

E-ACT POLICY

PARKWOOD ACADEMY

Capability – Teachers

Date agreed by Governors	
Date of review	
Responsible officer	Principal / Business Director

LIST OF CONTENTS

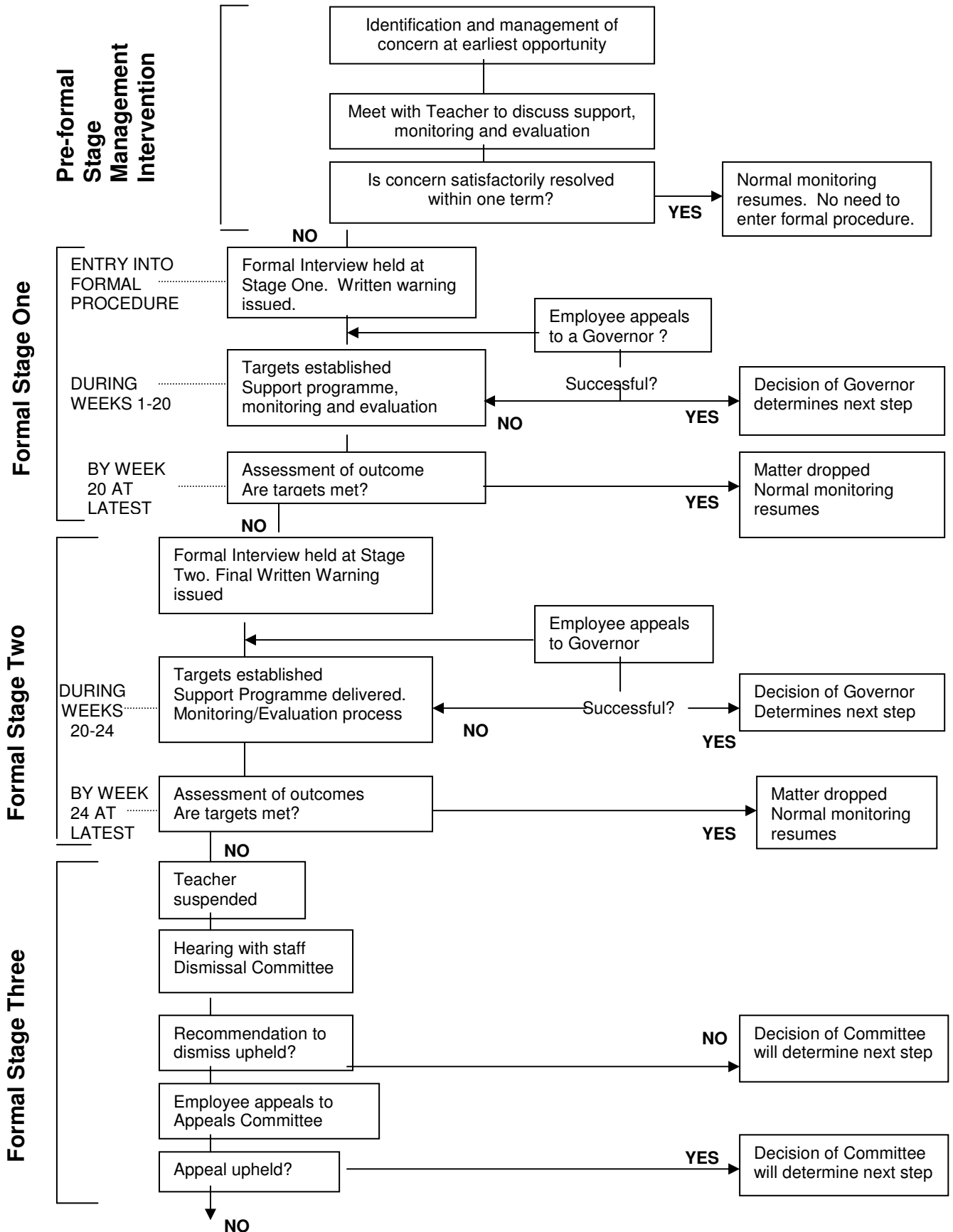
	Page No
Flowchart	3
Summary of Procedure	5
Preamble	8
 PART ONE	
Introduction	8
 PART TWO	
The Capability Procedure for Teachers	13
Section A Identification, Support, Monitoring and Evaluation	13
Section B Representation by Teachers and Headteachers' Trade Unions or other Employee Representative.	13
Section C Involvement of Governors in Appeals at Formal Stages One and Two and in Hearings and Appeals at Formal Stage Three	14
Section D Appeal Right	14
Section E Records	15
Section F Management Intervention Prior to Entry into the Formal Stages of the Procedure	15
Section G The Formal Stages of the Capability Procedure	17
Section H Suspension From Duty	22
Section I Options Available	22

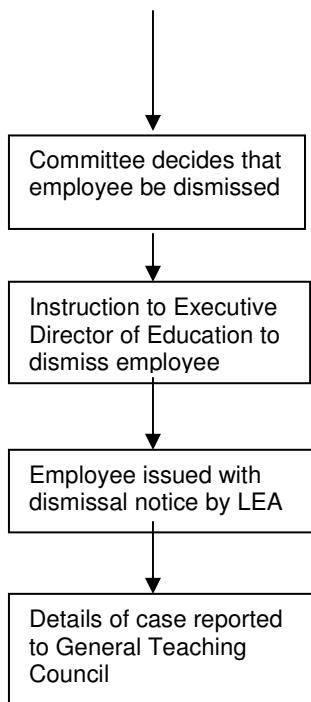
Section J	Source of Assistance and Review	23
Section K	Redeployment	23
Section L	Staff who are Absent through Illness during the Procedure	24
Section M	Reporting of Cases to the General Teaching Council	25

Appendices

One:	Important Notes to Consider When Planning Timetables for Managing the Formal Stages of the Capability Procedure
Two:	Notice Periods for Teachers and Headteachers
Three:	Roles and Responsibilities
Four:	Procedure to be followed at a Dismissal Hearing at Locally Managed Schools
Five:	Procedure to be followed at an Appeal Hearing at Locally Managed Schools
Six:	Notes on the Procedure for Teachers or Headteachers in Non-Delegated Schools or Employed Centrally by the LEA
Seven:	Potential Outcomes of the Formal Stages of the Procedure
Eight:	Model Letters

TEACHER CAPABILITY PROCEDURE – FLOWCHART





Note

1. At any of the above stages options in line with Section I of the procedure can be discussed and considered.
2. Timescales for individual cases will be determined in accordance with the seriousness of the particular case.

SUMMARY OF PROCEDURE

1. KEY POINTS RELATED TO PRE-FORMAL STAGE AND THE PROCEDURE AS A WHOLE

- 1.1 Any concerns a manager has about the performance of any teacher should be raised with the individual teacher as early as possible. Normally this will be part of the usual monitoring process to which all teachers are subject.

However, this procedure enables the manager to take action at the pre-formal or formal stages whichever is appropriate to the level of concern the manager has about the teacher's performance

- 1.2 Where concerns about a teacher's performance persist management interventions prior to the formal stages should last no more than one term.

- 1.3 Managers should ensure the individual teachers managed under this procedure are clear about:

- The level of concern
- The evidence used to reach this conclusion
- The stage of the procedure being followed
- The expected level of performance required
- The type of support available
- The consequences of failing to improve their performance

- 1.4 Individual teachers are expected to co-operate constructively with the procedure. Where a teacher believes a manager is behaving unreasonably these concerns should be raised within this procedure.

- 1.5 Throughout the operation of the procedure the manager should keep clear written records and put in writing their concerns to the individual teacher.

- 1.6 The aim of the procedure is to improve the performance of a teacher causing concern to a level that is acceptable. Teachers whose performance reaches an acceptable level will cease to be in the procedure. Their performance level will then be the subject of normal monitoring.

2. KEY POINTS RELATED TO THE FORMAL STAGES

- 2.1 The formal stage normally commences with the First Formal Interview. Unless it is a case involving the capability of a headteacher, no governor should be involved. In cases where the evidence shows very serious concerns, then the formal stage could start at a higher level (e.g. stage two).
- 2.2 At the end of the First Formal Interview the headteacher may decide to issue a first written warning to the teacher.

A teacher can appeal against such a decision and any appeal at this stage will be heard by one governor.
- 2.3 Following the first formal interview, the first assessment stage follows, which lasts no more than 20 weeks. It could of course last less than this where the evidence justifies such action. Evaluation of performance should take place by week 20 at the latest.
- 2.4 Depending on the outcome of the evaluation, a second formal interview may take place. Again no governor should be involved unless the interview is about a headteacher's capability.
- 2.5 At the end of the second formal interview the manager may decide to issue a final written warning.

A teacher can appeal against such a decision and any appeal at this stage will be heard by one governor.
- 2.6 Following the second formal interview the second and final assessment stage follows which lasts no more than 4 weeks. It could of course be a shorter period depending on the level of concern about the teacher's performance. Evaluation of performance should take place at the end of this period of assessment.
- 2.7 If the outcome of the evaluation is that the manager will recommend the dismissal of the teacher then the teacher will be suspended from duty on full pay.
- 2.8 Formal Stage Three includes the Governing Body Dismissal Committee. This committee determines whether or not to uphold a manager's recommendation that a teacher be dismissed.
- 2.9 If the Dismissal Committee upholds the manager's recommendation to dismiss the teacher can appeal to the Governing Body Appeal Committee.

- 2.10 Any dismissal is with contractual notice and can only be actioned once a teacher has had access to the Appeal Committee process.
- 2.11 Throughout the formal stage the options outlined in Section I should be considered although they may not always be appropriate.
- 2.12 Where staff are absent through illness during the procedure the following applies:-

In the case of long term absences

Where this absence appears to have been triggered by the capability procedure and which management believe is likely to be long term the teacher should be referred to the City Council Occupational Health Service by the manager for assessment of their health and fitness for continued employment.

Termination of employment on the grounds of ill health may be an option for the manager to consider depending on occupational health guidance.

In the case of short term absences

Such absences should not normally delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the teacher to attend evaluation meetings. Where the teacher is unable to attend, such meetings may proceed in the teacher's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided to the teacher in the letter confirming the decision taken.

CITY OF SHEFFIELD EDUCATION DEPARTMENT

CAPABILITY PROCEDURE FOR TEACHERS AND HEADTEACHERS

Preamble

It is recognised by the LEA that the vast majority of teachers and headteachers in its schools make a valuable contribution to the education of the children. All teachers' and headteachers' performance is being continually monitored, for example, as part of performance management, and support is given to them, for example through in-service training to help them further develop their performance. The capability procedure outlined below is only to be used to manage the minority of teachers and headteachers whose capability in their job is causing concern and potentially jeopardising the education of pupils.

PART ONE

Introduction

This procedure applies to teaching employees (including headteachers and members of the leadership team) of locally managed LEA schools and to those teachers or headteachers (including members of the leadership team) employed centrally by the LEA. It is based upon:

- The Outline Capability Procedure agreed at national level in 1997 by a working group which included the National Employers' Organisation for School Teachers, six teacher associations, church authorities and governor associations. This group was chaired by ACAS.
- The statutory guidance on capability procedures for teachers sent to all maintained schools in England by the DfEE on 13 July 2000. This guidance was issued under the staffing provisions of the Schools Standards and Framework Act 1998 (paragraph 22(3) of Schedule 16 and paragraph 21(3) of Schedule 17 and must be considered by governing bodies in determining the capability of teachers.
- The statutory powers of the General Teaching Council.

Note 1: The term manager throughout this procedure is a generic term and refers to the most appropriate manager to manage a capability issue. It could therefore mean Headteacher, Deputy Headteacher, Assistant Headteacher, Senior Teacher, Head of Department in a delegated school.

Note 2: Where the capability of a headteacher is causing concern the manager in this will be a member of the LEA's team of advisers who will report to the Headteacher's Chair of Governors.

Note 3: The term teacher throughout this procedure can mean teacher, headteacher, Deputy Headteacher, Assistant Headteacher or Teacher with management allowances.

Note 4: The procedure applies to both qualified and unqualified teachers.

The procedure deals with both the pre-formal and the formal stages of managing issues of the capability of a teacher which could result in that teacher receiving formal warnings or ultimately being dismissed from their post.

1.1 It is recognised that one of the most difficult areas for both Managers' and Teachers' Unions is where there are concerns about the capability of a teacher performing work which the teacher is normally employed to do. When dealing with issues of capability it is important to take into account the circumstances of a teacher at work and if appropriate at home. It is equally important to consider the potentially adverse impact on the standards of the education received by the children provided by the teacher whose performance is causing concern.

For this procedure, lack of capability is defined as a situation in which a teacher fails consistently to perform his or her duties to a professionally acceptable standard or, in particularly serious cases, a situation where the education or safety of children is in jeopardy. **The procedure does not deal with lack of capability due to ill health, nor with misconduct, which may be defined as an act or omission by a teacher which is considered to be unacceptable professional behaviour. Lack of capability due to ill health and misconduct need to be dealt with under separate procedures (i.e. attendance at work and discipline).**

1.2 As good employment practice it is strongly advised that the manager ensures the following have taken place:-

1.2.1 The teacher has received appropriate induction to their job (including statutory induction for newly qualified teachers).

1.2.2 The teacher has been issued with a clear job description.

1.2.3 The teacher has been told clearly what is expected of him/her in terms of the level of their performance.

1.2.4 The teacher's performance has been regularly monitored and feedback has been given to him/her.

1.3 The following procedure is designed to ensure that issues of capability are dealt with by managers thoroughly, promptly and equitably in a sensitive, constructive and understanding manner, with differential and developmental support recognising the needs of the individual concerned and their particular circumstances. In particular, it is designed to give an individual **teacher every reasonable opportunity** to overcome

his/her difficulties.

The manager will provide as appropriate at every stage of the procedure:

- the practical and consistent application of support, advice and guidance to the individual by a professional approach;
- training or retraining as necessary following any identification of an individual's needs;
- the establishment of performance criteria and monitoring of performance against the criteria within predetermined time periods;
- provide clear written information regarding the alleged shortcomings in the teacher's performance.

An individual teacher will be fully involved in the process by being invited to participate in discussions about his/her performance, advised clearly on the specific areas of concern and made fully aware of the comments being made by those whose role it is to offer support and guidance. He/she will also be made fully aware of the stage which has been reached, his/her performance at each stage, and the timescale by which improvement is expected.

The support and guidance provided for the teacher will be appropriate and, if necessary, include in-service training and attendance on appropriate courses. These costs will be met by the school.

Note 1: Regarding paragraphs 1.2.4 and 1.3, the manager in the case of the headteachers will be a member of the LEA's team of advisers working with the Chair of Governors or another appropriate member of the Headteacher's Governing Body. Under the school Standards and Framework Act the LEA may raise concerns about a headteacher's performance with a Chair of Governors. This may be the trigger that commences management of a case under this procedure.

1.4 It should be recognised that the success of any arrangements to improve the performance of an individual teacher depends on the constructive co-operation of the individual concerned. The individual experiencing difficulties in performing at an adequate level will not be a passive agent in this process. It is expected that they:

- 1.4.1 will willingly accept LEA Advisers and senior members of staff at the school to observe his/her performance;
- 1.4.2 accept and act upon the advice of LEA Advisers, senior staff and senior managers to carry out reasonable directions which are designed to improve performance;

1.4.3 will participate positively and constructively in discussions about his/her performance and how it can be improved and will be given opportunity to record his/her views on the advice and support offered and progress made;

1.4.4 will do all he/she can to act upon advice with regard to any in-service training opportunities made available.

Where a teacher does not co-operate with reasonable measures designed to improve his/her performance the period of monitoring of their performance may be shortened.

1.5 Whilst it is important that these provisions are considered in order to ensure fairness and equity in the treatment of individuals, it may be that formal sanctions have to be imposed. Therefore the manager will reserve the right to consider termination of employment on the grounds of capability where problems persist and alternatives to dismissal have been considered but are inappropriate or unavailable. In the most extreme cases termination of employment may be considered following no more than a 4 weeks period of monitoring and assessment.

1.6 The procedure is designed to ensure that if an individual fails to improve his or her difficulties any consequent action was based:

1.6.1 on structured information gathering and systematic recording which demonstrates that a teacher is incapable;

1.6.2 on a fair procedure used to reach this conclusion;

1.6.3 on the fact that the individual was given reasonable assistance to overcome such failings;

1.6.4 on the teacher knowing the level of seriousness of the problem, the teacher having been given clear written information on the nature of their professional performance problems and the teacher's problems being given appropriate consideration and support at the earliest possible stage;

1.6.5 on the teacher being given reasonable time to improve within the timescales given in this procedure.

1.7 The formal capability procedure is described in stages of increasing seriousness to avoid ambiguity about an employee's position. It must be noted however that some circumstances may be of such a serious nature that they will immediately need to be considered under the first, second, or the final formal Stage in the formal procedure.

Prior to a meeting or hearing taking place under this procedure, an individual should be informed, in writing, of the level at which the case is being considered. Entry into

the formal levels of the procedure will be determined to reflect the seriousness of the lack of capability. There will be an assessment of the level of the identified performance problem by the manager (with relevant advice from LEA Advisers and Education Personnel Services) which will determine the level at which the teacher enters the procedure.

- 1.8 If at any stage in the procedure the teacher regards the steps being taken as unreasonable, he/she will have the opportunity to raise their concerns during relevant meetings, hearings or appeals under this procedure and by submitting a letter to the Manager outlining their concerns.

PART TWO

The Capability Procedure for Teachers

Section A

Identification, Support, Monitoring and Evaluation

It is important that professional performance problems are clearly identified and given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s) must be investigated and identified by structured information gathering and systematic recording.

Those monitoring the performance of the teacher should offer feedback and instruction to help the teacher improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible but should not interrupt the timing of the procedure. Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

Following a specified period of support, monitoring and evaluation the next decision will be to assess the outcome. In the event that the teacher has failed to satisfy the targets and/or performance standards set, consideration should be given to a different balance of duties or alternative teaching post.

However, where it is not possible to provide a different balance of duties, an alternative teaching post or where the employer's level of performance is causing serious concern it will be necessary to enter into the formal stages of the procedure.

Note 1: With regards to Section A above, it will not normally be appropriate for headteachers who fail to satisfy targets and performance standards set to be considered for a different balance of duties or an alternative teaching post.

Section B

Representation by Teachers' Trade Unions or Other Employee Representative

Representation by Teachers' Trade Unions will be encouraged. An employee has the legal right to be accompanied by their Trade Union or other chosen employee representative at every stage of the procedure. Each employee will be informed of this right throughout the procedure. If the teacher's chosen companion is not available at the time proposed for the interview, meeting or hearing and the teacher proposes an alternative that is reasonable and

falls within five working days of the date proposed, the school will rearrange the event to the time proposed by the teacher.

Details of any actions previously taken or now proposed will be given in writing to the employee's representative if the employee so desires.

No action should take place with regard to any individual who is a recognised representative of a Trade Union until, following notification to the individual, the circumstances of his/her case have been discussed with a full-time official or other appropriate official of the individual's Trade Union. Should the individual not wish his or her Trade Union official to be involved the procedures will be followed normally.

SECTION C

THE INVOLVEMENT OF GOVERNORS IN APPEALS AT FORMAL STAGES ONE AND TWO AND IN HEARINGS AND APPEALS AT FORMAL STAGE THREE

In accordance with the 1998 School Standards and Framework Act and relevant governor regulations Governing Bodies of delegated schools must appoint two separate sub-committees of not less than 3 Governors each to consider capability at work cases at the third and final stage when the dismissal of an employee is being considered. The staff dismissal committee must hear representations and recommendations brought by the manager conducting the capability evaluation and any representations that the teacher may wish to make. The governing body should also set up a staff appeal committee to hear any appeal against a dismissal decision. None of the governors on the staff dismissal committee should be on the staff appeal committee.

For interviews in the formal stages of the procedure, the manager managing the teacher capability will determine whether or not to issue a formal warning after hearing representations from the teacher.

Any appeal at formal stages one and two will be heard by a governor. A personnel adviser from the LEA will be present to advise governors at formal hearings and appeals. A personnel adviser will also be available at formal interviews conducted by the manager at formal stages one and two.

SECTION D

APPEAL RIGHT

The school will give the employee the right of appeal against any formal warning issued under the two formal interviews of the procedure and the right of appeal against a decision to dismiss him/her at a stage three hearing. In order to register an appeal the teacher will need to write to the Headteacher or Chair of Governors as appropriate within five working days of the hearing and will need to specify the reasons for the appeal. Appeals should normally be restricted to:

- considering the reasonableness of the decision made;
- any relevant new evidence;
- procedural irregularities.

Note 1: Regarding Section C: Normally in a Primary School the manager presenting a case at the formal hearings will be the Headteacher.

SECTION E

RECORDS

Notes of any meetings held at formal stages of the procedure and any formal warnings issued will be recorded on the teacher's personal file. Throughout the procedure a teacher will be supplied with copies of any reports prepared and these, with their agreement, will also be supplied to their chosen representative. A written record should be kept of any observations made of a teacher's work and a résumé of the record handed to the teacher concerned as soon as possible after the end of the period of observation.

If at any time during the procedure the manager determines that the employee concerned has improved his/her performance to the standard required, he/she should be informed of this in writing. The employee will then revert to the normal monitoring to which all teachers are subjected.

SECTION F

MANAGEMENT INTERVENTION PRIOR TO ENTRY INTO THE FORMAL STAGES OF THE PROCEDURE

Before entering into the formal procedure, managers have the right and the duty to bring matters of concern to an employee's attention by discussing the situation with the employee concerned. These matters of concern may arise from normal monitoring, complaints, supervision sessions, work reviews or other sources. When it appears that an employee lacks the capability of performing to the required standard they will be requested to attend a meeting with the manager. The objective of the meeting is to draw to the attention of the individual the way in which their performance is alleged to be deficient and to:-

- assess the seriousness of the problem which exists
- explain the standards of job performance required
- outline the employee's shortcomings in reaching these standards
- explore possible reasons for shortcomings
- provide help that may be thought necessary
- give the employee an opportunity to respond
- outline the time allowed for improvement of the teacher's performance.

Notes of such a meeting will be kept by the manager and will be shared with the employee.

Before the meeting the manager will have investigated the alleged lack of performance to provide relevant information to put to the employee. This may include details of previous training, length of service, details of any previous meetings, notes of lesson observations and any written complaints about the employee's work. The provision of such information will lead to a greater understanding and appreciation of an individual's case at the earliest opportunity.

An appropriate support programme shall be arranged and the teacher will normally be given no more than one term in which to show acceptable improvement. The period of time given to the teacher to improve their performance will reflect the seriousness of the concern and in extreme cases will be shorter than one term. The employee will be informed that their subsequent performance will be monitored and how it will be assessed. This will be done as objectively as possible, bearing in mind particularly the nature of his/her duties and length of time, which could be considered reasonable for him/her to improve his/her

performance. A date for a review of the teacher's performances will be clearly specified as part of the programme of action determined. The employee will be notified of the period of time in which improvement is expected and advised of the consequences of a failure to improve their performance.

Depending on the circumstances of the case the manager concerned may consider the options available in Section I to enable a mutual resolution of the issues under consideration.

An individual will be informed if it is decided that their performance has improved to the standards required. The manager will confirm this in writing to the employee and the employee will revert to the normal monitoring to which all teachers are subjected.

However, please note that following investigation and assessment by a manager a decision may be reached to move immediately into the formal capability procedure because of the seriousness of the concerns. Again the individual teacher concerned should be informed of this decision in writing.

SECTION G

THE FORMAL STAGES OF THE CAPABILITY PROCEDURE

Introduction

The procedures described below are relevant to any case where continued or serious concern about the standard of performance is justified. The decision on which stage of the procedure is invoked will depend on the seriousness of the problem and the circumstances attached to a particular individual case. If performance is unsatisfactory a first formal interview will normally be the next step. In cases of serious concern a second formal interview or a move to suspension and a dismissal hearing may be appropriate. Timescales may also be shortened to reflect the seriousness of the concerns. In the most serious cases a period of only four weeks of monitoring and assessment may be appropriate after which termination of employment may be considered. The period of assessment may be shortened if justified, for example where it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, or where there is a lack of co-operation by the teacher with reasonable measures to achieve improvement.

1. STAGE ONE

1.1 First Formal Interview

The first formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in

a structured way. It allows the teacher to prepare a response to allegations about performance and make a case in the company of a union representative or other employee representative. At least five working days' notice must be given for the interview. Where justified, an interview may be held outside of term time. In such cases seven consecutive days' notice must be given.

The interview may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.

There are three main options at first formal interview. Other options may be considered (please see also Appendix Seven for details).

drop the matter and resume normal monitoring of performance,

counselling (except where already undertaken in the pre-formal stage without improvement).

The above two options are only relevant where new information, a different slant on the information collected or further investigation suggests that the matter is not as serious as it first seemed.

issuing by the manager of a first written warning to the teacher.

A decision made by a manager on which of the above options is appropriate should be made after all the facts and any representations from the teacher have been considered. The manager should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the teacher. Any appeal against a first written warning must be made within five working days of having received a copy of the written warning and heard within ten working days (or fourteen consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedures unless the appeal decision leads to the matter being reconsidered.

Where a first formal written warning is issued the manager should use the remainder of the meeting to:

- identify the professional shortcoming;
- give clear guidance on the improved standard of performance needed to end the capability procedures;

- explain the support that will be available and how performance will be monitored over the following weeks;
- identify the timetable for improvement and agree a date for the next evaluation meeting; and
- make it clearly understood that failure to improve may lead to a final written warning or dismissal,
- notify the teacher of their appeal rights.

A letter should be sent to the teacher within three working days after the formal interview recording the result of the investigations, the main points discussed at the meeting and confirming the decision. (A model letter is included as Appendix Eight.)

Following on from the first formal interview the following procedure will be invoked:

1.2 First Assessment Stage

The timescales described below are the recommended maximum period. The manager may have evidence to justify a shorter period of assessment.

Weeks 1 to 20 – Regular observation, monitoring and evaluation of performance with guidance, training if necessary and support to the teacher. If at any point during this stage the circumstances suggest a more serious problem a decision may be taken to move directly to a second formal interview or suspension and a dismissal hearing.

Week 20 – Evaluation meeting to assess performance over the previous weeks. If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the line manager. Normal monitoring of work performance will then resume.

2. STAGE TWO

2.1 Second Formal Interview

Following monitoring and evaluation at Stage One, if performance has continued to be unsatisfactory a second formal interview should take place at which a final written warning may be issued. In the more serious cases or where there has been continued concerns with a teacher's performance the formal capability procedures may also start at this stage. At least five

working days' notice must be given for the meeting and the teacher may be accompanied by a union representative or a colleague. Where justified, an interview may be held outside of term time. In such cases seven consecutive days' notice must be given.

The main options available to the manager are:

- issuing a final written warning to the teacher;
- further counselling and support;
- drop the matter and resume normal monitoring of performance. (Please see Appendix Seven also for further guidance.)

After the interview formal monitoring, evaluation, guidance and support should continue for a further period. Arrangements for this should be explained at the meeting. The teacher must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision of the manager and main points of the meeting should be recorded in a letter to the teacher. (Please see Appendix Eight for an example of a model letter.) Any appeal against a final written warning must be made within five working days of having received a copy of the final written warning (or seven consecutive days out of term time), and heard within ten working days (or fourteen consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure unless the appeal decision leads to the matter being reconsidered.

2.2 Second and Final Assessment Stage

The timescales outlined below are the recommended maximum period. The manager may have evidence to justify a shorter timescale.

Weeks 20 to 24 – Regular monitoring and evaluation of performance with guidance, training if necessary, and support to the teacher.

Week 24 – Final evaluation meeting to report the assessment of performance over the previous weeks. At least five working days (or, where justified, seven consecutive days out of term time) notice must be given for the meeting and the teacher may be accompanied by a union representative or colleague. If performance has been satisfactory and there is sufficient confidence that it can be maintained, the capability procedure can end here and normal monitoring can resume.

If performance is unsatisfactory the teacher should be told that they will be suspended from duty on full pay and the matter will be referred to the

governing body staff dismissal committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing (if known) should be recorded in a letter to the teacher. (Please see Appendix Eight for a copy of a model letter.)

3. STAGE THREE

3.1 Dismissal Committee Stage

Following a recommendation by the manager to move to the dismissal stage, the governing body should set up a staff dismissal committee with at least three governors. (In exceptional circumstances a committee of two governors may be used.) This must hear the representations and recommendations brought by the head or other line manager conducting the capability evaluation, and any representations that the teacher may wish to make. The governing body should also set up a staff appeal committee of three governors to hear any appeal against a dismissal decision. None of the governors on the staff dismissal committee should be on the staff appeal committee. At any hearing or appeal where dismissal is being considered the Executive Director of Education will be represented by an officer from Education Personnel Services to offer advice to the above committees.

At least five clear working days' notice of a dismissal hearing must be given to the teacher. Where justified, a dismissal hearing may take place outside of term time. Seven consecutive days' notice of such a hearing must be given.

Where appropriate and practicable, the options available in Section I must be considered as an alternative to dismissal. If redeployment is appropriate and available, then any arrangements offered will be in line with Section K.

The result of a hearing at which dismissal has been considered must be notified to the teacher at the end of the hearing and confirmed in writing within three working days of the hearing. If the decision is to dismiss the employee he/she must be informed in writing of the right of appeal to the staff appeal committee of the governing body before the decision to dismiss is notified to the Executive Director: Education. The employee must confirm their decision to appeal by writing to the Chair of Governors within five working days of receiving the written decision of the Dismissal Committee.

The decision to dismiss must be communicated to the LEA only after the outcome of an appeal has been confirmed by the staff appeal committee or after the employee has either turned down the opportunity to appeal or has not indicated whether they wish to appeal within the specified timescale.

The Executive Director: Education will issue the dismissal notice within 14 days of receipt of this notification. All dismissal letters must give the teacher appropriate contractual or statutory notice (whichever is the longer), specify the reasons for dismissal and notify the employee of his/her rights of appeal to an Employment Tribunal, mentioning the specific time limits for lodging such an appeal. All dismissal letters will be delivered by hand and signed for by the employee or will be sent to his/her home address by recorded delivery as appropriate.

Pay in lieu of notice may be offered when a teacher is dismissed on grounds of capability. Offering payment in lieu of notice to a teacher will have to be justified by the manager presenting the statement of case.

If payment in lieu is not offered, an employee who is dismissed on grounds of capability will remain on suspension from their teaching duties whilst serving their period of notice. Attempts at redeployment into non-teaching jobs (where such redeployment is deemed appropriate) will continue in this period,

3.2 Most Serious Cases

The short procedure of up to four weeks would apply in particularly serious cases where the education of children is in jeopardy. Examples of this might be where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, or where all the children under a teacher's care fail to progress in that teacher's lesson.

SECTION H

SUSPENSION FROM DUTY

1. Where, at any stage in the procedure, following investigation and consideration of the evidence by a manager results in a decision by the manager that the teacher's continued presence in the classroom or school is either a risk to the teacher's own health and safety or a risk to the children's health and safety, the teacher may be suspended from duty on full pay to allow proper consideration by the manager of how to deal with this teacher.
2. Suspension from duty on full pay will take place where it is decided that a teacher's lack of capability is so severe that he/she will be required to attend a dismissal hearing at formal stage three.

SECTION I

OPTIONS AVAILABLE

At any stage within the procedure the manager managing the capability of a teacher may wish to give consideration to the options available to enable them to resolve the issues presented.

Using the information gathered it may be appropriate in some cases to consider the following:

- Retraining and/or help from a skilled worker. Help from a skilled worker may be in the form of counselling and informal coaching to encourage and help the employee improve.
- Medical examination.
- Appropriate counselling about other types of employment.
- Redeployment in accordance with the arrangements established for redeployment which may include consideration of redeployment into non-teaching jobs.
- Any other appropriate counselling or advice.
- Job redesign or other changes to working arrangements (e.g. transfer to a post of less responsibility. If such a transfer was deemed appropriate by the manager and acceptable to the teacher the teacher would receive from the commencing date in the new post only the level of salary for the post of less responsibility).

SECTION J

SOURCE OF ASSISTANCE AND REVIEW

In primary schools the Headteacher and Deputy Headteacher will normally be involved in the process of assistance and review. However, in the smaller primary school this may only be the responsibility of the Headteacher.

In secondary schools the Headteacher, Deputy Headteacher, Assistant Headteacher and Head(s) of Department(s) or Year(s) will normally have this responsibility.

In all cases the school may also request assistance from the appropriate support service of

the LEA, particularly the Advisory and Inspection Service and Education Personnel Services.

Where the individual under review is a Deputy Head, assistance and the monitoring function will normally be provided by the Headteacher. If the individual under review in a secondary school is a Head of Department monitoring and assistance will be provided by the Headteacher, the Deputy Headteacher or Assistant Headteacher as appropriate. Where the individual under review is a Headteacher, the person providing monitoring and assistance will be a member of the LEA's Advisory and Inspection Service, who will report to the Chair of Governors.

SECTION K

REDEPLOYMENT

There can be no guarantee of redeployment under this procedure. Where it is appropriate and if posts are available redeployment to an alternative post more suited to that teacher's abilities will be considered. Redeployment may be considered to posts outside the teaching profession. This may be done at any stage within the procedure with the agreement of the employee concerned;

Where an employee is offered redeployment this will be in writing, specifying why it is being made, the timescale by which redeployment needs to be achieved, the level of salary on offer and the consequences of refusal. The employee will be given sufficient time to consider this offer although there will be no extension to dismissal notices issued.

Redeployment to a lower graded post on the grounds of lack of capability will result in the teacher immediately commencing work on the lower salary.

Redeployment will not be used as a means of passing a teacher capability issue from one school to another (or to another Service Area). Redeployment will only be considered where the available evidence suggests a teacher's performance will improve to a satisfactory level if they moved to another post.

SECTION L

STAFF WHO ARE ABSENT THROUGH ILLNESS DURING THE PROCEDURE

1. Long Term Absence

Absence which appears to have been triggered by the capability procedure and which management believe is likely to be long-term should be managed as follows:

- The employee to be immediately referred to the City Council's Occupational Health Service by the manager for an assessment of their health and fitness for continued employment, and
- The manager to take a considerate and sympathetic approach but in general the length of time they may wait for a person's health to improve before considering whether to terminate employment on health grounds (in line with the School Attendance at Work Policy) should be subject to occupational health guidance.

2. Short Term Absence

Short absences should not normally delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the teacher to attend evaluation meetings, but where the teacher is unable to attend these may proceed in the teacher's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided to the teacher in the letter confirming the decision taken.

SECTION M

REPORTING OF CASES TO THE GENERAL TEACHING COUNCIL

In cases where a teacher is:

- dismissed from employment;
- resigned from employment in advance of a stage three hearing where dismissal would have been considered;
- resigned from employment where a recommendation to dismiss them was likely.

Then the details of the case must be reported to the General Teaching Council in line with the relevant statutory instruments.

Cases must be reported if the above circumstances apply even where mutual terminations or compromise agreements are reached. The teacher will be informed that such a report will be made.

IMPORTANT NOTES TO CONSIDER WHEN PLANNING TIMETABLES FOR MANAGING THE FORMAL STAGES OF THE CAPABILITY PROCEDURE

1. Check when school holiday periods fall. It will not be possible to monitor employees during holidays. The arrangement of formal interviews, dismissal hearings and appeals should normally be held in term time.
2. Where there is absence due to sickness of the employee who is causing concern or of any relevant witness/manager it may be necessary to reschedule the timetable to allow for the recovery of this employee if medical evidence supports the teacher's early return to work. If the employee whose performance is causing concern is off on long-term sick, they will need to be managed under the school's attendance at work policy. (See also Section L of the procedure.)
3. Remember that under the Burgundy Book (The Conditions of Service for Schoolteachers in England and Wales), a teacher is entitled to at least 7 days' notice of the time, date and place of a dismissal Hearing. The teacher will also need to receive a written statement of case at the same time.

Such a notice period will also apply to an Appeal against dismissal. In practice it means giving the teacher 5 clear working days' notice of the Hearing and the Appeal.

4. Please note that while normally the period given for improvement will be as described in this procedure in exceptional circumstances the timescale may need to be extended to ensure that adequate monitoring and assessment of an employee's performance have taken place.
5. If you have assessed that a teacher or headteacher should be dismissed please note carefully the notice entitlements of these employees. (See Appendix Two.)

NOTICE PERIODS FOR TEACHER AND HEADTEACHERS

DATES	HEADTEACHERS	TEACHERS
31 January	Last day for issuing notice of dismissal for 30 April dismissal	
5 February		Last day for issuing notice of dismissal for 30 April for those with 12 or more years continuous of service
12 February		Last day for issuing notice of dismissal for 30 April dismissal for those with 11 years' continuous service
19 February		Last day for issuing notice of dismissal for 30 April dismissal for those with 10 years continuous service
26 February		Last day for issuing notice of dismissal for 30 April dismissal for those with 9 years continuous service
28 February		Last day for issuing notice of dismissal for 30 April dismissal for those with 8 years or less continuous service
30 April	Effective date of dismissal if notice issued on or before 31 January. Last day for issuing notice of dismissal for 31 August dismissal	Effective date of dismissal if appropriate statutory or contractual notice given
31 May		Last day for issuing notice for 31 August dismissal
31 August	Effective date of dismissal if notice of dismissal issued on or before 30 April	Effective date of dismissal if notice of dismissal issued by 31 May
30 September	Last day for issuing notice for 31 December dismissal	

DATES	HEADTEACHERS	TEACHERS
8 October		Last date for issuing notice of dismissal for 31 December dismissal for those with 12 years continuous service
15 October		Last date for issuing notice of dismissal for 31 December dismissal for those with 1 years continuous service
22 October		Last date for issuing notice of dismissal for 31 December dismissal for those with 10 years continuous service
29 October		Last date for issuing notice of dismissal for 31 December dismissal for those with 9 years continuous service
31 October		Last day for issuing notice for 31 December dismissal for those with 8 years or less continuous service
31 December	Effective date of dismissal if notice issued on or before 30 September	Effective date of dismissal if appropriate statutory or contractual notice given

ROLES AND RESPONSIBILITIES

1. Managers (Who Initiate and Manage the Process)

To inform an employee orally and in writing about any concerns about their performance.

To issue written and final written warnings at the end of formal interviews at formal stages one and two.

To arrange appropriate support for the employee.

To monitor and review an employee's progress.

To assess and make recommendations about which stage of the procedure should be entered.

To investigate capability cases thoroughly.

To present the management statement of case at formal dismissal hearings and dismissal appeals.

To present the management case at any appeals following the issuing of written or final written warnings.

2. Sheffield Advice and Inspection Service

To act as the manager in cases of Headteacher capability.

To keep Chair of Governors informed of progress when managing Headteacher capability.

To issue written and final written warnings at the end of formal interviews at formal stages one and two in cases of Headteacher capability.

To provide support and advice where relevant.

To assist with the monitoring and reviewing of a teacher's performance.

To provide advice to managers about an employee's progress.

To act as expert witness for the manager as required.

To present the management statement of case at dismissal hearings and dismissal appeals for Headteacher capability cases.

To present the management case at any appeals following issuing of written or final written warnings to Headteachers.

3. Education Personnel Services

To provide advice and support on the management of the procedure

To provide model letters.

To provide advice on employment law and terms and conditions of employment.

To advise at formal interviews.

To advise the staff dismissal committee and staff appeal committee (acting as representative of Executive Director of Education).

To advise managers on presenting a case at formal interviews or hearings.

4. Governors

To have regard to this policy when dealing with lack of capability in staff.

To make fair and objective decisions when dealing with appeals against warnings issued by a manager at formal stages one and two.

To notify the Executive Director of Education when they have made a recommendation to dismiss an employee.

To be members of the staff dismissal committee and staff appeal committee. Where the Headteacher's capability is an issue, some governors may be involved in the monitoring and evaluation of performance.

PROCEDURE TO BE FOLLOWED AT A DISMISSAL HEARING

1. Introduction

For a dismissal hearing, a staff dismissal committee comprising of three governors will normally hear the case. Where this number is not reasonably practicable it can be reduced to two.

No final decision regarding dismissal on grounds of capability will be made until after both the Hearing and any subsequent Appeal.

If there is no Appeal then the decision of the staff dismissal committee will be the final decision.

2. Purpose of Hearing

To consider whether a recommendation from a manager that a teacher should be dismissed with contractual notice on the grounds of capability from their post be upheld.

3. Conduct of Hearing

Chair of staff dismissal committee introduces all parties and outlines the purpose of the meeting.

The manager or Executive Director: Education's representative (in the case of headteachers) to present the management case to justify why an employee should be dismissed.

The employee and their representative to have the opportunity to ask questions of the manager/Executive Director: Education's representative.

The governors hearing the case to have the opportunity to ask questions of the manager/Executive Director: Education's representative.

The employee and their representative then have the opportunity to present their case.

The manager/Executive Director: Education's representative to have the opportunity to ask questions of the employee.

The governors' hearing the case to have the opportunity to ask questions of the employee.

The Manager/Executive Director: Education's representative to sum up their case if they wish.

The employee and their representative to sum up their case if they wish.

The Manager/Executive Director: Education's representative and the employee and their representative will withdraw to allow the manager/governor or panel of governors hearing the case to deliberate.

The dismissal committee will announce their decision orally and then confirm this decision in writing within three working days of the date of the hearing.

PROCEDURE TO BE FOLLOWED AT A FORMAL APPEAL

1. Introduction

Appeals against formal warnings issued at formal stages one or two by the manager will be heard by an individual governor. This governor will be advised by a different personnel officer from the one advising the manager.

For a dismissal appeal a staff appeal committee comprising of three governors will hear the appeal. These governors will not have had any prior involvement in the procedure relating to this particular teacher. Where it is not reasonably practicable for a panel of three governors to hear the appeal, then two governors may hear it. Please remember at stage three there should not be fewer governors involved at the appeal stage than were involved at the hearing.

If at a dismissal appeal the staff appeal panel committee decide to uphold a decision to dismiss a teacher, they will notify in writing the Executive Director: Education at the same time that they notify the teacher of their decision in writing.

2. Purpose of the Appeal

At Stages 1 and 2

To consider appeals against the reasonableness of the decision to issue formal written warnings.

To consider allegations of unfair procedure and unreasonable management practice.

To consider any relevant new evidence.

At Stage 3

To consider appeals against the reasonableness of the decision to dismiss a teacher

To consider allegations of unfair procedure or unreasonable management practice.

To consider any relevant new evidence.

3. Conduct of the Appeal Hearing

Chair introduces all parties and outlines the purpose of the meeting.

The Manager or Executive Director: Education's representative (in the case of headteachers) to present the management case to justify either why the formal warning issued at Stages 1 or 2 should remain in place or to justify why an employee should be dismissed at Stage 3.

The employee and their representative to have the opportunity to ask questions of the Manager/Executive Director of Education's representative.

The Manager/Governor(s)/Adviser hearing the case to have the opportunity to ask questions of the Manager/Executive Director of Education's representative.

The employee and their representative then have the opportunity to present their case.

The Manager/Executive Director of Education's representative to have the opportunity to ask questions of the employee.

The Manager/Governor(s)/Adviser hearing the case to have the opportunity to ask questions of the employee.

The Manager/Executive Director of Education's representative to sum up their case if they wish.

The employee and their representative to sum up their case if they wish.

The Manager/Executive Director: Education's representative and the employee and their representative will withdraw to allow the Manager/Governor or panel of governors hearing the case to deliberate.

4. The Manager/Governor or the Chair will announce his/her/their decision orally and then confirm this decision in writing within three working days of the date of the hearing.

NOTES ON THE PROCEDURE FOR TEACHERS OR HEADTEACHERS

1. Introduction

The Capability Procedure for Teachers or Headteachers (including Deputy Headteachers and members of the leadership team) employed in non-delegated schools or employed centrally by the LEA will be the same as for teachers employed in locally managed schools except in the areas indicated below.

2. Managing Capability

The term Manager throughout the procedure is a generic term and refers to the appropriate line manager within a service area. In some cases it may be Head of Service or the relevant Senior Manager in a Service.

3. Formal Hearings (Stages One, Two and Three)

A Stage Three Dismissal Hearing will be heard by an Authorised Manager (i.e. one who is authorised to dismiss employees). A Personnel Officer will offer advice to the Authorised Manager at hearings at all stages of the procedure.

At stages two and three the manager who is managing the case will determine whether or not to issue a formal warning.

The Authorised Manager hearing a case at stage three will usually be at a higher level than the Manager presenting the case.

4. Appeal Rights

The employee will have the right of appeal against any formal warning issued under Stages One and Two of the procedure as well as the right to appeal against a decision to dismiss him/her at Stage 3.

Appeals at stages One and Two should be heard by a different Authorised Manager (ideally at a higher level than the Manager who issued the warning). A Personnel Officer will offer advice at all Appeals.

Appeals against dismissal will need to be made in writing to the Head of Corporate Personnel within five working days of having received the written decision of the hearing, and will need to state the reasons for the Appeal. The Appeal will be heard by the City Council's Appeal Panel.

5. Date of Dismissal

The effective date of dismissal taken is the date of the appeal (if the employee's appeal is unsuccessful). The decision of the Authorised Manager will be confirmed in writing within 3 working days of the hearing.

The decision will confirm that the employee is dismissed with appropriate contractual or statutory notice.

All dismissal letters will be delivered by hand and signed for by the employee or will be sent to his/her home address by recorded delivery as appropriate.

6. Source of Assistance and Review

The appropriate LEA Manager will be involved in the process of assistance and review.

Although the relevant line manager will manage the process, there will need to be a clear role for the Headteachers of schools in which centrally employed teachers are placed. The Headteacher may provide support and assistance to the employee as well as providing monitoring information to the Service Manager.

POTENTIAL OUTCOMES OF THE FORMAL STAGES OF THE PROCEDURE

First Formal Interview

The manager can, after hearing representations from the Manager and the employee, make any of the following decisions:

- Issue a first formal written warning to the employee.
- Decide that the employee's performance should continue to be monitored and reviewed but that the issuing of a formal written warning is inappropriate at this stage. This further period of reviewing and monitoring must be within the timescales outlined in Section G.
- Determine that the employee should not have been entered into the formal stage of the procedure, drop the matter and resume normal monitoring.
- Consider the options available in Section I to enable a mutual resolution of the issues under consideration.

Second Formal Interview

The Manager can make any of the following decisions, having heard representations from the Manager and the employer:

- Issue a second and final formal written warning.
- Recommend that the period given for further improvement of the employee's performance is no more than four weeks.
- If the employee already has a first formal written warning, extend the period of reviewing and monitoring for a clearly determined period of time, but not so that the overall period of improvement for the employee exceeds the timescales outlined in Section G.
- Determine that the employee should not have been entered in the formal stage of procedure, drop the matter and resume normal monitoring.
- Consider the options available in Section I to enable a mutual resolution of the issues under consideration.

Stage Three/Dismissal Stage

The Governor committees hearing the dismissal case or an appeal against dismissal can make any of the following decisions after hearing representations from the manager and employee:-

- To recommend the employee be dismissed from their post with appropriate contractual or statutory notice.
- If an employee has been brought to a Stage 3 hearing without any previous formal warnings issued, issue a first or second written formal warning.
- If an employee already has a second and final written warning, determine that a further period of reviewing and monitoring of the employee's performance takes place. The Panel should only make this decision where they genuinely believe the teacher's performance is significantly improving or where they may have concerns about the operation of the procedure.
- Determine that the employee should not be managed under the formal stages of the procedure and that normal monitoring of performance should resume.
- Determine that the Manager presenting the case considers the options available in Section I to enable a mutual resolution of the issues under consideration.

The above are examples of decisions but it may be possible for other reasonable decisions depending upon the individual circumstances of the case.

MODEL LETTER ONE

LETTER REQUIRING ATTENDANCE OF A TEACHER AT EITHER A FIRST OR SECOND FORMAL INTERVIEW

Dear (Name of Teacher)

Teacher Capability Interview (Formal Stage One/Two)

Further to our meeting on (date) I am writing to confirm that you are required to attend a meeting at formal stage one/two of the school's Teacher Capability Procedure. At the interview I want to discuss concerns I have about your performance as a teacher.

This interview will be held on (date) at (time) in (venue).

You are entitled to be represented at the meeting by either your trade union representative or other employee representative. At the meeting the following people will be present: (list names).

The main areas of concern which I wish to discuss with you at the meeting are:-

1. ???
2. ??? (Insert concerns. Of course there may be more than 3)
3. ???

At the meeting you will have the opportunity to respond to my concerns. The agenda for the interview is as follows:-

1. Introductions and purpose of interview.
2. My concerns about your performance.
3. An opportunity for you or your chosen representative to ask me questions.
4. Your response to my concerns.
5. An opportunity for me to ask you questions.
6. An adjournment whilst I consider the next step(s).
7. My decision and the next step(s).

I must advise you that a possible outcome of this meeting is that I will issue you with a written (or final) warning which will be recorded on your personal file.

If you or your trade union/employee representative are unable to attend this meeting, please inform me immediately and I will rearrange the meeting to take place within five working days. If you have any queries please do not hesitate to contact me.

Yours sincerely

MODEL LETTER TWO

FORMAL WARNING ISSUED BY MANAGER AT FORMAL STAGES ONE AND TWO

Dear (Name of Teacher)

**Teacher Capability Procedure:
Formal/Final Warning issued at Stage One/Two**

Following the formal interview held at stage one/two of the school's Teacher Capability Procedure on (date) I am writing to confirm the formal/final warning I issued to you.

Present at this meeting were the following people:-

- 1.
- 2.
- 3.
- 4.

At the meeting I raised the following evidenced concerns about your performance and explained to you how they fell short of the expected standards of performance.

- 1.
- 2.
- 3.

I stressed that whilst I decided it was necessary to issue you with this warning I sincerely wanted you to make the necessary improvements so that this procedure could end.

Following this meeting the targets I have set you to meet the necessary standard of performance are:-

- 1.
- 2.
- 3.

We agreed that you would receive the following support to help you to meet your targets:-

- 1.
- 2.
- 3.

The monitoring process and timescale is as follows:-

(Details)

An evaluation of your performance will take place on (date) at (time) in (venue).

I must emphasise that in line with the Teacher Capability Procedure I expect you to co-operate/continue to co-operate constructively with this process. Failure to meet the above targets within the timescales described could result in me deciding to issue you with a final warning/recommending to the governors staff dismissal committee that you be dismissed from your post.

You have the right to appeal against this decision by writing to the Chair of Governors within five working days of your receipt of this letter. The Chair of Governors will then arrange for a governor to hear your appeal.

If you decide to register an appeal you must inform the Chair of Governors of the reasons for your appeal.

Yours sincerely