



**YSGOL CARREG  
HIRFAEN  
DISCIPLINARY  
RULES, CONDUCT  
PROCEDURES,  
CAPABILITY AND  
GRIEVENCE  
POLICY**

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## **DISCIPLINARY RULES AND PROCEDURES**

### **1. EXPLANATORY NOTES**

- 1.1 The procedure is intended to cover all employees solely at the establishment and which are under the responsibility of the Governing Body. It may also be used for those not employed solely at the establishment in which case the Governing Body is not entitled to recommend dismissal but only that the L.E.A. should withdraw that person from work at the School.
- 1.2 The procedure is written on the assumption that the Governing Body will delegate all disciplinary matters, short of a recommendation to the L.E.A. to dismiss an employee, to the Headteacher. If the Governing Body decides otherwise it will be necessary for it to appoint, at its inaugural meeting, a Disciplinary Sub Committee and an Appeals Sub-Committee (*unless the full Governing Body is to decline appeals*). Members who are involved in any part of the disciplinary process should not take part in the appeal procedure.

### **2. SCOPE OF THE PROCEDURE**

- 2.1 This procedure covers all employees employed in a school (*except school meals staff where provision is not delegated to the school. Also not included are school cleaning staff if they are employed by a cleaning contractor*) but will not apply to employees given notice
  - (a) at the conclusion of employment for which the employee has been specifically engaged;
  - (b) during a period of service where dismissal arises from unsuitability for confirmation of appointment;
  - (c) where the employee is above the normal retirement age.

### **3. CONSISTENCY AND EQUALITY OF TREATMENT**

- 3.1 Because the number of disciplinary matters that any particular Governing Body/Headteacher is likely to deal with will probably be very few, there is a need to ensure consistency and equality of treatment. Therefore, it is recommended that the advice of the Authority's officers be sought at an early stage, before any proposed formal process be initiated.

### **4. CONSISTENCY AND EQUALITY OF TREATMENT**



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### **4.1 Counselling**

Prior to invoking the formal disciplinary procedure, a Headteacher may, in respect of minor shortcomings or misdemeanours, counsel the employee concerned, with a view to effecting an improvement.

It is not generally necessary to confirm the outcome of a counselling interview in writing, although it may be mutually beneficial on occasions to do so, particularly if a plan has been agreed for improvement in the future. In any event, the Headteacher on conducting the counselling interview will make a note of the interview and its outcome for reference purposes and will also follow up on any agreed plan for improvement to evaluate progress or improvement. It would be helpful to agree on a determined period within which an improvement is anticipated. The result of any counselling may be confirmed in writing.

If this counselling procedure proves ineffective, then the formal disciplinary procedure should be invoked.

### **4.2 Investigation to Ascertain the Facts**

Prior to the holding of the Disciplinary Interview, it will be necessary to carry out an investigation to ascertain the facts and to determine whether or not there is a prima facie case to answer. It is not possible to give detailed guidance on the conduct of an investigation but the investigation will usually be carried out by the Headteacher and/or his representative and the Authority's officers will assist if required.

### **4.3 Effect of Police Investigation**

If the employee has been charged with a criminal offence or the Police are continuing an investigation it does not necessarily mean that the School's investigation and subsequent disciplinary action should not be proceeded with but appropriate advice should be sought at the time.

### **4.4 Suspension**

In the interest of the individual and the school, should a matter deemed to be of a sensitive or potentially serious nature then it may be appropriate to suspend the individual from attending his/her place of employment (*See also Section 6 on Gross Misconduct*).

The Governing Body and the Headteacher both have the power to suspend any person employed to work at the School. Any suspension may only be ended by the Governing Body.



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### **5. FORMAL DISCIPLINARY PROCEDURE**

5.1 Section 7 on “Application of the Procedure” should be read before embarking on the following stages.

#### **5.2 Stage 1**

Where an initial breach of discipline is substantiated, then a first warning will be given by the Headteacher to the individual concerned, and confirmed in writing. If an initial breach of discipline is serious then either a final warning (*see Stage 2*) can be issued immediately or alternatively if it is sufficiently serious dismissal action (*see Stage 3*) can be recommended.

#### **5.3 Stage 2**

If, as a result of this first warning, an improvement is not effected, then a second (*final*) disciplinary interview will be conducted by the Headteacher. If, as a result of this interview, the misdemeanour is substantiated, then a final warning, confirmed in writing, will be issued. This letter must make it clear that any further similar misdemeanour **will** result in a recommendation to the L.E.A. to dismiss.

#### **5.4 Stage 3**

5.4.1 If, despite the issue of a final written warning, an improvement is not effected or further misdemeanours are committed, then a further disciplinary interview will be held by the disciplinary Sub Committee of the Governing Body. If an acceptable explanation is not given by the employee, then he/she will be informed that the L.E.A. will be recommended to dismiss him/her. The employee will be immediately informed, in writing, of the reasons that such a recommendation is being made and indicating the right of appeal to the Governing Body. The employee has the right of appeal **before** the L.E.A. is informed.

5.4.2 Following an unsuccessful appeal, the recommendation to the L.E.A. to dismiss the employee will be made in writing and will include a statement of the reasons for the recommendation.

**Note:** 1. The decision on the result of disciplinary action with Stages 1, 2 and 3 will be notified to the individual concerned within two working days of the interview, unless exceptional circumstances prevent such action.



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2. The Director of Education has the right to attend for the purpose of giving advice, all proceedings of the Governing Body relating to the possible dismissal of an employee.

### **6. GROSS MISCONDUCT**

- 6.1 Where an employee is believed to have committed gross misconduct the Headteacher in consultation with the Chairman of Governors and Principal HR Officer for Schools, consider the suspension of the employee with full pay.
- 6.2 If as a result of the investigation (*see 4.2 above*) it is decided not to proceed with disciplinary action then a brief report should be submitted to a full meeting of the Governing Body with the recommendation that the suspension of the employee be ended.
- 6.3 Following investigation (*see 4.2 above*) and the holding of a disciplinary interview as at Stage 3 above, if the allegation of gross misconduct is substantiated, then the Local Education Authority will be recommended to dismiss the employee. The employee will be immediately informed, in writing, that such a recommendation is being made and of the reasons for making such a recommendation.

#### **DEFINITION OF GROSS MISCONDUCT**

Gross misconduct is misconduct of such a nature that the Governing Body and the Authority are justified in no longer tolerating the continued presence at work of the employee who commits an offence of gross misconduct.

Examples of offences of gross misconduct which have led to the dismissal of Local Authority Employees and which, if committed by an employee will be regarded as breaches of disciplinary rules, include:-

- Unauthorised removal of the school and/or Authority's property.
- Stealing from the school and/or Authority, its Members, members of staff, pupils or the public, and other offences of dishonesty.
- Sexual Offences.
- Sexual misconduct at work.



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- Fighting.
- Physical assault.
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- Malicious damage to the School and/or Authority's property.
- Serious breaches of safety regulations endangering other people including deliberate damage to, neglect of, or misappropriation of safety equipment.

This list is neither exclusive nor exhaustive and, in addition, there may be other offences of similar gravity which would constitute gross misconduct. The list is liable to amendment in the light of any negotiations on disciplinary rules and procedures which may take place with the recognised unions for the appropriate employment group.

## **7. APPLICATION OF THE PROCEDURE**

- 7.1 It is implicit throughout this procedure that, whenever a breach of discipline is alleged, there is an onus upon the Headteacher to investigate the allegations prior to taking action and, in every case, to inform the employee beforehand of the complaint. An interview will be arranged to allow the employee to state his/her case before a decision as to appropriate action is taken.
- 7.2 In all cases where, upon investigation, it is found that the allegation is unsubstantiated, then all reference to the matter will be expunged from the individual's personal file and from all records.
- 7.3 The employee has the right to be accompanied by an accredited Trade Union/Employee Representative or any other person at all stages in the formal disciplinary procedure. In addition the employee has the right to call and cross examine witnesses. The 7 day notice may be reduced by mutual agreement.
- 7.4 Excepting cases of alleged gross misconduct, seven working days' notice of any disciplinary hearing or interview will be given to the employee in writing so that he/she may be aware of the matters to be discussed.
- 7.5 Whilst any employee accused of gross misconduct may be suspended pending investigation and the conduct of any disciplinary interview, it is also permissible to suspend an employee on full pay in connection with misconduct which may not be gross misconduct. This may be useful if it



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can aid the investigatory process. The suspension may only be ended by the Governing Body.

- 7.6 On completion of the hearing, the Headteacher (*or the Chairman of the Governing Body or Sub Committee when the matter is being dealt with by a Sub Committee*) will ask the member of staff, his/her representative and officers present except any adviser(s) to the Governing Body to withdraw whilst the matter is being deliberated.
- 7.7 Refusal to attend any part of the procedure will not invalidate the procedure.
- 7.8 If the employee so desires, copies of any written warning, dismissal letters, etc., will be sent to his/her representatives.
- 7.9 Where an employee is suspected, accused or convicted of any criminal offence, either in connection with his or her employment, or which has, or could have, a material effect on the carrying out of his or her duties in the future, then the employee is to be dealt with in accordance with the disciplinary procedure outlined above. The decision as to what action undertaken by Headteacher, in consultation with appropriate officers at the time, is to be reported to the Governing Body.
- 7.10 Any disciplinary action contemplated against an Official of a recognised Employee Association/Trade Union will be reported to the appropriate full-time official of that Association/Union, prior to the action being taken.
- 7.11 If, after a reasonable period of time, dependent upon the circumstances, (*usually no more than 12 months*) the employee's conduct or performance gives no further cause for concern, then the record of disciplinary action will be expunged. To this effect, a Register of all current disciplinary cases will be maintained by the Headteacher and reviewed annually.
- 7.12 All proceedings and decisions should be treated as confidential.

## **8. APPEALS**

- 8.1 At each stage during the procedure, the employee has the right of appeal to the disciplinary appeal sub-committee of the Governing Body. The appeal committee shall include no fewer members of the Governing Body than that of the first Committee the decision of which is subject to appeal, not should it contain any members of the first Committee.
- 8.2 Notice of Appeal should be made in writing and should be received by the Clerk to the Governing Body within 15 working days of receipt of a Disciplinary Letter or within 5 working days of receipt of a notification that



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the Governing Body intends to recommend to the L.E.A. the employee's dismissal or removal from the School.

## **9. TIME LIMITS FOR WARNINGS**

Except in special circumstances any disciplinary action will be disregarded for disciplinary purposes after the periods specified below:-

**Stage 1:** disregard after 6 months.

**Stage 2:** disregarded after 12 months.

There may, however, be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record will be borne in mind in deciding how long any current warning will last.

Exceptionally, there may be circumstances where the employee's job is such or the misconduct is so serious – verging on gross misconduct – that it cannot realistically be disregarded for future disciplinary purposes. In such circumstances it will be made clear that the final warning will remain for an extended period or will never be removed and that any recurrence will lead to dismissal.

## **10. LEA ACTION ON RECEIPT OF A RECOMMENDATION FROM A GOVERNING BODY**

10.1 On receipt of a recommendation from a Governing Body to dismiss an employee:-

- (i) if the employee is a teacher then the Director of Education will issue the appropriate letter;
- (ii) if the employee is an NJC employee then the Director of Education will take the necessary procedures to issue the employee with an appropriate letter.

10.2 If the recommendation from a Governing Body in respect of an employee not wholly employed at the school is that the employee be removed from that school then consideration will have to be given, dependent upon the reasons for removal, to disciplinary action by the L.E.A. or any other action that is considered appropriate.



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### **11. DISCIPLINARY ACTION INVOLVING THE HEAD-TEACHER**

11.1 If the Governing Body is dissatisfied with the conduct of the Headteacher then the advice of the Director of Education will be sought, and following investigation by the Director of Education the procedure as set out in this document will be followed.

#### **Guidance on School Disciplinary, Grievance & Capability Procedures**

##### **1. Status**

- 1.1 The School Standards and Framework Act 1998 places staff disciplinary procedures under the control of the governing body and the School Staffing (England) Regulations 2003 (issued under sections 35 and 36 of the Education Act 2002) obliges all schools to put in place disciplinary and grievance procedures.
- 1.2 Statutory Instrument 2003/1963 of the Staffing Regulations says that governing bodies in all maintained schools must establish procedures for (a) for the regulation of the conduct and discipline of staff at the school, and (b) by which staff may seek redress for any grievance relating to their work at the school.
- 1.3 School governing bodies have a responsibility in Education law for ensuring that the performance of staff in the school is properly monitored and that lack of capability is identified and steps are taken to improve poor performance.
- 1.4 This statutory obligation on employers regarding staff procedures is further supported by the Employment Rights Act 1996 and the Employment Act 2002 (Dispute Resolution) Regulations 2004. The Employment Act requires all contracts of employment to make reference to the employer's grievance procedure and where a copy can be found, and, under the Dispute Resolution Regulations, an employee cannot bring claims before an employment tribunal unless they have first followed the statutory grievance procedures.
- 1.5 In Community, Voluntary Controlled and Community Special schools, where the Local Authority is the employer of staff, the Children's Services Group Director or their representative has the right to attend and give advice at any hearing to consider a dismissal and appeals against dismissals.
- 1.6 Foundation and Voluntary Aided schools will have made a formal decision as to whether to grant the Children's Services Group Director advisory rights. If advisory rights have been granted, then the Children's Services Group Director or a representative has a right to attend all hearings to consider dismissal and appeals against dismissals.



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- 1.7 The final level of appeal within each school's staff disciplinary, grievance and capability procedures will be the governing body itself. The only exception to this general rule of the governing body being the final level of appeal is if the subject of the grievance arises from any term or condition which is subject to agreement between the Local Authority and a recognised trade union at local, provincial or national level. Final appeal in these circumstances will be to the Local Authority, Provincial or National Council, as appropriate.
- 1.8 This guidance document is designed to support the implementation and operation of effective employee disciplinary and grievance procedures based on the legislative framework. The model procedures can be adopted in their entirety or used to review the procedures already in place at a school.

## **2. Introduction to the procedures**

- 2.1 This Guidance document and the model procedures it contains applies to all staff within the school. It is based on the premise contained in the 2003 School Staffing Regulations that the governing body will usually delegate initial dismissal decisions to the head teacher. If the head teacher of a school feels that it is inappropriate for the matter to be dealt with within the terms of this delegation from the governing body s/he may request that the matter is dealt with by governors. The range of actual delegation within a particular school is for the governing body to determine.
- 2.2 The governing body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to staff grievance and discipline. The head teacher is responsible for the internal organisation, management and control of the school.
- Under the Regulations the Governing Body may delegate their responsibilities, other than the hearing of appeals, to:
- i. the headteacher;
  - ii. one or more governors and the head teacher;
  - iii. one or more governors.
- 2.3 The head teacher, with the agreement of the Governing Body, may further delegate responsibility for deciding on sanctions up to but not including an initial dismissal decision to the relevant line manager. In most cases this would be another member of the school's leadership team but should in any case be a person who is suitably trained and/or experienced.
- 2.4 For matters of grievance that involve the actions of a member of the leadership team, these will need to be dealt with by the head teacher and a representative governor together. Where the matters involve the actions of the head teacher, these will need to be dealt with by governors.
- 2.5 It is essential that governing bodies, head teachers and line managers seek advice from relevant professionals in the Children's Services



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Authority or in the Dioceses before initiating any of the procedures described in this Guidance document. Failure to do this may result in the governing body facing financial liabilities, such as are described in the role of the governing body section of this Guidance.

- 2.6 The disciplinary procedures should not be thought of simply as a means of imposing sanctions or as necessarily leading to dismissal. The intention of the policy and procedures is that they should encourage all employees to achieve and maintain high standards of conduct. The head teacher and other managers are responsible for ensuring that the school's employees understand the standards of work and conduct that are expected of them. It is advisable for the head teacher to ensure that those school staff in a management or supervisory position are aware of the procedures adopted by the governing body.
- 2.7 All such managers and supervisors are responsible for ensuring that employees understand the standards of work and conduct that are expected of them. Head teachers, other managers and governors involved in applying the procedures should undertake appropriate training. This can be obtained and/or requested through the Local Authority. It is important to ensure that any commercial providers of personnel training are aware of the particular procedures applicable to schools.
- 2.8 Well-planned support and/or counselling should, whenever possible, precede formal disciplinary procedures. The employee should be helped to improve or resolve the situation as soon as it becomes apparent. Counselling may often be the most satisfactory method of resolving problems relating to a grievance, disciplinary or capability matter. It should take the form of a discussion with the objective of encouraging and helping the employee; this discussion should be documented.
- 2.9 It is recommended that governors apply the same grievance, discipline and capability procedures to all employees at the school, whether full-time or part-time, temporary or permanent, teachers or support staff. Any legal exceptions to this recommendation are identified in the model procedures. However, where the head teacher is the subject of any procedure, the procedures described in this document are modified so that the chair of the governing body, or other designated governor, replaces the head teacher in initiating any action which has to be taken. References in this document to the chair of the governing body could, in this context, include another designated governor in place of the chair, if for any reason the chair were unavailable. Where another member of the management team is the subject of any procedure, the head teacher or designated governor, depending on who has delegated authority, will initiate the action.



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#### **3. Procedural Guidance**

- 3.1 Head teachers and governing bodies need to be aware that the governing body will be the respondent for the most part to any application of unfair dismissal to any Employment Tribunal that arises out of action taken by, or on behalf of, the governing body (i.e. when exercising their employment powers or when action is taken by the Local Authority on the instructions of the governing body).
- 3.2 In order to respond positively in matters of discipline and to respect both the interests of the employee and the establishment, discipline should be maintained as far as possible by example, advice, management and supervision, and by informal action before any action is taken under the formal procedure. However, in the interests both of the establishment and employees, discipline may on occasion need to be reinforced by formal disciplinary procedures. Although it may be tempting to avoid formal action in favour of continually issuing informal reprimands, because of the spectre of employment law or other considerations, this is a mistake which encourages the likelihood of a build-up of problems. Employment law requires no more than that management actions be fair and reasonable within a general context of maintaining good relations between the management and staff of an organisation.
- 3.3 In the event that an employee is dismissed for misconduct, the employee may complain to an Employment Tribunal where he/she believes that dismissal to be unfair. Generally such applications are considered on the facts relating to his/her conduct or the failure of the employer (i.e. the governing body) to follow an agreed procedure, allow proper representation or provide the employee with reasonable opportunity to offer explanation and evidence in mitigation. It should be remembered that it is for the governing body to demonstrate that the dismissal was fair and reasonable, rather than for the claimant to prove his/her case. It is essential, therefore, to maintain full and accurate records of each stage of action.
- 3.4 It is equally important to ensure that rules of natural justice are observed. In dealing with a breach of discipline under the formal procedure the same person should not conduct both the detailed investigation and the hearing. Persons who take part in the investigation or disciplinary hearing or who are involved in a case as witnesses or in any material sense must not sit as a member of any appeal body.
- 3.5 Governing bodies must establish separate disciplinary committees - (a) to consider disciplinary matters at initial hearings where that is appropriate and (b) to consider any subsequent appeals. Committees for this purpose would usually comprise not less than three members of the governing body.



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- 3.6 Although normal disciplinary standards apply to their conduct as employees, no formal action should be taken against an employee who is a trade union representative until the circumstances of the case have been discussed with his/her full-time union officer.
- 3.7 Generally, governor appeal hearings will be by way of a review of the decision taken at the earlier stage, whether by the head teacher or a governor panel. The issue under consideration will normally be limited to the grounds stated by the appellant and the appeal hearing will be concerned as to whether the decision was one that fell within a band of reasonable responses, given the circumstances and evidence presented at the earlier stage.
- 3.8 The procedures will apply to the head teacher, subject to necessary modifications as determined by appropriate Local Authority advice and the governors' representative(s) following consultation with the head teacher and/or his/her trade union or other representative.
- 3.9 The disciplinary procedure is not intended to bar or discourage the head teacher or an employee's line manager in providing informal and day-to-day advice, guidance and counselling as to his/her conduct and behaviour at work. Such advice, guidance or counselling will not form part of the formal procedure.
- 3.10 When an employee is dismissed as a result of the disciplinary procedures, or might have been dismissed, but has resigned, during disciplinary procedures, the employer must report the case to the Department for Children Families and Schools, who will retain the case where it raises questions relating to the ability of staff to work with children and young people or for reasons relating to safety and child welfare. Cases of misconduct by teachers which do not fall into this category may still be referred by the DCFS to the General Teaching Council for England or Wales for consideration.
- 3.11 It is important that all those involved closely follow every stage of the model procedures in the order in which they apply. Employees are normally represented by their professional association, who will expect the procedures to be adhered to. Governing bodies of Voluntary Aided and Foundation schools should ask the Diocese and/or the Local Authority to provide advice on all formal procedures.
- 3.12 It is good practice for all schools to make disciplinary procedures available in the staff handbook. The staff handbook should also contain other school policies that relate to staff conduct, e.g. matters relating to sickness reporting, discrimination, time-keeping, expected duties, marking and recording work and pupil discipline.
- 3.13 At any stage of a formal grievance or discipline procedure, employees will always have the right to be accompanied or represented by an appropriate colleague, union representative or friend. It should be borne



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in mind that when employees are choosing a companion that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for an employee to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available in the school. The request to be accompanied at a meeting does not have to be in writing. Meetings to hear grievance and disciplinary matters are private meetings and are strictly confidential to those attending. They should normally be held during the employee's working hours. If the companion cannot attend on a proposed date, the employee can suggest another date that must suit everybody involved and must not be more than five working days after the original date.

- 3.14 It is important that any stage of the formal procedure is carried out as promptly as possible in the interests both of the establishment and employees. Notice periods regarding meetings or required action as defined in the procedures may be extended or reduced in exceptional circumstances, provided that such an extension or reduction is mutually agreed. Any of the parties may request in writing the postponement of a hearing; such a request should be given serious consideration. However, only in very exceptional circumstances should there be more than one postponement of a meeting. Documentation relating to any postponement should be kept on file. There is a statutory right to postpone a disciplinary meeting once where an employee's representative or colleague is unavailable to attend.

#### **4. The Role of the Governing Body**

- 4.1 The governing body and head teacher of a maintained school have separate and particular responsibilities for managing staff. Where a school has a delegated budget the governing body has extensive powers over staffing. It also has responsibilities under employment law. The main staffing functions of the governing body are set out in the Education (School Staffing) (England) Regulations 2003. These Regulations are made under Sections 35 and 36 of the Education Act 2002. The Regulations also contain responsibilities for the head teacher and the Local Authority in addition to the governing body. Statutory guidance on staffing functions under these provisions has also been produced and must be considered by any party undertaking staffing functions.
- 4.2 The Regulations and guidance are available at [www.governornet.co.uk](http://www.governornet.co.uk). The Regulations and statutory guidance provide for, amongst other things, the regulation of conduct and discipline of staff; the suspension and dismissal of staff; the role of the governing body and the head teacher, and advice from the Local Authority and the head teacher on both appointments and dismissals. They also include provision for the



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Local Authority to make written reports where there is serious concern about the performance of the head teacher.

- 4.3 The normal expectation is for the head teacher to lead the process of making staff appointments outside the leadership group (i.e. other than head teachers, deputy head teachers and assistant head teachers) and for making initial dismissal decisions. The governing body should delegate these functions to the head teacher unless there are good grounds not to do so.
- 4.4 In the case of a Voluntary Aided school with a religious character, the governing body may agree staffing policies which provide for governor involvement in the interests of preserving the school's religious character. The Secretary of State for Education and Skills guidance on this head teacher responsibility, which includes the circumstances in which these matters are not delegated to the head teacher, is contained in the first section of the statutory staffing guidance available at [www.governor.net.co.uk](http://www.governor.net.co.uk)
- 4.5 It is strongly recommended that unless it can be clearly demonstrated that the head teacher has not been involved in any part of the investigation of a disciplinary case, that the case should be heard by a panel of governors.
- 4.6 Where governors are to hear a disciplinary case, a disciplinary committee must be established. In all cases an appeals committee must hear all appeals concerning either disciplinary or grievance issues. The membership of such committees must be different at the different stages and should usually, where possible, consist of at least three members from the school governing body. Staff governors and any governors who have already been involved in the investigation or are connected to the matter under investigation by family relationships, etc. would be expected to inform the chair of governors and teachers to the DFE (where they are aware that a person is a teacher).
- 4.7 Both the governing body and the head teacher have power to suspend on full pay anyone who works at the school, if it seems necessary. Each must inform the other, and the Local Authority, if they take such action. Only the governing body may end such a suspension.
- 4.8 Schools do not have powers to bar a teacher from the profession. However, educational establishments are legally required to report all cases to the DFE where they cease (or might have ceased) to use a person's services because he or she is considered unsuitable to work with children; or as a result of misconduct; or because of a medical condition that raises an issue concerning the safety and welfare of children, regardless of whether the person's contract is terminated or s/he leaves voluntarily. The Education (Prohibition from Teaching or Working with Children) Regulations 2003 list the information that employers are required to supply to the Secretary of State for Education and Skills as part of a report. The police will continue to report



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- convictions and cautions incurred by teachers to the DFE (where they are aware that a person is a teacher).
- 4.9 The governing body will be the respondent in Employment Tribunal cases where unfair dismissal is claimed. In normal circumstances, the Local Authority will bear the costs arising from dismissals in schools where it is the employer. This will include any award of compensation that results from an Employment Tribunal hearing. However, the Local Authority does have the power to charge the school budget for all or part of the charges where it has good reason (e.g. not following the advice or procedures of the Local Authority). Schools are advised to contact their personnel provider immediately they suspect the need for disciplinary procedures to be used.
- 4.10 The importance of closely following the procedures in this document cannot be overemphasised. Once adopted these procedures form part of the contractual relationship between the governing body and its employees. Failure to adhere to these procedures can result in a dismissal being judged unfair on technical grounds at an Employment Tribunal, or in a finding that the school has acted prejudicially in dealing with or failing to deal with a staff grievance issue. This may also prejudice Local Authority support, should a dismissal decision or other employment issue go before a Tribunal, and jeopardise any legal expenses insurance protection the school may have.
- 4.11 Normally the Local Authority will bear legal costs arising from dismissals for all maintained schools, including Foundation and Voluntary Aided schools. This will cover any compensation payments that result from unfair dismissal cases brought to Tribunals. However, under S46 and S149 of the Education Reform Act, the Authority has the power to charge the school budget for the costs where it has “good reason”. This will include those cases where the school has not taken, or has not followed, the Local Authority’s advice.

## **Staff Capability Procedure**

- 1. Status**
- 1.1 The governing bodies of all maintained schools are required to adopt procedures relating to staff capability. Statutory guidance for teaching staff is contained in “Capability for Teachers” (DFE 0125/2000) and good practice requires a procedure for all school-based staff. This procedure is based on the statutory guidance and has regard to Calderdale Councils capability procedure. It should be applied to all staff within the school.
- 1.2 The School Staffing Regulations 2003 made under the Education Act 2002, provide for head teachers to have the delegated responsibility to make initial dismissal decisions (IDD), followed by the opportunity of



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appeal to a panel of governors. Where such formal delegation exists within the school, it is important for the head teacher to maintain impartiality until Staffing Review Committee stage, and the following procedure should be adjusted accordingly.

- 1.3 In Community, Voluntary Controlled and Community Special schools, the Local Authority is the employer of staff and all such schools must adopt this procedure.
- 1.4 Foundation and Voluntary Aided schools, where the governing body is the employer, may choose to continue using their own procedure provided it is no more elaborate than the statutory guidance.

## **2. Scope**

- 2.1 Capability in a job is concerned with having the appropriate level of competence to perform the duties of the role to a professionally acceptable standard. Unsatisfactory work performance may arise through inexperience, inadequate training and support, lack of skills, aptitude or ability.
- 2.2 As part of their general responsibilities, senior staff within a school set appropriate standards of performance, communicate these to staff and provide a reasonable degree of training and support to assist staff to meet the required standards. It is important that all staff are given the opportunity to reflect on performance and be supported in their professional development, indeed Performance Management should be seen as an entitlement for all staff.
- 2.3 In line with good practice, the manager should ensure that the employee:
  - i. has received the induction appropriate for his/her job (including statutory induction for newly qualified teachers);
  - ii. has been issued with a clear, up to date job description and is aware of other relevant documentation. For example, for teachers, the basic professional duties are laid out in the School Teachers Pay and Conditions document: for all staff, responsibilities may be further clarified by school policies;
  - iii. has been told clearly what is expected of him/her in terms of level of performance and that his/her performance has been regularly monitored and feedback has been provided;
  - iv. if a teacher, is receiving his/her full 10% Planning, Preparation and Assessment (PPA) time entitlement.
- 2.4 Any employee's work performance can vary over time and as part of their normal day to day management function, and outside of a capability procedure, head teachers and other line managers will make comments, challenge and support and provide constructive criticism on the performance of staff for whom they have responsibility.
- 2.5 This procedure should be used where evidence leads to concern that an employee is consistently failing to reach professionally acceptable standards through lack of capability, aptitude, skill or ability.



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- 2.6 Misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations should be dealt with under the school's disciplinary policy.
- 2.7 Where ill-health is identified as the main cause of a failure in performance the matter should be dealt with under the school's Sickness Absence Management procedure.
- 2.8 Capability concerns arising for newly qualified teachers undergoing the statutory induction will normally be addressed through that process, however, in particularly serious cases where the education of children is being seriously affected the head teacher "may wish to consider instigating a capability procedure" (see [www.teachernet.gov.uk](http://www.teachernet.gov.uk)). Please refer to your personnel provider for further advice. Non-teaching staff within the contractual probationary period should be dealt with in accordance with the relevant procedures: please refer to 4.1 in the School Personnel Guideline Induction of New Staff in Schools and to your personnel provider.

### **3. Key Issues**

- 3.1 All schools are strongly advised to seek advice from their personnel provider throughout the various stages of this procedure and to involve the school improvement partner or relevant consultant in the process, where necessary and appropriate, to ensure a broader, more objective assessment of the situation.
- 3.2 Each case should be considered on its merits and handled constructively, equitably, supportively and with understanding. It is important that everyone involved in the procedure maintains strict confidentiality and only those who need information to fulfil their professional role should be apprised of the situation.
- 3.3 The different stages of the procedure would normally follow in sequence. However, in exceptional cases it may be necessary to shorten some of the stages given. The recommended timings are upper limits which may be shortened if appropriate. For example, the period of assessment may be shortened, if justified, where it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, where there is a lack of cooperation with reasonable measures to achieve improvement, or in exceptional cases. In this event advice should be sought from your personnel provider.
- 3.4 An employee has the right to be accompanied by a companion throughout the process: see Appendix 1, point 3 for details.
- 3.5 The employee should be provided with a copy of the procedure when the capability process is invoked.
- 3.6 Urgent action may be required if sickness absence intervenes during a capability procedure. See Appendix 1, point 8.
- 3.7 The use of the capability procedure may impact on an employee's performance/ incremental progression. Please refer to the school's pay policy for further details.



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- 3.8 The term “working days” should be related to the appropriate working pattern, that is, for members of staff who work term time only, periods when the school would normally be closed should be omitted; for staff who work throughout the year, weekends, bank holidays and any previously agreed leave should be omitted.
- 3.9 Where the word week is used in this procedure it should be read as ‘working week’, that is, the individual’s usual, agreed hourly pattern of work within a calendar week.

#### **4. Procedure - Informal stage**

- 4.1 Where an employee may be under-performing, the head teacher or other line manager should investigate and collect evidence. The chair of governors must make arrangements for this to be done if the performance of the head teacher is in question and the following procedure should be read accordingly.
- 4.2 Once the facts are gathered and the seriousness of the problem established there are three initial options:
- i. decide that the employee is working at an appropriate / acceptable level of capability and drop the matter;
  - ii. arrange counselling (support without using the formal procedure);
  - iii. arrange a formal interview to initiate the formal approach for more serious cases.
- 4.3 Where improvement is thought possible outside the formal procedure, counselling should be arranged. In informal discussion with the employee, the head teacher or line manager should express his/her concerns, be supportive and seek to identify strategies to assist the employee to reach the required standard of performance. Please refer to Appendix 1, point 5. Explanations should be considered carefully and the matter dropped if it becomes evident that there is no case to answer.
- 4.4 Counselling and informal coaching should aim to encourage and help the employee to improve. It should be conducted discreetly. The employee must be told what is required, how performance will be reviewed, the review period, and that the formal procedure will commence if there is no improvement.
- 4.5 Management should propose a plan of support, in consultation with the employee, which may cover:
- developing more specific guidance in the area(s) of difficulty;
  - in service training (school based or other, as appropriate);
  - the opportunity to observe good practice;
  - referring the employee to an appropriate source of additional support/counselling.
- 4.6 Counselling should not go on too long, typically 6 weeks, but should reflect the seriousness of the concern. A note of any counselling should be kept for reference. Discussions must not harass the employee or turn



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into a formal interview. If more serious concerns arise, or if the employee expresses discontent or indifference to the counselling, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

- 4.7 After a period of review involving observation and assessment a firm conclusion should be reached. The options will be either to;
- decide that the employee is working at an appropriate / acceptable level of capability, drop the matter and advise the employee writing, or,
  - convene a formal interview to discuss the lack of capability with the employee.

## **5. Procedure - Formal stage**

### **5.1 Formal interview**

5.1.1 The formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in a structured way. It also allows the employee to prepare a response to allegations about performance and make a case in the company of a companion, defined in Appendix 1, point 3.

5.1.2 At least 5 working days written notice must be given for the interview.

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

5.1.4 There are three options at formal interview;

- decide that the employee is working at an appropriate / acceptable level of capability and drop the matter, resuming normal monitoring;
- counselling, except where already undertaken without improvement;
- issue a first written warning (see Appendix 1, point 7.5).

5.1.5 The first two options are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it at first seemed. In all other cases, option three applies.

5.1.6 The warning is relevant to any case where continued concern about the standard of performance is justified.

5.1.7 It may be appropriate to consider redeployment at this stage to a post with a salary more commensurate with the capability of the employee. Redeployment will only take place with the agreement of the employee:



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without agreement there can be no redeployment. Please refer to Appendix 1, point 9.

- 5.1.8 A decision should be made after all the facts and any representations from the employee have been considered. The head teacher or line manager should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee.
- 5.1.9 If performance is unsatisfactory a written warning will normally be the next step and this will invoke an assessment period of twenty weeks, except in cases of particularly serious concern, as outlined in 5.1.10, or where a more appropriate timescale between 9 and 20 weeks is mutually agreed at the outset.
- 5.1.10 In cases of particularly serious concern, where the education of children is in jeopardy, it is possible to consider reducing the first assessment period from the standard 20 weeks to a minimum of nine weeks. Examples of when this might be appropriate are where repeated poor behaviour management skills or repetition of unacceptable professional practice are putting the education, welfare or safety of pupils in jeopardy.
- 5.1.11 Where a formal warning is issued, the head teacher or manager should use the remainder of the meeting to:
- identify the professional shortcomings;
  - give clear guidance on the improved standard of performance needed to end the capability procedure;
  - identify success criteria;
  - explain the support, supervision, feedback and discussion that will be available, and how performance will be monitored over the following weeks;
  - identify the timetable for improvement and agree a date for the next evaluation meeting
  - advise the right of appeal, and,
  - make it clearly understood that failure to improve may lead to dismissal.
- 5.1.12 A letter should be sent to the employee immediately after the formal interview, which records the result of the investigations, the main points discussed at the meeting, confirms the decision and, where a warning is issued, provides a copy of the capability procedure and advises what stage has been reached and informs of the right of appeal. This letter should be copied to the companion, with the employee's agreement.
- 5.1.13 Any appeal against a warning must be made within 5 working days, and heard within 10 working days of notification of appeal. It must not



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interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered. See Appendix 1, point 14.

#### **5.2 First assessment stage**

- 5.2.1 Weeks 1 - 20 or as determined in 5.1.9 or 5.1.10 above - Regular observation, monitoring and evaluation of performance and regular feedback, together with guidance, training if necessary, and support to the employee. Written confirmation of support provided and the outcome of regular feedback sessions should be supplied to the employee and, by agreement, to the companion.
- 5.2.2 If at any point during this stage the circumstances suggest a more serious problem a decision may be taken to convene early feedback meeting(s) and, if appropriate, to reduce the overall first assessment stage, though not below a minimum of nine weeks.

#### **5.3 Second formal interview**

- 5.3.1 Week 20 or as determined in 5.1.9, 5.1.10 or 5.2.2 – Convene a formal Evaluation Meeting to assess performance over the previous weeks. At least 5 working days' notice must be given for the meeting: the employee may be accompanied by a companion.
- 5.3.2 If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the line manager.
- 5.3.3 If performance continues to be unsatisfactory it may be appropriate to consider redeployment at this stage to a post with a salary more commensurate with the capability of the employee. Redeployment will only take place with the agreement of the employee: without agreement there can be no redeployment. Please refer to Appendix 1, point 9.
- 5.3.4 If performance continues to be unsatisfactory and redeployment is not an option a final written warning should be issued (see Appendix 1, point 7.5). Formal monitoring, evaluation, guidance and support should continue for a further period. Arrangements for this should be explained at the meeting. The employee must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal.
- 5.3.5 The decision and main points of the meeting should be recorded in a letter to the employee / companion (see 5.1.12 for guidance).
- 5.3.6 Any appeal against a final warning must be made within 5 working days, and heard within 10 working days of notification of appeal. It must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.



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### **5.4. Second assessment stage**

- 5.4.1 Weeks 20 to 24 or as determined earlier - Regular monitoring and evaluation of performance to continue, with feedback, guidance, training if necessary, and support to the employee.
- 5.4.2 Week 24 or as determined earlier - Final evaluation meeting to report the assessment of performance over the previous weeks. At least 5 working days notice must be given for the meeting and the employee may be accompanied by a companion.
- 5.4.3 If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here, with a letter from the line manager.
- 5.4.4 If performance is unsatisfactory, and prior to reaching the decision to recommend dismissal, the head teacher or line manager should consider the possibility of redeployment either within the school or using the local authority's inter-schools procedure (see Appendix 1, point 9). If redeployment is not possible the employee should be told that the matter will be referred to the Staffing Review Committee with a recommendation to dismiss.
- 5.4.5 At this stage consideration should be given to the appropriateness of suspending the employee, without prejudice and on full pay, pending the outcome of the meeting. Please refer to Appendix 1, point 11.
- 5.4.6 A letter should be sent to the employee confirming the result of the assessment, the main points of the evaluation meeting, the date / details of the committee hearing (with appropriate notice – see 5.1.2), what material will be provided to the committee, inviting written representation, evidence or documentation to the committee within agreed timescales, explaining the procedure and advising of the right to be accompanied. This letter should be copied to the companion.

### **5.5 Review by staffing review committee**

- 5.5.1 The governing body should set up a Staffing Review Committee, normally comprising at least three governors (unless under IDD the initial dismissal decision is delegated to the head teacher) but, where this is not possible, an absolute minimum of two - see Appendix 1, point 1.2.
- 5.5.2 The governing body should set up a governors Appeal Committee to hear any appeal against a dismissal decision. None of the governors on the Review Committee should be on the appeal committee and the same number of individuals should be appointed to each.
- 5.5.3 At least 5 clear working days written notice of a potential dismissal hearing must be given.
- 5.5.4 At any hearing or appeal where dismissal is being considered a representative of the Local Authority's HR and Change service (or appropriate personnel provider) will be invited to offer advice to the committee or to the Head teacher making the initial dismissal decision.



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- 5.5.5 The purpose of the Staffing Review Committee is to determine one of the following outcomes:
- i. that the matter be referred back to the head teacher or manager to review, with any recommendations for further action, or,
  - ii. that the employee be dismissed on a date which will normally follow the standard notice period, based on hearing the representations and recommendations brought by the head teacher, or other line manager conducting the capability evaluation, and any representations that the employee may wish to make. (Refer to Appendix 2 for procedural guidelines.)
- 5.5.6 The outcome of the hearing will normally be notified to the employee at the end of the hearing and should then be confirmed in writing, advising of the right to appeal against the decision made and to whom that appeal should be made.
- 5.5.7 Any appeal against dismissal must be made in writing and state the grounds on which it is made, within 5 working days of receipt of the written decision in 5.5.6. 5.5.7 The appeal should be heard within 10 working days of notification of appeal, or at a mutually agreed date if this is not possible. (See Guidance Notes (Appendix 1, point 14).
- 5.5.8 The decision to dismiss must be communicated to the Local Authority's HR and Change service (or appropriate personnel provider) so that the dismissal notice can be issued.
- 5.5.9 The dismissal letter must give the individual the appropriate contractual or statutory notice (whichever is the longer), and specify the reasons for dismissal. The letter should either be delivered by hand or sent to his/her home address by recorded delivery.

## **6. Reporting to the General Teaching Council for England (GTC)**

- 6.1 Where the formal capability procedure has been / is being undertaken, and where an employer has ceased to use the services of a teacher registered with the GTC (or might have ceased to use those services had the teacher not ceased to provide them) should be referred to the GTC. For further information please contact your personnel provider.

## **7. Further information Guidance Document:**

Disciplinary Procedures Guidance Document:

Grievance Procedures Guidance Document:

Redeployment procedure for schools Guidance Document:

Sickness Absence Management Guidance Document:

Performance Management Guidance Document:

Whole School Pay Policy DfEE Guidance 0125/2000:



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The Advisory, Conciliation and Arbitration Service (ACAS): Code of Practice: Disciplinary and Grievance Procedures  
[www.teachernet.gov.uk](http://www.teachernet.gov.uk) The induction support programme for newly qualified teachers



## **Appendix 1**

### **Staff Capability Procedure – Guidance on Applying the Procedure**

#### **1. Role of governors**

- 1.1 In this context, “governors” excludes staff governors. Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning or in a capability procedure against a head teacher when some governors may be involved in the monitoring and evaluation of performance.
- 1.2 It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the staffing review committee and the appeal committee. Normally at least three governors are required for the staffing review committee and no fewer for the appeal, but where this number is not reasonably practicable it can be reduced to two. (These numbers should be adjusted as appropriate in schools where delegated powers exist).

#### **2. Role of school improvement partners and personnel advisors**

- 2.1 School improvement partners or other advisers with the relevant professional experience should advise the school and where appropriate assist with the process, including classroom observation and providing support. Personnel advice should also be sought, for example, on procedural issues.

#### **3. Representation by trade union or other employee representative**

- 3.1 An employee has the right to be accompanied by a union representative or, in line with Calderdale’s policy, any representative of his/her choice throughout the process. This person is referred to as a companion within the procedure. Each employee should be informed of this right. If the employee's chosen companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than 5 working days after the date originally proposed by the employer. This 5 day time limit may be extended by mutual agreement.
- 3.2 Details of actions previously taken or proposed will be provided in writing to the companion if the employee agrees to it.
- 3.3 No action should be taken with an employee who is a recognised trade union representative until, following notification to and agreement with the individual; the circumstances have been discussed with a full-time or other appropriate official of his / her trade union. If the individual does not wish his/her trade union official to be involved, the standard procedure should be followed.



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### **4. Notice of meetings**

- 4.1 Notice of 5 working days must be given for an initial formal capability interview. The date of successive review meetings should be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged. Written notice should be given of formal evaluation meetings.
- 4.2 Notice of at least 5 clear working days must be given for a Staffing Review Committee or an appeal committee hearing.

### **5. Support for the employee prior to entry to the formal stages of the procedure**

- 5.1 Before entering into the formal procedure managers have the right / duty to bring matters of concern to an employee's attention in discussion with him/her. Concerns may arise from normal monitoring, complaints, supervision sessions, work reviews or other sources. Relevant information for the meeting may include length of service, details of previous training, details of previous meetings, notes of lesson observations, any complaints about the employee's work. In a meeting with the employee the manager will draw to the individual's attention the perceived deficiencies in performance. The aim of the meeting will be to:
  - i. assess the seriousness of the situation;
  - ii. explain the standards of performance required;
  - iii. outline the perceived shortcomings in reaching those standards;
  - iv. explore possible reasons for the shortcomings;
  - v. give the employee an opportunity to respond;
  - vi. provide the help that may be thought necessary;
  - vii. outline the time allowed for improvement.

The individual should be advised that subsequent performance will be monitored and how it will be assessed. Those monitoring the performance should offer feedback and instruction to help the employee improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible.

### **6. Monitoring arrangements**

- 6.1 Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

### **7. Written records and formal written warnings**

- 7.1 A written record should be made of all interviews with the employee and any action taken following such an interview.
- 7.2 Notes of any meetings held at formal stages of the procedure and any formal warnings should be recorded on the individual's personal file.



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- 7.3 Throughout the procedure the individual should be provided with copies of any reports prepared and these, with the individual's agreement, will be supplied to their companion. A written record should be kept of any observations made of work and a resume of the record given to the individual concerned as soon as possible after the end of the period of observation.
- 7.4 If at any time during the procedure the manager determines that the employee concerned has improved his/her performance to the standard required, and that the improvement is sustainable, the employee should be informed in writing. The employee will then return to the standard day-to-day monitoring required of good management.
- 7.5 Except in agreed circumstances, any formal warnings should be disregarded for disciplinary purposes after a specified period of satisfactory performance. These periods are six months for a first written warning and 15 months for a final written warning.
- 8. Staff who are absent through illness during the procedure**
- 8.1 Urgent action is required if sickness absence intervenes during a capability procedure. If long term sickness absence appears to have been triggered by the capability procedure, the employee should be referred immediately to the occupational health adviser to assess whether s/he is fit for continued employment. Whilst taking a considerate and sympathetic approach, the length of time schools may wait for a person's health to improve before considering termination of employment on health grounds should be subject to occupational health guidance.
- 8.2 Short absences should not delay any part of the formal stage of the capability procedure. All reasonable steps should be taken to enable the employee to attend evaluation meetings, but in exceptional circumstances where s/he is unable to attend, these may proceed in the employee's absence if repeated delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances the employee's companion may attend on his/her behalf and a full account of the evaluation should be provided to the employee in the letter confirming the decision taken.
- 9. Redeployment**
- 9.1 There is no guarantee of redeployment within the procedure. However, where it is considered appropriate and is with the agreement of the employee, redeployment to an alternative post more suited to the employee's capabilities will be considered, in line with existing policies and procedures.
- 9.2 The offer of redeployment will be made in writing, specifying why the offer is being made, the timescale by which redeployment should be achieved, the level of salary on offer and the consequences of refusal.



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Sufficient time will be given to the employee to consider any offer but there will be no extension to dismissal notices issued.

- 9.3 Redeployment to a lower graded post on grounds of lack of capability will result in the payment of salary appropriate to the new role immediately on appointment: pay protection will not apply.
- 9.4 Redeployment will only be considered where the available evidence suggests that the employee's performance in the new post will be at a satisfactory level.

### **10. Decisions on continuing the procedure and recommending dismissal**

- 10.1 Normally the decision to continue a capability procedure or recommend dismissal should be taken by the head teacher, or by the line manager with the head teachers agreement (except where the head teachers performance is being considered). If there is a difference of opinion, the head teacher's decision should prevail except where his / her performance is being considered.

### **11. Suspension**

- 11.1 Where at any stage in the procedure, following investigation and consideration of the evidence by a manager results in a decision by that manager that the employee's continued presence in the school / classroom is either a risk to the individual's own health, safety and welfare or a risk to the children's health, safety and welfare, the employee may be suspended from duty on full pay to allow proper consideration by the manager of the way in which to deal with the situation.
- 11.2 Suspension from duty will be appropriate where it is decided that referral to a Staffing Review Committee is proposed with a recommendation of dismissal.
- 11.3 Suspension will be without prejudice and on full pay.

### **12. Disputes about the procedure**

- 12.1 Any disagreements or grievances about the interpretation of the procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

### **13. Important planning considerations when managing the formal stages of the procedure**

- 13.1 Consideration should be given to when school holiday periods fall as for certain staff it will not be possible to monitor during these absences. Arrangements for formal interviews, dismissal hearing and appeals should be made during an employee's normal working week.
- 13.2 Please refer to point 8 above concerning absences due to ill-health.



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13.3 Under the “Conditions of Service for School Teachers in England and Wales” (the Burgundy Book), a teacher is entitled to at least 7 days written notice of the time, date and place of a Staffing Review Committee hearing. The same notice period applies to an appeal against dismissal meeting. In practice this means giving at least 5 clear working days written notice of each of these meetings, as given in the procedure. If it has been determined that an employee should be dismissed you are reminded of the need to give the appropriate notice. You are also reminded to take particular note of the notice entitlements where a teacher or Head teacher is involved: these are given in Appendix 3.

#### **14. Appeals against formal warnings**

14.1 Appeals may be heard by a head teacher or senior manager, not previously involved in the case, or an individual governor. More than one governor may be used only where this does not compromise the availability of previously uninvolved governors to staff the staffing review committee and the appeal committee. However, previous involvement does not necessarily mean that a governor is tainted and thereby ineligible to serve on a staffing review or appeal committee.

14.2 Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities. Where the reasonableness of the decision is being questioned the test that should apply for overturning a formal warning is that the decision was so unreasonable that it was one that no other head teacher or manager, acting with proper regard to his or her responsibilities, could have chosen to take.

14.3 An employee is entitled to be accompanied at an appeal hearing by a companion (see 3 above).

14.4 The appeal decision should be confirmed in writing and the employee told that there is no further appeal against the decision. Where an appeal is upheld the matter should be referred back to the head teacher or manager to be reconsidered or for further appropriate action.

14.5 Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

#### **15. Grievances**

15.1 In exceptional circumstances an employee may raise a grievance about the behaviour of a head teacher or other manager during the course of a capability procedure. Depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated and consideration should be given to bringing in another manager to deal with the capability case. Any records should be passed to the new manager and, if appropriate, the case should be continued within the same timetable.



## **Appendix 2**

### **Staffing Review Committee Procedures**

The following procedure should be followed within the hearing:

**Chairperson (of the committee, or head teacher where appropriate)**

- Makes introductions
- Describes reason for the hearing
- Explains the procedure to follow
- Inform employee or companion of their right of adjournment at any time during the hearing

**School representative (head teacher or senior staff)**

- Presents case
- Is cross-examined by employee and/or companion
- Presents witnesses (if appropriate) for questioning
- Cross examination of witnesses by employee and/or companion

**Employee or companion**

- Presents case
- Cross-examination by school representative
- Presents witnesses (if appropriate)
- Cross-examination by school representative

**Chairperson (of the committee, or head teacher where appropriate)**

- Makes introductions
- Describes reason for the hearing
- Explains the procedure to follow
- Inform employee or companion of their right of adjournment at any time during the hearing

**Chairpersons (of committee, or head teacher where appropriate)**

- Informs both parties of their right to an adjournment before summing up

**School representative (head teacher or senior staff)**

- Sums up

**Employee or companion**

- Sums up

**Chairperson (of committee, or head teacher where appropriate)**

- Asks both parties to leave the room
- Decides on course of action in conjunction with the personnel representative



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- Calls both parties back into the room and informs all parties of decision reached and course of action decided upon

**Appendix 3**

**Notice Periods for Head teachers and Teachers**

<b>Dates</b>	<b>Head teachers</b>	<b>Teachers</b>
<b>Spring Term</b>		
31 January	Last day for issuing notice for 30 April dismissal, ie, 3 months notice	
5 February		Last day for issuing notice for 30 April dismissal for employee with 12 or more years continuous service
12 February		Last day for issuing notice for 30 April dismissal for employee with 11 or more years continuous service
19 February		Last day for issuing notice for 30 April dismissal for employee with 10 or more years continuous service
26 February		Last day for issuing notice for 30 April dismissal for employee with 9 or more years continuous service
28 February		Last day for issuing notice for 30 April dismissal for employee with less than 9 or more years continuous service
30 April	Effective date of dismissal if notice of dismissal issued on or before 31 January, ie, 3 months" notice  Last day for issuing notice for 31 August dismissal, ie, 4 months notice	Effective date of dismissal if appropriate statutory or minimum 2 months contractual notice of dismissal given
<b>Summer Term</b>	See above	



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31 May		Last day for issuing notice for 31 August dismissal ie, 3 months' notice
31 August	Effective date of dismissal if notice of dismissal issued on or before 30 April, ie, 4 months' notice	Effective date of dismissal if notice of dismissal issued on or before 31 May, ie, 3 months' notice
<b>Autumn Term</b>		
30 September	Last day for issuing notice for 31 December dismissal, ie, 3 months' notice	
8 October		Last day for issuing notice for 31 December dismissal for employees with 12 or more years continuous service
15 October		Last day for issuing notice for 31 December dismissal for employees with 11 or more years continuous service
22 October		Last day for issuing notice for 31 December dismissal for employees with 10 or more years continuous service
29 October		Last day for issuing notice for 31 December dismissal for employees with 9 or more years continuous service
31 October		Last day for issuing notice for 31 December dismissal for employees with less than 9 years continuous service
31 December	Effective date of dismissal if notice of dismissal issued on or before 30 September, ie, 3 months' notice	Effective date of dismissal if appropriate statutory or minimum 2 months' contractual notice of dismissal given

Adapted from leaf Human Resources 2005