

**Education and Young People's Services**

# **Schools Causing Concern Protocol**



April 2016

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## Introduction

“Vision and Priorities for Improvement 2016-2019” outlines Kent’s strong commitment to securing the best educational outcomes for all children and young people.

*“Every child and young person should go to a good or outstanding school, have access to the best teaching and benefit from schools working in partnership with each other to share the best practice as they continue to improve”.*

To achieve this ambition we recognise the need *“to support the best schools and their leaders to lead the system and drive improvement through collaboration across all schools supporting and challenging each other to improve so that we are able to transform outcomes for all children and young people more rapidly”.*

The large, successful and increasingly diverse, Kent family of schools works in partnership with the Local Authority and through the Kent Association of Headteachers (KAH) to ensure that all schools are supported to improve and to continue to increase the numbers of good and outstanding schools in the county. The quality of schools in Kent has improved year on year since 2011 when only 55% of schools were judged to be good or outstanding, to 85% in March 2016 which represents significant progress.

However, Kent has an ambitious target that, by 2019, 91% of Primary schools, 92% of Secondary schools and 100% of Special Schools will be judged to be good or outstanding. To meet this target and ensure that every child has the opportunity to attend a good or outstanding school in Kent means tackling underperformance swiftly and consistently across all schools.

Strong and sustainable school leadership, including effective governance, is key to ensuring high quality teaching and learning for all children and young people and to continuing to improve standards in Kent schools. A new leadership strategy “Kent Leaders in Leadership” 2016 -2019 aims to ensure support and inspiration for leaders, appropriate and accessible training and development opportunities and increased capacity for system leadership.

The responsibility for school improvement lies with schools and the majority of schools in Kent are self-improving. However, some schools require external support to improve. In a context of increasing autonomy for schools and changing accountabilities, the Local Authority (LA) retains a statutory duty to promote high standards so that children and young people achieve well and fulfil their potential. The Kent Association of Headteachers (KAH) supports and promotes collaborative working across schools to raise standards and develop system leadership.

The role of the Regional Schools Commissioner (RSC) is growing and as well as having responsibility for standards in academies, following the publication of the Education and Adoption Act in March 2016, this role includes strengthened powers in relation to maintained schools causing concern.

In a changing landscape for school improvement, this Protocol outlines the LA’s approach to addressing the needs of maintained schools facing challenges and those causing concern and aims to clarify:

- The roles and responsibilities of schools, LA and the RSC
- The criteria used to identify and respond to underperformance
- The support, challenge and where appropriate, intervention for schools

## **School Improvement and Support for School Leadership**

Kent County Council has a strong commitment to supporting all schools to improve and to securing the best educational outcomes for all children and young people. As the champion of families, children and young people our priorities are to ensure a good or better school is available to all learners; we secure and support the highest quality school leadership and governance; we promote the best educational practice; and we broker the influence of the best schools by facilitating strong collaborations between schools and with the Local Authority.

In doing so we aim to achieve continuous improvement in standards, a significant narrowing of achievement gaps for vulnerable groups of learners, and a rapid rate of improvement in the number of good and outstanding schools.

We recognise that the best education systems have highly effective school leadership and consistently good and better teaching. Instructional leadership and system leadership are highly prized skill sets that have to be developed throughout the county.

In spite of significant improvements, we are not satisfied that 15% of pupils in Kent do not yet attend a good or outstanding school. This impacts directly on their progress and attainment and affects their future life chances. And while we recognise that many pupils in schools requiring improvement are well taught, and many of these schools are well on their way to being judged good schools at their next inspection, it remains an urgent priority to continue to accelerate our progress in school improvement.

The quality of school leadership is key to success. Our strategy is to work directly with and support school leaders to be highly effective; to support and advise governors to make the best appointments to headship; to provide mentoring and leadership development opportunities for newly appointed Headteachers and those in the early years of headship; to provide leadership development opportunities and succession planning for aspiring Headteachers and senior leaders; and to facilitate peer support and collaborative work among school leaders that helps to spread the most effective educational and system leadership skills across the county.

It is the responsibility of every school and every school leader to secure their own development and improvement. However, there is no reason in Kent not to be able to access support from other schools and the Local Authority.

Support may consist of advice, practical help, training, the sharing of more effective school systems and tools, visits to and observation of practice in other schools, Headteacher mentoring, regular contact with experienced Headteachers who are Kent or National Leaders of Education and joint work through collaboration with other schools.

In its work with schools, and as part of its support and challenge functions, and as an employer, the Local Authority has a clear duty of care to Headteachers and other school staff. There is an expectation that the Local Authority will provide advice, support and guidance, training and other professional development opportunities for Headteachers and school staff, as well as a range of other support functions and services for schools which enable Headteachers to carry out their roles effectively. Headteachers should expect personal support when faced with challenging issues.

The following is a summary of the support for Headteachers that is available from the Local Authority:

- Induction for new Headteachers including the identification of a mentor
- Coaching: available by arrangement with the KAH Area Board
- Allocation of a Kent/Local/National leader of Education for support
- Access to the Support Line counselling service
- Regular meetings with School Improvement Advisers and Area Education Officers
- Timely support from the Educational Psychology Service in the event of a critical incident affecting the school. This would normally include providing support by working directly with the Headteacher and Senior Leadership Team.
- Immediate press support for any Head managing enquiries from the media
- Support from AEOs when managing complaints including parental complaints
- The provision of data to support school improvement
- Regular district and area briefings and Headteacher meetings with senior officers
- Regular communications and updates on local and national strategies and policies that inform the work of schools.

Depending on packages they may have purchased with the LA, there is immediate support and advice for all Personnel and HR issues, Legal support, Finance and Buildings. For all Headteachers, support is only ever a phone call away. There are strong relationships between schools and the key staff in LA services, and most services allocate named officers to liaise with schools in each local area and district.

The LA has actively brokered and facilitated school collaborations to ensure schools are supported through school to school support and the sharing of best practice. Documentation shows that 80% of Kent schools are in a range of partnerships, federations and collaborative arrangements with other schools which provide strong support for improvement. This work is supported by the Kent Association of Headteachers.

There is a wide variety of leadership courses and other development opportunities, some of which are targeted to various groups of Headteachers to provide even greater support for their development. Opportunities will be communicated through newsletters, headteacher briefings and Kent CPD online.

There is also access to training schemes such as coaching and mentoring and leadership qualifications, and Ofsted Inspector training, to ensure that Headteachers are as well skilled and confident as possible in leading their schools.

The Local Authority has also been developing opportunities for Executive Headship and system leadership, which many very able and experienced Headteachers are keen to take up. More than 40 Headteachers have now participated in this leadership programme. However, we recognise that Executive Headship and system leadership places more demands on some individuals. Where Heads are taking responsibility for more than one school the Local Authority carries out a risk assessment to ensure there is capacity in the schools concerned to support the Executive Head and to secure the on-going development and management of the schools concerned.

Headship is a demanding and challenging role, which requires high levels of leadership skill and expertise as well as personal resilience. It can at times be stressful as much as it is rewarding. School leadership in Kent is strong.

In 89% of schools leadership and management has been judged good or outstanding by Ofsted, and there is highly effective leadership in many other schools that require improvement. The LA, working with Chairs of Governors and Headteachers themselves, has put in place many supportive systems and structures as outlined above.

For support to be effective it must also be accompanied by challenge to accurately assess strengths and weaknesses, to understand the school's data, to address poor teaching and to tackle under-performance and variability in the quality of the school's work. Most effective schools, and schools requiring improvement, seek some external help with this challenge, to ensure perceptions and self-evaluation are valid and judgements about quality are secure.

Schools that are not continuously improving at a good enough rate are coasting or declining. Where schools are coasting or declining, pupils are not achieving what they should be or they are experiencing less good chances of success than previously or compared to pupils in other similar schools. This is not acceptable.

The Local Authority's responsibility for school improvement recognises as a cause for concern, schools where some of the following applies:

- Performance below the floor standard
- A declining trend in pupil attainment and progress
- Progress rates well below average
- Little or no improvement in standards of attainment that are below average
- Wide gaps in progress and outcomes that are well below average for disadvantaged and vulnerable groups
- RAISE online data which is significantly below what is expected
- High rates of pupil absence, persistent absence and exclusion
- Less than 70% good and outstanding teaching
- More than one inspection where the school has been rated no better than requires improvement
- Poor quality teacher assessment and weak tracking and monitoring of individual pupil progress
- Weak governance following a review
- High levels of parental concerns and complaints
- Inadequate progress arising from HMI monitoring visits
- Rapid or significant reductions in pupil numbers
- Financial deficit or financial mismanagement
- Reluctance to acknowledge concerns and address weaknesses
- Reported incidents that lead KCC to consider whether there is a breakdown of leadership or governance.
- Notes of Visit from KCC Improvement Advisers which report poor progress and continued weak performance.

In the case of a small number of schools it will be clear that an inadequate inspection result is likely unless prompt and effective action is taken to bring about improvement.

In the case of most schools where there are any concerns or significant priorities for improvement, KCC's approach is to provide more targeted support for improvement. In these cases there is an expectation that there will be good progress in a relatively short period of time and certainly within one school year.

In a minority of cases where, in spite of significant support, progress is inadequate and leadership and governance have not been effective, the Local Authority uses its statutory intervention powers to bring about the necessary improvement.

This protocol sets out the Local Authority's approach to addressing the needs of schools causing concern, and has been updated to reflect the most recent guidance from the Department for Education. This is statutory guidance given by the Department for Education, on behalf of the Secretary of State, relating to maintained schools causing concern.

Section 72 of the Education and Inspections Act 2006 places a statutory duty on all local authorities in England, in exercising their functions in respect of schools causing concern as set out in Part 4 of the 2006 Act, to have regard to any guidance given from time to time by the Secretary of State. Local authorities must have regard to this guidance.

The guidance covers "schools causing concern" (within the meaning of section 44 of the Education Act 2005) that are "eligible for intervention" (within the meaning of Part 4 of the 2006 Act), but also other maintained schools about which the Local Authority and/or the Secretary of State have serious concerns which need tackling.

The guidance also refers to the Education and Adoption Act 2016 which was published on the 22<sup>nd</sup> March 2016.

# 1 Roles and Responsibilities of Schools, the Local Authority and the Regional Schools Commissioner

**Self-Improving Schools** are at the heart of a school led system. Excellent leaders drive improvement and improve outcomes for children and young people and start with robust self-evaluation to identify both strengths and areas for development. They build resilience and capacity into the system through the expansion of a broader exchange of knowledge, skills and expertise through school to school support. The national context and policy direction for schools is to be increasingly autonomous. With autonomy comes strong school accountability for performance through published results and the Ofsted inspection framework.

**Governing Bodies** have a strategic role to:

- Ensure clarity of vision, ethos and strategic direction;
- Hold the Headteacher to account for the educational performance of the school and its pupils, and the performance management of staff; and
- Oversee the financial performance of the school and make sure its money is well spent.

## The Local Authority

At the same time, local authorities retain the statutory duty “**to promote high standards so that children and young people achieve well and fulfil their potential**” (1996 Education Act) and are required to ensure secure arrangements for school improvement.

The Local Authority works with schools where there is a need for increased capacity and where the agreed processes of review, evaluation, improvement planning and external support and challenge are a necessary accompaniment to what schools can do for themselves.

In partnership with the [Kent Association of Headteachers](#) (KAH), the Local Authority (LA):

- encourages schools that are good or outstanding to support other schools and develop capacity to bring about system wide and sustainable improvement across the county
- promotes school to school support, placing this at the heart of system wide arrangements to help ensure a good school for every child in every district
- targets funding and resources to facilitate rapid improvement
- supports and challenges schools to remain good or outstanding, and improve from Ofsted ‘Requires Improvement’ and ‘Inadequate’ judgments in the shortest possible time; and
- supports schools in responding to national policy changes and government initiatives

Local Authorities have a duty to intervene more formally in maintained schools when they are not providing a good enough quality of education, where there is other cause for concern, or when Ofsted judges a school to be inadequate. This duty is carried out transparently and all concerns are discussed with governors and senior leaders to agree improvement plans before formal action is taken.



## Academies and Free Schools

Working with all schools is a fundamental part of the Local Authority's commitment to the Kent family of schools. Standards and quality of provision in academies and free schools are monitored by the Regional Schools Commissioner, however, if the Local Authority has concerns about an Academy or Free School, they would be raised with the academy, academy trust and Regional Schools Commissioner as appropriate.

**Regional Schools Commissioners** work with school leaders to promote and monitor academies and free schools. Regional Schools Commissioners (RSCs) are responsible for approving new academies and, under the Education and Adoption Act 2016 to intervene in underperforming maintained schools in their area. They act on behalf of the Secretary of State for Education and are accountable to the National Schools Commissioner.

RSCs are supported by a Headteacher board of elected academy Headteachers.

The Secretary of State for Education requires all schools that enter an Ofsted inadequate category to become sponsored academies. Under **The Education and Adoption Act 2016** Regional Schools Commissioners (RSCs) also have considerable powers with regard to failing, underperforming and 'coasting' schools.

Schools falling within these definitions will become eligible for intervention. Where the RSC considers that a coasting school does not have a sufficient improvement plan and the necessary capacity to bring about improvement, the powers of the Secretary of State will be used to intervene. In many cases this intervention will be to ensure that the school receives the support and challenge it needs.

Actions that may be taken include requiring the Governing Body of the school to enter into arrangements, appointing additional governors and/or an interim executive board (IEB) and, where necessary make an academy order.

Kent County Council understands the Government's intentions and approach to intervening in underperforming maintained schools by encouraging and promoting the academisation of the school system through Academy orders for failing, underperforming and coasting schools.

The LA works in partnership with the RSC to ensure that local knowledge and intelligence are part of an informed decision making process about the future of underperforming schools in Kent.

## 2 Criteria Used to Identify Underperformance

The Local Authority's monitoring and evaluation of maintained schools' effectiveness and improvement is on-going and draws on all available data, starting from the school's own self-review evidence.

### Evidence is gathered from:

- school self-review
- Ofsted reports
- recent test and examination data and all other relevant data and consider value-added evidence
- comparisons with other schools against national benchmark criteria categorise each school in terms of its quality and level of intervention and support needed

To ensure schools remain on an upward trajectory towards outstanding, their performance is regularly reviewed and monitored by the School Improvement Team to determine what support should be provided.

In making their evaluations, Improvement Advisers analyse outcomes, the most recent inspection judgements and school self-evaluation evidence, including in-year assessment data and the quality of teaching.

### Evidence used to identify a school causing concern

The following factors are taken into account in determining whether or not a school requires additional support. Judgements are shared with the Headteacher and the Governing Body.



This information is used to judge whether a school is at risk of a poor or declining Ofsted inspection outcome and to allocate appropriate levels of additional support. Resources and the brokering or commissioning of specialist expertise and tailored help are targeted to areas of greatest need.

<sup>1</sup> Pupils registered as eligible for Free school meals in the last six years, those with special educational needs and disabilities, English as an additional language, low, middle and high abilities and other (non-disadvantaged).

## Schools where performance is a concern

This would include schools:

- in an Ofsted category (Special Measures or Serious Weaknesses)
- likely to be judged inadequate if inspected by Ofsted
- judged, or risk assessed as likely of being judged, as 'requires improvement', underperforming, failing or meeting the 'coasting' definition according to Department for Education (DfE) criteria
- where performance is significantly below that of comparable schools
- where there are complex weaknesses and/or serious financial concerns
- where there is limited capacity to improve.

Schools where performance is a concern receive higher levels of additional support. **It is expected that with support a school should make sufficient progress within one year to enable it to be graded good or better by Ofsted.**

## The Regional Schools Commissioner (RSC)

The Education and Adoption Act (March 2016), introduces new measures designed to speed up the process by which failing schools become sponsored academies. The Act identifies three groups of schools that will be eligible for intervention:

- **Schools that have been judged inadequate by Ofsted** – an academy order will be issued for all such schools, requiring them to become sponsored academies;
- **Schools that are coasting** – schools which fall within the DfE definition of coasting. Where a coasting school does not have a sufficient plan and the necessary capacity to bring about improvement, the Regional Schools Commissioner (RSC) will use the powers of the Secretary of State to intervene; and
- **Schools that have failed to comply with a Performance Standards and Safety Warning Notice** – local authorities and RSCs, acting on behalf of the Secretary of State, have powers to give warning notices to schools where they have concerns.

In addition:

- The Secretary of State is able, through regulations, to disapply the coasting definition for certain types of schools, for example maintained nursery schools.
- A coasting maintained school will be eligible for intervention if the Secretary of State has notified the school that it is coasting as per the definition in regulations.

## **“Coasting” schools – the DfE’s proposed definition**

*At present, a coasting school is where data shows that, over a three-year period, the school is failing to ensure that pupils reach their potential. A school will only be coasting if performance data falls below the coasting bar in all three previous years.*

No school will be identified as coasting until after final 2016 performance data is published. New progress-based accountability arrangements come into force in 2016, meaning that the first coasting judgements will be based on data from 2014 and 2015 under the old system (levels and GCSE grades) and 2016 under the new system. This definition applies to maintained schools and academies.

A Primary school will be considered coasting if

- in three consecutive years fewer than 85 per cent of pupils achieve Level 4, the expected standard, across reading, writing and mathematics and pupil progress is below median scores for the percentage of pupils at the end of key stage 2 who make expected progress in reading (94 per cent in 2014; 94 percent in 2015) and writing (96 per cent in 2014; 97 percent in 2015) and mathematics (93 per cent in 2015; 93 percent in 2015).
- less than 85 per cent of children achieved level 4, in each year between 2014, 2015 and 2016, and had below average proportions of pupils making expected progress in reading and writing AND mathematics between Key Stage 1 and Key Stage 2 based on the median scores.
- in 2017, as Primary schools continue to move away from levels to the new national curriculum tests, the ‘level 4’ will be replaced with a standard score.

A Secondary school will be considered coasting if

- in 2014 and 2015 the five A\*-C GCSE pass rate (including English and mathematics) was below 60%; and below average proportions of pupils making expected progress in English and mathematics between Key Stage 2 and Key Stage 4; and in 2016 receives a below-standard score on the new Progress 8 measure. (This standard will be set after the 2016 results to ensure it is at a suitable level). So, in 2016, a school will be judged as coasting based on its GCSE pass score and expected progress scores of the 2014 and 2015 cohorts and the Progress 8 score of the 2016 cohort.
- in 2017, a school will be judged by its GCSE pass rate and expected progress of the 2015 cohort, plus the Progress 8 scores of the 2016 and 2017 groups. And by 2018, coasting schools will be selected based on three years of Progress 8 scores.

If a school performs below these standards for three years, then the school will be judged to be coasting.

Regional School Commissioners (RSCs) will have discretion to decide which schools will need additional support and challenge in order to improve, and in which schools intervention by the DfE will be required.

The Local Authority will also work closely with the RSC to ensure consideration is given to any views, local intelligence or context relevant to any final decision taken by the RSC. This is particularly relevant where local school to school support may have already been established and may be providing the necessary support for the school to make sufficient improvement.

However, where the school is the subject of an academy order because it is eligible for intervention, the **Governing Body** and the **Local Authority** will be under a duty to work towards the school's successful conversion to an academy. RSCs can also use the Secretary of State's power to give the Governing Body or Local Authority a direction, or directions, to take specified steps for this purpose. If the RSC has identified a sponsor to run the school, and has notified the school of this, then the Governing Body and the Local Authority must take all reasonable steps to facilitate that sponsor taking responsibility for the school. (Sections 5A, 5B and 5C of the Academies Act 2010, as amended by the Education and Adoption Act).

### 3 Monitoring, Support, Challenge and, where appropriate, Intervention

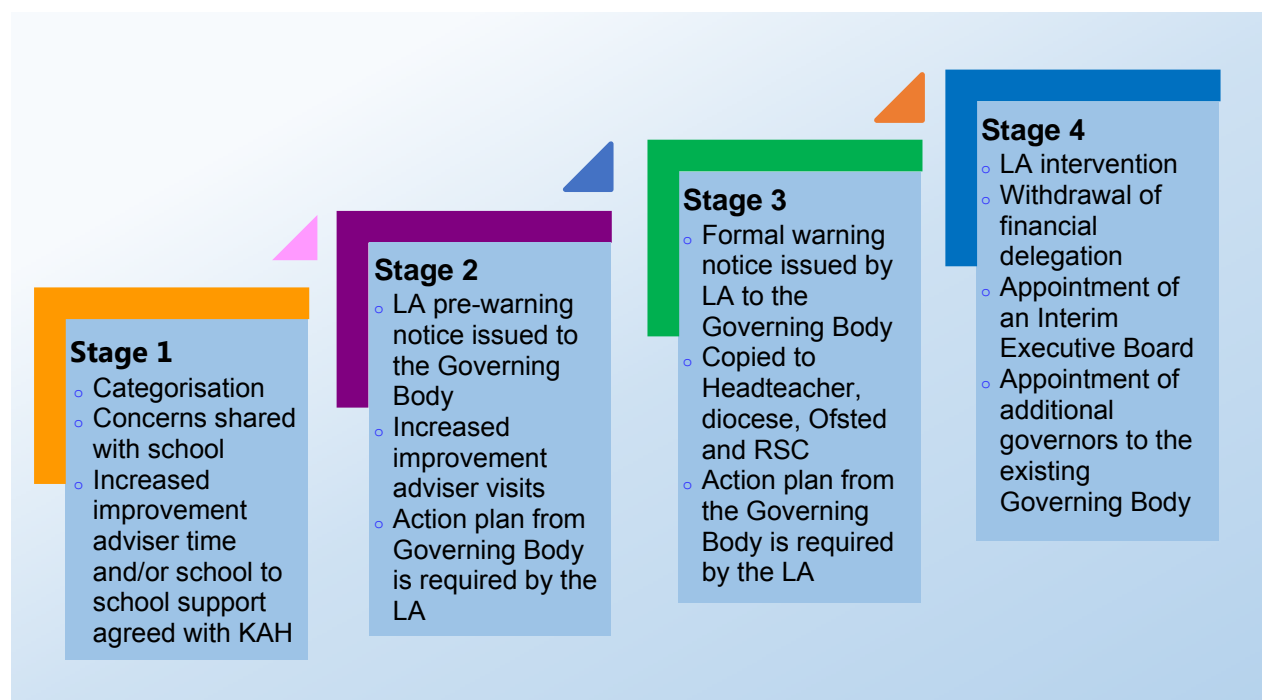
Kent has well established processes for identifying schools where there are concerns and need additional external support.

Where concerns are raised, contact is made with the school to discuss these and to identify any support required. In the first instance this will be carried out by the attached Improvement Adviser.

Increased support, including provision brokered from another school, is evaluated at Progress and Impact meetings. The frequency of Progress and Impact meetings depend on the circumstances of an individual school. Typically they take place every six weeks and include the Headteacher, Chair of Governors, other relevant advisers and the Diocese where appropriate. Plans are made at these meetings for further actions, where needed, to bring about improvement.

Where there are concerns about an academy or free school, KCC raises these with the Headteacher and Academy Trust. If these are not able to be resolved rapidly, the LA will discuss the issues and risks that have been identified with the RSC.

#### The stages of escalation: action available to the Local Authority



The aim at all stages is to enable the school to become self-improving and self-sustaining. It is an expectation therefore that the leadership of the school, within a reasonable time, is able to operate independently of support.

At all stages the Local Authority will maintain dialogue with schools, evaluating progress achieved and communicating any continuing concerns.

Progress and Impact meetings are time limited. If sufficient progress is made, the Headteacher and Chair of Governors is informed in writing and if progress is not evidenced and rapid improvement achieved, the LA's response will be escalated to a more formal warning notice which is copied to Ofsted.

## **Stage 1**

1. The attached Improvement Adviser will check, advise and comment on the rigour and suitability of school's plan for improvement and whether leadership, including governance, has the capability to deliver against this plan i.e. rapidly address concerns and overcome weaknesses. This will be discussed with the school.
2. Where a school has been identified as requiring significant additional support, the Headteacher and Chair of Governors are invited to a meeting with the LA to discuss and agree the support needed to promote more rapid improvement. Agreed actions are confirmed in writing.
3. Specific actions may include
  - provide increased support through allocating additional adviser time and sourcing peer and school to school support through KAH
  - arrange for review of school effectiveness, or identified aspects such as leadership, governance, use of pupil premium, provision, teaching, learning and assessment
  - recommend a focused review of leadership, governance or use of pupil premium. This could be carried out by a local strong school
  - brokered support from KAH including allocation of Kent/Local/National/Specialist leader of Education with support from Teaching Alliances, Teaching Schools and Interim Leaders or Executive Headteachers
  - where leadership issues have been identified, the LA will broker peer support from a Kent, local or national leader of education, arrange visits to outstanding and good schools
  - recommend that the school consider entering into particular arrangements such as partnership to access support from system leaders, Kent/Local/National/Specialist leaders of Education, Teaching Alliances, Teaching Schools and Executive Headteachers. This can be facilitated through bids prepared by School Improvement Advisers which are presented to KAH
  - support for governing bodies which may include:
    - skills and training needs analysis
    - a review of the effectiveness of the Governing Body
    - bespoke training, coaching or support from governors with particular expertise
    - training on the skills required to evaluate the effectiveness of the school and Governing Body over time

## **Stage 2**

If, following the above, insufficient progress has been made and concerns about performance continue, the local authority will issue a pre warning notice.

## **Stage 3**

Issuing a Warning Notice under section 60 of the Education and Inspections Act 2006.



## **Stage 4: Formal powers and statutory interventions**

A school becomes 'eligible for intervention' if it has not complied with a Warning Notice or has been placed in category by Ofsted i.e. 'serious weaknesses' or 'special measures', (but not 'requires improvement') or it meets the definition of coasting.

Under the Education and Inspections Act 2006, the Secretary of State can direct a local authority to consider giving, and to give a Warning Notice. If a maintained school is the subject of an academy order made under section 4(A1) or (1)(b) of the Academies Act 2010, the governing body and the local authority will be under a duty to facilitate the maintained school's conversion into an academy by taking all reasonable steps towards that end.

### **Statutory interventions**

There are two types of warning notice that can be issued by LAs or RSCs to maintained schools: a performance standards and safety warning notice and a teachers' pay and conditions warning notice.

Following the issue of a valid Warning Notice the Local Authority will strengthen the school with any or all of the following:

- the appointment of governors to the Governing Body with provision for it to consist of interim executive members;
- suspending the delegated budget;
- direct specific actions where discipline has broken down;
- require the school to enter into arrangements with another person (who may be the Governing Body of another school); collaboration between schools, or Further Education body, or joining a federation.

When a maintained school becomes an academy then the intervention role will fall solely to the RSC

### **Warning Notices**

Section 60 of the Education and Inspections Act 2006 (as amended) gives local authorities in England the power to issue a Warning Notice to the Governing Body of a maintained school where the LA is satisfied that the standards of performance of pupils at the school are "unacceptably low", and are likely to remain so unless the LA exercises its statutory powers under the Act.

If a maintained school is unable to address concerns rapidly and successfully a Warning Notice may be issued after ensuring that the school has received significant support for improvement and every opportunity has been provided to review the effectiveness of that support and the progress achieved as a result.

### **Roles of local authorities and RSCs**

Local authorities will work with RSCs to discuss where they judge that a performance standards and safety warning notice is necessary. Local authorities are expected to continue to use warning notices to challenge schools they maintain to improve.

By having the same powers, RSCs will be able to issue a warning notice where, in the RSC's opinion, it is appropriate to act – for example, where the local authority has failed to act

swiftly enough in a specific case, has generally not acted swiftly or robustly enough in the past, or lacks capacity to act.

The Secretary of State's power to issue a warning notice takes precedence over the local authority's, so the RSC will also act where the local authority issues a warning notice that the RSC does not consider to be robust enough, or the RSC does not consider that the action that follows a warning notice issued by a local authority to be robust enough.

A copy of any warning notice issued by a local authority will be given to the relevant RSC and vice versa.

**A Warning Notice may be issued where:**

- the standards of performance of pupils at the school are unacceptably low and are likely to remain so;
- there has been a serious breakdown in management or governance, which is prejudicing, or is likely to prejudice, standards of performance; or
- the safety of staff or pupils is at risk (by a breakdown of discipline or otherwise).

The detail of what constitutes "low standards of performance" includes reference to any one or more of the following:

- standards below the floor, on either attainment (including the 16-19 minimum standards) or progress by pupils;
- the standards that the pupils might in all the circumstances reasonably be expected to attain; or
- where relevant, the standards previously attained by them; or
- the standards attained by pupils at comparable schools.
- an Ofsted judgement that the school requires improvement, where there are also additional factors to indicate that a warning notice is appropriate, including in types of schools where the coasting definition does not apply;
- in a school with a sixth form, an Ofsted judgement that the sixth form is inadequate, even though the school overall may not have been judged inadequate;
- performance data which show sustained historical underperformance, including where the coasting definition may not apply in particular circumstances, for example because two schools have recently merged to become one new school, but there is concern about persistent poor performance.

Local authorities and RSCs will consider the school in the round, take account of its context, and consider data and other evidence of the school's performance and capacity to improve.

The following additional factors will also be considered by local authorities and RSCs in deciding whether or not to issue a warning notice:



- performance trends, such as a sudden drop in performance or conversely signs that a school is on a sharp upward trajectory. It should be noted, with respect to this factor, that in 2016 only, if a school's performance at Key Stage 2 has dropped below the floor standard based on performance in writing alone, and in the absence of any other factors, the local authority or RSC will not issue a warning notice, except where the extent of the change in performance cannot be explained by the impact of the changes to primary assessment arrangements in this transitional year;
- recent Ofsted judgements or assessments of aspects of a school's performance and its capacity to improve, particularly judgements of Leadership and Management;
- variations in performance data between pupils of different characteristics (including pupils of low, middle and high abilities) and/or
- low standards achieved by disadvantaged pupils, including where the school's pupil premium spending is not used effectively

### **Breakdown in the way a maintained school is managed or governed**

Another ground for issuing a performance standards and safety warning notice is that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, the pupils' standards of performance.

Local authorities (or RSCs) can identify additional support or consider issuing a warning notice, depending on the severity of the case, to maintained schools where the governing body is failing to deliver one or more of its three core strategic roles resulting in a serious breakdown in the way the school is managed or governed, that will or is likely to adversely affect standards' of pupils performance.

Evidence that governors may be failing to deliver on one or more of their strategic roles (see page 6) could include, but is not restricted to:

- high governor turnover;
- a significant, unexplained change to their constitution; and/or
- the governing body having an excessive involvement in the day to day running of the school.

These situations could all indicate a serious breakdown of management or governance that may prejudice standards. In such circumstances, the local authority (or RSC) may want to investigate and where appropriate take action early by issuing a warning notice.

### **When formal intervention is used**

KCC will consider issuing a warning notice to schools that have not responded robustly or rapidly enough to a recommendation by Ofsted to commission an external review of

- the use and impact of the Pupil Premium and
- governance.

Such recommendations are normally made as part of Section 5 inspections in schools 'requiring improvement' where the standard of performance of disadvantaged pupils is unacceptably low or where governance is judged to be weak.

Since it is a core function of Governing Bodies to create robust accountability for the educational performance of the school, failure to address such recommendations by Ofsted is seen as an indication that the school is causing sufficient concern for the LA to issue a Warning Notice. This must set out:

- (a) The matters on which the LA's concerns are based;
- (b) The action which the Governing Body is required to take in order to address the concerns raised (e.g. specific actions if discipline has broken down);
- (c) The initial compliance period beginning with the day when the warning notice is given and ending 15 working days following that day, during which time the Governing Body is to address the concerns set out in the warning notice, or make representations to Ofsted against the Warning Notice; and
- (d) The action the LA is minded to take using its statutory powers if the Governing Body does not take the required action.

When a school is judged by Ofsted to require Special Measures the Local Authority can apply for an Interim Executive Board (IEB) in all cases. This has to be approved by the Secretary of State for Education. The Governing Body in question has the right to appeal before approval is given. Withdrawal of delegation may also be considered unless the LA has already intervened and has facilitated leadership change.

If an IEB is established it is given full delegated powers to take the necessary action to improve the school.

As a consequence of the removal of delegation, a senior KCC Officer would attend governing body meetings where financial and personnel decisions need to be made such as the appointment of staff, promotions, the use of the budget and Headteacher capability.

If a school is judged by Ofsted to be inadequate (i.e. requiring special measures or judged to have serious weaknesses) the immediate action taken by KCC is to prepare a statement of action, and support the school to prepare its action plan.

## **References:**

- [Schools Causing Concern – Intervening in failing, underperforming and coasting schools. Guidance for local authorities and RSCs \(effective from the 18<sup>th</sup> April 2016\)](#)
- [Education and Adoption Act 2016](#)
- [Kent School Improvement Strategy – February 2016](#)