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Dear Colleagues

Procedures to Address Teacher Underperformance

You will be aware that in 2012 the Department for Education (DfE) issued new regulatory guidance on the procedures for addressing teacher underperformance through a formal competence procedure. The Local Authority (LA) is pleased to recommend the attached model policy, which has been revised in the light of the new guidance, for adoption by the Governing Body. This policy has been accepted by the relevant, recognised professional associations/trade unions, following lengthy and detailed consultation through the Schools' Joint Consultative Committee (SJCC).

Concerns Regarding Teacher Performance Within Appraisal

The competence procedure is accompanied by an additional document, 'Appraisal - Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring'. As a consequence of the new DfE guidance there is no longer an informal stage of the competence procedure but there is the requirement to address initial concerns about a teacher's performance through the appraisal cycle. This additional document has been produced to further support schools in implementing this requirement. The LA recognises the importance of tackling issues of concern effectively, as early as possible. This document is recommended for adoption by schools as an Appendix to their Appraisal Policy and it 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 school. It is of critical importance that best use is made of this process and it is sufficiently robust.

The guidance also provides for meetings outside of appraisal, if necessary, where the Headteacher 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 school'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 (Appendix 3) to illustrate the potential steps included in the application of 'Teachers Experiencing Difficulties' during appraisal and how this should link to the Competence Procedure.

With the introduction of this new appendix to the Appraisal Policy it is useful to clarify at what point it is appropriate to propose that a teacher should enter the 'Teachers Experiencing Difficulties' section of the policy.

Colleagues will be aware that 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 school'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 appraisal.

The LA's advice is to adhere to the use of 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 'requires improvement' 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 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 the teaching was assessed as 'requiring improvement', in Ofsted terms. 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 teacher's overall performance, informed by the Teachers' Standards.

Timescales

The timescales recommended for tackling concerns about teacher underperformance during Appraisal are best described on the attached flowchart (Appendix 3). 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 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 new Local Authority (LA) model policy to address the professional competence of teachers 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.

The detail of the policy is written to allow Governing Bodies to determine the level of delegation to the headteacher (see Appendix 1 of the procedure) but the LA advice is for the Headteacher to manage the application of the Competence Procedure and thus for a committee of governors to hear cases where a recommendation is made for a teacher's continued employment in the school to cease and the teacher be dismissed. Alternative paragraphs are provided for schools where the initial decision on the potential dismissal of teachers is delegated to the Headteacher. Please substitute the relevant paragraphs from

sections 9 and 10, as detailed in Appendix 1, and delete sentences as applicable in section 11.

Adoption by the Governing Body

Both the 'Teachers Experiencing Difficulties-Advice on Informal Structured Support and Monitoring' document and the Competence Procedure, with the accompanying flowchart, have been agreed with the recognised professional associations and unions. These are recommended to schools for formal adoption by the governing body. Should a school decide not to adopt the 'Teachers Experiencing Difficulties-Advice on Informal Structured Support and Monitoring' document, make amendments to either document, or adopt another competence procedure, the Governing Body would need to undertake formal consultation with the staff **and** unions on their proposals.

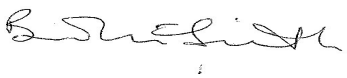
To avoid the need to consult with trade unions at school level, it is only acceptable to adopt and use the Formal Competence Policy in conjunction with the Teachers' Experiencing Difficulty policy, the accompanying flowchart and the advice in this covering letter. These four documents are all inter-related and have been designed to be used as a package.

After adoption of the models provided, the Governing Body should ensure that all relevant staff are made aware and given easy access to any new policy/procedure.

Schools' Appraisal Policies will also need to be reviewed in the light of changes to STPCD, relating to pay progression. The LA will issue a revised version of the sample appraisal policy, published in September 2012, in due course as discussion is already underway through Schools' JCC on a new LA model Teachers' Pay Policy.

If you have any queries concerning the attached documents please contact Teresa Potter or Les Biggs. For advice and guidance with the application of the procedures please contact the consultants of the Schools' Team.

Yours sincerely



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DERBYSHIRE LA

FORMAL COMPETENCE PROCEDURE FOR TEACHERS

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Formal Competence Procedure

Model Policy Statement- Background Information

This policy and procedure is recommended for adoption by Governing Bodies of all schools, including Foundation and Voluntary Aided Schools. It is recommended to Academies who purchase the Local Authority HR Advice and Guidance Service.

The Governing Body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to employee capability (competence).

Where the Governing Body wishes to deviate from this proposed policy or adopt any other policy, it is the responsibility of the Governing Body to arrange consultation with recognised trade unions.

This policy and procedure has been developed in consultation, and agreed, with the recognised professional associations and trade unions.

Where notice of meetings is given in 'working days', these are defined as 'school working days'.

This procedure is not intended to be used for misconduct, which is handled under the disciplinary procedure.

Formal Competence Procedure For Teachers

The Governing Body of Swanwick School and Sports College adopted this procedure on September 2021.It will review it in annually in line with DCC.

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 school.

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 and is the basis on which the Authority can provide support.

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 replaces the General Teaching Council's Code of Conduct in defining the personal and professional conduct expected of teachers and will be utilised by the Department for Education 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 school's discipline 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 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 School's Appraisal Policy. The guidance on policy and procedure applies to all teachers, including Headteachers, deputy Headteachers, and assistant Headteachers employed at the school whether they be 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 school will apply the Management of Sickness Absence procedure, agreed with the teacher associations. Specific guidance is included in appendix….

2.3 These competence guidelines 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. They deal both with assistant teachers and Headteachers, with specific procedures for each detailed.

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 within the schools and from the network of professional services available through the local authority (LA), 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 Headteacher. The responsibility of the governing body, except in the case of the competence of the Headteacher, rests in ensuring that the school has adopted an appropriate competence procedure. If the Governing Body adopts then adapts the LA's Formal Competence Procedure it will be necessary for the school to undertake formal consultation with the recognised teacher trade unions and professional associations. Any Performance Management Policy adopted by the Governing Body should meet

statutory requirements and be reviewed in accordance with the Governing Body's schedule.

3.3 At school level, teachers may look to the advice, support and encouragement available from colleagues, particularly their appraiser under performance management, those with professional leadership roles such as senior members of staff, deputy head and Headteacher.

3.4 Within the Authority a range of professional support services exist and a programme of in-service training for teachers is available. The strength of ongoing in-school, and between schools, forms of professional development (eg coaching, mentoring, peer collaboration, shadowing) are recognized 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 or headteacher'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 Governing Body 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 head teachers,

deputy head teachers and assistant head teachers, who are experiencing performance difficulties will be initially provided with a programme of support and monitoring through the 'Appraisal Policy'. (Also see 'Appraisal-Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring' and the Appraisal/Competence Procedure Flowchart)

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 Governing Body 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), for those in holding Teaching and Learning Responsibility Payments, Advanced Skills Teacher and Excellent Teacher posts, Assistant Headteacher, Deputy Headteacher and Headteacher positions;

- the school has a process where job descriptions will be the subject of regular review and discussion with the postholder 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, AST standards, National Standards for Headship, Excellent Teacher Standards.

4.5 If an issue of competence arises, it is strongly recommended that the Headteacher seeks early advice from HR and may also wish to consult with the school's Link Adviser.

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 (2 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. The Headteacher 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.

4.9 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.

4.10 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 school/pupils.

4.11 Should the employee persistently be unable or unwilling to attend a formal competence meeting, without good cause, the employer should make a decision based on the evidence available. A postponed meeting should be re-arranged within 5 working days. (Please refer to the advice on the arrangement of formal meetings *link)*

5. **Transfer from Appraisal**

It is anticipated 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 Headteacher 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 and document entitled 'Appraisal- Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring')

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 teacher (or other designated senior staff member) 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 school, staffing structure and specific context, the head teacher 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. (please see guidance on arranging formal meetings)

6.3 Two working days prior to the meeting, the employee should provide the name of their companion. They should also submit any further evidence they wish to present to support their case at least 2 days before the meeting. The head teacher 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 teacher themself) will present the concerns and evidence. The Headteacher may be advised by a representative of CAYA HR. (for those purchasing the LA traded service) All the documentation to evidence the concerns (eg lesson observation feedback, notes of meetings, pupil data etc) will have been supplied by the Appraiser/Headteacher 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 teacher 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 teacher 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 Education 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 school 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 teacher 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 practise.

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 one nominated governor. Lodging of an appeal will not delay the commencement of the programme of support and monitoring.

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. As referenced in 6.6, Headteachers are advised to hold an interim review meeting with the teacher, their representative and an adviser from the HR service provider to share progress and consider whether any changes need to be made to the plan.*

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).

7.2 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).

7.3 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 5 working days in advance.

8.2 The head teacher will conduct the meeting and may be advised by a representative of CAYA HR (where schools purchase the HR Advice and Guidance Service). The appraiser/senior teacher monitoring the competence procedure will present the evidence from the review period.

The teacher will have the opportunity to respond.

8.3 If the head teacher 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 Headteacher 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 Headteacher also 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 5 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. *Headteachers are advised to hold an interim review meeting with the teacher, their representative and an adviser from the HR service provider to share progress and consider whether any changes need to be made to the plan.*

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9.2 Where a final written warning is issued it will mirror any previous warnings given and will be provided within 5 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 one nominated governor.

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.

(This section and paragraph 10 may be worded to show the Headteacher conducting the decision meeting and determining whether the teacher should be dismissed. Please see Appendix1)

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 Headteacher 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 Headteacher in writing within 5 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 Headteacher should make this decision only if there is strong evidence that performance now meets the relevant standards and can be sustained.

9.7 The Headteacher 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 Headteacher will advise the employee that the process will move to the final stage and arrange for a Decision Meeting to be held with the appropriate committee of the Governing Body.

9.9 The Headteacher 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

Where the Headteacher has conducted the formal competence programme with the teacher concerned and/or does not have the delegated power, a Governors' sub-committee will hear the case, which will be presented by the Headteacher. It is advised that, as the Headteacher has made previous decisions in the case, it is preferable for the case to be heard by the Governors' sub-committee, even when the Headteacher does have delegated power of dismissal. The procedure where a Governors' sub-committee hears the case is detailed below.

10.1 As with formal competence meetings and formal review meetings, at least

5 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 5 working days in advance. The teacher should be notified of any witnesses to be called and the school 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 5 working days of the original meeting should be arranged. (see advice on arranging formal meetings). At least two working days prior to the meeting, the teacher should provide the name of their companion.

10.2 The Governors' sub-committee will conduct the meeting. The sub-committee will normally consist of 3 Governors. If it is identified that there will be a shortage of Governors available for any appeal (owing to previous involvement in the case or other connection to the teacher) the sub-committee may consist of 2 Governors. For Maintained Schools, at any meeting considering the dismissal of a teacher, a representative of the local authority should be invited to advise. The Headteacher may be supported by their HR adviser and the committee of governors may be supported by a second HR Adviser.

- The person responsible for reviewing the teacher's performance, (usually the Headteacher), through the support and monitoring programme aimed at securing the necessary improvement, will present the case. Alternatively, the Headteacher may present the case and call the senior member of staff (SMT member) who conducted the procedure as a witness. Other witnesses may be called if appropriate. (eg School Improvement Advisers who have evaluated performance)
- The teacher/representative will have the opportunity to ask questions.
- The Governors' sub-committee 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 Governors' sub-committee 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 Governors' sub-committee will consider the case and reach a decision. The LA representative will provide advice and guidance.

10.3 If the committee of governors decide 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 committee 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 sub-committee decides to dismiss/require the Authority to dismiss the teacher, they will be informed in writing as soon as possible, within 5 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

[please select either a), b), c) or d below and delete the remainder.]

a) *Either:* The power to dismiss staff in this school rests with the Governing Body.

b) *Or:* The power to dismiss staff in this school has been delegated *to the head teacher/to one or more Governors/to one or more Governors acting with the head teacher (delete as appropriate).*

(NB: the two options above are available only to Foundation Schools, Voluntary Aided Schools and Foundation Special Schools).

c) Or: The power to decide that members of staff should no longer work at this school rests with the Governing Body.

d) Or: The power to decide that members of staff should no longer work at this school has been delegated to *the head teacher/to one or more Governors/to one or more Governors acting with the head teacher.* (*delete as appropriate).*

Dismissal

[please select a) or b) below and delete the alternative]

a) *Either:* Once the decision to dismiss has been taken, the Governing Body (*or insert details of person or people to whom the power to dismiss has been delegated)* will dismiss the teacher with notice, (*Voluntary Aided, Foundation and Foundation Special schools only).*

b) *Or:* Once the Governing Body (*or insert details of person or people to whom the power has been delegated)* has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the

notification. Where they work in more than one school, the local authority must require them to cease to work at this school *(Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only).*

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 5 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.

Appeals against a decision to issue a written warning or final written warning will be heard by one nominated governor.

Appeals against dismissal will be heard by the Appeals Sub-Committee of the Governing Body. The committee will consist of at least as many members as any committee who made the decision to dismiss.

An appeal will be dealt with impartially and by Governors who have not previously been involved in the case. The Governors will be advised by a representative of the Local Authority (in maintained schools- others are advised to utilise the advice and guidance of a HR officer)

For hearings considering dismissal of a teacher, all documents to be relied upon at the appeal hearing will be provided at least 5 working days in advance. Any witnesses to be called will be notified to the teacher and the school at least 5 working days in advance.

12.1 Appeal Procedure

(*see * below)*

- The Headteacher, (accompanied by the Chair of the 1st sub committee, where appropriate) will present the case for dismissal. The Chair of the 1st sub-committee/Headteacher will explain the reasons for the (committee's) decision. Witnesses may be called, if appropriate.

- The teacher/representative may ask questions of the Headteacher, (chair of 1st committee) or any witnesses called.

- The Appeal sub-committee may ask questions of the Headteacher, (chair of the 1st sub-committee) or any witnesses called. (Witnesses will then leave)

- The teacher/representative will present their case and may call witnesses

- The Headteacher/Chair may ask questions of the teacher and any witnesses called.

- The Appeal sub-committee may ask questions of the teacher and any witnesses called. (Witnesses will then leave)

- The Headteacher (Chair of 1st sub-committee) may sum up

- The teacher/representative will have the opportunity to sum up.

The Headteacher/Chair of 1st sub-committee, teacher and representative will all withdraw. The Appeal sub-committee will reach a decision and will be advised by the Local Authority representative.

The teacher will be recalled and informed of the outcome of the appeal hearing in person where possible. The outcome will be confirmed to the teacher in writing within 5 working days.

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 Headteacher/Chair of 1st sub-committee will present their response second, following the same pattern as set out above.

13 Competence Procedure for Headteachers

13.1 Where the sub-group of Governors undertaking the Headteacher's appraisal has concerns about the Headteacher's performance or evidence of concerns has been referred to the group by the Chair of Governors, they will first follow the Appraisal Policy to address these concerns. In these circumstances the group will endeavour to involve the External Adviser in any mid-year review meeting called to consider performance concerns, review progress and draw up an action plan. The Chair of Governors is advised to call an interim review meeting with the Headteacher, 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 Headteacher's representative and HR adviser 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)*

13.2 If the Local Authority has evidence of concerns about the performance of the Headteacher they will inform the Chair of Governors. A written summary of the concerns will be provided to the Chair, the Headteacher informed and given a copy of the report.

The Chair will notify the LA of the action he/she intends to take. The Chair will consult with the appraisal committee to determine whether:

a) A review meeting is called under the appraisal process and action taken as detailed in the Appraisal Policy, or

b) To review the process already underway within appraisal to address concerns, in the light of any new evidence, or
c) If concerns have already been addressed through appraisal, the sub-group should consider whether sufficient improvement has been made.

13.3 Where, following a review meeting, it is assessed that there has been insufficient improvement and the programme of support and monitoring has been delivered, the group will consult with the Chair of Governors (if she/he is not a member of the group) and the Chair will consult with the LA Strategic Director of CAYA (or his representative) The Headteacher 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.

a. Where this is the case the Headteacher will be given at least 5 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 Headteacher to prepare to answer the case at a formal hearing. It will contain:

- copies of any written evidence;
- the details of the time and place of the meeting;
- and will advise the Headteacher 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.

b. The Chair of Governors will conduct the meeting. One of the appraisal Governors may present the case, unless the Chair of Governors is an appraisal governor and can present the information him/herself. The Chair may commission an officer of CAYA HR Advice and Guidance service to present the case on their behalf. A relevant LA Adviser will present a professional assessment of the evidence giving rise to concerns and the expected standards of performance.

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

c. The formal Competence Meeting will be conducted as detailed in paragraphs 5.5 to 5.8 of the Competence Procedure, including notification of right of appeal.

d. LA 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 Headteacher in writing as described in paragraph 5.6 above.

14 Monitoring and Review Period Following a Formal Competence Meeting

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 Headteacher 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

15 Formal Review Meeting

15.1 The arrangements for the meeting will be as detailed in paragraph 7 above. Any evidence to be considered at the meeting will be provided at least 5 working days in advance of the meeting. The Chair of Governors will conduct the meeting and may be advised by a representative of CAYA HR. If a Local Authority Adviser has been commissioned to monitor and evaluate progress and improvement, they may present their findings in person.

15.2 The Headteacher 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.

15.3 After the evidence has been presented by the Governor/Chair/ Adviser the Headteacher will have the opportunity to respond. The Chair will withdraw to consider their decision, advised by CAYA HR.

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

In other cases:

- If some significant progress 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);*
- If no, or insufficient, improvement has been made during the monitoring and review period, the Headteacher will receive a final written warning.

15.5 The final warning will be confirmed in writing within 5 working days and will mirror any previous warnings that have been issued. Where a final written warning is issued, the Headteacher will be informed in writing that failure to achieve an acceptable standard of performance, within the set timescale, may result in dismissal.

The Headteacher 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 Headteacher appeals against a decision to issue a warning or final written warning, this will be heard by one nominated governor, who may be advised by an officer from CAYA HR Advice and Guidance Service. (where purchased)

Within 10 working days the notes of the formal review meeting will be copied to the Headteacher.

The details of a support and monitoring programme will be provided in writing including any clarification of professional shortcomings, standards to be attained, specific objectives, success criteria, evidence to be utilised, support and timescale for improvement. The timetable for meeting performance standards will depend on the circumstances of the individual case. It should be reasonable and proportionate to provide sufficient opportunity for improvement to take place. The time period should be between 4 and 10 weeks in length. It is expected that the maximum period will be adopted, other than in exceptional cases. As noted in paragraph 13.1, an interim review meeting is advised during the period provided for improvement. 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, school contextual issues, significant progress underway but confidence needed that it can be sustained.)*

The Headteacher will be invited to a decision meeting at the end of the review period.

16 Decision Meeting

16.1 The Chair of Governors will consult with the Local Authority adviser and representative of CAYA 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 Chair will follow either a) or b) below.

a) Where the initial review of the evidence by Chair and LA representatives suggests that sufficient improvement may have been secured, the decision meeting will be arranged as follows:

At least 5 working days' notice will be given and the Headteacher will be advised of the time, place and right to be accompanied. (see paragraph 7.7). All documents to be relied upon in the meeting will be issued at least 5 days in advance.

The Chair of Governors will conduct the meeting and consider the evidence of concerns/improvement and the Headteacher'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 of Governors 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 their HR adviser.

b) Where the initial review of evidence by Chair and LA representatives 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 directly to a Governing Body sub-committee, to hold the decision meeting.

16.2 As with formal competence meetings and formal review meetings, at least 5 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the Headteacher 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 5 working days in advance of the meeting.

16.3 **Procedure of the Decision Meeting:**

- The sub-committee will be advised by a Local Authority representative.(Maintained Schools and those purchasing LA traded HR Advice and Guidance Service)
- The Chair or Governors will present the case. The Chair may commission an HR representative to present the case on their behalf. She/he may call witnesses.
- The Headteacher/representative will have the opportunity to ask questions
- The sub-committee may ask questions
- Any witness will withdraw
- The Headteacher/representative will have the opportunity to present their response.
- The Headteacher may call witnesses
- The Chair/HR Presenting Officer will have the opportunity to ask questions
- The sub-committee may ask questions
- Any witness will withdraw
- The Chair/HR Presenting Officer may sum up
- The Headteacher/representative will have the opportunity to sum up.
- The Chair/presenting officer, Headteacher and their representative will leave the meeting.

The sub-committee will reach a decision and will receive advice and guidance on procedure from another representative of the Local Authority.

The Headteacher, Chair/Presenting Officer will be recalled and informed in person of the outcome of the meeting, wherever possible.

16.5 Where relevant, the Headteacher will be informed as soon as possible, and within 5 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.

16.6 Where the committee of governors decides not to dismiss the Headteacher, the final written warning will remain in place for 18 months and the Headteacher will be expected to maintain the agreed level of performance. The Committee 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.

17 Appeal

If a Headteacher 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 5 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 Headteacher.

Appeals against a decision to issue a written warning or final written warning will be heard by one nominated governor. Appeals against dismissal will be heard by the appropriate Governing Body sub-committee.

An appeal will be dealt with impartially and, wherever possible, by Governors who have not previously been involved in the case. The Governors will be advised by a representative of the Local Authority.

17.1 Appeal Procedure

(see * below)

- The Chair of 1st sub-committee, (accompanied by the Presenting Officer, where appropriate) will present the case for dismissal. The Presenting Officer/chair of 1st sub-committee will explain the reasons for the (committee's) decision.

- They may call witnesses

- The Headteacher/representative may ask questions of the chair of committee/presenting officer or any witnesses called.

- The Appeal sub-committee may ask questions of the Chair of 1st sub-committee/Presenting Officer or any witnesses called.

- The Headteacher/representative will present their case and may call witnesses

- The Chair/presenting officer may ask questions of the Headteacher and any witnesses called.

- The Appeal sub-committee may ask questions of the Headteacher and any witnesses called

- The Chair of 1st sub-committee/Presenting Officer may sum up

- The Headteacher/representative will have the opportunity to sum up.

The Chair of 1st sub-committee/Presenting Officer, Headteacher and representative will all withdraw. The Appeal sub-committee will reach a decision and will be advised by the Local Authority representative.

The Headteacher will be recalled and informed of the outcome of the appeal hearing in person where possible. The outcome will be confirmed to the Headteacher in writing within 5 working days.

***Where the Headteacher's appeal relates to a specific part of the previous case for dismissal or is procedural, then the Headteacher will be asked to present their appeal first and the Chair of the sub-committee who made the initial decision will present his/her response second.**

18. References

The School Staffing (England) Regulations 2009 were amended in 2012 in relation to the provision of information in references. Where a member of the teaching staff at a school applies for a teaching post at another school, which is a maintained school or an Academy, the Governing 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 a Capability procedures in the legislation and by some LAs and schools). The Governing 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.

There is a general expectation of employees 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.

19. Reporting

Should the school 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 government has set up the Teaching Agency which now regulates teacher training and deals with the professional conduct of teachers. However cases of underperformance should be dealt with locally and no requests submitted to the agency for the investigation of such cases. Neither is there any requirement to report the outcome of a dismissal hearing to the Teaching Agency.

The 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 Teaching Agency may use Part Two of the Teachers' Standards when hearing cases of serious misconduct, as these relate to personal and professional conduct. At the school level such circumstances are appropriately dealt with through application of their Disciplinary Procedure.

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 Governing Body 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 head teacher.

Delegation
Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

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 Headteacher or Chair of Governors is advised to consult with their HR service provider.

Monitoring and Evaluation

The Governing Body will monitor and evaluate the policy.

The Headteacher will provide the Governing Body with a written report on the operation of the school's Competence Procedure policy annually, if it has been utilised. The report

will not identify any individual by name. The report will include an assessment of any potential impact of the policy on employees with regard to the following characteristics:

- Race
- Sex
- Sexual Orientation
- Disability
- Religion & Beliefs
- Age
- Part-time Status
- Maternity and Pregnancy

The Headteacher will report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination.

Appendix 1

Legal background on power to dismiss and the conduct of any dismissal proceedings- where the Headteacher has the delegated power to dismiss.

Legal Framework for delegation of power to dismiss :-

In Foundation School, Voluntary Aided Schools and Foundations Special Schools, the governing body is the employer but the power to dismiss can be delegated to the Headteacher, to one or more Governors, or to one or more Governors acting with the Headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

In adapting and adopting a Formal Competence Procedure for the school, Governors will need to take into account their legal status and the context of their school. It is recognised that the suitability, appropriateness and practicality of the choices available are very different between large secondary schools and very small primary schools. Also the experience and views of the Headteacher will need to be taken into account. Decisions on levels of delegation should be made/confirmed and the membership of committees agreed at the first meeting of the Governing Body of each academic year.

This Formal Competence Procedure has been written to reflect the operational situation that is recommended for the majority of schools. That is, where the Headteacher is likely to have had significant involvement in the application of the competence procedure and therefore it is recommended that a decision on dismissal is made by a Governors' sub-committee.

However earlier recognition is made of situations where another senior member of staff has been conducting the formal monitoring role and making an assessment of the teacher's improvement. In these circumstances, it is recommended that the SMT member informs the Headteacher of the recommendation they will be making, before a formal decision meeting takes place. If the SMT member has assessed that the teacher has made the necessary improvement, the Headteacher will then be able to determine whether it would be appropriate to conduct the meeting themself, and have the opportunity to confirm this decision, without the need to call a Governors' committee hearing. This option would need to be written into the procedure in 9.5 above.

Alternative procedure for schools where the power to dismiss has been delegated to the Headteacher :-

Below is the recommended procedure for paragraphs 9.4 to 10.5, in schools where it is anticipated another senior member of staff will fulfil the formal monitoring/assessing role **AND** the school has delegated the power to dismiss to the Headteacher. *(In Community, Voluntary Controlled, Special schools and Maintained Nurseries, the power is to determine whether a member of staff should no longer work at the school – the Local Authority actually dismisses).*

9.4 The teacher will be invited to a decision meeting. The senior member of staff filling the formal monitoring and assessment role will inform the Headteacher, who will ensure that the appropriate arrangements are made.

10. Decision Meeting

Where the Headteacher has the delegated power to make dismissal decisions, the senior member of staff (SMT member) conducting the procedure will present the outcome of the programme of support and monitoring to the Headteacher at a Decision Meeting.

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. All documents to be relied upon at the decision meeting will be provided at least 5 working days in advance. The teacher should be notified of any witnesses to be called and the school notified by the teacher of any witnesses he/she proposes to call.

10.2 The teacher must notify the Headteacher of the identity of their representative at least 2 days before the meeting. They should submit any additional documents they wish to present, to support their case, 2 days before the meeting.

10.3 The Headteacher will conduct the meeting. He/she will arrange for notes to be taken. (For Maintained schools, at any meeting where the dismissal of a staff member will be considered, a representative of the Local Authority should be invited to advise).

- The SMT member will present the information concerning the professional shortcomings identified, the support provided and any evidence of improvement. They may call witnesses if appropriate.
- The teacher/representative will have the opportunity to ask questions.
- The Headteacher will have the opportunity to ask questions.
- Any witness will withdraw.
- The teacher/representative will present their response to the performance concerns and any other relevant information. They may call witnesses, if appropriate.
- The SMT member will have the opportunity to ask questions.
- The Headteacher will have the opportunity to ask questions.

- Any witness will withdraw.
- The SMT member will have the opportunity to sum up.
- The teacher/representative will have the opportunity to sum up.
- The SMT member, teacher/representative will withdraw.
- The Headteacher will consider the case and reach a decision. He/she may be advised by an HR Consultant. *(For maintained schools, a representative of the LA Strategic Director of CAYA, should be invited to advise.)*

10.4 If an acceptable standard of performance has been achieved during the further monitoring and review period, the competence procedure will end and the appraisal process will re-start. If the Headteacher 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 maintain the agreed level of performance. Where the teacher does not sustain the agreed level of performance within this period, a further Decision Meeting will be arranged.

10.5 If performance remains unsatisfactory, a decision will be made that the teacher should be dismissed or required to cease working at the school.

If the Headteacher decides to dismiss *(require the authority to dismiss)* the teacher, they will be informed in writing as soon as possible, within 5 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 to appeal. It is expected that the teacher will be suspended from teaching duties, pending the outcome of any appeal

Appendix 2

Advice and Guidance for Headteachers and Governors

Introduction

The majority of schools 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 Headteacher and governing body.

- Continuing professional development for all staff is clearly linked to appraisal and the school's priorities.

- A collaborative approach to the development of quality of teaching, learning through reflective practise and regular reference to the Teachers' Standards are embedded.

- Regular leadership development is undertaken to ensure senior staff can offer clarity of expectations and support to their teams.

- The school 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 school supports and values all members of the school community and facilitates them in contributing to their full potential.

The Context of Teachers Experiencing Difficulties

Headteachers 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. Headteachers and Governors will want to support such staff through difficult periods and minimise any impact on the education of pupils. The Headteacher 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.

Headteachers 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 to schools purchasing the LA Health & Safety service) A school's policy for the management of stress/promoting wellbeing 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 school leaders 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 Local Authority model Management of Stress Policy provides relevant guidance and is available to schools purchasing the CAYAHR traded service

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.

Ill 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 Management of Sickness Absence 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. Headteachers and governors are advised to consult the Management of Sickness Absence 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 Headteacher, in the case of other teachers, or Chair of Governors, in the case of the Headteacher, must decide what action should be taken.

The options are to:

1. Postpone Formal Competence Procedures until the teacher returns and implement the Management of Sickness Absence Procedure.

2. Continue Formal Competence Procedures.

In reaching a decision the Headteacher, in the case of other teachers, or Chair of Governors, in the case of the Headteacher, 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 school.

- 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 re-ocurrence 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 a Sub-Committee of Governors for a decision on the outcome of Formal Competence Procedures as set out in the Competence Procedure adopted by the Governing Body. The Committee will need to be presented with all the available evidence and circumstances before deciding whether to:

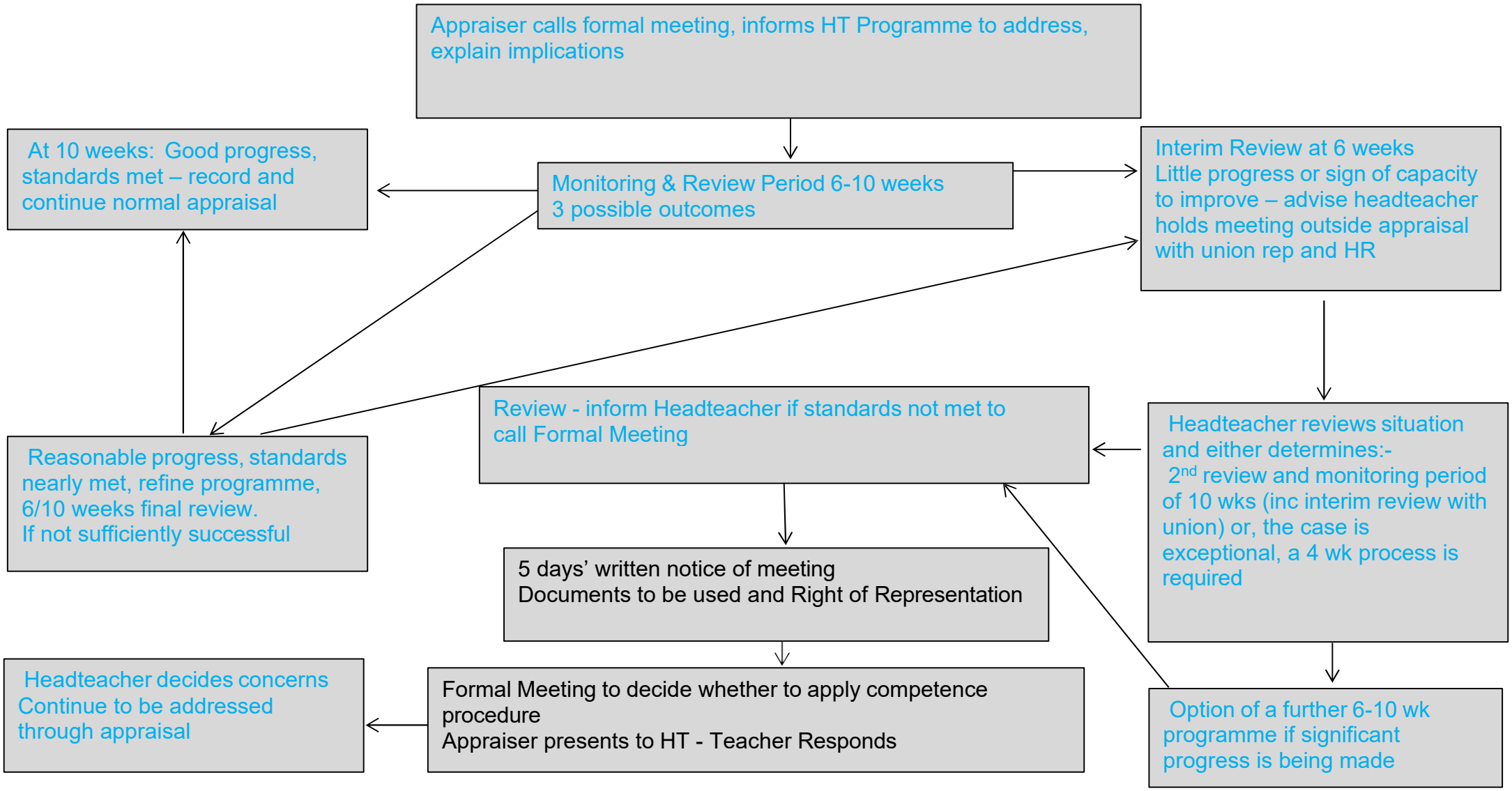
1. Postpone Formal Competence Procedures until the teacher returns and implement Management of Sickness Absence Procedure.

2. Dismiss the teacher on the grounds of competence.

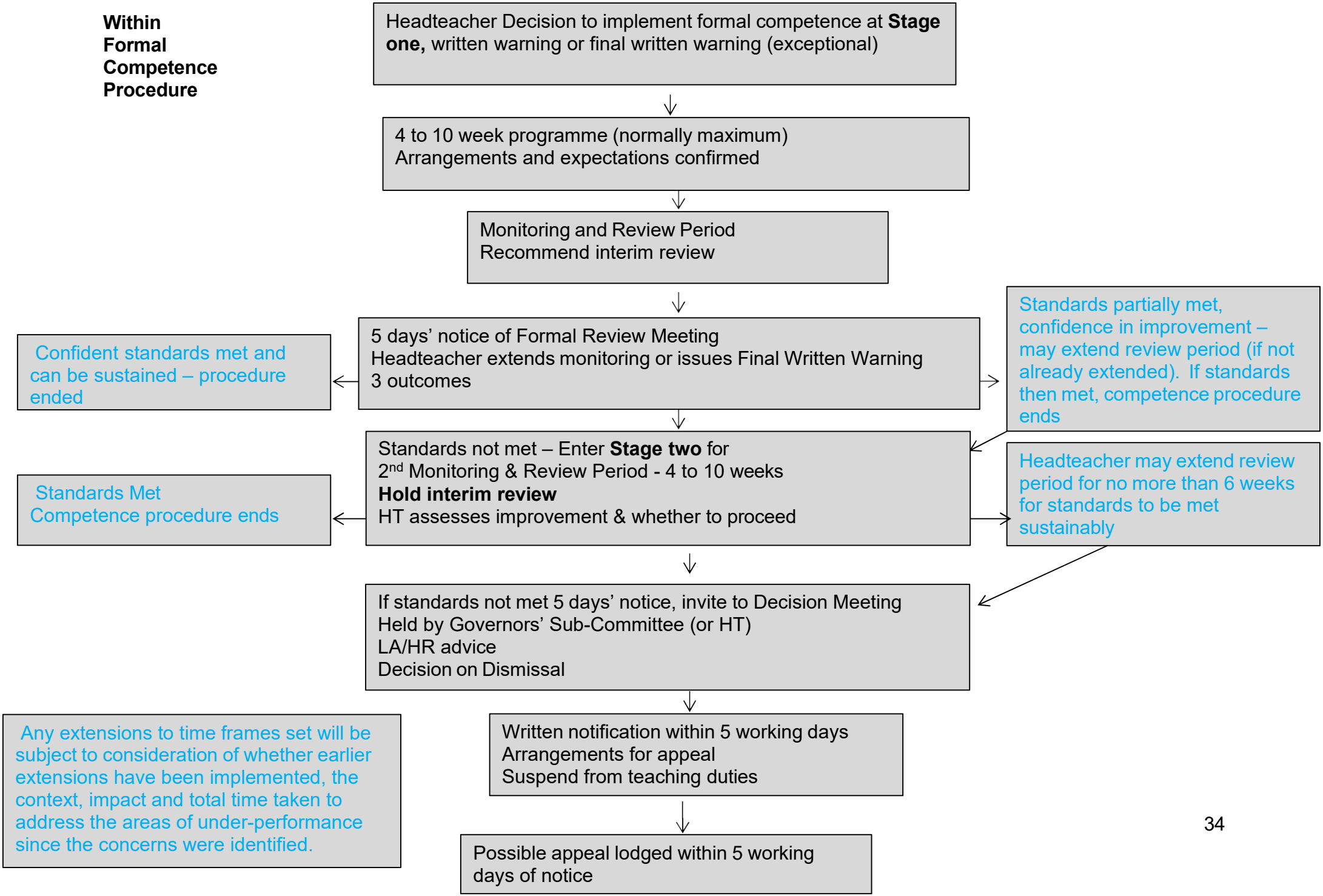
If the decision is to dismiss, this will probably be challenged. The Governing Body will therefore need to be satisfied and confident it can demonstrate there is substantial evidence to support its decision. In particular, that any further period of structured support, monitoring and review would not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

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

Within Appraisal



Within Formal Competence Procedure



Any extensions to time frames set will be subject to consideration of whether earlier extensions have been implemented, the context, impact and total time taken to address the areas of under-performance since the concerns were identified.