written warning, unless there are contextual reasons identified that have prevented the improvement sought.
- If the Chair is satisfied that the Head of Service has made sufficient improvement, the competence procedure will cease and the appraisal process will re-start. This will be confirmed to the Head of Service in writing within 5 working days. The warning letter issued at Stage One will remain live for 12 months. If there is a re-occurrence of related performance concerns after 2 Derbyshire terms but within the 12 months, the process will

be re-instated with a meeting to consider entry into Stage One of the Formal Competence procedure.

18. Implementation of Stage Two

18.1. The purpose of the Stage Two meeting is to reiterate the ongoing areas of concern and to agree a way forward. The following may be revised in the light of any progress made or further clarification of the performance concerns:

- Identification of the professional shortcomings, in relation to expected standards and targets previously set.
- Clear guidance on the improved standard of performance required to remove the teacher from the competence procedure (the specific objectives may be revised to focus on the outstanding areas of underperformance, success criteria refined and any further evidence to be utilised in assessing improvement identified)
- Support provided may be reviewed and amended, taking account of the need for teachers to demonstrate that the required standards can be sustained once the programme is completed.
- The timetable for improvement will be set out, monitoring and review arrangements clarified. The timetable will depend on the circumstances of the individual case. The period will be reasonable and proportionate to provide sufficient opportunity for improvement to take place. The review period will be between 4 and 10 weeks in length. It is anticipated that the maximum period for improvement will be utilised unless there are exceptional circumstances. *Appraisers/Senior managers conducting the process are advised to hold an interim review meeting with the Head of Service, their representative and an adviser from HR to share progress and consider whether any changes need to be made to the plan. It is possible for the period to be extended for no more than 6 weeks, if good reason to do so is identified. (eg This might be owing to a delay in the delivery of development opportunities, service contextual issues, significant progress underway but confidence needed that it can be sustained.)*

Within ten working days the notes of the formal review meeting will be copied to the Head of Service.

18.2. The final warning will be confirmed in writing within five working days and will mirror any previous warnings that have been issued. Where a final written warning is issued, the Head of Service will be informed in writing that failure to achieve an acceptable standard of performance, within the set timescale, may result in dismissal.

18.3. The Head of Service will also be informed of the arrangements and time limits for appealing against the final written warning. Details relating to

lodging appeals are given below. Where a Head of Service appeals against a decision to issue a warning or final written warning, this will be heard by a manager of the leadership Job Family (of appropriate seniority, grade 15 equivalent or above), who will be advised by an officer from HR.

- 18.4. At the end of the review period, a Stage Two review meeting will take place.
- 18.5. The Head of Service will be invited to attend the Stage Two review meeting and has the right to be accompanied and represented by their trade union representative or work colleague. The Chair of the meeting may be supported by their HR adviser.
- 18.6. If the employee has reached the agreed standard of performance, the employee will be told that the procedure ceases and this will be confirmed in writing within five working days of the meeting. The existing final written warning will remain live for a period of 18 months. If there is a re-occurrence of related performance concerns after 2 terms but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.
- 18.7. The Chair of meeting should make this decision only if there is strong evidence that performance now meets the relevant standards and can be sustained.
- 18.8. The Chair of meeting has the discretion to extend this review period to ensure the required level of performance is consistently sustained without support. This period should not normally exceed 6 weeks.
- 18.9. If the Head of Service has failed to achieve the agreed standards, the Chair of meeting will advise the employee that the process will move to the final stage and arrange for a Decision Meeting to be held with a different manager of grade 15 (equivalent) or above from the Leadership Job Family.
- 18.10. The Chair of the meeting will assess whether any additional arrangements are required to ensure that the education received by relevant pupils remains at least satisfactory during this period.

19. Decision Meeting

- 19.1 The Appraiser will consult with the Local Authority adviser (if involved) and HR at the end of the review period to assess whether it appears as if sufficient improvement has been made. Depending on the evidence, the Appraiser will follow either a) or b) below.
 - a) Where the initial review of the evidence from the Appraiser suggests that sufficient improvement may have been secured, the decision meeting will be arranged as follows:

At least five working days' notice will be given and the Head of Service will be advised of the time, place and right to be accompanied. All documents

to be relied upon in the meeting will be issued at least five working days in advance.

If the Head of Service, or their companion/representative, is unable to attend the meeting an alternative date within five working days of the original meeting should be arranged, or mutually agreed alternative date (see guidance on arranging meetings – *Appendix 2*). At least 2 working days prior to the meeting the Head of Service should provide the name of their companion/representative.

The manager from the Leadership Job Family, of appropriate seniority, will chair the meeting and consider the evidence of concerns/improvement provided by the senior officer presenting the case and the Head of Service's response. If an acceptable standard of performance is confirmed as having been achieved during the further monitoring and review period, the competence procedure will end and the appraisal process will re-start. The Chair has the discretion to extend the review period to ensure the required level of performance is consistently sustained without support. This period should not normally exceed 6 weeks. In making this decision the Chair may receive advice from the HR adviser.

- b) Where the initial review of evidence by Chair suggests there is case to be heard, that the improvement may not have been sufficient and the expected standards of performance may not have been met, he/she will refer the matter for a Decision meeting.

19.2 As with formal competence meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the Head of Service of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. All parties provided with any documents to be relied upon in considering the case, at least five working days in advance of the meeting.

19.3 Procedure of the Decision Meeting:

- The manager from the Leadership Job Family who chairs the meeting will be advised by a HR officer.
- The Presenting Officer/Appraiser will present the case. She/he may call witnesses.
- The Head of Service/representative will have the opportunity to ask questions
- The Chair may ask questions
- Any witness will withdraw
- The Head of Service/representative will have the opportunity to present their response.
- The Head of Service may call witnesses
- The Presenting Officer/Appraiser will have the opportunity to ask questions
- The Chair may ask questions

- Any witness will withdraw
- The Presenting Officer/Appraiser may sum up
- The Head of Service/representative will have the opportunity to sum up.
- The Presenting Officer/Appraiser, Head of Service and their representative will leave the meeting.

The Chair will reach a decision and will receive advice and guidance on procedure from HR.

The Head of Service, Presenting Officer/Appraiser will be recalled and informed in person of the outcome of the meeting, wherever possible.

19.4 Where relevant, the Head of Service will be informed as soon as possible, and within five working days, in writing of the reasons for their dismissal, the date on which employment will end, the appropriate period of notice and their right of appeal.

19.5 Where the Chair decides not to dismiss the Head of Service, the final written warning will remain in place for 18 months and the Head of Service will be expected to maintain the agreed level of performance. The Chair will indicate whether a further review period within the procedure should be implemented. If there is a re-occurrence of related performance concerns after 2 Derbyshire Terms, but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.

20. Appeal

If a Head of Service feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of the written notification of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion/representative will apply, as with formal competence meetings and review meetings. As with other formal meetings, notes will be taken and a copy sent to the Head of Service.

- Appeals against a decision to issue a written warning or final written warning will be heard by an appropriate manager from the Leadership Job Family (grade 15 equivalent or above).
- Appeals against dismissal will be heard by the Executive Director

An appeal will be dealt with impartially and, by persons who have not previously been involved in the case. The Executive Director will be advised by a representative of legal services.

21. Appeal Procedure

(see * below)

- The presenting officer/Appraiser will present the case for dismissal. (The Chair of the decision meeting will be available to explain the reasons for their decision).
- They may call witnesses
- The Head of Service/representative may ask questions of the Appraiser/Chair or any witnesses called.
- Executive Director/ appropriate manager from the Leadership Job Family may ask questions of the presenting officer/ Appraiser or any witnesses called.
- The Head of Service/representative will present their case and may call witnesses
- The presenting officer/Appraiser may ask questions of the Head of Service and any witnesses called.
- Executive Director / appropriate manager from the Leadership Job Family may ask questions of the Head of Service and any witnesses called
- The presenting officer/Appraiser may sum up
- The Head of Service/representative will have the opportunity to sum up.
- The presenting officer/Appraiser, Head of Service and representative will all withdraw. Executive Director/ appropriate manager from the Leadership Job Family will reach a decision and will be advised by the legal representative.
- The Head of Service will be recalled and informed of the outcome of the appeal hearing in person where possible. The outcome will be confirmed to the Head of Service in writing within five working days.

***Where the Head of Service's appeal relates to a specific part of the previous case for dismissal or is procedural, then the Head of Service will be asked to present their appeal first and the Appraiser/Chair of Decision Meeting will present their response second.**

22. References

Where a member of the teaching staff at a school (or other establishment) applies for a teaching post at another school, which is a maintained school or an Academy, the appropriate Body must advise in writing whether or not the teacher has, in the preceding 2 years, been the subject of formal competence procedures. (These procedures are referred to as Capability procedures in the legislation and by some

LAs and schools). The Appropriate Body must provide written details of the concerns which gave rise to the application of the procedure, the duration of the process and their outcome.

This requirement would apply to the Local Authority in the case of teachers employed by the Local Authority and not attached to schools.

There is a general expectation of employers that any reference provided is honest, truthful and fair. It is necessary that the reference would stand up to scrutiny and legal challenge. It is good practice to discuss the contents of a reference with a member of staff, as it should only contain fact and judgements that have already been shared with them. Although employers may state that they have supplied a confidential reference, it is likely the subject of the reference could obtain a copy through a Data Protection Act – Subject Access Request as this is the case Heads of Service are recommended to inform prospective employers that they have shared the reference with the employee.

23. Reporting

Should the council dismiss a teacher on the grounds of lack of competence and failure to meet relevant standards there is no longer a requirement to report this to a central body. The General Teaching Council was decommissioned in 2012 and any orders made by that body still stand.

The Teachers Regulation Agency deals with cases of serious misconduct, where a teacher has been, or was likely to be, dismissed if they had not resigned. Therefore the TRA may use Part Two of the Teachers' Standards when hearing cases of serious misconduct, as these relate to personal and professional conduct. At the Local Authority such circumstances are appropriately dealt with through application of their Disciplinary Procedure.

24. General Principles Underlying This Policy

ACAS Code of Practice on Disciplinary and Grievance Procedures.

The policy will be implemented with the provisions of the ACAS Code of Practice.

Consistency of Treatment and Fairness

The Council is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Definitions

Unless indicated otherwise, all references to “teacher” include the heads of the teaching support services.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the heads of service and the Executive Director (or his/her representative) to quality-assure the operation and effectiveness of the system for managing teacher underperformance. Heads of Service will monitor the evaluation of teacher performance by other appraisers within the service to ensure appropriate standards are utilised and that any programmes for improvement reflect the appropriate level of challenge and support. The Executive Director will correlate performance management reports on the outcomes for each education support service with the annual report on teacher appraisal and recommendations for performance pay progression in order to identify whether development areas are being addressed.

Grievances

Where a member of staff raises a grievance relating to the competence procedure, the procedure may be temporarily suspended in order to deal with the grievance. However it may be appropriate to deal with both issues concurrently. The Head of Service or senior manager is advised to consult with HR.

Monitoring and Evaluation

The council will monitor and evaluate the procedure. The review will be conducted in consultation with the recognised unions and professional associations representing teachers, through the Schools' Joint Consultative Committee (SJCC).

Advice and Guidance for Heads of Service and Managers

Introduction

The majority of services will not need to utilise the Formal Competence Procedure particularly if the following are in place:-

- A robust appraisal process, which is monitored and evaluated by the Head of Service and Assistant Director.
- Continuing professional development for all staff is clearly linked to appraisal and the service and Council's priorities.
- A collaborative approach to the development of quality of teaching & learning, through reflective practise and regular reference to the Teachers' Standards is embedded.
- Regular leadership development is undertaken to ensure senior staff can offer clarity of expectations and support to their teams.
- The service has a range of data (hard and soft) to inform the identification of areas for development and this regularly prompts appropriate action.
- The culture of the service supports and values all members of the service and facilitates them in contributing to their full potential.

The Context of Teachers Experiencing Difficulties

Heads of Service and managers are advised to read the document 'Appraisal – Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring', as much of the advice and guidance provided there concerning the delivery of support and monitoring programmes is also relevant to managing the successful application of the Formal Competence Procedure.

The context for tackling performance concerns is also addressed in paragraph 3 of this document, 'Introduction'.

Teachers with Health Problems

Teachers with health problems or those experiencing stress may require particular support.

The performance of teachers experiencing personal crisis, or a challenging context in their wider life, may decline. Managers will want to support such staff through

difficult periods and minimise any impact on the education of pupils. The Head of Service will need to use their professional judgement to determine, on balance, where the application of the competence procedure is appropriate and necessary, in such circumstances.

Heads of Service will be aware of any adjustments required to support teachers with a disability in the workplace and may seek further advice from Occupational Health when considering issues of underperformance from such staff. They are also advised to seek advice from HR to ensure the needs of staff who are covered by Equality Act 2010 are addressed.

Where a member of staff has been diagnosed with workplace stress, a risk assessment should be conducted. (A form and guidance are available from the Council's Health & Safety section) The Council's policy for the management of stress will provide further guidance. A proactive approach to identifying and responding to any sources of stress, in collaboration with the teacher, their professional association representative (where relevant), and HR adviser is recommended.

It is recognised that a proposal to initiate the Formal Competence Procedure may, in itself, be a cause of stress, therefore managers should plan to mitigate this effect through the quality of professional relationships, communication, positive approach and consideration for the colleague's dignity that is displayed.

The inclusion of mentoring that provides personal support, as well as professional guidance, in the programme drawn up to facilitate improvement of the teachers performance, is recommended.

III Health Absence

a) Before or at the outset of Formal Competence Procedures

Where a teacher is absent due to ill health just before the meeting called to determine whether the procedure should be applied or soon after a decision is made, clearly the procedure cannot progress further until the teacher returns.

It should be made clear that the procedure will be applied after a suitable settling in period on their return.

If the meeting to consider transfer from Appraisal has not taken place it is advised that this be arranged a couple of weeks after their return. If the decision to enter the competence procedure has already been made, the teacher may be given a settling in period with support to develop his/her practice (as defined in the programme of support and monitoring) but the introduction of formal monitoring is deferred. This period should not exceed 4 weeks. During this time the teacher may be expected to co-operate with development activities and receive feedback from a coach or mentor.

The period allowed for the necessary improvement, when the formal monitoring of progress will be implemented, should commence at the end of the settling in period.

The support programme should specifically include arrangements to take account of the teacher's health and to minimise any potential for the procedure to contribute to a recurrence of ill health.

The advice of the Occupational Health Physician may be sought, as appropriate, concerning the teacher's fitness for work and any implications of their health for the continued application of the competence procedure.

Long term absence should be addressed through the Attendance Management procedure, which also includes the process for dealing with repeated short term absences.

b) Absence in the Early Stages of Formal Competence Procedures

The aim of the procedure is to improve performance through targeted support and regular developmental feedback. Unless there is consideration of issuing a final written warning at the same time as the teacher is notified of entry into the formal competence procedure (*exceptional cases*), there are potentially two periods of support and monitoring each of between 4 and 10 weeks. (normally the maximum period would be utilised)

Where a teacher is absent due to ill health during the first period, a decision cannot be made on whether to issue another warning at the time of review, unless:-

- the absence is short and they have returned before the review, or
- the teacher's absence only commenced just before the formal review meeting at the scheduled end of Stage One and sufficient evidence of progress and capacity to improve has been generated **and**
- the review meeting can still be held. (*It is possible that the teacher is sufficiently fit to attend the meeting even if they are not fully fit for work. The advice of occupational health should be sought.*) It may be possible to hold the review meeting in the teacher's absence through their representation by a professional association.

Otherwise, when the teacher returns to work, a settling in period, as described above, should be identified before the procedure continues.

Reviewing and revising the programme of support and monitoring should be considered and the teacher's health should be taken into account in any updated programme. The agreed programme of support should include arrangements to address and minimise the potential effects of the application of the competence procedure on the teacher's health and, in particular, a re-occurrence of previously experienced health concerns. Managers are advised to consult the Attendance Management and Stress Management Policies to facilitate consideration of the individual's situation.

Short absences of up to 2 weeks may not delay the timetable for the formal competence procedure, depending on the length of the review period and whether there has been sufficient time for the identified support to be delivered, enacted and consolidated.

c) Absence in the later stages of Formal Competence Procedures

As already stated, Formal Competence Procedure should last for between 8 and 20 weeks. Where a teacher is absent due to ill health towards the end, or in the later stages (the second period of 4 to 10 weeks) of Formal Competence Procedures what action is taken will depend on the teacher's progress so far. The decision may be easier where the period has almost run its course and Formal Competence Procedures are close to a conclusion.

Reasonable steps should be taken to enable the teacher to attend evaluation meetings. Where the teacher is unable to attend, these may proceed in their absence, if delay would otherwise compromise the maximum timescale set aside for the procedure. The teacher's Professional Association Representative will be invited to attend and make a statement or representations on their behalf. A full and detailed record of the review should be provided in the letter confirming the decision taken.

If the teacher has made significant progress, and there is evidence to support this, they may be removed from Formal Competence Procedures.

If no significant sustainable progress has been made, or this is limited, and there is substantial evidence to support the view that Formal Competence Procedures will result in potential dismissal the Procedure should continue on this basis. In these circumstances the Head of Service, in the case of other teachers, or the relevant member of Children's Services senior management, in the case of the Head of Service, must decide what action should be taken.

The options are to:

1. Postpone Formal Competence Procedures until the teacher returns and implement the Attendance Management Procedure.
2. Continue Formal Competence Procedures.

In reaching a decision the Head of Service, in the case of other teachers, or senior manager, in the case of the Head of Service, will need to consider:

- The likelihood of significant sustainable progress being made during the remaining weeks of Formal Competence Procedures.
- The impact that a prolonged period before the situation is resolved will have on the effective, efficient management and operation of the service.
- The extent to which known ill health has now, or previously, affected the teacher's performance.

Particular attention should be paid to the last of these as this is a potential source of significant challenge to a decision to continue Formal Competence Procedures.

If the decision is to postpone Formal Competence Procedures it should be made clear to the teacher that Formal Competence Procedures will continue, after a suitable settling in period of no longer than four weeks, when they return. As already indicated it will be necessary to take account of the potential effects of ill health on the teacher's performance. The agreed programme of support should, therefore, include arrangements to address and minimise those potential effects to avoid action that may lead to a reoccurrence of ill health and therefore potential challenges to subsequent decisions.

If the decision is to continue Formal Competence Procedures the matter should be referred to an appropriate manager from the Leadership Job Family for a decision on the outcome of Formal Competence Procedures as set out in the Competence Procedure adopted by Council. The manager will be advised by a member of legal services. The manager will need to be presented with all the available evidence and circumstances before deciding whether to:

1. Postpone Formal Competence Procedures until the teacher returns and implement Attendance Management Procedure
2. Dismiss the teacher on the grounds of competence

If the decision is to dismiss, this will probably be challenged. The manager will therefore need to be satisfied and confident that there is substantial evidence to support its decision. In particular, that any further period of structured support, monitoring and review would not have led to significant and acceptable improvement in performance. Also, Council must ensure that employment rights to representation and appeal are met.

Guidance on the Arrangement of Formal Meetings with staff Involving Union/Professional Association Representatives

The arrangement of a formal meeting with a member of staff is a fairly occasional event in most services. This will particularly be the case in small services.

Such meetings are likely to be in connection with one of the Human Resources policies, e.g. Disciplinary Policy, Absence Management, Competence Procedure. When the need arises to meet with a member of staff in connection with such processes or to arrange a hearing, there is an entitlement for him/her to be accompanied by a chosen representative. This representative will usually be from one of the trade unions or teachers' professional associations.

Senior Leaders are advised to be asked for the name/organisation of the representative, where possible, and make contact to ascertain their availability before setting dates and times. It can be very unsettling and disruptive to relationships, at an already difficult time, when a date is set and then has to be postponed owing to the unavailability of the representative:-

The legal position is as follows (The Employment Relations Act 1999 Section 10, paragraph 4)

"If:

- (a) a worker has a right under this section to be accompanied at a hearing,*
- (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and*
- (c) the worker proposes an alternative time which satisfies subsection (5), the employer must postpone the hearing to the time proposed by the worker.*

5. *An alternative time must—*

- (a) be reasonable, and*
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer".*

Unions/associations are likely to quote this when they are presented with a date they cannot accommodate. The service will have no choice, at this point, but to make new arrangements. This can cause considerable inconvenience for everyone concerned. A further difficulty is likely to be caused because the legal requirement calls for the representative to set a new date, within five days, and this will probably not be convenient for other people involved.

It is best to try and avoid a difficult period where parties struggle to set a mutually suitable date, colleagues (and sometimes pupils) in service may suffer because of the delay and resentment may develop.

Service leaders need to consider the perspective of the employee and their representative. Most employees would not expect to be called to a formal meeting, or any other management process, outside of working hours. The representatives themselves are sometimes employees of the union/association, who have scheduled working time, and branch officials are allocated particular times away from their 'day job' for their union duties. They may struggle to obtain release at other times.

It has been possible, on occasions, to arrange such hearings/meetings in the evenings but Heads of Service should expect to be challenged if making such arrangements. If at all possible, meetings in working hours are also preferable because the participants are more likely to be able to contribute effectively, than at the end of the day.

When informed that a representative cannot attend a meeting and a considerable number of other stakeholders have been assembled (Heads of Service, witnesses, HR Consultant, minute taker), Heads of Service have sometimes challenged the union to send a different representative to facilitate the process and save the impact of further delay on the employee. This is not easy for some associations to accommodate. They may have an agreement where only an individual union representative is authorised to receive the details of the case and to act on the member's behalf.

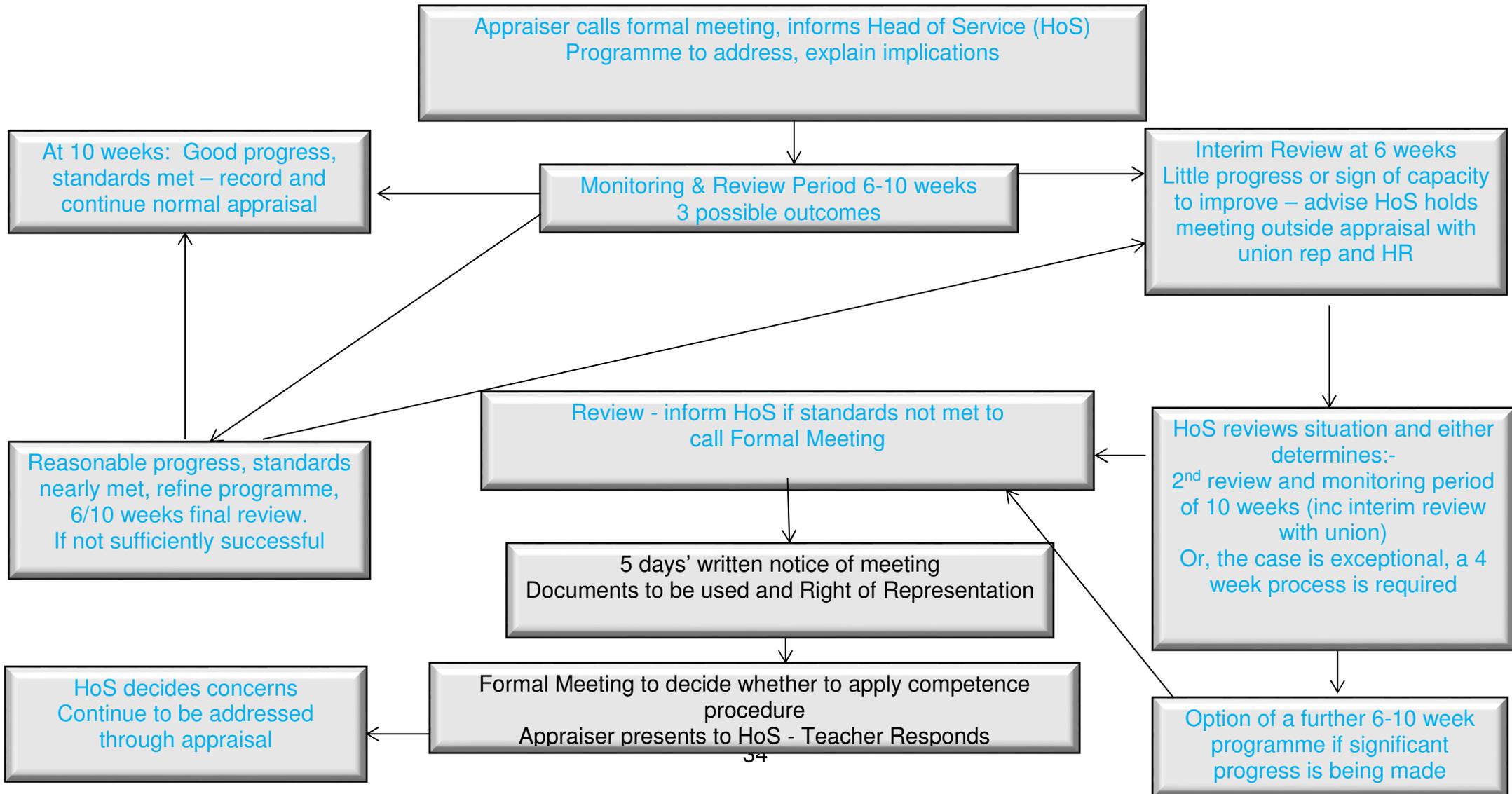
Heads of Service are advised to take these factors into consideration, in order to enable arrangements to be made in co-operative fashion. Alongside this guidance there has also been correspondence to the unions/associations seeking a similarly collaborative approach from their representatives. For instance, in recognising the requirement to co-operate with the process and offer a reasonable number of possible dates when meetings are needed. We reminded the association that just asserting their rights can foster a defensive response.

The need for formal meetings invariably means that there are challenging situations to manage, not just with the employee concerned but also possibly colleagues and the wider service. The 'tone' of all actions in connection with progressing the issue of concern will play a large part in minimising disruption, negative relationships and the ability to re-establish normal working practice afterwards.

Heads of Service may wish to contact the HR Service, if they are having difficulty in working with the unions on these matters.

Dealing with Underperformance- Flowchart - Appendix 3
 (Summary only – Please refer to procedure for necessary detail)

Within Appraisal



**Within
Formal
Competence
Procedure**

