

Capability Procedures

**for Employees in
Voluntary Aided and
Foundation Schools**

The National Society

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This guidance is one of a series produced by a working party representing The National Society, London Diocesan Board for Schools, Southwark Diocesan Board of Education and several other dioceses. It is designed for use in Church of England and Church in Wales schools. Advice should be sought on the application of the procedures from the Diocesan Board of Education

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Preface

1 Governing bodies are required to adopt formal policies and procedures for both teaching and support staff capability. This document addresses the particular circumstances of Voluntary Aided and Foundation schools. It is recommended to the governing bodies of those schools that they adopt the policies and procedures contained in this document.

2 It is essential that the policy and procedures recommended here are adhered to closely and advice sought at an early stage on how to implement them. This will help to avoid the possibility of time-consuming and expensive problems.

3 Governing bodies have considerable responsibilities for the staff they employ. It is hoped that this document will enable governors to have an accessible point of reference to guide them through the stages of any capability procedure. **The need to seek professional advice at an early stage cannot be overemphasized.**

4 **Insurance cover: It is important that schools contact Diocesan Boards and LEAs at an early stage in order to ensure that legal cover (if provided through the LEA under a service level agreement or generally) or insurance cover, which many Dioceses arrange, is not invalidated in any way.**

5 Because of the complexities of clerking capability committees and appeals, a summary of the **role of the clerk** has been included in Annex B (pp. 16-18).

6 These procedures are based on the **ACAS** guidelines. Eight **trade unions and professional associations** have been consulted.

7 The **legislation** relating to staff capability can be found in the Education Act 2002, the School Staffing (England) Regulations 2003 and the Teaching and Higher Education Act 1998 and relevant Employment law.

8 It is hoped that governing bodies of Voluntary Aided schools, Diocesan Boards and LEAs will work in close **partnership** on these procedures. Foundation schools may wish to consult with Diocesan Boards and LEAs as well as with independent advisers.

9 A comprehensive set of **contracts** to meet the different needs of staff in Voluntary Aided and Foundation schools has been produced by the same working party which produced these procedures. These contracts contain summaries of the procedures included in this book. As with the procedures, the trade unions and professional organisations have been consulted. Copies of contracts are available from the National Society and from dioceses as hard copy or on the National Society web site.

10 Throughout this document **bold type** is used to provide the reader with a quick point of reference to the subject of the paragraph.

11 This document has been produced by The National Society, the London Diocesan Board for Schools and the Southwark Diocesan Board of Education, in consultation with their legal advisers, Winckworth Sherwood.

Definitions

Capability A person's ability to demonstrate that s/he is able to meet all the professional demands made in the job. For one of a variety of reasons, a person may be incompetent in an essential part of a job.

Capability committee Comprises governors appointed by the governing body to consider capability matters, sometimes referred to as 'first committee' (see Annex A, pp. 14-15). (This may be the same as the staff committee.)

Committee A body formally appointed by the governing body and given delegated powers of decision on behalf of the governing body.

Companion A companion may be:

- another employee
- a full time official employed by a trade union, or lay trade union official, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at capability hearings. Certification may take the form of a card or letter
- a legal representative

A complaint In the context of these procedures, relates to a person's ability to demonstrate that s/he is able to meet all the professional demands made in the job. If the complaint is upheld in some cases it could result in the employee being dismissed.

Counselling Within these procedures means a confidential discussion in a one-to-one situation.

Diocesan Boards of Education (in London, Diocesan Board for Schools) Those bodies which, under the Diocesan Boards of Education Measure 1991 as amended, exercise statutory functions in relation to Church schools. In the Church in Wales the Diocesan Boards exercise non-statutory but similar functions.

Exceptional cases Very unsatisfactory work performance that is placing the education of pupils in jeopardy.

Line Manager An individual within the school staffing structure who has delegated responsibility, under the control of the headteacher, from the governing body for the day to day management of an identified group of staff members

Must Indicates something which is required by law or formal procedures.

On duty Refers to a member of staff on duty on or off school premises.

On file Placing a record in an employee's personal file. Employees have access to their file through the headteacher. Employees do not have access to confidential matters relating to other people or to confidential references which may be in their file.

Shall Has the same meaning as that given above for *must*.

Should Describes something which is generally accepted as good practice and is recommended.

Staff Refers to both teaching and non-teaching staff.

Staff committee Comprises governors appointed by the governing body to consider grievance and disciplinary matters, sometimes referred to as 'first committee' (see Annex A, pp. 14-15).

Untainted governor One whose ability to act fairly is not impaired by previous direct involvement in the subject matter or by discussion by the governing body.

Abbreviations

ACAS Advisory Conciliation and Arbitration Service

DB Diocesan Board

GB governing body

HT headteacher

LEA Local Education Authority

LM Line Manager

SD school days

PART A: Introduction

A.1 Aims of these procedures

1.1 Governing bodies of all maintained schools¹ with delegated budgets are required formally to adopt procedures relating to staff capability. The aim of these procedures is to provide governing bodies with:

- (a) fair, consistent and objective procedures for responding to problems of work performance;
- (b) procedures which will help and encourage all employees to achieve and maintain a high standard of performance and conduct.

A.2 Contracts

2.1 Governing bodies of Voluntary Aided and Foundation schools **must provide all employees with contracts** of employment. Governing bodies are advised to adopt the procedures and guidance described in this document as part of each employee's contract. Employees should have easy access to a copy of these procedures. Where governors use contracts provided by the LEA they should satisfy themselves that such contracts correctly identify and reflect their role as employers of the staff of the school.

A.3 General

3.1 The governing body is **responsible** for ensuring that fair, consistent and objective procedures exist for matters relating to staff capability. The headteacher is responsible for the internal organization, management and control of the school.

3.2 It is essential that governing bodies seek advice from relevant professionals such as Diocesan Boards and LEAs before initiating any procedures described in this document. **Failure to do this may result in the governing body facing financial liabilities.**

3.3 The **capability procedures** should not be thought of simply as a means of imposing sanctions or as necessarily leading to dismissal. The intention of the procedures and guidance is that they should encourage all employees to achieve and maintain high standards of performance.

3.4 Governing bodies should ensure that in all matters relating to capability, particular attention is paid to providing **equal opportunities** for all employees.²

3.5 **Capability** issues should not be confused with those of a disciplinary nature. **Lack of capability** can include unsatisfactory work performance and/or lack of professional skills. **Discipline** is concerned with an act or omission, or series of acts or omissions, which are considered to be improper or unacceptable behaviour and which contravene school policies, rules and guidance, or professional conduct or behaviour.

¹ There are six types of maintained school: Community, Voluntary Controlled, Voluntary Aided, Special Community, Foundation and Foundation Special

² Codes of practice are available from the Commission for Racial Equality, ACAS and the Equal Opportunities Commission; for addresses see page 37

3.6 Governors involved in applying the procedures should undertake appropriate **training**. This can be obtained and/or requested from the diocese or LEA, or purchased from private consultants. It is important to ensure that the providers of the training are aware of the particular procedures applicable to Voluntary Aided and Foundation schools.

3.7 All **staff in a supervisory position** are responsible for ensuring that employees understand the standards of work and conduct that are expected of them. It is advisable for the headteacher to ensure that staff in a supervisory position are aware of the procedures adopted by the governing body.

3.8 Well-planned **support and/or counselling** should precede informal or formal 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 capability matter. It should take the form of a discussion with the objective of encouraging and helping the employee.

3.9 At any stage of a formal capability procedure, employees will always have the right to be **accompanied or represented** by a companion.

3.10 **Formal meetings held under these procedures**, whether with the headteacher or of capability committees are private meetings, are strictly confidential to those attending and should normally be held during the employee's working hours. If a committee is meeting after working hours then there is a danger that important decisions affecting a person's future may be taken late at night when people are tired.

3.11 **Periods of notice** of meetings or required action defined in the procedures may be extended or reduced in exceptional circumstances, provided that such an extension or reduction is mutually agreed.

3.12 Any of the parties may request in writing the **postponement of a meeting**; such a request should be given serious consideration, normally by the chair of the committee. Only in 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 where an employee's representative is unavailable to attend.

3.13 All **employees** at the school, whether full-time or part-time, temporary or permanent, teachers or support staff, use the same capability procedures, unless stated otherwise in their contract.

3.14 Where the term 'headteacher' is used in these procedures, with regard to implementation, this could be the line manager or senior member of staff. This is a matter for the Head to decide with the agreement of the Governing Body.

3.15 Where the **headteacher** 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 headteacher 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.

3.16 All forms of **publicity, both internal and external, should be avoided** while a capability case is being considered as it might taint the final outcome (see Annex G, p. 24, about responding to the media).

3.17 Governing bodies of Voluntary Aided and Foundation schools should ask the **Diocesan Board** and the LEA to provide advice on all formal procedures. **It is important that all those involved closely follow every applicable stage of the procedure.** Employees are normally represented by their professional association, who will expect the procedures to be adhered to.

3.18 When a registered teacher is dismissed as a result of the capability procedures, or might have been dismissed, but has resigned, during capability procedures, the employer must report the case to the **General Teaching Council for England or Wales**.³

A.4 Importance of following procedures

4.1 The importance of closely following the procedures in this document cannot be overemphasized. 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 committee decisions being overturned on technical grounds.** This may also prejudice LEA and diocesan support, should a capability matter go to an employment tribunal, and jeopardize any legal expenses insurance protection.

A.5 Governing body committees

5.1 Under the School Staffing (England (Regulations) 2003) governors may delegate some of their staffing responsibilities to

- a. the headteacher
- b. one or more governors
- c. one or more governors and the headteacher

At the **beginning of the school year** the governing body must decide how far it is prepared to delegate matters to the headteacher. It is possible that some capability issues might arise with members of staff where the headteacher is directly involved in their support and in the informal stages of any procedure and therefore have become 'tainted' for the purposes of these procedures. Governing bodies should appoint a committee with delegated powers to consider staff capability matters in the light of this. The governing body should also appoint governors to hear appeals on these matters (see Annex A, pp. 14-15, for details). In delegating responsibility to the headteacher, governors must agree if this may result in line managers or senior members of staff carrying out the preliminary stage(s) of these procedures.

5.2 The governing body should be aware of the need to appoint someone to **clerk any formal hearing** (see Annex B, pp. 16-18).

5.3 **Notes should be kept** of all hearings and a copy of these notes, together with any documents made available to the committee, should be retained by the clerk to the governing body for future reference. Although these documents are technically the property of the governing body, governors who are not members of the committee should not have access to the papers (see A.6 below). However, these documents would have to be made available if ordered by a court or tribunal or an investigating committee of the General Teaching Council.

5.4 At the end of the hearing all copies of papers should be given to the clerk to the committee. S/he will then arrange for the **retention** of a set of papers and all notes for future reference by the clerk to the governing body, as outlined above, and dispose of the remainder.

A.6 Protection from prejudice

6.1 **Reports to the governing body** of any matters relating to capability should not contain the names of individuals and be general and brief. This is to ensure that governors who may have to be on first hearing or

³ The General Teaching Council for England (Disciplinary Functions) (Amendment) Regulations 2003, Regulation 29
National Society Guidance: Capability Procedures 2004

appeal committees are not tainted. Such reports must be included in the confidential section of the meeting. It is advisable for the chair of the governing body to give brief notice in very general terms that a procedure is being followed. At the end of the procedure, including any appeal, the chair of the committee may provide a short written report to the next meeting of the governing body. This report should summarize briefly the nature and outcome of the procedure.

6.2 While any procedures are in progress the governing body should not discuss the matter as this could prejudice possible future action.

6.3 Where performance is deemed to be satisfactory and the procedures have been stopped, paperwork relating to the procedures should be removed from the member of staff's file after six months.

6.4 **No one who has been involved** in the initial stages can be on the capability committee. Similarly, no one who has been in any way involved with the case, or taken part in discussions relating to it, may hear an appeal. If an employee is the subject of more than one procedure, governors who served on a previous capability committee concerning that employee may serve on any subsequent committee, dealing with fresh allegations against the same employee, where no alternatives are possible.

A.7 Natural justice

7.1 In order to comply with the **principles** of natural justice the following should be observed:

- (a) A person is entitled to an **unbiased** hearing.
- (b) **No one person** can be both the bringer of a complaint and an arbiter of the complaint.
- (c) There must be **adequate time** for the employee to prepare and to consult with their **companion**.
- (d) The **case must be thoroughly documented, clearly written** and be supported by evidence. Care must be taken not to allow assumptions, prejudices or stereotypes to influence decisions.
- (e) The employee has the **right to be accompanied** by a **companion** at any hearing.
- (f) The employer or representative has the **right to be accompanied** by a **companion** at any hearing.
- (g) Both sides have the **right of reply**.
- (h) Both sides may call **witnesses** and produce written evidence. There will normally be no restriction on witnesses, but the committee reserves the right not to hear witnesses whose evidence it decides is not relevant. There must be a right of cross-examination by both sides.
- (i) There is a **right of appeal**.
- (j) **No one who has been involved** in the development of the case can be on the capability or appeal committee.

PART B:

Capability procedure

B.1 General guidance

1.1 **Lack of capability can include** unsatisfactory work performance and/or lack of professional skills. Procedures relating to issues such as high-level or frequent short-term sickness absences, alcohol or drug-related problems or a combination of any of the above are dealt with in a separate booklet in this series, *Managing Staff Sickness Absence*.

1.2 Each case should be **considered on its merits**, be handled in an appropriate manner and with sensitivity.

1.3 The **aims of the procedure** should be:

- to provide as much support as possible at the beginning of the procedure, reducing this over a mutually agreed timescale, so that the employee's capability can be improved against agreed targets and a record of progress (see Annex E, p. 22);
- to provide regular monitoring of performance.

1.4 Advice should be sought from the **LEA and from the Diocesan Board** over additional support and the setting of targets. All targets should be Specific, Measurable, Attainable, Reasonable and Time-limited (SMART).

1.5 Where appropriate, **counselling** should be provided to assist the employee to improve her/his capability. Written notes should not be kept of counselling, other than a brief record that the meeting took place.

1.6 At each stage in the capability procedure, agreement should be reached on the **additional support** to be provided, the targets to be reached, the nature of the monitoring and the formal review date (see Annex E, p. 22).

1.7 A **detailed record** should be kept of the additional support which has been provided, together with maintaining reports and interim reviews.

1.8 In the event that **agreement cannot be reached** on the targets, the headteacher has the right to decide on targets and timescales.

1.9 In exceptional cases, where performance is so unsuccessful that it is placing the education of pupils in jeopardy, governors may consider whether it is necessary to **suspend** a teacher pending a hearing.

1.10 All stages in the capability procedure would normally follow in sequence. In exceptional cases it may be necessary to omit some of the stages given. If consideration is being given to breaking the sequence, advice should be sought from the LEA and Diocesan Board.

B.2 Preliminary stage

2.1 Preliminary action

2.1.1 Where the headteacher is concerned over an employee's standard of work s/he should arrange an informal discussion with the employee and express this concern (see letter 1, Annex H p. 26). The aim of the meeting is to be supportive and to identify strategies which will assist the employee to improve his/her performance to the required standard. These strategies may include additional training, counselling, mentoring, observation of others and other practical measures designed to help the employee develop the skills, competences and confidence necessary to attain satisfactory levels of performance.

2.1.2 The purpose of this action is threefold:

- a. to identify and provide support to help the employee overcome any difficulties;
- b. to monitor performance, record progress and, if performance does not improve to a satisfactory level, to move into the formal action stage of the procedure
- c. to consider whether there are any underlying reasons for the difficulties (i.e. health, other personal reasons, workload, the work environment) and to take action where appropriate.

Care must be taken to see that the support is positive and realistic and that monitoring does not put excessive burdens on someone with difficulties.

2.1.3 The headteacher should keep a written note of the discussion including the agreed strategies; this note should be copied to the employee and may be referred to in any subsequent formal action. The employee must be told what is required, how performance will be reviewed, the review period and that formal action will commence if there is no improvement. At the end of the discussion a date should be set at which progress will be reviewed. In most cases the actions agreed at during this discussion will be sufficient to ensure that the employee is enabled to reach the required standards.

2.1.4 On the date previously agreed, a further meeting is held to review progress made by the employee. The employee must be reminded of the meeting by the headteacher at least five school days beforehand, and told that the purpose of the meeting is to establish:

- whether or not her/his competence is deficient;
- ways in which s/he may be further helped.

2.1.5 If the headteacher is satisfied that the employee has attained a satisfactory standard, there shall be no further action and the headteacher will monitor future performance in the normal way.

2.1.6 Where the headteacher is not satisfied that the required standards have been achieved the meeting s/he should move on to consider what formal action is necessary in order to help the employee reach appropriate standards.

B.3 Formal action

3.1 Stage 1: Improvement plan⁴

3.1.1 Where during the preliminary meeting the headteacher is not satisfied that the required standards have been achieved, an improvement plan should be agreed that will set targets and a date with a time limit of up to 6 weeks to discuss the level of performance against targets (Stage 2). In the event that agreement cannot be reached the headteacher has the right to decide on targets and timescales. Employees must also be warned that should their performance not improve further action could be taken, which, in the case of registered teachers, could include referral to the General Teaching Council for England or Wales.

3.1.2 Any targets established within an improvement plan should be SMART. That is Specific, Measurable, Attainable, Reasonable and Time-limited.

3.1.3 The decisions within this meeting should be recorded and the text of the performance plan agreed if possible. The following actions should then be undertaken:

(a) Two copies of the improvement plan, together with confirmation of the targets and date for the next review meeting, must be sent to the employee within five school days of the meeting (Annex H, sample letter 4, p. 29).

(b) The employee acknowledges receipt of the improvement plan and confirmation of the meeting (including the warning given) by signing and returning to the headteacher a copy of the papers s/he has received. The signature only acknowledges receipt; non-return of the signed papers does not invalidate the warning.

(c) Copies of the papers sent to the employee should be sent to the Diocesan Board and LEA.

(d) The headteacher should consult with the Diocesan Board and LEA over possible further support and targets, should they be necessary.

(e) The headteacher must ensure that the school meets all the undertakings that it has made in the context of the improvement plan.

3.2 Stage 2(A): Further review meeting and possible final written warning⁵

(a) On the date previously agreed, a further meeting is held to review progress made by the employee.

(b) and (c) in 3.1 above are repeated; where the headteacher continues to be concerned for the standard of work of the employee, a final written warning should be issued.

(c) A final written warning is given:

- requiring the achievement of the agreed targets with a time limit of up to 6 working weeks (4 weeks in extreme cases where the education of pupils is in jeopardy), and confirming the date agreed to review the progress of the employee;

⁴ The Diocesan Board and LEA need to be consulted

⁵ As above

- stating that if the targets are not met by that date, a capability committee of the governing body will meet to consider what action to take, including the possibility of dismissal (Annex H, sample letter 4, p. 29).
- (d) and (e) in 3.1 above are repeated.

3.3 Stage 2(B): Review of progress and possible referral to governing body committee following final written warning⁶

(a) On the date previously agreed, a further meeting is held to review progress made by the employee; where the headteacher continues to be concerned for the standard of work of the employee, they should refer the matter to a hearing by a committee of the governing body.

(b) If the headteacher is not satisfied with the progress of the employee, s/he will inform the employee that:

- a report of the current meeting and previous reviews will be prepared and sent to the clerk to the governing body within five school days, together with a request that the capability committee of the governing body meet to consider the report and decide on what action to take;
- within 15 school days of the date of the review meeting, a meeting of the capability committee of the governing body, will be held;
- s/he may make representations to the capability committee and be accompanied by a companion;
- any written representations, evidence or documents s/he may wish to present to the capability committee, must be with the clerk to the governing body within seven school days of the date of the final review;
- details of the procedure to be followed at the meeting, together with documents given to the capability committee, will be sent to her/him by the clerk to the governing body at least seven school days before the date of the meeting of the capability committee;
- all the above points will be confirmed in writing to her/him within five school days of the date of the current review.

3.4 Stage 3: Hearing by governors' capability committee⁷

(a) After consulting with the chair of the governing body, the clerk to the governing body convenes a meeting of the governing body's capability committee; care must be taken to ensure that none of the governors being appointed to serve on the committee have been involved in earlier procedures.

(b) The meeting of the capability committee must be held within 15 school days of the date of the last review of progress.

(c) Notice of the meeting must be sent to all parties by the clerk to the governing body within ten school days of the final review by the headteacher; the notice should include:

- the time and place of the meeting;

⁶ The Diocesan Board and LEA need to be consulted

⁷ As above

- the purpose of the meeting;
- the names of any people who may be called to give evidence;
- copies of any written evidence or relevant documents from the employee or headteacher, and of the procedure to be followed during the meeting (Annex H, sample letter 5, p. 30).

(d) The purpose of the meeting is for the committee to decide on one of the following courses of action:

- that the matter be referred back to the headteacher for further action, together with any specific recommendation the committee may wish to make;
- that the employee be dismissed on a date normally in accordance with the standard period of notice.

(e) The procedures to be followed by the capability committee are described below:

i) Subject to the procedure outlined below, the chair of the committee is responsible for the conduct of the proceedings and for any variance s/he considers appropriate; the chair of the committee:

- welcomes those present and makes introductions;
- stresses that hearings are private meetings and that all information brought to the committee is strictly confidential to the people present;
- outlines the procedure to be followed during the hearing;
- asks all attending the hearing, including witnesses, to remain available to the committee for a short period of time after they withdraw from the hearing, in case the committee needs to clarify any point.

ii) Witnesses will normally only be present during a hearing to give their evidence and will then withdraw.

iii) In order to obtain clarification or to refute misinformation, it may sometimes be necessary for one of the parties to be given permission to ask further questions of a witness.

iv) The chair of the committee may decide to adjourn the meeting for a short period or for a number of days if new evidence is brought which all parties have not had time to consider, or for any other good reason. If there is an adjournment, the reconvened committee must comprise the same membership. Either party may request an adjournment.

v) The chair of the committee explains how the employee and headteacher will be informed of the committee's decision.

vi) The employee, headteacher and witnesses withdraw. They may have been asked to remain available for a short period of time, in order to clarify any particular point.

vii) Consideration of the matter will take place in the presence of the clerk and any legal advisers. If any further information is required from either the employee or headteacher, then all parties should return. An opportunity should be given to each party to question or comment on this additional information.

viii) In considering the matter governors should adopt a two-stage process:

- 1) to decide whether the case against the employee is proved;
- 2) to decide on the appropriate sanction, if the case is proved.

ix) The parties concerned are notified either by being recalled to hear the decision of the committee, or they may be notified by telephone or letter.

x) The clerk to the hearing writes to the parties concerned confirming the decision of the committee and providing information about any right of appeal. The letter is copied to the Diocesan Board and LEA (Annex H, sample letter 6, p. 31).

xi) When informing the governing body reference should be made to protection from prejudice as described below:

- Reports to the governing body of any matters relating to capability should be general and brief, and should not contain the names of individuals. This is to ensure that governors who may have to be on capability or appeal committees are not tainted. Such reports must be included in the confidential section of the meeting. It is advisable for the chair of the governing body to give brief notice in very general terms that a procedure is being followed. At the end of the procedure, including any appeal, the chair of the committee may provide a short written report to the next meeting of the governing body. This report should summarize briefly the nature and outcome of the procedure.
- No one who has been involved in the initial stages can be on the capability committee. Similarly, no one who has been in any way involved with the case, or taken part in discussions relating to it, may hear an appeal. If an employee is the subject of more than one procedure, governors who served on a previous capability committee concerning that employee may serve on any subsequent committee, dealing with fresh allegations against the same employee, where no alternatives are possible.

(f) Within five school days of the date of the meeting of the capability committee, the employee must be informed of the decision of the committee and that s/he has the right to appeal against that decision.

(g) If the capability committee decides to dismiss the employee, legal advice should be sought when drafting the notice of dismissal.

B.4 Appeal

4.1 If, at Stage 3, the employee wishes to appeal against the decision of the capability committee, s/he must send a written notice of appeal to the clerk of the governing body within ten school days of the date of the letter notifying her/him of the decision of the committee. The notice of appeal should include the grounds on which the appeal is being made. For details of the appeal procedure see Annex F (p. 23).

B.5 Timescales

5.1 The headteacher, in consultation with the employee and where appropriate the chair of the governing body, shall decide on the time to be given between each stage in a capability procedure. The time given to achieve agreed targets will vary for each case but would normally be up to 6 working weeks. In extreme cases, where the unsatisfactory work performance is placing the education of pupils in jeopardy, **the time limit should be no more than 4 weeks.**

5.2 Where there is the possibility of withholding an annual experience spine point for salary increase, attention will need to be given to the governing body's programme for providing teachers' annual pay assessments. Spine points can only be withheld as part of a formal capability procedure and after reasonable notice has been given.

5.3 The number of days given in the Time column in Table 2 (p. 13) represents the maximum number of clear days which should be allowed before action is taken. In exceptional circumstances it may become necessary to agree mutually to adjust the timescales given.

B.6 Headteacher

6.1 Where the headteacher is the subject of any procedure or where it is inappropriate for the headteacher to initiate any action, the procedures described in this document are modified so that the chair of the governing body replaces the headteacher 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.

6.2 The chair of the governing body, or the designated governor, should seek professional advice from the Diocesan Board or LEA.

Table 1: **Summary of stages in the capability procedure**

Stage	Procedure	People involved	Sample letter no. (Annex H)
Preliminary stage	<ul style="list-style-type: none"> • Informal action • Informal notes made of discussion to include details of further support, monitoring, success criteria & timescale 	HT or LM and employee	1 2
1 Formal	<ul style="list-style-type: none"> • Review of progress § Setting of targets agreed by all parties, which should be confirmed in writing • Additional support agreed 	HT and companion Employee and companion LEA and DB advice	3 4
2 Formal (A)	<ul style="list-style-type: none"> • Further review of progress • Final written warning • Setting of targets agreed by all, which should be confirmed in writing • Additional support agreed 	HT and companion Employee and companion LEA and DB advice	5 6
(B)	<ul style="list-style-type: none"> • Final review of progress, decision whether to extend support, or refer to governors 		
3 Formal	<ul style="list-style-type: none"> • Consideration by governors whether to set further targets or to dismiss 	Clerk to GB Committee of governors HT and companion Employee and companion	

Appeal procedure following Stage 3

1 Appeal	<ul style="list-style-type: none"> • If the employee wishes to appeal s/he sends written notice to the clerk to the GB 	Employee to clerk	
2 Appeal	<ul style="list-style-type: none"> • The clerk to the GB arranges a meeting of the appeal committee • Meeting held within 15 SD of receipt of written appeal • Parties involved shall be given not less than 10 SD notice of meeting • Copies of documents to be placed before committee should be given to all parties not less than five SD before the hearing 	Clerk to the GB Appeal committee HT and companion Employee and companion	6 7

Table 2: **Summary of timescales**

Stage	Description	Time
Preliminary stage	<ul style="list-style-type: none"> • Informal warning • Notice of meeting • HT or LM has informal discussion with employee • Informal note of discussion and sent to employee 	<p>5 SD before meeting</p> <p>5 SD after meeting</p>
1 Formal	<ul style="list-style-type: none"> • Notice of meeting to employee • Notes of meeting and agreed targets sent to employee • Any comments on notes sent by employee to HT 	<p>5 SD before meeting</p> <p>5 SD after meeting</p> <p>10 SD from receipt of notes</p>
2 Formal (A)	<ul style="list-style-type: none"> • As for Stage 1 • Review meeting • Final written warning 	<p>As for Stages 1 and 2</p> <p>4 - 6 weeks</p>
(B)	<ul style="list-style-type: none"> • Final review of progress If HT not satisfied with progress: • report sent to clerk to governing body 	<p>5 SD after HT meeting</p>
3 Formal	<ul style="list-style-type: none"> • notification of meeting of capability committee sent out by clerk • papers sent out to all parties attending capability committee meeting • meeting of governors' capability committee • decision of committee sent by clerk to employee 	<p>10 SD after HT meeting</p> <p>7 SD before meeting</p> <p>15 SD after HT meeting</p> <p>5 SD after meeting</p>

Appeal procedure following Stage 3

1 Appeal	<ul style="list-style-type: none"> • If the employee wishes to appeal s/he sends written notice to the clerk to the GB 	<p>10 SD from date of meeting</p>
2 Appeal	<ul style="list-style-type: none"> • The clerk to the GB arranges for a meeting of the appeal committee. • Meeting to be held within 15 SD of receipt of written appeal • Parties involved shall be given not less than 10 SD notice of meeting • Copies of documents to be placed before committee should be given to all parties not less than 5 SD before the hearing 	<p>15 SD from receipt of appeal</p> <p>10 SD before hearing</p> <p>5 SD before hearing</p>

Annex A

Appointment of governing body committees

1 Quorum

1.1 The quorum for a meeting of the governing body is one-half of the members of the governing body in post, when powers are being delegated to a committee.

2 Staff committee

2.1 The School Staffing (England) Regulations 2003 give the governing body authority to delegate many of its powers on staffing matters to:

- § The headteacher or
- § One or more of the governors or
- § One or more of the governors plus the headteacher

2.2 A decision to bring any matters arising from the management of staff capability to the governors of a school will always have been preceded by some formal activity by the headteacher if the procedures outlined in this book have been carefully followed. It is therefore not appropriate for the governors to delegate to the headteacher the hearing stage of the procedures. It is strongly recommended that a hearing by the governors within the meanings used in this book should always be heard by members of the governing body, with the headteacher in attendance, but not a member of the panel. Therefore the governing body should appoint a group of governors to undertake the implementation of the capability procedures. It is recommended that there should be three governors present at any hearing or appeal. However, given the variation in the size of governing bodies it is not always possible to achieve this.

3 Pool of governors for different committees

3.1 It is imperative that such committees are seen to be impartial, and governing bodies are advised to set up panel members (excluding the head) from which they can be formed. It is suggested that between one third and half the members of the governing body are nominated in order that a Staff Committee and the related Appeal Committee can each consist of at least two members (the minimum requirement). A further governor is a reserve to be called upon if another member is ill or disqualified because they have an interest in the outcome or could not be seen to act impartially. Members will serve on the following committees as called (see paragraph 5 below):

- (a) First committee (recommended three, but at least two untainted governors) for:
 - capability
 - staff discipline
 - redundancy
 - grievance
 - absence (staff)

(b) Appeal committee to follow the first committee if required (recommended three, but at least two, untainted governors). **The appeal committee cannot have fewer governors than the first committee.**

3.2 To allow for illness, absence or previous involvement, it is prudent to have a pool of between one third and half of the total membership who are untainted governors from which to form the different committees.

4 Chair of committees

4.1 It is recommended that at the time the governing body appoints a pool of governors from which the committees listed in paragraph 3 above are formed, it also nominates two or three of the members of that pool to serve as chairs of the committees.

5 Order of calling to serve

5.1 The order in which governors will be called to serve on the various committees listed in paragraph 3 above must be agreed at the time the pool of governors is appointed by the governing body, for example, in alphabetical order. **It is most important that the order of calling be decided at the beginning of the school year.** This is to protect the governing body against any charge of being biased in the selection of individuals to serve on particular committees. Chairs should be called in turn and other governors as agreed.

6 Untainted committees

6.1 Care must be taken to ensure that governors serving in the pool of governors listed in paragraph 3 above always withdraw from any discussion by the governing body, a committee or elsewhere, concerning staff whenever formal procedures might follow. It is unwise for the whole governing body to discuss personnel matters. Governors in the pool described above must take particular care to remain untainted, otherwise a whole procedure could fall.

7 Terms of reference

7.1 It is essential that the governing body provide clear written terms of reference for the committees. Some of the following points may be included:

- § The committee has full delegated powers of decision in matters relating to formal hearings dealing with staff issues.
- § All matters relating to a hearing are treated as **strictly confidential** to the members of the committee.
- § At the end of the procedure, including any appeal, the chair of the committee should provide a short written report to the next meeting of the governing body. This report should summarize briefly the nature of the concerns and the outcome of the procedure.

Annex B

The role of the clerk to governors' capability and appeal hearings

1 General

1.1 The Diocesan Board and the LEA should be consulted on clerking and advice arrangements. The clerk takes no part in the decision-making process and therefore the same person can act as clerk to both the hearing by the disciplinary committee and any subsequent appeal hearing. The clerk to the hearing or appeal hearing may be the clerk to the governing body or another appropriate person but for the appearance of justice, it is better if an alternative person can be found to clerk any appeal.

2 Responsibilities

2.1 The role of the clerk to either a governors' capability hearing or an appeal hearing is vitally important. Support may be separated into two areas of advice and clerking responsibility:

- (a) to carry out administrative responsibilities;
- (b) to provide legal and procedural advice throughout the proceedings.

2.2 Although one person could be appointed to assume both areas of responsibility, two people may be appointed. The specific functions to be carried out within the two areas of responsibility and the person responsible are summarized in the table below.

3 Hearing date

3.1 The clerk's involvement will begin with arranging the hearing date. It is important to consult as widely as possible on this, taking into account the timescales provided for and the availability in particular of any companion.

Table 3: **The role of the clerk**

Responsibility	Person responsible
1 To ensure all concerned are properly notified of the meeting and of the procedures to be followed, and that they are sent a complete set of the documents which will be used at the meeting	Clerk
2 To take full notes of the proceedings	Clerk
3 To provide legal and procedural advice during the proceedings	Diocesan Board, LEA or clerk
4 To assist in preparing the final written decision	Clerk
5 To notify the employee of the decision of the committee	Clerk
6 To keep a complete set of documents in case they are needed	Clerk

for an appeal or tribunal

4 Notification

4.1 The letter notifying the employee of the hearing, sent by the clerk, must include the following and should be copied to the Diocesan Board and LEA:

- date, time and place of the hearing;
- names of the members of the capability or appeal committee;
- agenda for the hearing (see Annex I, pp. 33-34);
- name of the person/s presenting or answering the case and any witnesses they may call;
- a statement of the right to be accompanied by a companion;
- a request that all documents to be submitted to the committee be sent to the clerk by a stated date, this date to allow for the clerk to send out copies by the required deadline;
- a request that the names of any witnesses and copies of written statements detailing their evidence to the hearing be notified to the clerk by a stated date (see Annex H, sample letter 3, p. 28).

5 Names and documentation

5.1 The names of each party's witnesses, together with their witness statements, must be supplied, by the clerk, both to the other party and to the members of the committee as many days as possible before the hearing. Any other documentation to be submitted to the committee must be circulated in similar fashion.

5.2 The clerk should prepare an indexed bundle of papers with numbered pages running from the beginning to the end of the bundle. This saves time and confusion at the hearing, particularly if there is a large number of documents.

5.3 It is helpful if the index is split into headed sections; for a capability committee these might include:

- documents submitted by the school;
- documents submitted by the employee;
- correspondence concerning the hearing.

For an appeal hearing, these documents might include documents considered by the capability committee, any further documents submitted by the parties and correspondence.

5.4 If new evidence or documentation is presented during the hearing, the clerk should advise the chair of the committee as to whether or not it should be taken or whether the hearing should be adjourned.

5.5 The chair of the committee may decide to adjourn the meeting for a short period or for a number of days if new evidence is brought which all parties have not had time to consider, or for any other good reason. If there is an adjournment, the reconvened committee must comprise the same membership. Either party may request an adjournment.

6 Notes of hearing

6.1 During the hearing the clerk, or someone else, takes a detailed note of the evidence presented, verbatim if possible. If the clerk wishes to record the hearing on audio-tape, s/he should obtain the agreement of all parties.

7 Written statement

7.1 After the parties withdraw, the clerk to the hearing and the Diocesan Board/LEA representative as appropriate stay with the committee to advise on law and procedure as required. The clerk notes the committee's discussion. The clerk should draw the committee's attention to the requirement to produce a written statement which contains:

- a review of the evidence presented to them;
- their findings on that evidence;
- the reasons for reaching their decision.

7.2 S/he may wish to check the precise wording of the written decision with the committee at this stage. It is important that the written statement following the hearing of the capability committee gives the details described above, so that, if there is an appeal, the appeal committee can see clearly the evidence given to the capability committee and the reasons for its decision.

7.3 The committee may delegate to the clerk the production of the written decision, which must then be approved by all members of the committee and normally be signed by the chair of the committee.

8 Notification of decision

8.1 As soon as possible, and within five days of the hearing, the signed decision must be sent to the employee by the clerk together with a covering letter (see Annex H, sample letter 6, p. 31).

9 Retention/disposal of documents

9.1 At the end of the hearing all copies of papers should be given to the clerk to the hearing. S/he will then arrange for the retention of a set of papers and all notes for future reference by the clerk to the governing body and dispose of the remainder.

Annex C

Procedures for capability review meetings

1 Preliminary stage

1.1 Before the formal review meeting, as part of the support and monitoring programme, the headteacher, or an appropriate colleague, will have discussed with the employee the progress being made. If necessary, concern should be expressed at these interim stages if progress is not being made, and any further support identified.

1.2 The employee must be reminded of the previously arranged date for the review meeting at least five school working days beforehand, and told that the purpose of the meeting is to:

- review the progress on the agreed targets;
- consider whether the targets have been satisfactorily attained;
- issue appropriate warning where progress is unsatisfactory;
- agree further targets if appropriate;
- identify any further support necessary, including training.

2 During the review meeting

2.1 During the meeting the following procedure is recommended:

- (a) The headteacher should remind those present of the previously arranged targets and the support and monitoring programme.
- (b) The headteacher should, at this stage, inform those present of the interim meetings that may have taken place.
- (c) The employee is then invited to comment on whether s/he considers the targets to have been met.
- (d) The headteacher should then comment and state whether s/he is satisfied with the progress and give acknowledgement and appreciation of any improvements, as appropriate.
- (e) If there has not been satisfactory progress, the headteacher must state this and give reasons with clear examples relating to the identified targets. The employee should be given the opportunity to respond.

2.2 The headteacher may conclude that due to the seriousness of the situation, a warning be issued appropriate to the stage in the process. This conclusion should be clearly stated.

2.3 The following points are then agreed:

- further targets for improving performance;
- dates by which targets are to be met;

- additional support programme;
- interim reviews and monitoring;
- date and formal review of progress;
- possibility of further action should a satisfactory level of performance not be reached.

2.4 Clearly the headteacher will have in mind some ideas of the range and nature of the targets prior to the review meeting, as these would have become apparent from the outcome of the previous interim discussions.

3 Headteachers

3.1 When a headteacher is the subject of a capability procedure, it is recommended that a member of the governing body is nominated to fulfil the role of the headteacher described in the procedure above. Such a nomination is made by the governing body or by its staffing committee.

3.2 The nominated governor should always seek professional advice from the Diocesan Board or LEA.

3.3 Advice provided by the Diocesan Board and LEA will cover the following areas:

- procedures to be followed;
- setting of targets;
- advice on nature and extent of additional support;
- monitoring progress;
- participation in formal review meetings.

3.4 Should the capability procedure proceed to formal Stage 3, that is, a hearing by a committee of the governing body, the nominated governor will be responsible for presenting the governors' case. The nominated governor should be accompanied to the hearing by a representative of the Diocesan Board and/or LEA.

Annex D

Legal expenses for Voluntary Aided and Foundation schools

1 General

1.1 Capability matters can be complex and governors will frequently find that they need legal advice. If capability action results in employment tribunal proceedings, they will undoubtedly need legal representation.

2 Employment tribunal costs

2.1 Provided governors have followed correct procedures and consulted with the LEA the legal costs incurred in employment tribunal proceedings, and any compensation awarded, should be met by the LEA from its reserved funds. Governors must, however, seek LEA agreement to this potential liability at the earliest possible stage. In the event that the LEA refuses to pay, an application can be made to the Secretary of State for Education and Skills for a determination. If governors have legal expenses insurance in place, either through the Diocesan Board or their own initiative, advice must be sought from insurers at the earliest possible stage so that cover is not invalidated.

3 Capability proceedings costs

3.1 The position with regard to capability proceedings is less clear. Provided governors incur any expenses 'reasonably', these should be met by the LEA as part of its responsibility to maintain the school. An application can be made to the Secretary of State for a determination if the LEA refuses to pay.

3.2 When governors require legal advice in connection with capability proceedings, they should immediately approach the LEA and ask for an assurance that costs reasonably incurred will be met by the LEA. This approach may be met with a refusal, or with an offer of assistance by the borough/county solicitor. The latter should be accepted if the LEA will not pay for independent legal advice. Governors may wish to discuss the matter with the Diocesan Board.

Annex E

Draft agenda for the preliminary meeting

1 Outline the purpose of the meeting and the nature of the problem, e.g.:

- (a) the **concern** caused by the employee's work performance, its effect upon the pupils' work, his/her colleagues, and delivery of services;
- (b) the level of **seriousness** of the lack of performance;
- (c) the **cause** of the problem (any particular problems or difficulties s/he might be experiencing);
- (d) the steps which are necessary to redress the problem, including any **support** which the employee may need.

2 The **outcome** is intended to be a developed strategy and agreed targets which, taken together, represent a serious commitment from all present to enabling the employee to reach the required standards. It should also be clear that failure to improve will result in formal capability procedures being instigated which could result in the employee's job being at risk.

3 Remind the employee that this is the preliminary stage, and that a **written note** is being made of the discussion which will be copied to them and also kept in the file in order to act as a basis for future review meetings.

Annex F

Appeal hearings

1 The clerk to the governing body shall **arrange for the appeal committee to meet** within 15 school days of receipt of the written notice of appeal. The parties involved shall be given at least seven clear school days' notice of the time and place of the hearing.

2 The clerk to the governing body of a Voluntary Aided school must **notify the Diocesan Board and LEA** of the date of the hearing. Copies of relevant documents should also be sent to the Diocesan Board and LEA.

3 **Copies of documents** to be placed before the committee should be given to all those attending the appeal not less than five school days before the hearing.

4 The appeal committee will normally **re-hear** the evidence which was presented to the first hearing. New evidence may be submitted to the appeal committee.

5 The **procedures** followed by the appeal committee are the same as the hearing described in Annex J (pp. 35-36).

6 The **decision** of the appeal committee shall be final. The appellant should be notified of the outcome within five school days of the date of the appeal hearing.

7 If the appeal committee's decision is to dismiss the appellant, the case must be referred to the appropriate General Teaching Council.

7 The employee may at any time **withdraw an appeal** by writing to the clerk of the governing body. Withdrawal of an appeal or resignation prior to completion of the case where dismissal might have been the outcome will not remove the responsibility of the employer to refer the matter to the appropriate General Teaching Council.

Annex G

Responding to the media

1 Staffing and personnel disputes are of interest to the media because they are human stories. When such a situation is developing, it is advisable to **be prepared**. You should consult the LEA or diocesan press officer. It is often helpful to arrange with the press officer to deal with all media enquiries.

2 If you are caught unprepared, do your utmost to reach the **press officer(s)**. If you cannot do so, consult with someone who can be objective but understands the issues, such as a Diocesan Board of Education adviser. If you do not reach the press officer(s) in advance, please do tell them immediately afterwards what you have said and to whom, and agree with them what the procedure will be from now on.

3 With the help of the person(s) suggested, prepare a **brief statement** which gives your position factually and concisely - rather than trying to answer or correct a series of points (even if you have already been misreported). Keep to 50 words or less if possible. The more you say, the more chance there is of something being left out in a brief news report.

4 If you get a telephone call from a reporter asking about the situation, always be **polite, but give nothing away** until you have a written statement ready and agreed. Write down the reporter's name and phone number, and who they are representing. They will be guarded and will usually not reveal sources, but try to discover where the information came from and glean any further background you can.

5 Do not get drawn into discussing the situation. Just say that you will give it your immediate attention and will ring back shortly. **Then make sure you do so** - the reporter is probably working to a tight deadline, and you need to do your best to provide your clear and factual side of the story.

6 As the story develops, it may be necessary to make supplementary statements. However, stick to your original statement as long as it is relevant. You need to be as open as is necessary for public information, and to **maintain confidence** in your school etc, but you need to avoid feeding the media with new angles on the story.

7 You should ensure that all those who may be contacted as representatives of the school, know the content of your press statement and how they are expected to respond. It is helpful to discuss with the Press officers of the LEA and the diocese who within their organisations might be contacted by reporters and how they can be briefed so that their response is well informed and helpful in the situation.

8 Remember that other people may be feeding the media out of disaffection or thoughtlessness. You may be asked to **confirm or comment on allegations**. Try to foresee these and prepare responses in consultation with the press officers. A question and answer format is often useful.

9 Remember you cannot tell the media what to say or write. You can however develop professional and courteous relations with reporters, which will bear fruit in times of trouble.

10 Personnel matters are confidential between the employer and employee and you must guard against any breach of the Data Protection Act. There may, therefore, be very little or nothing that can be said without the express agreement of the employee.

Annex H

Sample letters

- 1 Request to attend a preliminary meeting
- 2 Note stating outcome of a preliminary 1 meeting
- 3 Request to attend a formal meeting (Stages 1 and 2)
- 4 Letter confirming warning relating to capability (Stages 1 and 2)
- 5 Request to attend capability hearing (Stage 3)
- 6 Letter stating outcome of capability hearing (Stage 3)
- 7 Letter notifying an appeal hearing

1 Request to attend a preliminary meeting

Sent by headteacher or line manager

Date

Dear

PRELIMINARY MEETING RELATING TO CAPABILITY

You will be aware from our informal discussions over the past half term that I have a number of concerns about the standard of your performance as (*title*). I need to meet with you to discuss the situation. The aim of the meeting is to agree strategies which will provide an opportunity for you, with appropriate counselling, support and training, to achieve the required standard of performance.

The meeting will take place at (*time*) on (*date - at least five clear school days' notice*) and be held in (*place*). This will be an preliminary meeting as set out in the governing body's capability procedure.

Yours sincerely

(*typed name*)
Headteacher or Line Manager

2 Note of preliminary meeting

Sent by headteacher or line manager

Date

NOTE OF PRELIMINARY MEETING

At the meeting held on (date) where we discussed issues relating to the governing body's capability procedure, I discussed issues relating to your work performance, in particular your [e.g. classroom management, behavioural management, effectiveness as curriculum co-ordinator/Head of Department, example of support staff ineffectiveness.]*

As I discussed with you, I am concerned about the standard of your work and your ability to [e.g. control and discipline the children in your class].* This is having a serious effect upon [your pupils' work and the delivery of the National Curriculum or effectiveness of the school]. As you are aware I sent you on an INSET / course / support* to assist you [both] with your role as [and].* [I have also provided you with an additional classroom assistant in the afternoons.]

In order to help and support you in achieving improved performance we agreed some strategies. These are attached, together with details of the support you will be given. It was agreed at the meeting that your performance during the next four / six weeks would be monitored, during which time it was hoped that there would be a marked improvement in your work performance. I hope that any further action will not become necessary, and that your performance will improve. A meeting will be arranged at the end of this time to assess your performance and decide on future action. If you need any further advice or assistance, or if there are any particular matters which you would like to discuss, please do not hesitate to contact me.

(typed name)
Headteacher or Line Manager
encl.

* Please use appropriate wording

3 Request to attend a review meeting

Sent by headteacher

Date

Dear

REVIEW MEETING RELATING TO CAPABILITY

I write to remind you that on (*date*) we agreed to a further meeting to review your performance in relation to the agreed targets.

You will recall that, in our preliminary meeting, I expressed my concern at your level of performance and we agreed that it would be monitored during a four / six* week period, during which time it was hoped that there would be a marked improvement in your work performance. However, my monitoring over the last four / six* weeks has indicated insufficient improvement in (*area of work*) and having consulted with the chair of the governors, I now need to move to formal capability procedures.

The meeting will take place at (*time*) on (*date - at least 5 clear school working days' notice*) and be held in (*place*).

You may be accompanied to the meeting by a companion, who may be a member of a union, professional association or legal adviser. Please notify me the day before the meeting of the name of any companion you may be bringing.

I shall be accompanied by(*name*).

The meeting represents Stage 1 / 2 / 3 * of the governing body's formal capability procedure. A copy of the procedure is enclosed with this letter for your information.

Yours sincerely

(*typed name*)
Headteacher
encl.

* Delete as appropriate

4 Letter confirming outcome of meeting relating to capability

Sent in duplicate by headteacher or clerk to the governing body

Date

Dear

CONFIRMATION OF IMPROVEMENT PLAN/FINAL WARNING* RELATING TO CAPABILITY

Following the review meeting held on(date) attended by(names), I write to confirm that the headteacher gave you / you were given a performance improvement plan and a warning/final written warning that your work must improve to a standard acceptable to the headteacher.

I attach details of targets set for improving your performance, together with dates by which these are to be met, additional assistance and support to be given, the arrangements for conducting interim reviews and monitoring of progress.

A formal meeting to review progress made and any subsequent appropriate action will be held on(date).

I have to advise you that failure to achieve required standards could result in your job being at risk.

[Final warning only: If targets are not met by the agreed date, a capability committee of the governing body will meet to consider what action to take, including the possibility of dismissal and referral of the case to the General Teaching Council.]

If you wish to comment on this letter or the formal meeting, written comments should reach me within ten school days of the date of the meeting. Any such comments will be placed with your records.

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy. Failure to return the copy does not invalidate any possible subsequent capability procedures.

Yours sincerely

(typed name)
Headteacher / Clerk to the governing body
encl.
CC: Chair of governing body
Stage 2 and 3 only: LEA, DB

* Please use appropriate wording

5 Request to attend capability hearing

Sent in duplicate by the clerk to the governing body

Date

Dear

CAPABILITY HEARING - STAGE 3

As a result of the outcome of earlier stages in the capability procedure and at the request of the chair of the governing body, I regret that it has become necessary for me to ask you to attend a formal capability hearing. The purpose of the hearing is to consider the progress you have made under the capability procedure and whether or not any action should be taken against you up to and including dismissal. This meeting represents Stage 3 of the governing body's formal capability procedure.

The meeting will take place at (*time*) on (*date*) and be held in (*place*). A copy of the agenda for the hearing is enclosed, together with documents currently available.

During the meeting you may be accompanied by a companion, who may be a member of a union, professional association or legal adviser. The headteacher will be accompanied by(*name*).

If you have any documents you wish to be considered at the hearing, please ensure that I receive copies as soon as possible and at least five clear school days before the hearing. Similarly, at least five clear school days before the hearing I will send you copies of the written documents which the headteacher will be presenting to the hearing.

The following information should be supplied to me as soon as possible and no later than five school days before the date of the hearing:

- 1 name of any companion who will be with you during the hearing;
- 2 any documents you wish to be considered;
- 3 names of any witnesses and copies of written statements detailing their evidence.

The headteacher will be calling the following witnesses to the hearing:
..... (*names*).

The governors who will be serving on the capability committee are (*names*).

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy.

Yours sincerely

(*typed name*)
Clerk to the governing body
encl.
CC: Headteacher
LEA
DB

6 Letter stating outcome of capability hearing

Sent in duplicate by the clerk to the capability/dismissal committee

Date

Dear

OUTCOME OF STAGE 3 CAPABILITY HEARING

Following the hearing held by the governing body's capability committee on (date) I write to tell you that the committee decided that:

(one of the following)

limited progress has been made and that a final set of targets should be agreed;

or

that you be dismissed. *(Legal advice must be sought on the composition of this letter.)*

On the evidence presented to the capability committee, it was found that *(It is important to detail the finding.)*

The capability committee had the following reasons for reaching its decision *(As in the preceding paragraph, it is important to detail the reasons.)*

It was agreed that a final set of targets be met in the agreed timescale to avoid any further capability action / that you be dismissed.* *[A copy of the targets with timescales is attached.]**

[The consequence of failure to meet the agreed targets could be possible future dismissal.] (If this is a final written warning, notice must be given of possible future dismissal.)*

If you wish to appeal against this decision / dismissal you may do so by writing to the clerk to the governing body stating the grounds of your appeal within ten clear school days of the date of the hearing.

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy within five clear school days. Failure to return the copy does not invalidate any possible subsequent capability procedures.

Yours sincerely

(typed name)

Clerk to the capability/dismissal committee

encl.

CC: Headteacher

LEA

DB

* Please use appropriate wording

7 Letter notifying an appeal hearing

Sent in duplicate by the clerk to the governing body

Date

Dear

APPEAL COMMITTEE HEARING

In response to your letter of(date) stating that you wish to appeal against the decision of the capability committee of the governing body notified to you on(date), I write to inform you that the appeal hearing will be held at (time) on (date) and be in (place). (*The appeal committee shall meet within 15 school days of receipt of written notice of appeal.*) The procedures to be followed during the appeal hearing are the same as those used during the capability hearing.

During the meeting you may be accompanied by a companion, who may be a member of a union, professional association or legal adviser. The school will be represented by (name), chair of first committee and the headteacher accompanied by (name).

I enclose an index of the documents to be presented to the appeal committee. This index lists all the documents which were considered by the capability committee and new documents which the school intends to present to the appeal committee. I enclose copies of all the documents.

If you wish to submit any new papers please send these to me as soon as possible.

The following information should be supplied to me as soon as possible and no later than five school days before the date of the hearing:

- 1 name of any companion who will be with you during the hearing;
- 2 any new written evidence or relevant documents you wish to be considered;
- 3 names of all witnesses you intend to call together with copies of any new statements.

The school will be calling the following witnesses to the hearing (names).

The governors who will be serving on the appeal committee are(names).

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy. Failure to return the copy does not invalidate the proceedings of the appeal hearing.

Yours sincerely

(typed name)
Clerk to the governing body
encl.
CC: Headteacher
LEA
DB

Annex I

Model agenda for a capability hearing

1 Introductions

1.1 Having agreed the order of the agenda with the professional association representatives or union official, the chair of the committee introduces her/himself and allows an opportunity for all others present to do so.

2 Nature of the complaint

2.1 The chair of the committee checks that all parties have the relevant documents and identifies the specific complaint.

3 Presentation by the school

3.1 The headteacher or other senior member of staff⁸ presents the school's case.⁹ Witnesses¹⁰ are called.

4 Questions by member of staff concerned

4.1 The member of staff and/or professional association representative or union official may question the headteacher or other senior member of staff representing the school, and witnesses.

5 Questions by committee members

5.1 Members of the committee may question the headteacher/senior member of staff and the witnesses.

6 Presentation by member of staff

6.1 The member of staff and/or the professional association representative or union official presents their case. Witnesses may be called.

⁸ The headteacher or senior member of staff may be accompanied by a companion

⁹ Where the action of the headteacher is being considered, the presentation for the school would be made by the chair of the governing body or other designated governor

¹⁰ Witnesses will normally only be present during a hearing to give their evidence and will then withdraw

7 Questions by school

7.1 The headteacher or other senior member of staff and/or their companion may question at this point in the procedure.

8 Questions by committee members

8.1 Members of the committee may question the member of staff concerned, the professional association representative or union official and the witnesses.

9 Final statement by the school

9.1 The headteacher or other senior manager may make a final statement.

10 Final statement by member of staff

10.1 The member of staff and/or representative may make a final statement.

10.2 The parties then withdraw to allow the committee to discuss the findings and come to a decision. The clerk to the committee will remain, as will any Diocesan Board or LEA representative. The parties are usually asked to remain available for a short time in case the committee needs to clarify any point.

Annex J

Improving capability: some suggestions

1 General

1.1 It is often necessary to invite an independent and external person to assess and assist the employee concerned. Diocesan Board and LEA staff are available to help with this, as well as professional organizations and colleagues in other schools. Many LEAs have detailed procedures for teachers experiencing professional difficulties.

2 Additional support

2.1 Some of the suggestions given below may be found helpful for inclusion in a programme of additional support:

- (a) observation by the employee of good practice;
- (b) reorganization of work area, classes or rooms;
- (c) in-service training;
- (d) observation of the employee's work by someone (either from the school or outside) with good experience;
- (e) a modified workload or timetable for a specific period;
- (f) work-sharing or team teaching with experienced persons;
- (g) visits to other schools or workplaces;
- (h) help with planning and content of work and any follow-up;
- (i) regular follow-up meetings with a mentor in the school.

3 Setting targets

3.1 Initial and subsequent meetings The targets to be set will depend upon the particular difficulties of the employee. The headteacher, line manager, or one of the advisers should draw up a draft paper of clearly defined proposed targets and timescales (see paragraph 3.b below). The targets should be revised where necessary and agreed at a meeting attended by the employee and, where appropriate, the headteacher, a companion of the employee, advisers from the LEA and diocese. It is important that a clear written record of the decisions reached at the meeting is agreed and given to all those who took part.

3.2 Targets should be agreed and the process by which they are to be monitored (see B.1.8, p. 7). All targets should be Specific, Measurable, Attainable, Reasonable and Time-limited (SMART).

3.3 Time limits For classroom teachers appropriate times for meeting set targets should be up to 6 working weeks. As well as being aware of the additional support required for the teacher, those agreeing the targets should remember the importance of maintaining the quality of education being provided for the pupils.

3.4 For headteachers, where performance will usually relate to management issues, the time limit would normally be two terms after Formal Stage 1 has been reached. However, for all teachers, including

headteachers, in extreme cases where education of pupils is jeopardized, the period given for improvement after the day of a formal warning will be no more than four weeks.

3.5 For other employees time limits should be set that are realistic in terms of the duties of the post and the pace at which improvement could normally be expected to be manifested.

3.6 When time limits are being agreed, the possibility of a need to set further targets should be borne in mind.

Addresses

Codes of practice are available from:

Commission for Racial Equality
St Dunstan's House
201-211 Borough High Street
London
SE1 1GZ
Tel: 020 7939 0000

ACAS
Brandon House
180 Borough High Street
London
SE1 1LW
Fax: 020 7201 3664

Equal Opportunities Commission,
Arndale House
Arndale Centre Manchester
M4 3EQ
Tel: 0845 601 5901