

**DERBYSHIRE COUNTY COUNCIL**  
**CABINET MEMBER FOR CHILDREN’S SERVICES**

**11 April 2017**

**Report of the Strategic Director for Children’s Services**

**REPORT RECOMMENDING ADOPTION OF A COMPETENCE  
PROCEDURE TO BE APPLIED TO TEACHERS EMPLOYED BY  
DERBYSHIRE COUNTY COUNCIL BUT NOT ATTACHED TO SCHOOLS**

**1. Purpose of Report**

To seek approval for the adoption of a Teacher Competence Procedure, that builds on the Teacher Appraisal Policy adopted by the Council in 2014, and incorporates the relevant provisions of the Education (School Teachers’ Appraisal) [England] Regulations 2012.

**2. Information and Analysis**

The regulations governing teachers’ appraisal procedures also incorporate the framework for dealing with underperformance. The Department for Education (DfE) has produced an optional model policy entitled, ‘Teacher appraisal and capability, a model policy for schools’. The proposed procedure, attached as Appendix A, builds on section B of the DfE model policy, which deals with capability. It is intended to use the term competence instead of capability, in the Council’s document, to distinguish this procedure from those designed to deal with the capability issues arising from ill health. The procedure is intended to be utilised in the management of teachers employed by the Council in the Education Support Services.

The Support Services are:-

County Behaviour Support Service  
Out of School Tuition Service  
Support Service for Visual, Hearing and Physical Impairment  
Support Service for Special Educational Needs

Support Service for Pre-School Special Educational Needs  
Music Partnership  
Virtual School

The Teachers' Appraisal Policy adopted by the Council was based on section A of the DfE model policy but included more detail, in order for teachers and appraisers to be clear what is expected of them and how to utilise the process to secure maximum benefit for pupils and teachers. Teachers employed in the LA support services are not subject to the Council's My Plan employee review and development scheme because their appraisal has to conform to the national regulations. It would be beneficial to now agree a Teacher Competence Procedure which incorporates the national guidance and dovetails with the appraisal policy already in place. The regulations provide for the first response to any concerns about a teacher's performance to be addressed under the appraisal process and only to transfer to a formal competence procedure if the measures undertaken are not successful in securing sufficient improvement. As such, the two procedures must be fully integrated and consistent.

In order to support teachers and managers to successfully address any performance concerns as soon as possible the appraisal policy includes significant additional guidance, than provided by the DfE model policy, in the 'Teachers Experiencing Difficulties' phase of the process. Expectations of the timescales and content for programmes of support and monitoring are detailed. These are then further extended, should a teacher have to transfer to the formal competence procedure.

The Competence procedure details the process for the transfer from appraisal to formal competence, the timescales, meetings to be held, roles of relevant employees, documentation and programmes for improvement. The requirements for monitoring, review and moving from stage one to stage two, if necessary, are included. The arrangements for a decision meeting, to determine whether a teacher should be dismissed on the grounds of underperformance, and for appeal are set out. A separate section has also been included describing the application of the procedure to a head of service, who is employed on teachers' terms and conditions, should this be necessary.

### **3. Financial Considerations**

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

#### **4. HR Considerations**

Formal consultation has taken place with the recognised trade unions and professional associations representing teachers, with regard to the proposed Teacher Competence Procedure, at Schools' Joint Consultative Committee. Collective agreement has been reached on the policy and it matches the model policy already offered to the Governing Bodies of schools for adoption.

The procedure provides 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.

#### **5. Legal Considerations**

The proposed Teacher Competence Procedure incorporates 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.

#### **6. Social Value 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 communities served by the teachers would benefit from 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. There is the potential for a positive effect on the recruitment and retention of suitable teachers as a consequence of the Council adopting a fair and equitable approach to the management of teachers' performance within a climate of good staff relations.

#### **7. Other Considerations**

In preparing this report the relevance of the following factors has been considered – equality and diversity, health, environmental, transport, property and prevention of crime and disorder considerations.

#### **8. Background Papers**

The Education (School Teachers' Appraisal) [England] Regulations 2012 and the 'Teacher appraisal and capability model policy' (DfE) are available in the Children's Services Human Resources Section, as is the Appraisal Policy for Teachers employed by Derbyshire County Council but not attached to schools.

## **9. Key Decision**

No

## **10. CALL-IN PERIOD**

It is necessary to waive the calling-in period in respect of the decisions being proposed within this report? No

## **11. Strategic Director's Recommendations**

That the Cabinet Member agrees to the adoption of the formal Teacher Competence Procedure (attached as Appendix A) for the management of underperformance by employees on teachers' terms and conditions, employed by the Council but 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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**Derbyshire County Council**

**Formal Competence  
Procedure for  
Centrally Employed Teachers**

March 2017

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# Formal Competence Procedure for Centrally Employed Teachers

## 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.

### 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 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 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 Council's Appraisal Policy for Teachers. The guidance on policy and procedure applies to all teachers employed by the Council 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 and Ill Health Capability Procedure.

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.

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 Council rests in ensuring that the authority has adopted an appropriate competence procedure and for the Strategic Director of 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 performance management, those with professional leadership roles such as senior members of staff and Heads of Service.

3.4 Within the Council 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 Council 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 '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 Council 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.
- 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, the criteria for transfer to the Upper Pay Range.

4.5 If an issue of competence arises, it is strongly recommended that the Senior Manager/Head of Service seeks early advice from Children's Services HR.

4.5.1 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.

4.6 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.

4.7 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.

4.7.1 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.

4.7.2 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.

4.7.3 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, or as soon as possible, without the employee if they continue to be unavailable.

## **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 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 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 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).

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 Children's Services 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 to 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 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 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 normally delay a 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. As referenced in 6.6, 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.*

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 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 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 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 representative Children's Services HR. 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 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 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 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 a senior manager of grade 15 (equivalent) or above from the Leadership Job Family.

9.2 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.

9.3 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 departmental HR to share progress and consider whether any changes need to be made to the plan.*



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 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 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 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 (equivalent) or above from the Leadership Job Family.

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.

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 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 5 working days of the original meeting should be arranged. (see guidance on arranging meetings [link](#)) At least two working days prior to the meeting, the teacher should provide the name of their companion.

10.2 The manager from the Leadership Job Family will conduct the meeting. The Head of Service will be advised by departmental 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 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**

### **Dismissal**

If the decision is made that the employee will no longer work for the LA, the dismissal must be carried out within fourteen days of the date of the notification.

**a) 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 an appropriate manager from the Leadership Job Family (grade 15 equivalent or above).
- Appeals against dismissal will be heard by Members.

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

- An appeal against any other outcome will be heard by a member of the Leadership Job Family (grade 15 and above) and must be registered in a letter to the appellant's Director within the same timescales.
- An appeal against dismissal is to Elected Members and this must be registered in a letter to the Director of Legal Services within 5 working days of receipt of the written notification of the hearing decision.

The employee will receive a reply to the appeal letter within 5 working days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of 5 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 5 working days prior to the hearing.

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

The employee has a right to be accompanied at the appeal.

The employee will be informed of the outcome of the appeal in writing within 5 working days. That outcome is the final stage within the Council's procedures.

## 12. Appeal Procedure

- The Head of Service (accompanied by the Chair of the Decision Meeting, where appropriate) 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 Head of Service, Chair of Decision Meeting or any other witnesses called.
- The committee of members may ask questions of the Head of Service, Chair of Decision Meeting or any other witnesses called. (Witnesses will then leave)
- The teacher/representative will present their case and may call witnesses
- The Head of Service may ask questions of the teacher and any witnesses called.
- The committee of Members may ask questions of the teacher and any witnesses called. (Witnesses will then leave)
- The Head of Service may sum up
- The teacher/representative will have the opportunity to sum up.

The Head of Service, teacher and representative will all withdraw. The committee of Members 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 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 Head of Service present their response second, following the same pattern as set out above.***

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

13.1 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 Children's Services 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*).

13.2 When at the conclusion of a period of support, review and monitoring to address significant concerns about a Head of Service's performance, insufficient improvement has been secured, the appraiser will inform the Head of Service in writing that consideration will be given to whether the appraisal system will apply. At the Teachers Experiencing Difficulty review meeting, if it is assessed that there has been insufficient improvement, the Head of Service will either be informed that the issues will continue to be addressed through the appraisal process or that they will 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.

#### **14. Meeting to Consider Entry into Competence Procedure – Stage One**

a. 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 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 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 5 working days should be arranged (but see advice on arranging meetings).

b. 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.

- c. 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.
- 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 Head of Service in writing as described above.

## **15 Monitoring and Review Period Following a Formal Competence Meeting**

15.1 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. *Review of progress, collaboration on how to address any problems, build on success and adapt the programme to maximize effectiveness is recommended. 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.

15.2 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).

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

## **16 Formal Review Meeting**

16.1 The arrangements for the meeting will be as detailed in paragraph 8 above. Any evidence to be considered at the meeting will be provided at least 5 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 Children's Services HR. If a Local Authority Adviser has been commissioned to monitor and evaluate progress and improvement, they may present their findings in person.

16.2 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.

16.3 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 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.

## **17. Implementation of Stage Two**

17.1 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 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.

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 Children's Services HR.

17.2 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 departmental 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 10 working days the notes of the formal review meeting will be copied to the Head of Service.

17.3 At the end of the review period, a Stage Two review meeting will take place.

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.

17.4 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 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.



17.5 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.

17.6 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.

17.7 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.

17.8 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.

## **18 Decision Meeting**

18.1 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 5 working days' notice will be given and the Head of Service will be advised of the time, place and right to be accompanied. (as detailed in paragraph 10.1). All documents to be relied upon in the meeting will be issued at least 5 working days in advance.

If the Head of Service, or their companion/representative, is unable to attend the meeting an alternative date within 5 working days of the original meeting should be arranged, or mutually agreed alternative date (see guidance on arranging meetings). 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 provide 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.

18.2 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 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 5 working days in advance of the meeting.

### **18.3 Procedure of the Decision Meeting:**

- The manager from the Leadership Job Family who chairs the meeting will be advised by a Children's Services 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, Headteacher 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.

18.5 Where relevant, the Head of Service 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.

18.6 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.

## **19 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 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 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 Members.

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

### **19.1 Appeal Procedure**

(see \* below)

- The Appraiser/presenting officer 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.
- The Members' Committee may ask questions of the Appraiser/Chair or any witnesses called.
- The Head of Service/representative will present their case and may call witnesses
- The Appraiser/presenting officer may ask questions of the Head of Service and any witnesses called.

- The Members' Committee may ask questions of the Head of Service and any witnesses called
- The Appraiser/presenting officer may sum up
- The Head of Service/representative will have the opportunity to sum up.

The Appraiser, Head of Service and representative will all withdraw. The Members' committee 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 5 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.**

## **20. 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 (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 Council in the case of teachers employed by the council 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.

## **21. 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 government has set up the National College for Teaching and Leadership (NCTL) 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. 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 NCTL 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 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 Strategic 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 Strategic 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 Children's Services HR.

## **Monitoring and Evaluation**

A report will be prepared for Children's Services' Senior Management Team on the operation of the council's Teacher 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 report will include whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination.

## Appendix 1

# **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.

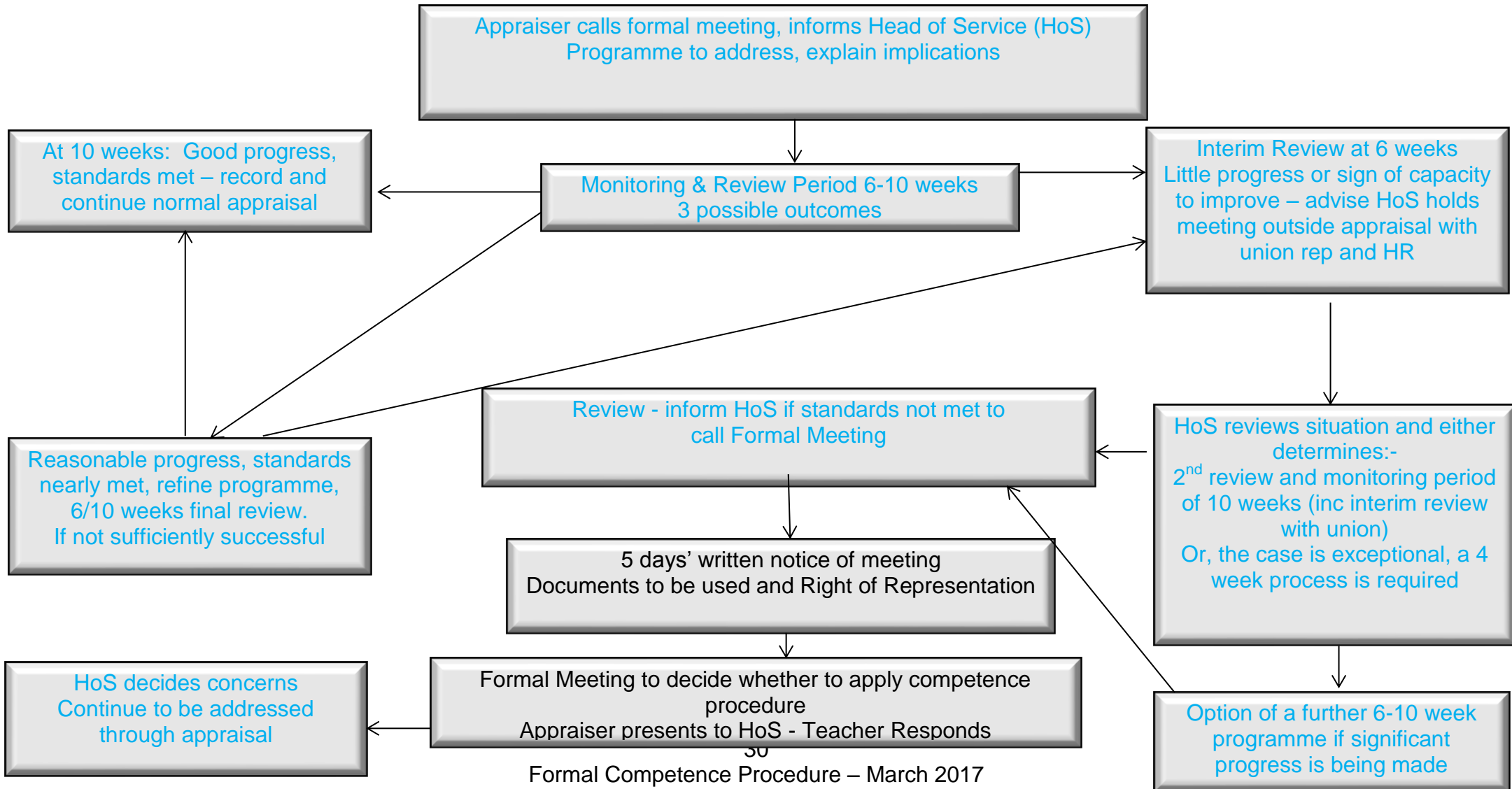
If the decision is to continue Formal Competence Procedures the matter should be referred to an appropriate manager from the Leadership Job Family for a decision on the outcome of Formal Competence Procedures as set out in the Competence Procedure adopted by Council. The manager will be advised by a 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.

## Dealing with Underperformance- Flowchart - Appendix 2 (Summary only – Please refer to procedure for necessary detail)

### Within Appraisal



**Within  
Formal  
Competence  
Procedure**

