

PROPOSED CHANGES TO PERFORMANCE MANAGEMENT AND CAPABILITY ARRANGEMENTS

Response of the Association of School and College Leaders

- 1 The Association of School and College Leaders (ASCL) consists of more than 15,000 members of the leadership teams of maintained and independent schools, academies and colleges throughout the UK. This places the association in a unique position to see this consultation from the viewpoint of the leaders of secondary schools. We welcome the opportunity to respond to the consultation on the proposed changes to performance management and capability arrangements.
- 2 In general, we agree that the current arrangements are extremely detailed and over-prescriptive and that the bureaucratic nature of the performance management and capability processes could be reduced by many of the proposed changes.
- 3 We are pleased to note the moderate and supportive tone of the proposals, particularly the greater and more overt acknowledgement of the professionalism of teachers and head teachers, and it is helpful to have the rationale for the changes clearly stated.
- 4 Our response to the specific consultation questions is set out below.

Q1 Do you agree that regulations should require schools and LAs to establish a written policy that sets out their approach to managing teacher and head teacher performance?

- 5 Yes; a written policy that has been properly consulted on and approved by the governing body not only sets out the parameters within which heads may operate under delegated authority, but also provides them with due protection against challenges under employment law and other statutory provisions.

Q2 Do you agree that regulations should require that there is an annual appraisal cycle which supports decisions on pay, including recommendations on pay progression where relevant?

- 6 Yes. However, if pay recommendations are to be made, the head should have the right, in the interests of fairness and consistency, to monitor/quality assure these and should not be required to pass them on to the pay committee unaltered, as is the case now. Currently, under the STPCD, governing bodies, in the case of deputies, assistant heads, ASTs and teachers on the upper pay spine, who are eligible for pay progression, are obliged to have regard to any such recommendation recorded in the teacher's most recent planning and review statement (the two most recent for those on the upper pay spine). There is no provision for any intervention on the part of the head, whose view should be pertinent. In a large school, moreover, it is difficult to achieve consistency across the board on the current basis.

Q3 Do you agree that regulations should require that each teacher's and head teacher's development needs are identified and there is clarity about how they will be addressed?

- 7 Yes. It is important that CPD is embedded in the PM process. However, the focus should be on development in the sense of securing improvement in performance in the interests of the school, its pupils and the individual, not simply on the provision of interesting training opportunities.

Q4 Do you agree that regulations should require that the objectives agreed with each teacher and head teacher should be such that, if they are achieved, they will contribute to school improvement and to improving the progress of pupils?

- 8 Yes, in principle. We would, however, prefer to focus on making good progress towards an objective rather than on meeting or achieving it. Such a wording permits and, indeed, encourages teachers and head teachers to accept/agree to challenging objectives, whereas 'meeting/achieving', especially when pay progression decisions are entailed, tends to foster a minimalist approach. We also want to encourage people to put their judgments on the line, instead of only requiring a 'yes' or 'no' judgment from them, as is the case when an objective is simply met or not met, and for them to judge progress towards a demanding objective which may have a number of overlapping strands in an appropriately nuanced way. There should, moreover, be provision for an objective to be set over a longer timescale than a year.
- 9 What constitutes 'improving the progress of pupils' and how this will be gauged are matters worthy of further discussion. We would be against using simple outcomes as the sole measure of such improved progress, but would not be averse to strengthening the link between performance management and pupil outcomes; 'contributing' to school improvement and to improving the progress of pupils is rather a vague notion. There should be scope for qualitative as well as quantitative measures of achievement and progress.

Q5 Do you agree that regulations should require that teachers and head teachers should receive a written assessment of their performance: against their objectives for the relevant period; the relevant standards expected of teachers; and having regard to their role in the school?

- 10 Yes, in principle, but it is difficult to endorse assessment against the 'relevant standards', when we do not know what these are going to be and have already expressed serious reservations about the proposals put forward so far in our response to the consultation on their revision. If teachers are also to be judged on their performance in leadership and management responsibilities/roles (and we would support such a development), is it the government's intention to produce leadership standards for all levels of responsibility in schools and not just to rely on head teacher standards, as is currently the case?

Q6 Do you agree that regulations should require that the governing body receives support and challenge from an external adviser when appraising the performance of the head teacher?

- 11 Yes, very much so. However, we believe firmly that the regulations should go beyond what has been proposed. If the requirement is left as vague as this, many without the right qualifications and experience would be permitted to act as external advisers and the whole process could easily be subverted. It is essential for such advisers to be properly quality-assured, though not on the lines of the elaborate training required previously. Appropriate criteria should be developed against which applicants could be assessed and a list drawn up of those accredited in this way from which governing bodies could choose an adviser suited to their particular context and needs. It might

also be advisable to require governing bodies to have regard to DfE guidance on the process.

- 12 It would also be important for governors involved in the review of the head to undertake appropriate training to enable them to discharge their responsibilities effectively.
- 13 As the whole question of head teachers' pay with appropriate limits and justification has been raised by the STRB's 20th report, it might be sensible to consider whether external advisers should be given the additional brief of monitoring governors' decisions and advising on pay progression.

Q7 Do you agree that regulations should require schools to make teachers' two most recent written appraisal reports available on request to any other schools to which the teachers concerned apply for work?

- 14 No. Such a requirement would change the whole basis of the process. The possibility of one's future career being blighted would intrude into a professional dialogue about strengths and weaknesses and would militate against an honest, open exchange of views. We agree wholeheartedly that the issue of recycling of poor teachers should be addressed, but think that this could be better achieved, for example, by requiring the provision of fair and accurate references – and making heads more accountable for them.
- 15 We are, therefore, fully supportive of the sentiments expressed in paragraph 24: *'Where a teacher has been dismissed for poor performance, their former employers should provide an honest reference that reflects that fact. Any employer that provides a dishonest or misleading reference could be liable to legal proceedings. When a head teacher provides a misleading reference or fails to tell the whole story to another school, they are failing as a school leader and potentially undermining the quality of pupils' education.'*
The number of teachers in this category is very small; this proposal is insufficiently thought through and liable to create more difficulties than it solves.

Q8 What barriers do schools face in tackling under-performance, including any created by aspects of current employment law?

- 16 The most common barriers at the moment are:
 - the long drawn out nature of the process;
 - a lack of LA support (many are reluctant to rock the union boat);
 - the teacher's absence owing to stress or sickness, which often delays or derails the process;
 - the invocation of a grievance;
 - a lack of willingness or enthusiasm on the part of heads to invoke capability procedures in the light of the above points.
- 17 We very much welcome the statement in paragraph 22 that sickness absence and grievance procedures should not automatically result in a suspension of action, but it remains difficult to handle such situations whether or not they are deliberate attempts to derail or delay the process.
- 18 The lack of nationally accepted and binding policies could actually make the process even slower in that schools are more likely to be challenged on decisions based on *ad hoc* policies rather than a national protocol.

Q9 Please comment on the role played by local authorities in helping schools to manage poor performance and handling staff dismissals. Is this different for those

schools who employ their staff directly and for those who do not, and are there advantages for schools in directly employing their staff?

- 19 Some LAs, as stated above, may be fairly pusillanimous in their approach, but we are not convinced that making all schools self governing will necessarily help, as the key factor in both situations is how confident and empowered heads are in handling such issues. It should, moreover, be noted that with the increasing fragmentation of the system, it is often harder for schools to access high quality HR services.

Q10 Please comment on the extent to which it would make sense for schools to make changes to their performance management arrangements and/or their capability procedures in advance of September 2012.

- 20 There is no immediate pressure to publish revised regulations and a revised PM policy by September 2011. It is vital to get the process right and, therefore, we would favour a delayed publication date and certainly an implementation date that is no earlier than September 2012 (especially as the proposals under consideration are far from the finished product).

Q11 Please use this space to comment on the new model policy on appraising and managing teacher performance.

- 21 We are not sure why it has been felt necessary to revert to 'appraisal', when most people have become both used to and comfortable with 'performance management'.
- 22 We note that the status of the model policy is 'optional' instead of 'strongly recommended'. It would be preferable for the guidance to be given a more enhanced status than 'optional', especially as most policies on the ground will inevitably have to include considerably more detail than is provided in the model policy proposed. We appreciate the government's commitment to greater flexibility and that one size does not fit all, but in the interests of fairness and consistency it is very helpful to be able to refer to a clear national framework within which one can operate with some flexibility to suit one's context.
- 23 We agree that schools should consult staff on their PM policies, though it should be emphasised that 'consultation' does not mean 'secure the agreement of'.
- 24 We fundamentally disagree with the decision to fuse performance management with capability, despite the policy being consistent with the ACAS Code of Practice on disciplinary and grievance procedures, and develop our opposition to the proposals below.
- 25 Whilst we are aware that for legal reasons it is technically correct to require head teachers to be appraised by the governing body (supported by an external adviser), it should be clearly stated that in practice the whole governing body should not be involved, particularly as this would prevent the establishment of proper appeal procedures, since all governors would be 'tainted'. The current approach of having two or three governors appointed to carry out the head's review should be allowed to continue unaltered.
- 26 On page 4, we do not agree that the objectives set for (or agreed with) each appraisee should be SMART. Each objective should have a number of specific success criteria (which could be SMART) and would suggest the following format:
- a general objective;
 - specific success criteria ;
 - the evidence that will be used;
 - the support that will be provided, if any;
 - monitoring arrangements.

- 27 Such a framework would help middle managers, especially, to carry out their roles effectively and would promote greater consistency.
- 28 It is important for any appraisee to be fully aware at the outset of the cycle of what s/he needs to do to perform well and there should be no surprises. This also applies in the case of any amendments to objectives during the year. Account should also be taken of any significant changes that occur during the cycle that would need original assumptions to be modified; for example, if a particular class had a higher degree of absence or truancy than the norm or what had been expected.
- 29 We hope that the new process will still focus on totality of performance. If so, how will the inevitable conflict between ensuring that all aspects of a teacher's role are covered and having a plethora of objectives be reconciled? Currently schools are required to set relatively few objectives for priorities and it is assumed that all other aspects of their responsibilities are being carried out satisfactorily. If such an assumption proves to be incorrect, then the issue can be addressed at a mid-year meeting. This arrangement seems to have worked well so far.
- 30 Whilst we do not object to informal meetings during the year, we would strongly advocate that where performance and development priorities are to be considered and addressed on a continuous basis throughout the year, such meetings should be part of the formal process. We do not, moreover, see how replacing one mid-year meeting (which only occurs when either the reviewer or the reviewee expressly wants it) with 'a series of informal meetings' actually helps to reduce bureaucracy.
- 31 In the event of a conflict between development that is linked to school improvement and development related to individual needs, which takes priority?
- 32 The process described on page 6ff. is somewhat confused and confusing. In our view, performance management should address a teacher's weaknesses or areas in need of development as a matter of routine. Where the PM process does not manage to secure the requisite improvement, a decision needs to be made as to whether it should continue or whether capability procedures should be invoked. Thus a meeting between the head and the teacher concerned should be arranged at which it is made clear to the individual that performance management has ceased and capability procedures are beginning. At this meeting or at a subsequent one shortly afterwards, appropriate objectives should be set that focus on the areas that need significant improvement, and a timescale determined within which that improvement must be achieved. Any support that might be required and the ways in which progress against the objectives will be monitored should be specified. In fact, capability procedures mirror performance management almost exactly, but the timescale is much shorter. The teacher should be advised that failure to achieve the desired improvement might lead to his/her dismissal.
- 33 It needs to be made clear when teachers in such a position may be accompanied by a friend or union representative.
- 34 The cases in which legal representation might be permissible should also be specified.
- 35 Capability procedures should be pursued until the school is satisfied that the desired improvement has been achieved and performance management is resumed or, in cases where this has not occurred, the head makes a recommendation to the relevant committee of the governing body that the teacher in question should be dismissed.
- 36 When a teacher wishes to appeal against a decision to dismiss, the grounds for the appeal should be explicitly spelled out.

Q12 Please use this space for comments on any other aspects of the proposals, including their likely impact, or to make any suggestions for other changes that might help tackle the issue of underperformance.

37 We welcome the proposals to:

- remove the restrictions on classroom observation;
- remove the informal stage of capability procedures;
- require the head teacher to appoint all other reviewers without any qualification;
- empower the reviewer to set objectives in the event of a failure to secure agreement with the reviewee;
- include provision for leadership dimensions to be assessed and observed; and
- extend the provision to drop-in to other members of the leadership group.

38 We think that statutory provisions have been pared to the bone and would oppose any move to revoke all regulations and guidance.

39 We are again disappointed that regulations and guidance which are deemed beneficial to the maintained sector generally will not apply to academies and free schools.

40 We appreciate the rationale for the decision to revoke all aspects of the performance management regulations covered in paragraph 13 of the proposals, but feel that schools will still have to include most of these in their policy and that there is a good case for retaining them in the model policy.

41 We would welcome the removal of the provision that heads may only use the outcomes of the last two PM reviews as evidence for threshold assessment. The current requirements are too constrictive and the outcomes of two performance reviews often do not provide sufficient evidence to permit sound judgments. The final decision should be based on an overall assessment.

42 When the regulatory requirements have been finalised, the Department for Education will need to take care that they are compatible with the statutory provisions of the STPCD.

43 Our most significant concern is the proposal to fuse performance management, grievance, capability and disciplinary procedures. We do not accept that the current distinctions are confusing. Whilst there is a degree of overlap between capability and disciplinary procedures, the differences are well understood and do not cause any difficulties on the ground. They should remain as two discrete processes. The distinction is quite clear: capability is concerned with securing improvement in performance with appropriate support, whereas discipline covers inappropriate conduct or a lack of willingness to behave in an acceptable manner. Gross misconduct, for example, could warrant immediate dismissal, whilst such action would not occur in capability cases. We firmly believe, furthermore, that the use of the term 'disciplinary' would have a devastating psychological effect on the profession, as well as fundamentally conveying the wrong impression.

44 ASCL is willing to be further consulted and to assist in any way that it can.

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Association of School and College Leaders
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