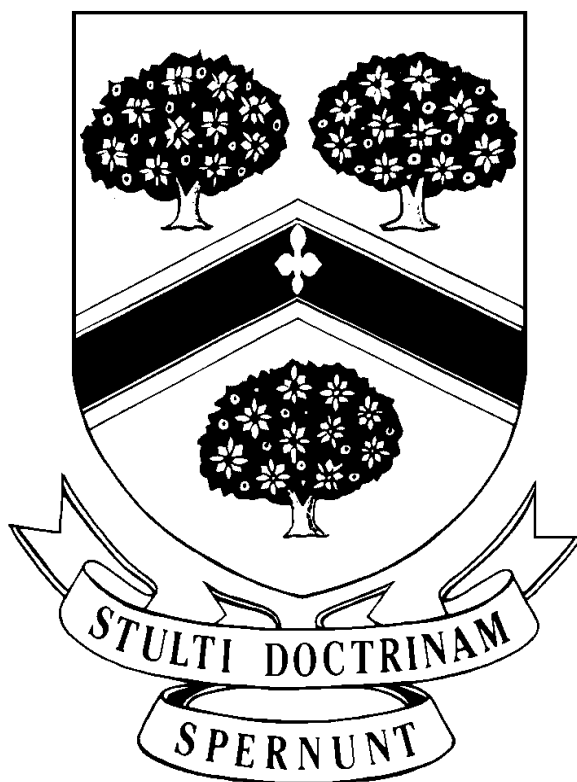


THORNTON GRAMMAR SCHOOL

A SPECIALIST SPORTS, SCIENCE & APPLIED LEARNING
TRUST SCHOOL



FOUNDED 1673

REVIEWED: JUN 2011

Policy **Capability Procedures for Teachers**

Capability Procedures for Teachers

Capability Procedures for Teachers	Error! Bookmark not defined.
Introduction	3
Adopting a Capability Procedure	3
Scope of the Capability Procedure	3
Format	4
Publicising the Procedure	5
Informal Action.....	6
Formal Procedure (Standard)	10
Stage 1: First Capability Hearing.....	10
Stage 2: First Formal Meeting after Hearing (Monitoring & Review).....	14
Stage 3: First Formal Review	16
Stage 4: Final Review Meeting.....	17
Stage 5: Second Capability Hearing.....	18
Formal Procedure (Fast Track)	21
Stage 1: First Capability Hearing (Fast Track)	21
Stage 2: Meeting after the Hearing.....	25
Stage 3: Final Review Meeting.....	27
Stage 4: Capability Hearing	28
Appendix Ai - Capability Procedure Notification Form for Teachers	31
Appendix Aii - Capability Procedure Notification Form for Headteachers.....	32
Appendix B - Sample Letter: Invite to Attend Meeting of Management Concerns	33
Appendix C - Capability Procedure For Teaching Staff: Guidance Notes For Managers	34
Appendix D - Capability Procedure for Teachers.....	36
Appendix E - Sample Letter: Invite Request to Attend Capability Hearing	45
Appendix F - Disciplinary Warnings.....	46
Appendix G - Recommended Procedure for Capability Hearings.....	47
Appendix H - Flowchart – Standard Capability Procedure	48
1. Informal Capability Process (Standard).....	48
2. Formal Capability Process (Standard).....	49
3. Formal Capability Process (Standard) cont.....	50
Appendix I - Fast-Track Capability Procedure.....	51
1. Formal Capability Process (Fast Track).....	51
Appendix 2 - Briefing Note For Clerks At Hearings	52

Introduction

Adopting a Capability Procedure

School management has a responsibility to ensure that pupils have the best educational opportunities available to them. One of the key elements is the quality of teaching provided to ensure that all teachers are performing to a professionally acceptable standard.

All schools must have a capability procedure. This must be adopted and owned by the governing body, who are responsible for ensuring teachers in their school perform to a professionally acceptable standard. When management becomes aware that a teacher's performance is failing to meet this standard, consideration should be given to applying the capability procedure and providing the teacher with support to help him/her to improve.

The DCSF has produced recent guidance (Capability Procedure for Teachers. DCSF 0125/2000 Model Capability Procedure) which details the statutory minimum requirements to be incorporated into a school's capability procedure. The DCSF goes on to recommend that the procedure should be considered at a local level to expand and develop a procedure for schools. This has led to the introduction of this new procedure, which has been devised by the LEA in conjunction and with the full agreement of the trade unions in Bradford and updates the 1998 Capability procedure for Teaching Staff.

Scope of the Capability Procedure

This document should be used for dealing with capability issues for teachers/headteachers (with the exception of NQTs) in relation to teaching/management ability. The most common areas of concern which lead to the implementation or capability proceedings include low expectation of pupils, poor children's progress, weak planning and preparation, inadequate classroom discipline.

The aim of the document is to improve teacher performance. This is most likely to occur where a structured approach is taken, incorporating advice and support. It is important that the Capability Procedure, therefore, should not be seen as a disciplinary tool, although ultimately the procedure does make provision for a teacher to be dismissed by governors if performance fails to improve sufficiently

There is no direct link between the Capability Procedure and the Performance Management process. Whilst there is a possibility that performance review may identify some concerns which may be addressed with reference to the Capability Procedure, it is expected that in most cases any concerns will be highlighted within normal ongoing assessments etc.

The Capability Procedure should not be used in cases of misconduct, such as theft, fraud or inappropriate behaviour, which instead should be considered under the school's discipline and grievance procedure with support from your HR Adviser.

Neither should the Capability Procedure be used around ill health issues, as schools should refer to their sickness absence policy for appropriate guidance. However, it is recognised that sickness absence is not uncommon during capability proceedings (often stress-related) at which times it may be appropriate to seek guidance from your HR Adviser.

Format

Bold Type

This is used to convey instructions to be followed by headteachers/governors.

Best Practice Advice

This is printed in italics and represents additional information and advice in relation to the action identified above the Best Practice Advice in bold. The aim is to provide clarification of the action and useful guidance to help managers to carry out an instruction.

Please note that throughout the document where the concerns relate to the performance of the headteacher, insert headteacher in place of teacher, and nominated governor in place of headteacher as the management representative.

Publicising the Procedure

1. Ensure that all teaching staff are aware of the Capability Procedures which the school will follow in the event of identified teaching performance which falls below a professionally acceptable standard over a sustained period.

Best Practice Advice

When informing teaching staff it is recommended to include:

- *the overarching principle behind the Capability Procedure, namely that school management has a responsibility to ensure that pupils have the best educational opportunities available to them and one of the key elements is the quality of teaching provided to ensure that all teachers are performing to a professionally acceptable standard*
- the various stages of the procedure which provide reasonable opportunities for the teacher's performance to improve, although in extreme cases where pupils' education is in jeopardy this could ultimately lead to dismissal.

Informal Action

It is important to remember that teachers do not suddenly become incompetent, but rather any deterioration is usually gradual. It is important that any concerns are detected as early as possible, usually through informal monitoring or concerns raised within school, to help prevent further deterioration and to assist the teacher to improve.

The informal stage of the Capability Procedure is the normal starting point for tackling capability issues with teachers on a more structured basis where normal management intervention has been unsuccessful in improving performance.

The aim of informal action is to identify areas of weakness and develop targets and support to assist the teacher to improve to a professionally acceptable standard. It may be possible to address any issues satisfactorily through informal proceedings and avoid the need for more formal intervention.

- 1. Complete a 'Capability Procedure Notification Form' (see Appendix Ai and Aii) and forward a copy to the Administrator in the HR Advisory Service.**

Best Practice Advice:

The DCSF requires LEAs to monitor capability proceedings within schools and as such this form has been devised to create a standard format for schools to pass on this information.

There are two separate forms, one for teacher capability which should be completed by the headteacher, and a second for headteacher capability which is to be completed by a governing body representative.

- 2. At the start of the informal stage, the teacher should be given written notification that his/her capability is giving cause for concern and that a meeting will be held to discuss this.**

The letter should:

- **Indicate the specific areas of concern**
- **Inform the teacher that they are entitled under the Capability Procedure to be accompanied by a trade union representative or work colleague**
- **Inform them that the LEA has been notified**
- **Include a copy of the Capability Procedure (Appendix D).**

This process must be led by:

- **The headteacher where a teacher's performance is causing concern**
- **A nominated governor where the headteacher's performance is causing concern.**

Best Practice Advice:

See Appendix B for a sample letter inviting the teacher to a meeting to address management concerns, whilst Appendix C provides guidance notes to help management in assessing areas causing concern.

A study of capability proceedings in schools has shown that there are 4 major aspects which most frequently lead to management concerns, including:

- 1 Low expectation of pupils*
- 2 Poor children's progress*
- 3 Weak planning and preparation*
- 4 Inadequate classroom discipline.*

Appendix D is the Capability Procedure for Teachers to be given to the teacher. It is the same as the management guidance procedure, with the exception of the Best Practice Advice which is for management purposes only.

- 3. Meet the teacher to discuss the areas of concern and provide an opportunity for the teacher to respond to the points.**

Determine the most appropriate course of action from the following options:

- Drop the case where the concerns are unsubstantiated or found not to be related to capability**
- Proceed with informal action where concerns are upheld (which may include a number of meetings)**
- Consider counselling (either as an alternative or in conjunction with other action)**

Inform the teacher that whilst the procedures are intended to help him/her to attain a professionally acceptable standard, if that standard is not attained, the procedure may ultimately lead to dismissal.

Best Practice Advice:

Sensitivity and confidentiality should be upheld throughout the meeting.

Bear in mind that a sudden deterioration in the standard of work could be the result of job related or personal factors which could be of a temporary nature and as such may be solved by discussion and support.

You should consider whether there have been any changes in the teacher's duties or general changes within school which might have an impact on the teacher's performance, such as the introduction of new technology, new demands related to the National Curriculum or a change in the school policy on behaviour management.

A suitable format for such a meeting includes: -

- Opening - try to create an open and supportive environment, explaining that the purpose of the meeting is to establish the facts and to consider jointly what action may be appropriate in the future.*
- Main body - provide a clear and precise account of management concerns and encourage*

the teacher to respond and identify reasons which may account for this. Consider and discuss with the teacher that reasonable steps may be taken to support the individual. These may include:

- *counselling - via a short course with a professional counsellor which may be organised through Occupational Health.*
- *identification of an informal coach/mentor to provide advice and guidance on improving performance in school*
- *training*

It is important to clearly identify targets, expectations and mechanisms for monitoring and to establish an agreed timescale for improvement. Agreement should also be sought on the timing of regular monitoring meetings. Your Inspector/Adviser may be contacted to provide support and guidance during this process.

Reference to Appendix C may again be helpful in considering appropriate support and evaluation methods etc.

Close - summarise the meeting and confirm the way forward, including clear targets, expectations, timescales and review process as appropriate.

4. Provide a written record of the meeting to all parties present at the meeting.

Best Practice Advice:

This should be undertaken by the headteacher as soon as possible following the meeting.

5. Implement action, including monitoring process, as agreed.

At the end of the review, or at any stage, where the teacher's performance has improved to a professionally acceptable standard, inform the teacher in writing of this and that the process has ended.

Best Practice Advice:

When the monitoring and review process commences, management may observe a slight dip in the performance of the teacher. This may be expected as an initial reaction to the stressful situation in which the teacher is operating. However, it is advisable to be vigilant to ensure that this does not become prolonged or that the deterioration is of a more serious nature than originally thought.

There is no fixed time limit regarding the length of time that the informal stage should last. This is a matter for the headteacher to determine, taking into account how much progress has been made and is likely to continue to be made, and also the seriousness of the concern and the effect on pupils' education.

Informal capability proceedings are to follow, the nature of the problem, its level of seriousness and cause(s) must be investigated and identified by structured information

gathering and systematic recording, as above.

- 6. If the informal approach does not result in the required improvement within a reasonable period and the level of capability is seriously in question, the headteacher/governor must decide whether or not it is appropriate to institute the formal capability procedure.**

Formal Procedure (Standard)

Stage 1: First Capability Hearing

Before entering into formal proceedings, you should have completed the informal action stage unless the concerns are so serious that it is considered appropriate to immediately enter into capability proceedings at the formal stage.

- 1. If entering the procedure at this stage and you have not previously informed the authority, complete a 'Capability Procedure Notification Form' (see Appendix Ai and Aii) and forward a copy to the Administrator in the HR Advisory Service.**

Best Practice Advice:

The DCSF requires the LEA to monitor capability proceedings within schools and as such this form has been devised to create a standard format for schools to pass on this information.

There are two separate forms, one for teacher capability which should be completed by the headteacher, and a second for headteacher capability which is to be completed by a governing body representative.

- 2. Prior to convening a hearing where insufficient improvement has been made and the teacher's performance remains below a professionally acceptable standard or if the concerns are seriously jeopardising pupils' education, ensure that the facts have been fully investigated and information has been gathered in a structured, systematic manner illustrating the nature of the concerns and level of seriousness.**

Best Practice Advice:

It is strongly recommended that you contact your Human Resources Adviser at this stage for support and guidance on collating this information.

- 3. Set-up a hearing to consider entry into the formal procedure and notify the teacher in writing.**

When notifying the teacher:

- give at least 10 working days notice of the date, time and place of the hearing**
- state in detail (but as concisely as possible) the allegations/areas of capability for consideration**
- inform the teacher that he/she has the right to be represented by up to two trade union representatives or work colleagues**
- provide copies of documents to be presented by management and details of any witnesses**
- provide a copy of the Capability Procedure (Appendix D)**
- state the power of the person/s hearing the case to issue warnings**
- ask the teacher to provide information prior to the hearing of any witnesses and/or**

- representation that he/she intends to bring to the hearing
- ask the teacher to provide any documents which he/she will be submitting as evidence prior to the hearing wherever possible.

Hearing the case on behalf of school management will be:

- the headteacher where a teacher's performance is causing concern
- the Discipline, Grievance and Dismissal Sub-Committee of the Governing Body where the headteacher's performance is causing concern, in which case a full copy of the above should also be given to the governors 3 days prior to the hearing with the instruction that they should not discuss the matter with anyone beforehand.

Best Practice Advice:

Please refer to Appendix E for a sample letter requesting the teacher's attendance at the hearing.

It is important to consider the seriousness of the concern/s prior to convening the hearing with a view to who will conduct the hearing. Appendix F provides guidance on the levels of warning which may be issued after a hearing and by whom.

Appendix D is the Capability Procedure for Teachers to be given to the teacher. It is the same as the management guidance procedure, with the exception of the Best Practice Advice which is for management purposes only.

As employees now have the legal right to representation, management is advised to propose and agree a date for the hearing with the teacher and their representative/s to try to ensure all parties are available. The law does account for the need for all parties to be reasonable in setting a date for the hearing and the teacher may postpone/delay the date proposed by school by a maximum of 5 days.

4. Conduct the hearing, following the procedure laid out in Appendix G.

Decide course of action from the following possible outcomes:

- Not to continue action in relation to the teacher's capability
- To offer the teacher an alternative post in the school/reduce responsibilities, if appropriate
- To recommend that a further period of monitoring and review be undertaken
- To issue a first or written warning and state that the formal procedure will begin

Re-iterate to the teacher that whilst the procedures are intended to help him/her to attain a professionally acceptable standard, if that standard is not attained, the procedure may lead to dismissal.

Best Practice Advice:

See Appendix G for recommended running order for the hearing.

At the hearing the following advice is available on who will be in attendance and their roles:

- *Headteacher (in the case of teacher performance)*
 - *to hear the case and usually to present management's case also*
- *Discipline, Grievance and Dismissal Committee (in the case of headteacher performance)*
 - *to hear the case*
- *nominated governor/s (in the case of headteacher performance)*
 - *to present management's case to governors*
- *teacher*
 - *to respond to management's case and present evidence*
- *teacher representative*
 - *to represent or accompany the teacher*
- *management witness/es*
 - *to provide evidence to support management's case and may include other school employees or an Inspector/Adviser involved in monitoring the teacher's performance or setting targets*
- *witness/es for the teacher*
 - *to present evidence to management*
- *Human Resources Adviser*
 - *to provide support on procedural matters.*

If an employee raises a wish to explore alternative posts, it is recommended that governors seek advice from the HR Adviser.

When determining a course of action where a period of further monitoring and review is recommended, it is normal to implement the maximum period for improvement of up to 26 working weeks, with the proviso that if insufficient progress is made during the period such that it is seriously affecting pupils' education the time allowed for improvement may be shortened.

5. **Provide written notification of the outcome of the hearing to all parties and inform the teacher of his/her right of appeal. If the teacher wishes to appeal, he/she must do so in writing to the Clerk of Governors within 5 working days of receipt of the written notification of the headteachers/governors decision.**
6. **Where an appeal has been submitted, convene an Appeal Hearing of the Appeals Committee of the Discipline, Grievance and Dismissal Committee of the Governing Body within 10 working days.**

Provide written notification of the Appeal Hearing to the employee giving at least 5 working days notice and informing the teacher of his/her legal right to be represented at the hearing.

If at any time the teacher's performance is causing very serious concern and pupils' education is in jeopardy, a meeting of the Discipline, Grievance and Dismissal

Committee of the Governing Body should be convened to consider issuing a final warning and entry into the Fast Track process, including an assessment period not exceeding 4 weeks.

Best Practice Advice:

As with the original hearing, management are advised to discuss potential hearing dates with the teacher and his/her representative/s to try to ensure all parties are available.

7. Following the Appeal Hearing, governors must decide to:

- **Uphold the appeal**
- **Recommend a further period of monitoring or review**
- **Offer the employee an alternative post within the school, if appropriate where this has not already been offered**
- **Substitute a different level of warning**
- **Confirm the original decision.**

Confirm the outcome in writing to the teacher and implement action as appropriate unless the Appeal has been upheld and no further action is necessary.

Best Practice Advice:

For guidance on levels of warning, refer to Appendix C.

If an employee raises a wish to explore alternative posts, it is recommended that governors seek advice from the HR Adviser.

If at any time the teacher's performance is causing very serious concern and pupils' education is in jeopardy, a meeting of the Discipline, Grievance and Dismissal Committee of the Governing Body should be convened to consider issuing a final warning and entry into the Fast Track process, including an assessment period not exceeding 4 weeks.

Formal Procedure (Standard)

Stage 2: First Formal Meeting after Hearing (Monitoring & Review)

- 1. Immediately following the hearing, arrange a meeting and provide written notification to the teacher, giving at least 5 working days notice.**

Best Practice Advice

When arranging the meeting, you should organise for the following to be present:

- the headteacher,*
- the teacher together with a trade union representative or work colleague if desired,*
- a Human Resources Adviser (to advise on process and procedure),*
- an Inspector/Adviser (to provide advice on the setting of targets and the assessment process).*

- 2. At the meeting management should:**

- Reaffirm the concerns identified as a result of the hearing and inform the teacher that this meeting represents the date of formal entry into the capability procedure.**
- Jointly identify and agree a set of realistic targets to be achieved and standards of work to be attained by a given date.**
- Identify appropriate support, resources and training to be made available, plus the offer of counselling if required.**
- Agree the arrangements for monitoring the teacher's progress, including timescales, which should not exceed 13 working weeks, with interim review sessions usually on a weekly or fortnightly basis, if the teacher's performance should cause serious concern at any stage during this period, the review period may be shortened.**
- Inform the teacher that the procedures are intended to help him/her achieve a professionally acceptable standard of performance and that if this standard is not met it could lead to dismissal.**

At the end of the meeting, re-affirm the points covered in the meeting to form the basis of an action plan, which must include targets, support, monitoring and agreed timescales.

Best Practice Advice

State the management concerns to be addressed. (These will be those which were upheld at the hearing, i.e. it is possible that not all issues presented by management were upheld in which case those unsubstantiated concerns would no longer be pursued.)

The Inspector/Adviser can support management in identifying appropriate realistic targets and standards.

It is strongly recommended that a suitable mentor within school is identified to provide support to the teacher and try to identify any resources that can be used to help the teacher to improve their performance. In the case of headteacher performance, it may be appropriate to enlist the support of another headteacher from within the authority to act as mentor with the assistance of the Education Department.

Where it is established that the teacher may benefit from personal counselling sessions with a professional counsellor school should contact their Human Resources Adviser. Appendix C may be useful when considering monitoring arrangements.

- 3. Provide the teacher with written confirmation of the outcome of the meeting (with copies to those present at the meeting), including a statement in the letter that formal entry into the Capability Procedure has now taken place.**
- 4. Implement action plan, including review meetings.**

Best Practice Advice:

When the formal assessment and review commences, management may observe a slight dip in the performance of the teacher. This may be expected as an initial reaction to the stressful situation in which the teacher is operating. However, it is advisable to be vigilant to ensure that this does not become prolonged or that the deterioration is not of a more serious nature than originally thought.

If at any stage during the 13 weeks review period in exceptional circumstances where the teacher's performance is not improving sufficiently and is causing serious concern, a hearing of the Discipline, Grievance and Dismissal Committee may be convened to consider issuing a final warning with entry into the Fast Track procedure (proceed to stage 1 of the Fast Track procedure) or dismissal (proceed to stage 4 of the Fast Track procedure).

Formal Procedure (Standard)

Stage 3: First Formal Review

- 1. Arrange for the first formal review meeting to take place after 13 working weeks (from the date of the First Formal Meeting after the Hearing), unless the teacher's performance is considered to be progressing insufficiently when the review meeting may be convened sooner.**

Provide the teacher with written notification of this meeting, giving at least 5 working days notice.

Best Practice Advice

Invite all those who attended the first formal meeting after the hearing (stage 2 of the standard formal procedure).

- 2. At the meeting:**
 - Address all the concerns raised at the First Formal Meeting after the hearing.**
 - Inform the teacher that although the procedures are there to improve performance, if a professional standard is not achieved the procedure may lead to dismissal (normally at the end of the 26 working week period, but sooner if there are serious concerns).**
 - Determine appropriate course of action from the following possible outcomes:**
 - to end process if performance has improved to a professionally acceptable standard.**
 - to extend review period if sufficient mitigating circumstances are identified.**
 - to continue review and monitoring where performance has not improved to a professionally acceptable standard, giving consideration to monitoring and any appropriate support arrangements.**
- 3. After the meeting, confirm the outcome in writing to the teacher (copied to others present at the meeting).**
- 4. Implement action plan, including review meeting with school management.**

If at any stage during the 13 weeks review period in exceptional circumstances where the teacher's performance is not improving sufficiently and is causing serious concern, a hearing of the Discipline, Grievance and Dismissal Committee may be convened to consider issuing a final warning with entry into the Fast Track procedure (proceed to stage 1 of the Fast Track procedure) or dismissal (proceed to stage 4 of the Fast Track procedure).

Formal Procedure (Standard)

Stage 4: Final Review Meeting

- 1. At the end of the agreed monitoring period (normally after 24 working weeks), arrange for a final evaluation meeting of the teacher's performance to be held, giving at least 5 working days notification to the teacher in writing.**

Best Practice Advice

Wherever possible ensure that all those who attended the first meeting will be in attendance (as at stages 2 and 3).

The final review meeting is convened after 24 working weeks (rather than 26 working weeks), to ensure that where the decision is to proceed to a second hearing and appropriate notice given, the 26 working week time limit imposed by the DCSF will be reached.

2. At the meeting:

- Address all the concerns raised at the First Formal Review Meeting**
- Determine course of action from time following possible outcomes:**
 - to end process if performance has improved to a professionally acceptable standard**
 - to implement a further short-term review period if there is definite improvement but some areas continue to require improvement. At the same time, the teacher should be made aware that if the outstanding areas of concern persist a hearing will be convened to consider dismissal**
 - to convene a hearing of the Governors' Discipline, Grievance and Dismissal Committee if there has been insufficient improvement and no sufficient mitigation.**

Best Practice Advice

When considering a further period of review, it is expected that this will not exceed 4 working weeks, unless there are exceptional circumstances.

- 3. Following the meeting, confirm the outcome in writing to the teacher. Where the decision is made to convene a hearing, inform the Clerk to the Governing Body who will arrange the hearing.**

Formal Procedure (Standard)

Stage 5: Second Capability Hearing

- 1. Convene a hearing of the Discipline, Grievance and Dismissal Committee of the Governing Body and provide written notification of the hearing to the teacher.**

When notifying the teacher, you should:

- give at least 10 working days notice of the date, time and place of the hearing**
- state in detail (but as concisely as possible) the allegations/ areas of capability for consideration**
- inform the teacher that he/she has the right to be represented by up to two trade union representatives or work colleagues**
- provide copies of documents to be presented by management and details of any witnesses**
- provide a copy of the Capability Procedure for Teachers (Appendix D)**
- state the power of the person/s hearing the case to issue warnings, including dismissal**
- ask the teacher to provide information prior to the hearing of any witnesses and/or representation that he/she intends to bring to the hearing**
- ask the teacher to provide any documents which he/she will be submitting as evidence prior to the hearing wherever possible.**

3 days prior to the hearing provide copies of all the documentation issued to the teacher, together with any documents submitted by the teacher to:

- the governors from the Discipline, Grievance and Dismissal Committee hearing the case**
- the Human Resources Adviser (who will be advising on process and procedure)**
- a Legal representative (who will be advising on points of law) inform governors that they should not discuss the matter with anyone prior to the hearing.**

Best Practice Advice:

As employees now have the legal right to representation, management is advised to propose and agree a date for the hearing with the teacher and their representative/s to try to ensure all parties are available. The law does account for the need for all parties to be reasonable in setting a date for the hearing and the teacher may postpone/delay the date proposed by school by a maximum of 5 days.

It is the responsibility of the headteacher/nominated governor to ensure that documents are distributed prior to the hearing.

2. At the hearing:

- **Follow the format laid out in the Authority's agreed disciplinary procedure running order (Appendix G).**
- **Determine course of action from the following possible outcomes:**
 - **to recommend that no further action is required as the concerns are unsubstantiated**
 - **to recommend that a further period of monitoring and review be undertaken and agree an appropriate timescale**
 - **to consider an alternative post in school/reduce responsibilities, if appropriate, as an alternative to dismissal**
 - **to issue a formal warning and timescale for improvement**
 - **to recommend dismissal**

Best Practice Advice:

At the hearing the following advice is available on who will be in attendance and their roles:

- *Discipline, Grievance and Dismissal Committee*
 - *to hear the case and determine outcomes*
- *headteacher*
 - *to present management's case to governors*
- *teacher*
 - *to respond to management's case and present evidence*
- *teacher representative/s*
 - *to represent or accompany the teacher*
- *management witness/es*
 - *to provide evidence to support management's case and may include other school employees or an Inspector/Adviser involved in monitoring the teacher's performance or setting targets*
- *witness/es for the teacher*
 - *to provide supportive evidence on behalf of the teacher*
- *Human Resources Adviser*
 - *to provide support on procedural matters.*
- *Legal Services representative*
 - *to provide advice on points of law.*

When determining course of action, it is likely that the timescale for a period of further monitoring and review should not exceed 4 weeks in all but exceptional circumstances.

If an employee raises a wish to explore alternative posts, it is recommended that governors seek advice from the HR Adviser.

3. **After the hearing, provide written notification of the outcome of the hearing and inform the teacher of his/her right of appeal.**

An Appeal must be made in writing to the Clerk of Governors within 10 working days of receipt of written notification from the governor's decision.

4. **If an appeal is received from the teacher, an Appeal Hearing must then be convened within 10 working days.**

Notify the teacher of the date of the Appeal Hearing, giving at least 5 working days notice.

Best Practice Advice:

It may not be possible for the teacher and their representative/s to attend a governors hearing within 10 working days. It is recommended that governors seek to arrange a date by mutual agreement as close to 10 working days as possible.

5. **After the Appeal Hearing the governors must decide:**

- **to uphold the appeal**
- **to recommend a further period of monitoring and review**
- **to offer the employee an alternative post within the school, if appropriate**
- **to substitute a different level of warning**
- **to confirm the original decision.**

6. **Convey the decision of the Appeals Committee as soon as possible to the teacher in writing.**

7. **Implement any action, as appropriate.**

- **Where a further period of review has been recommended and there has been insufficient improvement, convene a further hearing at the end of the assessment period. The same governors would normally be expected to hear the case.**
- **Where governors recommend dismissal (following an Appeal or the 28 day appeal timescale has elapsed) present the recommendation in writing to the LEA/Chief Education Officer as it is the LEA/Chief Education Officer who has the authority to dismiss an employee. The LEA/Chief Education Officer has 14 days from the date the notification is received to action the dismissal. The teacher is then entitled to receive pay in lieu of notice, payable by school.**

Best Practice Advice:

When calculating the cost of pay in lieu of notice, schools are advised to speak to their Human Resources Adviser for clarification of notice entitlement. This will vary dependant upon the dismissal date within the term and which term it is in the school year.

Formal Procedure (Fast Track)

Stage 1: First Capability Hearing (Fast Track)

In most cases it is expected that the informal and standard formal capability procedure will be followed. The Fast Track process therefore, should only be considered in extreme cases where the teacher's performance is not to a professionally acceptable standard and where pupils' education is in serious jeopardy. This could occur at any stage during informal or standard formal proceedings where performance does not improve sufficiently or deteriorates to a level which causes a particularly serious concern.

- 1. If entering the procedure at this stage and you have not previously informed the authority, complete a 'Capability Procedure Notification Form' (see Appendix Ai and Aii) and forward a copy to the Administrator in the HR Advisory Service.**

Best Practice Advice:

The DCSF requires the LEA to monitor capability proceedings within schools and as such this form has been devised to create a standard format for schools to pass on this information.

There are two separate forms, one for teacher capability which should be completed by the headteacher, and a second for headteacher capability which is to be completed by a governing body representative.

- 2. Prior to convening a hearing where insufficient progress has been made in relation to improvement in the teacher's performance or if the concerns are so serious that pupils' education is in jeopardy, ensure that the facts have been fully investigated and information has been gathered in a structured, systematic manner illustrating the nature of the concerns and level of seriousness.**

Best Practice Advice:

It is strongly recommended that you contact your Human Resources Adviser at this stage for support and guidance on collating this information.

- 3. Set-up a hearing of the Discipline, Grievance and Dismissal Committee of the Governing Body to consider entry into the Fast Track procedure and notify the teacher in writing.**

When notifying the teacher:

- give at least 10 working days notice of the date, time and place of the hearing**
- state in detail (but as concisely as possible) the allegations/ areas of capability for consideration**
- inform the teacher that he/she has the right to be represented by up to two trade union representatives or work colleagues**
- provide copies of documents to be presented by management and details of any witnesses**
- provide a copy of the Capability Procedure for Teachers (Appendix D)**

- state the power of the person/s hearing the case to issue warnings
- ask the teacher to provide information prior to the hearing of any witnesses and/or representation that he/she intends to bring to the hearing
- ask the teacher to provide any documents which he/she will be submitting as evidence prior to the hearing wherever possible.

3 days prior to the hearing provide copies of all the documentation issued to the teacher, together with any documents submitted by the teacher to:

- the governors from the Discipline, Grievance and Dismissal Committee hearing the case
- the Human Resources Adviser (who will be advising on process and procedure)

Inform governors that they should not discuss the matter with anyone prior to the hearing.

Best Practice Advice:

Appendix D is the Capability Procedure for Teachers which should be for issuing to a teacher. It is the same as the management guidance procedure, with the exception of the Best Practice Advice which is for management purposes only.

Please refer to Appendix E for a sample letter requesting the teacher's attendance at the hearing.

As employees now have the legal right to representation, management is advised to propose and agree a date for the hearing with the teacher and their representative/s to try to ensure all parties are available. The law does account for the need for all parties to be reasonable in setting a date for the hearing and the teacher may postpone/delay the date proposed by school by a maximum of 5 days.

4. Conduct the hearing, following the procedure laid out in Appendix G.

Decide course of action from the following possible outcomes:

- That no further action in relation to the capability procedure is required
- That the Informal Capability Procedure should be applied.
- That the standard Formal Capability Procedure should be applied.

This could include:

- a further period of monitoring
- consideration of an alternative post in the school if appropriate
- issuing of a first or written warning
- That the Fast Track Capability Procedure should be applied. This will include issuing a final warning, stating that entry into the formal Fast Track procedure will begin and implementing an assessment period not exceeding 4 weeks. Re-iterate to the teacher that whilst the procedures are intended to help him/her to attain a professionally acceptable standard, if that standard is not attained, the procedure may lead to dismissal.

Best Practice Advice:

See Appendix G for recommended running order for the hearing.

At the hearing the following advice is available on who will be in attendance and their roles:

- *Discipline, Grievance and Dismissal Committee*
 - *to hear the case*
- *headteacher*
 - *to present management's case to governors*
- *teacher*
 - *to respond to management's case and present evidence*
- *teacher representative/s*
 - *to represent or accompany the teacher*
- *management witness/es*
 - *to provide evidence to support management's case and may include other school employees or an Inspector/Adviser involved in monitoring the teacher's performance or setting targets*
- *witness/es for the teacher*
 - *to provide supportive evidence on behalf of the teacher*
- *Human Resources Adviser*
 - *to provide support on procedural matters.*

The Fast Track procedure should be used in extreme cases where the teacher's performance is seriously jeopardising pupils' education.

If the concerns about a teacher's performance are not serious enough to be subject to the 4 week Fast Track, governors can determine to transfer to the standard Capability Procedure and should refer to the relevant section of Capability Procedure for advice/guidance.

5. **Provide written notification of the outcome of the hearing to all parties and inform the teacher of his/her right of appeal. If the teacher wishes to appeal, he/she must do so in writing to the Clerk of Governors within 10 working days of receipt of the written notification of the headteachers/governors decision.**
6. **Where an appeal has been submitted, convene an Appeal Hearing of the Appeals Committee of the Discipline, Grievance and Dismissal Committee of the Governing Body within 10 working days.**

Provide written notification of the Appeal Hearing to the employee giving at least 5 working days notice and informing the teacher of his/her legal right to be represented at the hearing.

Best Practice Advice:

As with the original hearing, management are advised to discuss potential hearing dates with the teacher and his/her representative/s to try to ensure all parties are available.

- 7. Following the Appeal Hearing, governors must decide:**
- **To uphold the appeal**
 - **To apply an alternative decision/different level of warning, including:**
 - **no further action in relation to the capability procedure is required**
 - **transfer to the informal Capability Procedure**
 - **entry into the standard Formal Capability Procedure, including a further period of monitoring, consideration of an alternative post in the school if appropriate and the issuing of a first or written warning**
 - **To apply the Fast Track Capability Procedure with a maximum assessment period of 4 weeks.**

Confirm the outcome in writing to the teacher and implement action as appropriate.

Formal Procedure (Fast Track)

Stage 2: Meeting after the Hearing

- 1. Immediately following the hearing, the headteacher should arrange a meeting and provide written notification to the teacher, giving at least 5 working days notice.**

Best Practice Advice

At the meeting, the following should be present:

- the headteacher,*
- the teacher together with a trade union representative or work colleague if desired,*
- a Human Resources Adviser*
- an Inspector/Adviser.*

- 2. At the meeting management should discuss and propose an action plan. Include:**

- Re-affirmation of the concerns identified as a result of the hearing.**
- Joint identification and agreement of a set of realistic targets to be achieved and standards of work to be attained within the 4 week assessment period**
- Identification of appropriate support, resources and training to be made available, plus the offer of counselling if required**
- Information to the teacher that this meeting represents the formal entry date into the Fast Track Capability Procedure**
- Information to the teacher that the procedures are intended to help him/her achieve a professionally acceptable standard of performance but if this standard is not met it could lead to dismissal**
- Agreement of the arrangements for monitoring the teacher's progress during the 4 week Fast Track period, including interim review sessions on at least a weekly basis**
- Advice that if the teacher's performance should cause a very serious concern at any stage during this period, the review may be shortened.**

Best Practice Advice

It is important to state the management concerns resulting from the hearing to be addressed. These will be the issues that were upheld at the hearing.

The Inspector/Adviser can support management in identifying appropriate realistic targets and standards.

It is strongly recommended that a suitable mentor within school is identified to provide support to the teacher and try to identify any resources that can be used to help the teacher to improve their performance. In the case of headteacher performance, it may be appropriate to

enlist the support of another headteacher from within the authority to act as mentor, with the assistance of the Education Department.

Where it is established that the teacher may benefit from personal counselling sessions with a professional counsellor, school may contact their Human Resources Adviser.

Appendix C may be useful when considering monitoring arrangements.

If at any stage during the 4 week period the teacher's performance should cause additional and very serious concern, consideration may be given to shortening the review period. Before taking any such action, it is strongly recommended that you contact your Human Resources Adviser.

- 3. Provide the teacher with written confirmation of the outcome of the meeting (with copies to those present at the meeting), including a statement in the letter that formal entry into the Fast Track Capability Procedure has now taken place.**

Best Practice Advice:

During review meetings, it is recommended that wherever possible the teacher should be given the option to be accompanied by their trade union representative or a work colleague in recognition of the difficult and serious nature of the proceedings. However, all parties should be aware that the maximum delay to proceedings is 5 days before a meeting may go ahead even a representative/work colleague is unavailable to accompany the teacher.

- 4. Implement action plan, including review meetings.**

Formal Procedure (Fast Track)

Stage 3: Final Review Meeting

- 1. At the end of the agreed monitoring period (normally after 4 working weeks), arrange for a final evaluation meeting of the teacher's performance to be held, giving at least 5 working days notification to the teacher in writing.**

Best Practice Advice

Wherever possible ensure that all those who attended the first meeting (at stage 2) will be in attendance.

- 2. At the meeting:**
 - Address all the concerns raised at the meeting after the hearing and in review sessions during the last 4 weeks**
 - Determine course of action:**
 - to end process if performance has improved to a professionally acceptable standard**
 - to implement a further short-term review period If there is definite improvement but some areas continue to require improvement. At the same time, the teacher should be warned that if the outstanding areas of concern persist a hearing will be convened to consider dismissal.**
 - to convene a hearing of the governor's Discipline, Grievance and Dismissal Committee if there has been insufficient improvement and no sufficient mitigation.**
- 3. Following the meeting, confirm the outcome in writing to the teacher. Where the decision is made to convene a hearing, inform the Clerk to the Governing Body who will arrange the hearing.**

Formal Procedure (Fast Track)

Stage 4: Capability Hearing

- 1. Convene a hearing of the Discipline, Grievance and Dismissal Committee of the Governing Body and provide written notification of the hearing to the teacher.**

When notifying the teacher, you should:

- give at least 10 working days notice of the date, time and place of the hearing**
- state in detail (but as concisely as possible) the allegations areas of capability for consideration**
- inform the teacher that he/she may be represented by up to two trade union representatives or work colleagues**
- provide copies of documents to be presented by management and details of any witnesses**
- provide a copy of the Capability Procedure for Teachers (Appendix D)**
- state the power of the person/s hearing the case to issue warnings, including dismissal**
- ask the teacher to provide information prior to the hearing of any witnesses and/or representation that he/she intends to bring to the hearing**
- ask the teacher to provide any documents which they will be submitting as evidence prior to the hearing wherever possible.**

3 days prior to the hearing provide copies of all the documentation issued to the teacher, together with any documents submitted by the teacher to:

- the governors from the Discipline, Grievance and Dismissal Committee hearing the case**
- the Human Resources Adviser (who will be advising on process and procedure)**
- a Legal representative (who will be advising on points of law) inform governors that they should not discuss the matter with anyone prior to the hearing.**

Best Practice Advice:

As employees now have the legal right to representation, management is advised to propose and agree a date for the hearing with the teacher and their representative/s to try to ensure all parties are available. The law does account for the need for all parties to be reasonable in setting a date for the hearing and the teacher may postpone/delay the date proposed by school by a maximum of 5 days.

It is the responsibility of the headteacher/nominated governor to ensure that documents are distributed prior to the hearing.

2. **At the hearing:**
 - **Follow the format of the disciplinary procedure running order (Appendix G).**
 - **Decide course of action from the following possible outcomes:**
 - That no further action in relation to the capability procedure is required
 - That the Informal Capability Procedure should be applied.
 - That the standard Formal Capability Procedure should be applied.
 - To implement a further short-term period of review within the Fast Track procedure.
 - To recommend dismissal.

Best Practice Advice:

See Appendix G for recommended running order for the hearing.

At the hearing the following advice is available on who will be in attendance and their roles:

- *Discipline, Grievance and Dismissal Committee*
 - *to hear the case*
- *headteacher*
 - *to present management's case to governors*
- *teacher*
 - *to respond to management's case and present evidence*
- *teacher representative/s*
 - *to represent or accompany the teacher*
- *management witness/es*
 - *to provide evidence to support management's case and may include other school employees or an Inspector/Adviser involved in monitoring the teacher's performance or setting targets*
- *witness/es for the teacher*
 - *to provide supportive evidence on behalf of the teacher*
- *Human Resources Adviser*
 - *to provide support on procedural matters.*

3. **After the hearing, provide written notification of the outcome of the hearing and inform the teacher of his/her right of appeal.**

The Appeal must be made in writing to the Clerk of Governors within 10 working days of receipt of written notification from the governor's decision.

4. **Where an appeal has been submitted, convene an Appeal Hearing of the Appeals Committee of the Discipline, Grievance and Dismissal Committee of the Governing Body as soon as possible but no later than 10 working days.**

Notify the teacher, giving at least 5 working days notice and informing the teacher of his/her legal right to be represented at the hearing.

Best Practice Advice:

As employees now have the legal right to representation, management is advised to propose and agree a date for the hearing with the teacher and their representative/s to try to ensure all

parties are available. The law does account for the need for all parties to be reasonable in setting a date for the hearing and the teacher may postpone/delay the date proposed by school by a maximum of 5 days.

5. Following the Appeal Hearing, governors must decide:

- **To uphold the Appeal**
- **To apply an alternative decision including:**
 - **no further action in relation to the capability procedure**
 - **transfer to the Informal Stage of the Capability Procedure**
 - **entry into the Formal Stage of the Capability Procedure**
 - **to implement a further short term period of review within the Fast Track Procedure**
- **To confirm the original decision.**

Confirm the outcome in writing to the teacher and implement action as appropriate.

6. Implement any action, as appropriate.

- **Where a further period of review has been recommended and there has been insufficient improvement, a further hearing should be convened at the end of the assessment period. The same governors would normally be expected to hear the case.**
- **Where governors recommend dismissal, this should be presented in writing to the LEA/Chief Education Officer, as it is the LEA/Chief Education Officer who has the authority to dismiss an employee. The LEA/Chief Education Officer has 14 days from the date the notification is received to action the dismissal. The teacher is then entitled to receive pay in lieu of notice, payable by school.**

Best Practice Advice:

When calculating the cost of pay in lieu of notice, schools are advised to speak to their Human Resources Adviser for clarification of notice entitlement. This will vary dependant upon the dismissal date within the term and which term it is in the school year.

Appendix Ai - Capability Procedure Notification Form for Teachers

1. This form to be completed by the headteacher when action is taken under the Capability Procedures (including the informal stage)
2. The teacher must be informed of notification of concern to the LEA.

Name of School: _____

Name of Teacher: _____

Job Title: _____

Details of Concern/s (please tick)

Quality of teaching:

- subject knowledge
- competence in basic teaching skills
- planning and setting of objectives/targets
- teaching methods
- pupil management and behaviour
- use of time and resources
- assessment and its use in planning
- use of homework

Quality of management:

- strategic direction and development of subject or area of responsibility
- teaching and learning (including evaluation)
- leading and managing staff
- deployment of staff and resources

Brief description of any other concerns:

Brief description of any previous support given to the teacher:

Is HR involvement required at this stage?

- No Yes: _____ is yes:
- to advise school on procedures
 - to discuss with Assigned Inspector/Adviser
 - to prepare for entry into formal procedure

To be completed by HR

HR Adviser for this case: _____

Name of Assigned Inspector: _____

Date of entry onto database:-
HR Service (April 2001)

Appendix Aii - Capability Procedure Notification Form for Headteachers

1. This form to be completed by the Chair of Governors when action is taken under the Capability Procedures (including the informal stage)
2. The Headteacher must be informed of notification of concern to the LEA.

Name of School: _____

Name of Headteacher: _____

Name of Chair of Governors: _____

Details of Concern/s (please tick)

Professional duties (as detailed in the National Standards for Headteachers' 1998):

- professional knowledge and understanding of the school
- skills and attributes
- strategic direction and development
- teaching and learning
- leading and managing staff
- deployment of staff and resources
- accountability

Brief description of any other concerns:

Brief description of any previous support given to the Headteacher:

Is HR involvement required at this stage?

- No Yes: _____ is yes:
- to advise school on procedures
 - to discuss with Assigned Inspector/Adviser
 - to prepare for entry into formal procedure

To be completed by HR

HR Adviser for this case: _____

Name of Assigned Inspector: _____

Date of entry onto database:-
HR Service (April 2001)

Appendix B - Sample Letter: Invite to Attend Meeting of Management Concerns

(Informal Capability Procedure)

George Smith
120 Lanehead
Bradford

Date: 21 October 2000

Dear Mr Smith

I am writing to request your attendance at a meeting to discuss management concerns in relation to your ability to perform to a professionally acceptable standard.

The areas of concern that will be discussed relate to:

1. your ability to maintain control of a class
2. your long-term planning.

At this stage I would like to assure you that this meeting is intended to clarify any concerns and provide you with an opportunity to respond, and to consider any appropriate action, if necessary, to support and assist you to reach a professionally acceptable standard of performance.

The meeting will be held in my office on Wednesday 28 October 2000. At the meeting you have the right to be accompanied by a trade union representative or a work colleague. I would be appreciative if you could inform me prior to the meeting if you intend to be accompanied to allow appropriate housekeeping arrangements to be made.

I also enclose a copy of the Capability Procedure for Teachers (Teachers' Guide) for your information.

Yours sincerely

Jill Brown
Headteacher

Appendix C - Capability Procedure For Teaching Staff: Guidance Notes For Managers

(Inspection, Support And Advisory Service)

It is always preferable to clearly separate out the person who is providing the teacher with support and the person who is evaluating the performance of the teacher. If the school involves other people from outside the school, for example LEA Inspector/Advisers, consultants, then it should be made clear what role (support or evaluation) they are undertaking.

What are the key characteristics of effective support?

Effective support should involve:

- providing counselling/listening/mentoring;
- providing advice and feedback from direct observation and clearly stating what needs to be improved, and setting smart targets for improvement;
- providing demonstration sessions/lessons;
- enabling the teacher to observe 'good practice' elsewhere in the school or in another school;
- providing training to address known weaknesses;
- using other teachers/consultants/trainers/inspectors/advisers to provide one-to-one support/advice;
- a reduced teaching load, for a short while, to allow for more thorough lesson preparation, for example planning, assessment, identification of learning resources.

What are the key characteristics of effective monitoring and evaluation?

The observer should:

- be as unobtrusive as possible;
- evaluate whether the teaching is effective in terms of its impact on pupils' learning, not "I wouldn't have done it that way";
- be aware of what the teacher is trying to achieve during the session/lesson, i.e. the purpose of the lesson and the anticipated learning outcomes;
- 'triangulate' the evidence base by observing, talking to pupils, looking at pupils' work, teacher's lesson plans and records of pupils' progress, and if possible, discussions with the teacher;
- make notes of the lesson identifying key points to be discussed after the lesson;
- always offer to provide 'feedback'. This should be done in private, not hurried. This ideally should be done within 24 hours of the observation. The feedback should identify the strengths and weaknesses of the teaching, giving examples wherever possible and provide guidance on how the weaknesses might be eliminated. A written report for the teacher summarising the key points of the feedback, copied for the headteacher, should be provided.

The criteria to be used to evaluate teacher performance/effectiveness

These should be clearly stated in the school's guidance/policy on evaluating classroom performance/effectiveness.

Most schools build upon the OFSTED criteria from "How well are pupils taught?" section in the OFSTED Handbook for Inspection. These are listed below. Some schools are using the teacher threshold criteria but these have yet to be adopted by the School Teachers' Pay Review Board.

"In determining their judgements, inspectors should consider the extent to which teachers:

- show good subject knowledge and understanding in the way they present and discuss their subject;
- are technically competent in teaching phonics and other basic skills;
- plan effectively, setting clear objectives that pupils understand;
- challenge and inspire pupils, expecting the most of them, so as to deepen their knowledge and understanding;
- use methods which enable all pupils to learn effectively;
- manage pupils well and insist on high standards of behaviour;
- use time, support staff and other resources, especially information and communications technology, effectively;
- assess pupils' work thoroughly and use assessments to help and encourage pupils to overcome difficulties;
- use homework effectively to reinforce and/or extend what is learned in school;

and the extent to which pupils:

- acquire new knowledge or skills, develop ideas, and increase their understanding;
- apply intellectual, physical or creative effort in their work;
- are productive and work at a good pace;
- show interest in their work, are able to sustain concentration and think and learn for themselves;
- understand what they are doing, how well they have done and how they can improve."

There is comprehensive guidance on the evaluation of teaching in Section 3 of the phase Handbooks for Inspecting Schools (OFSTED) and in the Threshold and Performance Management documentation from the DCSF.

Appendix D - Capability Procedure for Teachers

Publicising the Procedure

1. Ensure that all teaching staff are aware of the Capability Procedures which the school will follow in the event of identified teaching performance which falls below a professionally acceptable standard over a sustained period.

Informal Action

1. Complete a 'Capability Procedure Notification Form' (see Appendix Ai and Aii) and forward a copy to the Administrator in the HR Advisory Service.
2. At the start of the informal stage, the teacher should be given written notification that his/her capability is giving cause for concern and that a meeting will be held to discuss this.

The letter should:

- indicate the specific areas of concern
- inform the teacher that they are entitled under the Capability Procedure to be accompanied by a trade union representative or work colleague
- inform them that the LEA has been notified
- include a copy of the Capability Procedure (Appendix D).

This process must be led by:

- the headteacher where a teacher's performance is causing concern
- a nominated governor where the headteacher's performance is causing concern.

3. Meet the teacher to discuss the areas of concern and provide an opportunity for the teacher to respond to the points.

Determine the most appropriate course of action from the following options:

- Drop the case where the concerns are unsubstantiated or found not to be related to capability
 - Proceed with informal action where concerns are upheld (which may include a number of meetings)
 - Consider counselling (either as an alternative or in conjunction with other action) inform the teacher that whilst the procedures are intended to help him/her to attain a professionally acceptable standard, if that standard is not attained, the procedure may ultimately lead to dismissal.
4. Provide a written record of the meeting to all parties present at the meeting.
 5. Implement action, including monitoring process, as agreed.

At the end of the review or at any stage, where the teacher's performance has improved to a professionally acceptable standard, inform the teacher in writing of this and that the process has ended.

6. If the informal approach does not result in the required improvement within a reasonable period and the level of capability is seriously in question, the headteacher/governor must decide whether or not it is appropriate to institute the formal capability procedure.

Formal Procedure (Standard)

Stage 1: First Capability Hearing

1. If entering the procedure at this stage and you have not previously informed the authority, complete a 'Capability Procedure Notification Form' (see Appendix Ai and Aii) and forward a copy to the Administrator in the HR Advisory Service.
2. Prior to convening a hearing where insufficient improvement has been made and the teacher's performance remains below a professionally acceptable standard or if the concerns are seriously jeopardising pupils' education, ensure that the facts have been fully investigated and information has been gathered in a structured, systematic manner illustrating the nature of the concerns and level of seriousness.
3. Set-up a hearing to consider entry into the formal procedure and notify the teacher in writing.

When notifying the teacher:

- give at least 10 working days notice of the date, time and place of the hearing.
- state in detail (but as concisely as possible) the allegations/ areas of capability for consideration.
- inform the teacher that he/she has the right to be represented by up to two trade union representatives or work colleagues.
- provide copies of documents to be presented by management and details of any witnesses.
- provide a copy of the Capability Procedure (Appendix D).
- state the power of the person/s hearing the case to issue warnings.
- ask the teacher to provide information prior to the hearing of any witnesses and/or representation that he/she intends to bring to the hearing.
- ask the teacher to provide any documents which he/she will be submitting as evidence prior to the hearing wherever possible.

Hearing the case on behalf of school management will be:

- the headteacher where a teacher's performance is causing concern
- the Discipline, Grievance and Dismissal Sub-Committee of the Governing Body where the headteacher's performance is causing concern, in which case a IUI copy of the above should also be given to the governors 3 days prior to the hearing with the instruction that they should not discuss the matter with anyone beforehand.

4. Conduct the hearing, following the procedure laid out in Appendix G.

Decide course of action from the following possible outcomes:

- Not to continue action in relation to the teacher's capability
- To offer the teacher an alternative post in the school/reduce responsibilities, if appropriate
- To recommend that a further period of monitoring and review be undertaken
- To issue a first or written warning and state that the formal procedure will begin

Re-iterate to the teacher that whilst the procedures are intended to help him/her to attain a professionally acceptable standard, if that standard is not attained, the procedure may lead to dismissal.

5. Provide written notification of the outcome of the hearing to all parties and inform the teacher of his/her right of appeal.

If the teacher wishes to appeal, he/she must do so in writing to the Clerk of Governors within 5 working days of receipt of the written notification of the headteachers/governors decision.

6. Where an appeal has been submitted, convene an Appeal Hearing of the Appeals Committee of the Discipline, Grievance and Dismissal Committee of the Governing Body within 10 working days.

Provide written notification of the Appeal Hearing to the employee giving at least 5 working days notice and informing the teacher of his/her legal right to be represented at the hearing.

7. Following the Appeal Hearing, governors must decide to:
 - Uphold the appeal
 - Recommend a further period of monitoring or review
 - Offer the employee an alternative post within the school, if appropriate where this has not already been offered
 - Substitute a different level of warning
 - Confirm the original decision.

Confirm the outcome in writing to the teacher and implement action as appropriate unless the Appeal has been upheld and no further action is necessary.

Formal Procedure (Standard)

Stage 2: First Formal Meeting after Hearing (Monitoring & Review)

1. Immediately following the hearing, arrange a meeting and provide written notification to the teacher, giving at least 5 working days notice.
2. At the meeting management should:
 - Reaffirm the concerns identified as a result of the hearing and inform the teacher that this meeting represents the date of formal entry into the capability procedure.
 - Jointly identify and agree a set of realistic targets to be achieved and standards of work to be attained by a given date.
 - Identify appropriate support, resources and training to be made available, plus the offer of counselling if required.
 - Agree the arrangements for monitoring the teacher's progress, including timescales, which should not exceed 13 working weeks, with interim review sessions usually on a weekly or fortnightly basis. If the teacher's performance should cause serious concern at any stage during this period, the review period may be shortened.
 - Inform the teacher that the procedures are intended to help him/her achieve a professionally acceptable standard of performance and that if this standard is not met it could lead to dismissal.

At the end of the meeting, re-affirm the points covered in the meeting to form the basis of an action plan, which must include targets, support, monitoring and agreed timescales.

3. Provide the teacher with written confirmation of the outcome of the meeting (with copies to those present at the meeting), including a statement in the letter that formal entry into the Capability Procedure has now taken place.
4. Implement action plan, including review meetings.

Formal Procedure (Standard)

Stage 3: First Formal Review

1. Arrange for the first formal review meeting to take place after 13 working week (from the date of the First Formal Meeting after the Hearing), unless the teacher's performance is considered to be progressing insufficiently when the review meeting may be convened sooner.

Provide the teacher with written notification of this meeting, giving at least 5 working days notice.

2. At the meeting:
 - Address all the concerns raised at the First Formal Meeting after the hearing.
 - Inform the teacher that although the procedures are there to improve performance, if a professional standard is not achieved the procedure may lead to dismissal (normally at the end of the 26 working week period, but sooner if there are serious concerns).
 - Determine appropriate course of action from the following possible outcomes:
 - to end process if performance has unproved to a professionally acceptable standard.
 - to extend review period if sufficient mitigating circumstances are identified.

- to continue review and monitoring where performance has not improved to a professionally acceptable standard, giving consideration to monitoring and any appropriate support arrangements.
3. After the meeting, confirm the outcome in writing to the teacher (copied to others present at the meeting).
 4. Implement action plan, including review meetings with school management.

Formal Procedure (Standard) Stage 4: Final Review Meeting

1. At the end of the agreed monitoring period (normally after 24 working weeks), arrange for a final evaluation meeting of the teacher's performance to be held, giving at least 5 working days notification to the teacher in writing.
2. At the meeting:
 - Address all the concerns raised at the First Formal Review Meeting
 - Determine course of action from the following possible outcomes:
 - to end process if performance has improved to a professionally acceptable standard.
 - to implement a further short-term review period if there is definite improvement but some areas continue to require improvement. At the same time, the teacher should be made aware that if the outstanding areas of concern persist a hearing will be convened to consider dismissal.
 - to convene a hearing of the Governors' Discipline, Grievance and Dismissal Committee if there has been insufficient improvement and no sufficient mitigation.
3. Following the meeting, confirm the outcome in writing to the teacher. Where the decision is made to convene a hearing, inform the Clerk to the Governing Body who will arrange the hearing.

Formal Procedure (Standard) Stage 5: Second Capability Hearing

Convene a hearing of the Discipline, Grievance and Dismissal Committee of the Governing Body and provide written notification of the hearing to the teacher.

When notifying the teacher, you should:

- give at least 10 working days notice of the date, time and place of the hearing
- state in detail (but as concisely as possible) the allegations/ areas of capability for consideration
- inform the teacher that he/she has the right to be represented by up to two trade union representatives or work colleagues
- provide copies of documents to be presented by management and details of any witnesses
- provide a copy of the Capability Procedure for Teachers (Appendix D)
- state the power of the person/s hearing the case to issue warnings, including dismissal
- ask the teacher to provide information prior to the hearing of any witnesses and/or representation that he/she intends to bring to the hearing
- ask the teacher to provide any documents which he/she will be submitting as evidence prior to the hearing wherever possible.

3 days prior to the hearing provide copies of all the documentation issued to the teacher, together with any documents submitted by the teacher to:

- the governors from the Discipline, Grievance and Dismissal Committee hearing the case
- the Human Resources Adviser (who will be advising on process and procedure)
- a Legal representative (who will be advising on points of law)

Inform governors that they should not discuss the matter with anyone prior to the hearing.

2. At the hearing:
 - Follow the format laid out in the Authority's agreed disciplinary procedure running order (Appendix G).
 - Determine course of action from the following possible outcomes:
 - to recommend that no further action is required as the concerns are unsubstantiated
 - to recommend that a further period of monitoring and review be undertaken and agree an appropriate timescale
 - to consider an alternative post in school/reduce responsibilities, if appropriate, as an alternative to dismissal
 - to issue a formal warning and timescale for improvement
 - to recommend dismissal.
3. After the hearing, provide written notification of the outcome of the hearing and inform the teacher of his/her right of appeal.

An Appeal must be made in writing to the Clerk of Governors within 10 working days of receipt of written notification from the governor's decision.

4. If an appeal is received from the teacher, an Appeal Hearing must then be convened within 10 working days.

Notify the teacher of the date of the Appeal Hearing, giving at least 5 working days notice.

5. After the Appeal Hearing the governors must decide:
 - to uphold the appeal
 - to recommend a further period of monitoring and review
 - to offer the employee an alternative post within the school, if appropriate
 - to substitute a different level of warning
 - to confirm the original decision.
6. Convey the decision of the Appeals Committee as soon as possible to the teacher in writing.
7. Implement any action, as appropriate.
 - Where a further period of review has been recommended and there has been insufficient Improvement, convene a further hearing at the end of the assessment period. The same governors would normally be expected to hear the case.
 - Where governors recommend dismissal (following an Appeal or the 28 day appeal timescale has elapsed) present the recommendation in writing to the LEA/Chief Education Officer, as it is the LEA/Chief Education Officer who has the authority to dismiss an employee. The LEA/Chief Education Officer has 14 days from the date the notification is received to action the dismissal. The teacher is then entitled to receive pay in lieu of notice, payable by school.

Formal Procedure (Fast Track)

Stage 1: First Capability Hearing (Fast Track)

1. If entering the procedure at this stage and you have not previously informed the authority, complete a 'Capability Procedure Notification Form' (see Appendix Ai and Ail) and forward a copy to the Administrator in the HR Advisory Service.
2. Prior to convening a hearing where insufficient progress has been made in relation to improvement in the teacher's performance or if the concerns are so serious that pupils' education is in jeopardy, ensure that the facts have been fully investigated and information has been gathered in a structured, systematic manner illustrating the nature of the concerns and level of seriousness.
3. Set-up a hearing of the Discipline, Grievance and Dismissal Committee of the Governing Body to consider entry into the Fast Track procedure and notify the teacher in writing.

When notifying the teacher:

- give at least 10 working day's notice of the date, time and place of the hearing.
- state in detail (but as concisely as possible) the allegations areas of capability for consideration.
- inform the teacher that he/she has the right to be represented by up to two trade union representatives or work colleagues.
- provide copies of documents to be presented by management and details of any witnesses.
- provide a copy of the Capability Procedure for Teachers (Appendix D).
- state the power of the person/s hearing the case to issue warnings.
- ask the teacher to provide information prior to the hearing of any witnesses and/or representation that he/she intends to bring to the hearing.
- ask the teacher to provide any documents which he/she will be submitting as evidence prior to the hearing wherever possible.

3 days prior to the hearing provide copies of all the documentation issued to the teacher, together with any documents submitted by the teacher to:

- the governors from the Discipline, Grievance and Dismissal Committee hearing the case
- the Human Resources Adviser (who will be advising on process and procedure)

Inform governors that they should not discuss the matter with anyone prior to the hearing.

4. Conduct the hearing, following the procedure laid out in Appendix G.

Decide course of action from the following possible outcomes:

- That no further action in relation to the capability procedure is required
- That the Informal Capability Procedure should be applied.
- That the standard Formal Capability Procedure should be applied. This could include:
 - a further period of monitoring
 - consideration of an alternative post in the school if appropriate
 - issuing of a first or written warning
- That the Fast Track Capability Procedure should be applied.

This will include issuing a final warning, stating that entry into the formal Fast Track procedure will begin and implementing an assessment period not exceeding 4 weeks.

Re-iterate to the teacher that whilst the procedures are intended to help him/her to attain a professionally acceptable standard, if that standard is not attained, the procedure may lead to dismissal.

5. Provide written notification of the outcome of the hearing to all parties and inform the teacher of his/her right of appeal.

If the teacher wishes to appeal, he/she must do so in writing to the Clerk of Governors within 10 working days of receipt of the written notification of the headteachers/governors decision.

6. Where an appeal has been submitted, convene an Appeal Hearing of the Appeals Committee of the Discipline, Grievance and Dismissal Committee of the Governing Body within 10 working days.

Provide written notification of the Appeal Hearing to the employee giving at least 5 working days notice and informing the teacher of his/her legal right to be represented at the hearing.

7. Following the Appeal Hearing, governors must decide:
 - To uphold the appeal
 - To apply an alternative decision/different level of warning, including:
 - no further action in relation to the capability procedure is required.
 - transfer to the Informal Capability Procedure.
 - entry into the standard Formal Capability Procedure, including a further period of monitoring, consideration of an alternative post in the school if appropriate and the issuing of a first or written warning.
 - To apply the Fast Track Capability Procedure with a maximum assessment period of 4 weeks.

Confirm the outcome in writing to the teacher and implement action as appropriate.

Formal Procedure (Fast Track) Stage 2: Meeting after the Hearing

1. Immediately following the hearing, the headteacher should arrange a meeting and provide written notification to the teacher, giving at least 5 working days notice.
2. At the meeting management should discuss and propose an action plan. Include:
 - Re-affirmation of the concerns identified as a result of the hearing.
 - Joint identification and agreement of a set of realistic targets to be achieved and standards of work to be attained within the 4 week assessment period
 - Identification of appropriate support, resources and training to be made available, plus the offer of counselling if required
 - Information to the teacher that this meeting represents the formal entry date into the Fast Track Capability Procedure
 - Information to the teacher that the procedures are intended to help him/her achieve a professionally acceptable standard of performance but if this standard is not met it could lead to dismissal
 - Agreement of the arrangements for monitoring the teacher's progress during the 4 week Fast Track period, including interim review sessions on at least a weekly basis
 - Advice that if the teacher's performance should cause a very serious concern at any stage during this period, the review may be shortened.
3. Provide the teacher with written confirmation of the outcome of the meeting (with copies to those present at the meeting), including a statement in the letter that formal entry into the Fast Track Capability Procedure has now taken place.
4. Implement action plan, including review meetings.

Formal Procedure (Fast Track) Stage 3: Final Review Meeting

1. At the end of the agreed monitoring period (normally after 4 working weeks), arrange for a final evaluation meeting of the teacher's performance to be held, giving at least 5 working days notification to the teacher in writing.
2. At the meeting:
 - Address all the concerns raised at the meeting after the hearing and in review sessions during the last 4 weeks
 - Determine course of action:
 - to end process if performance has improved to a professionally acceptable standard

- to implement a further short-term review period if there is definite improvement but some areas continue to require improvement. At the same time, the teacher should be warned that if the outstanding areas of concern persist a hearing will be convened to consider dismissal.
 - to convene a hearing of the governor's Discipline, Grievance and Dismissal Committee if there has been insufficient improvement and no sufficient mitigation.
3. Following the meeting, confirm the outcome in writing to the teacher. Where the decision is made to convene a hearing, inform the Clerk to the Governing Body who will arrange the hearing.

Formal Procedure (Fast Track)
Stage 4: Capability Hearing

1. Convene a hearing of the Discipline, Grievance and Dismissal Committee of the Governing Body and provide written notification of the hearing to the teacher.

When notifying the teacher, you should:

- give at least 10 working days notice of the date, time and place of the hearing.
- state in detail (but as concisely as possible) the allegations! areas of capability for consideration.
- inform the teacher that he/she may be represented by up to two trade union representatives or work colleagues.
- provide copies of documents to be presented by management and details of any witnesses.
- provide a copy of the Capability Procedure for Teachers (Appendix D).
- state the power of the person/s hearing the case to issue warnings, including dismissal.
- ask the teacher to provide information prior to the hearing of any witnesses and/or representation that he/she intends to bring to the hearing.
- ask the teacher to provide any documents which they will be submitting as evidence prior to the hearing wherever possible.

3 days prior to the hearing provide copies of all the documentation issued to the teacher, together with any documents submitted by the teacher to:

- the governors from the Discipline, Grievance and Dismissal Committee hearing the case
- the Human Resources Adviser (who will be advising on process and procedure)
- a Legal representative (who will be advising on points of law)

Inform governors that they should not discuss the matter with anyone prior to the hearing.

2. At the hearing:
- Follow the format of the disciplinary procedure running order (Appendix G).
 - Decide course of action from the following possible outcomes:
 - That no further action in relation to the capability procedure is required.
 - That the Informal Capability Procedure should be applied.
 - That the standard Formal Capability Procedure should be applied.
 - To implement a further short-term period of review within the Fast Track procedure.
 - To recommend dismissal.
3. After the hearing, provide written notification of the outcome of the hearing and inform the teacher of his/her right of appeal.

The Appeal must be made in writing to the Clerk of Governors within 10 working days of receipt of written notification from the governor's decision.

4. Where an appeal has been submitted, convene an Appeal Hearing of the Appeals Committee of the Discipline, Grievance and Dismissal Committee of the Governing Body as soon as possible but no later than 10 working days.

Notify the teacher, giving at least 5 working days notice and informing the teacher of his/her legal right to be represented at the hearing.

5. Following the Appeal Hearing, governors must decide:
 - To uphold the Appeal
 - To apply an alternative decision including:
 - no further action in relation to the capability procedure.
 - transfer to the Informal Stage of the Capability Procedure.
 - entry into the Formal Stage of the Capability Procedure.
 - to implement a further short term period of review within the Fast Track Procedure.
 - To confirm the original decision.

Confirm the outcome in writing to the teacher and implement action as appropriate.

6. Implement any action, as appropriate.
 - Where a further period of review has been recommended and there has been insufficient improvement, a further hearing should be convened at the end of the assessment period. The same governors would normally be expected to hear the case.
 - Where governors recommend dismissal, this should be presented in writing to the LEA/Chief Education Officer, as it is the LEA/Chief Education Officer 'who has the authority to dismiss an employee. The LEA/Chief Education Officer has 14 days from the date the notification is received to action the dismissal. The teacher is then entitled to receive pay in lieu of notice, payable by school.

Appendix E - Sample Letter: Invite Request to Attend Capability Hearing

(Formal Capability Procedure)

George Smith
120 Lanehead
Bradford

Date: 5 February 2001

Dear Mr Smith

CAPABILITY HEARING, 17 February 2001

I write to inform you that a hearing will be held regarding management concerns in relation to your ability to perform to a professionally acceptable standard.

At the hearing before the headteacher/governors of the Discipline, Grievance and Dismissal Committee, consideration will be given to the following allegations made against you:

1. That you (insert detail including specific date/s, actions and outcome)
2. That you.....

The capability hearing will be held on (date) at (time) in (place). At the hearing you have the right to be represented by up to 2 trade union representatives or work colleagues. To ensure that administrative arrangements can be made, I would be grateful if you would advise me at the earliest opportunity of whom, if anyone, you intend to bring to the meeting as a representative, along with the names of any witnesses. Could I also request that you provide a copy of any documentation you intend to refer to 3 days prior to the hearing, wherever possible.

Please find attached the management information which will be presented at the hearing, together with a copy of the agreed running order which will be followed at the meeting and a copy of the Capability Procedure for Teachers.

I must inform you that under the procedures adopted by the Governors of the school, in the event of my finding one or both/all of the allegations against you being proven, the headteacher has the discretion to issue a first or written warning/governors can issue any level of warning.

Yours sincerely

Headteacher/governor

Appendix F - Disciplinary Warnings

FIRST WARNING

Warning given by:

Headteacher

WRITTEN WARNING

Headteacher

FINAL WARNING

Discipline, Grievance &
Dismissal Committee

DISMISSAL

Discipline, Grievance &
Dismissal Committee

Appeal to:

Appeals Committee of
Discipline, Grievance &
Dismissal Committee

Appeals Committee of
Discipline, Grievance &
Dismissal Committee

Appeals Committee of
Discipline, Grievance &
Dismissal Committee

Appeals Committee of
Discipline, Grievance &
Dismissal Committee

Rationale:

Where the concern is
serious enough to bring to
the attention of the
employee formally

Where insufficient
improvement has been
made, or where the case
is of sufficient
seriousness

Where the case has
involved the written
warning stage and no
improvement has been
made, or where the case
is of sufficient
seriousness

Where pupils' education
is seriously in jeopardy
and no sufficient
improvement has been
made

Appendix G - Recommended Procedure for Capability Hearings

The Chair is in control of the procedure. The sequence listed below enables both sides to present their evidence fairly and fully. It is:

1. The Chair shall introduce those present, explain the procedure to be used and ensure that it is agreed by the employee and/or his/her representative.
2. The management representative shall present his/her case and may call witnesses to clarify evidence.
3. The employee and/or his/her representative may question the management representative and any witnesses he/she has called.
4. The employee and/or his/her representative shall present his/her case and may call witnesses to clarify evidence.
5. The management representative may question the employee and any witnesses he/she has called.
6. The Chair (and through him/her the other governors, if appropriate) may question either side and any witnesses called at any time. If new evidence is brought out both sides will have an opportunity to comment.
7. The management representative shall be given an opportunity to sum up his/her case.
8. The employee and/or his/her representative shall be given an opportunity to sum up his/her case.
9. The Chair shall ask both parties to leave while the decision is made, only recalling the two parties to clear points of uncertainty in evidence already given. If recall is necessary both parties will return not withstanding only one is concerned with the point giving rise to doubt. The advice of a Human Resources Adviser and/or a Legal Officer during their deliberation on points of law; procedure of the Council's declared HR Policies is available if required.

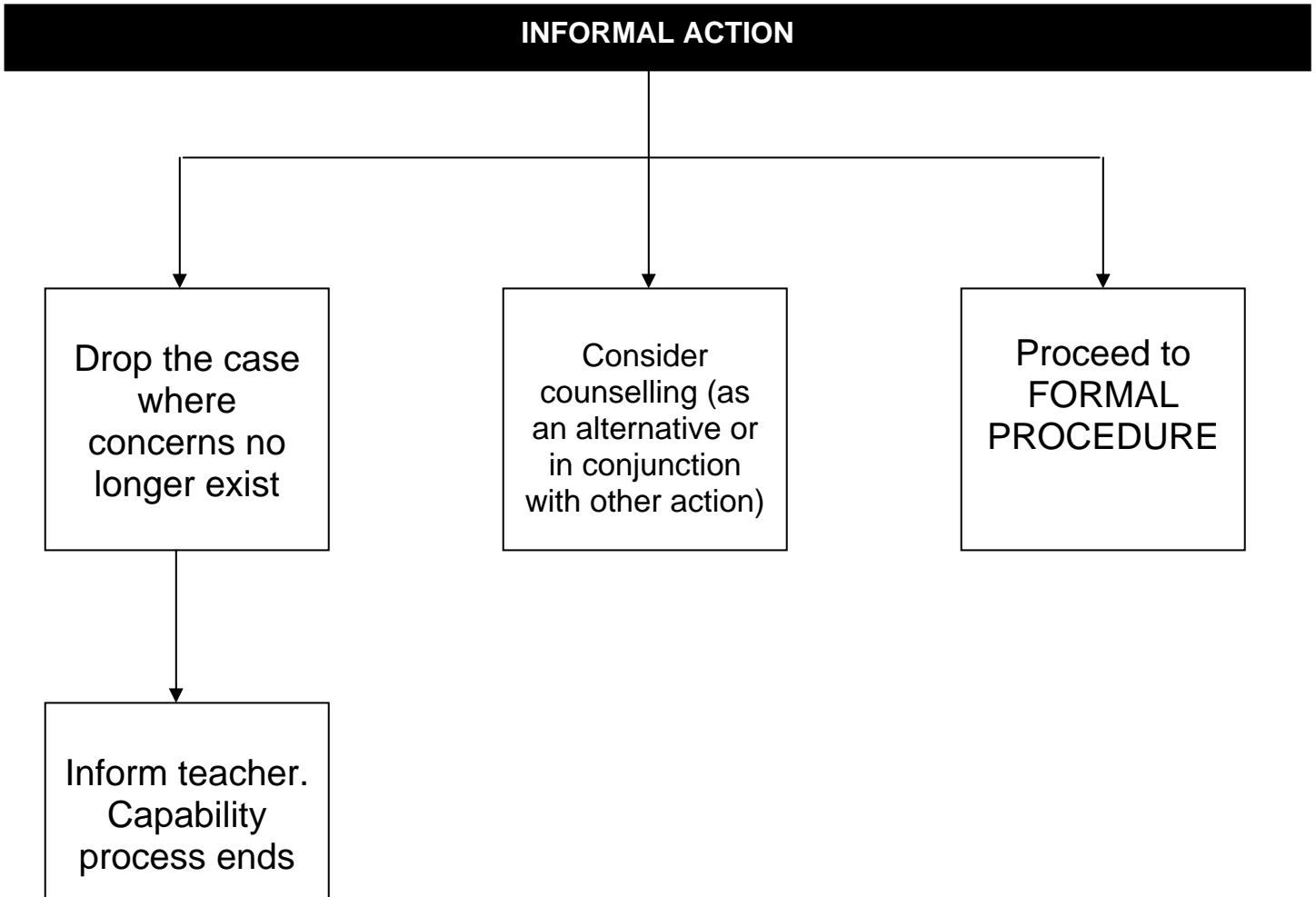
The Decision

The Chair shall recall the two sides and give the decision. He/she shall explain the reasons for the decision. Alternatively, he/she may inform the employee that the decision will be made known to him/her later. The Chair shall explain that the decision and reasons shall be confirmed in writing.

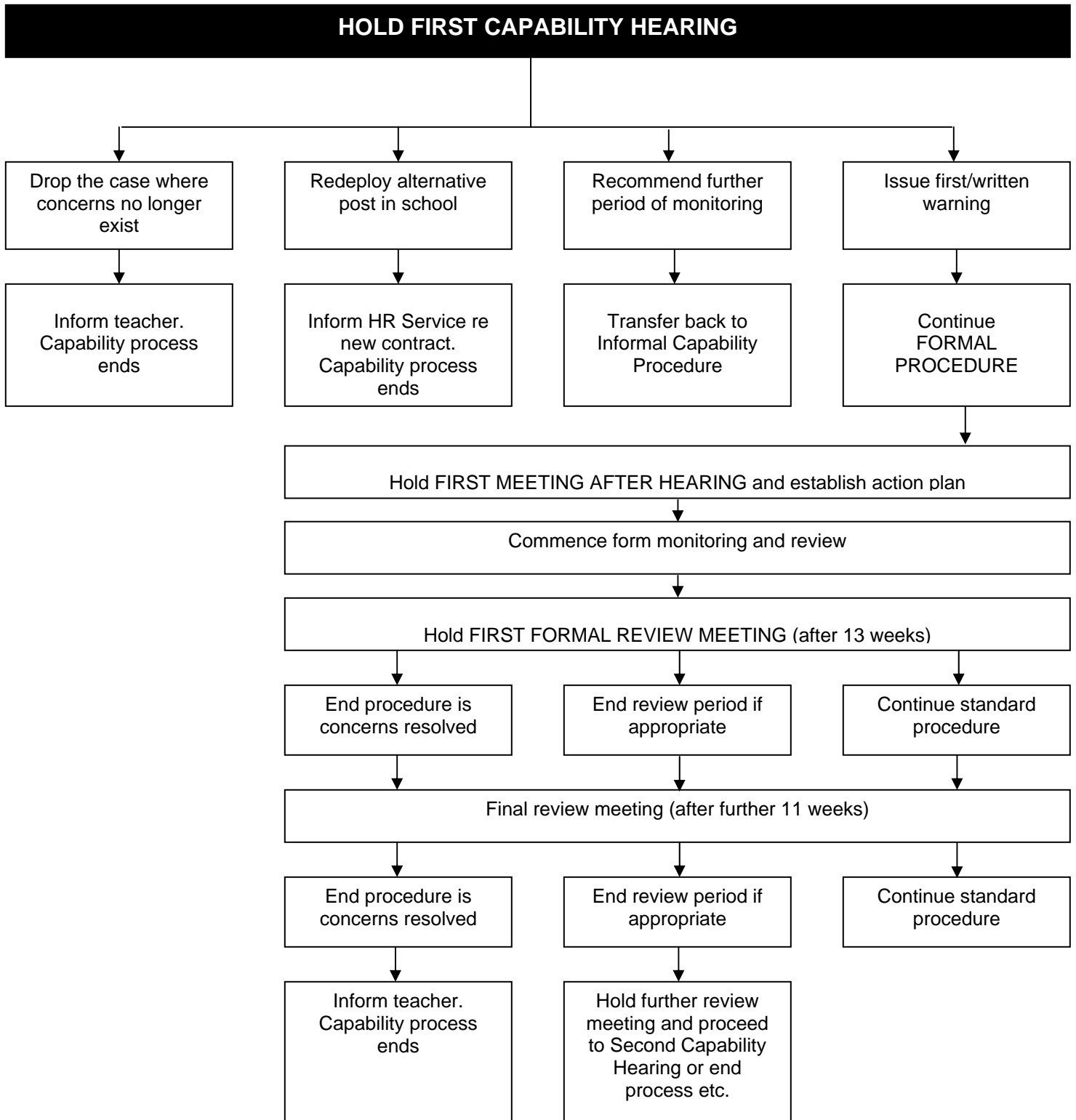
* The Chair is either the Chair of the Discipline, Dismissal and Grievance Sub-Committee of the Governing Body or the Headteacher. (See the school's procedure).

Appendix H - Flowchart – Standard Capability Procedure

1. Informal Capability Process (Standard)

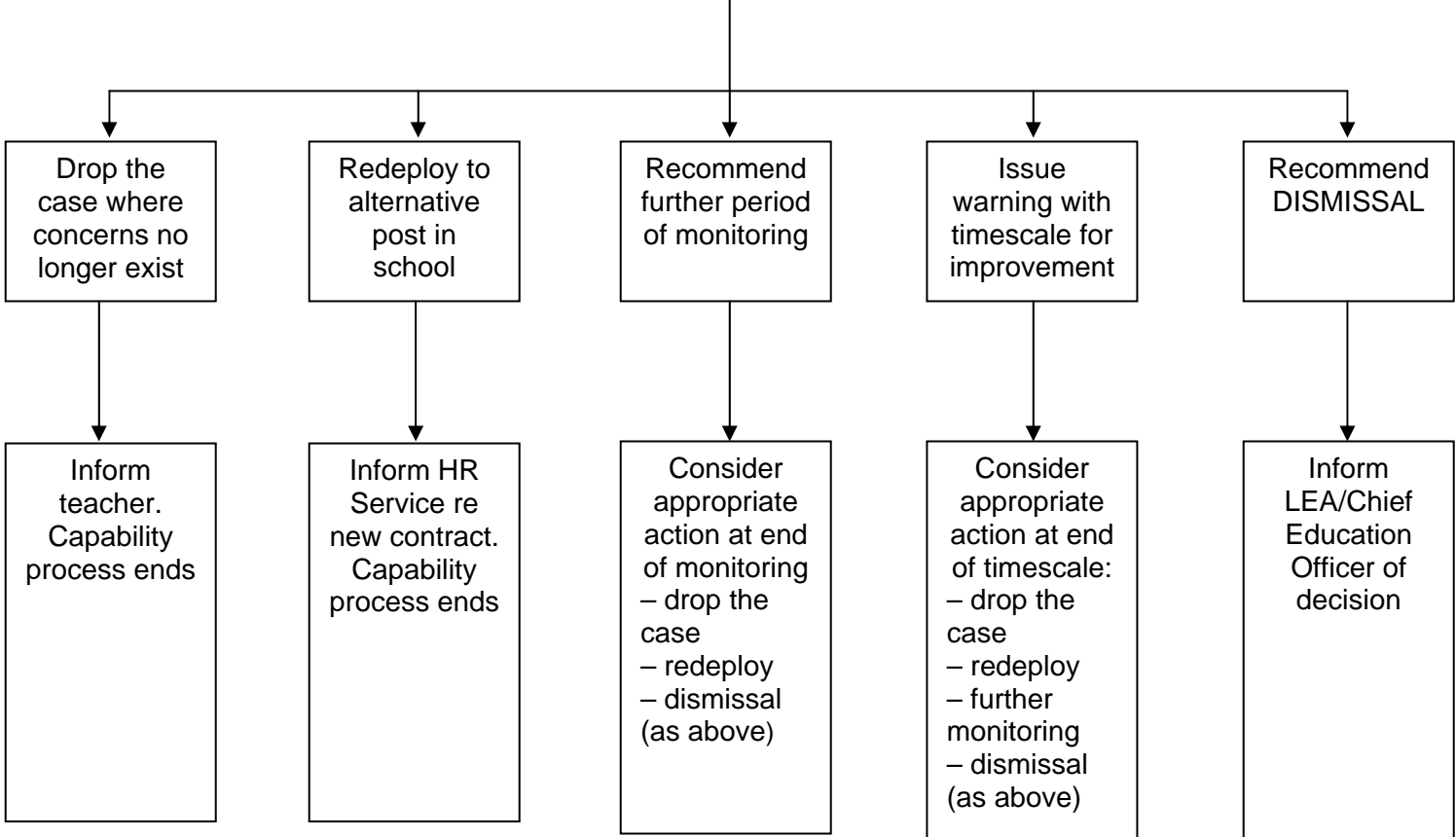


2. Formal Capability Process (Standard)



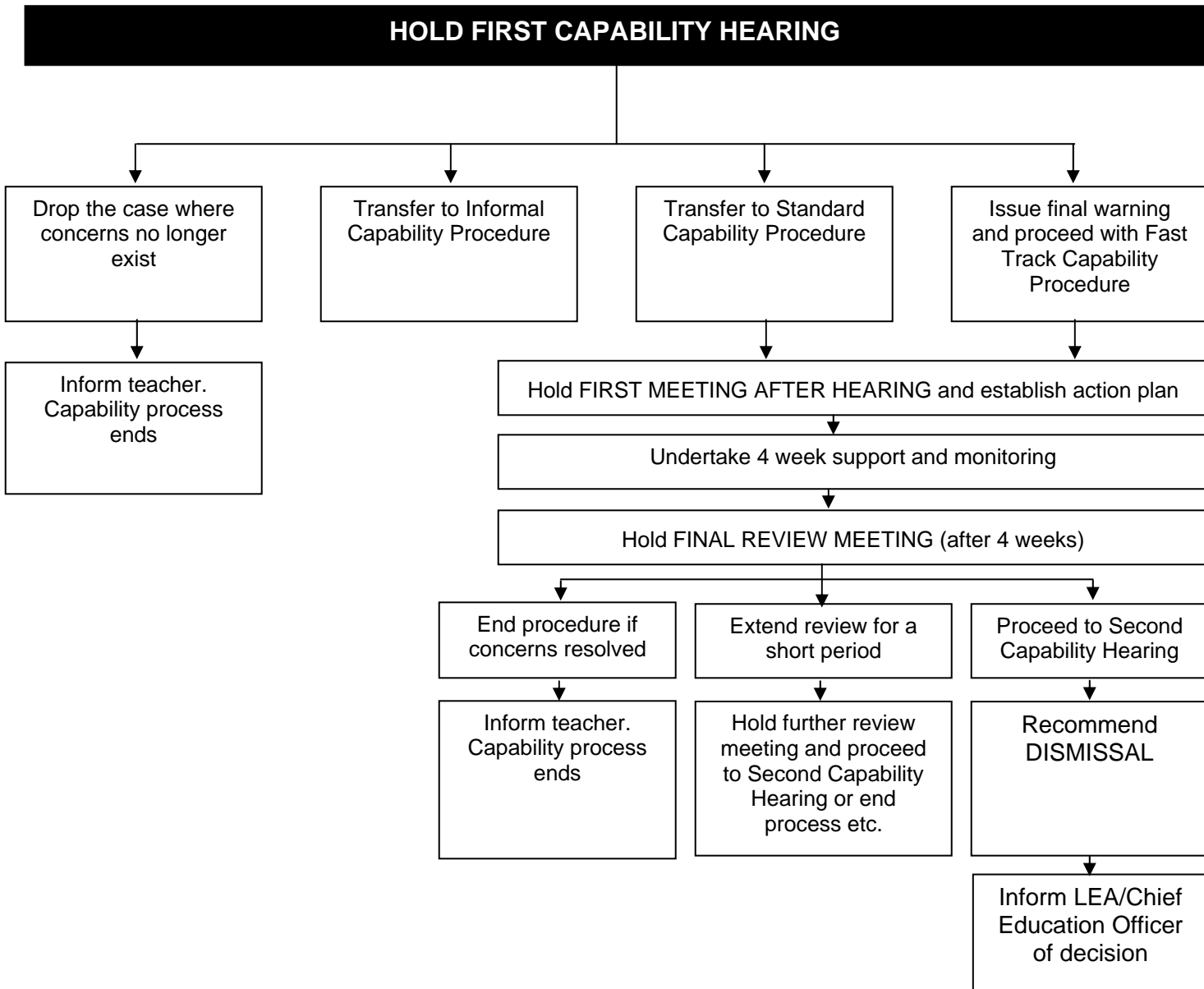
3. Formal Capability Process (Standard) cont.

HOLD SECOND CAPABILITY HEARING (after approx. 26 weeks in total)



Appendix I - Fast-Track Capability Procedure

1. Formal Capability Process (Fast Track)



Appendix 2 – Briefing Note for Clerks at Hearings

BRIEFING NOTE FOR CLERKS AT GOVERNING BODY DISCIPLINARY HEARINGS AND GOVERNING BODY DISCIPLINARY APPEAL HEARINGS

The role of clerk is an important role. The following briefing note sets out some key points. At the hearing there will be a committee consisting of three governors, the employee concerned who can attend with up to two representatives, a management representative (often the head teacher) a HR adviser to the Committee, a legal adviser to the Committee if dismissal is a possibility and a Chief Education Officer (unless the school is a voluntary aided or foundation school).

1. The role of the clerk at Governing Body disciplinary hearings and Governing Body disciplinary appeal hearings is to make notes of what is said during the course of the hearing. The clerk needs to note as much of what is said during the course of the hearing as is possible. It is, of course, not always possible to take notes verbatim. The note taking should not slow down the hearing.
2. The clerk only makes notes when all parties (management and the employee side) are present. No notes are taken by the clerk during any adjournment, including any deliberations. The clerk need not be present once the parties (management and the employee side) have left the room.
3. The clerk should note at the commencement of the hearing the members of the Committee and all parties present and their role in the hearing (for example it should state that the Human Resources Advisor (state name) with Education Bradford is there to advise the Committee).
4. It is important that the clerk notes the “niceties” which take place during the hearing, however trivial they may seem, for example asking whether the person facing the disciplinary action wants to have a short adjournment during the course of the hearing, asking whether s/he is ready to proceed etc. If the person subsequently brings an Employment Tribunal claim, such matters may assist in showing the fairness of the process.
5. It is also important that the clerk always notes down what is said by the HR advisor and legal advisor to the Committee **when parties are present (management and the employee side)**, as when they are speaking they will not be making their own notes. It is important that any legal advice/HR advice given openly to all parties is noted carefully.
6. Under no circumstances should the clerk paraphrase what is said during the hearing.
7. The clerk should **not** be sent any of the papers in advance of the hearing. It is not necessary for the clerk to know the case.
8. The clerk should not proffer any opinions/advice during the hearing or during any adjournment about the case. To do so may render any decision making of the Committee unfair.
9. It is important that the clerk does not later add to the notes which have been produced during the hearing. If the clerk has not written down what was said, s/he should not at a later time fill in what was said; even if s/he believes s/he is certain of the words used. Any notes taken must be contemporaneous. There is always a risk that if notes are added to later different words are used by the clerk than those used in the hearing. This would also cause problems if the notes are ever challenged. It is not always necessary for the notes to be typed up by the clerk. If they are typed up the handwritten original must be retained.