

# Guidance for Schools

## Capability Procedure for Teachers

(Professional Performance)

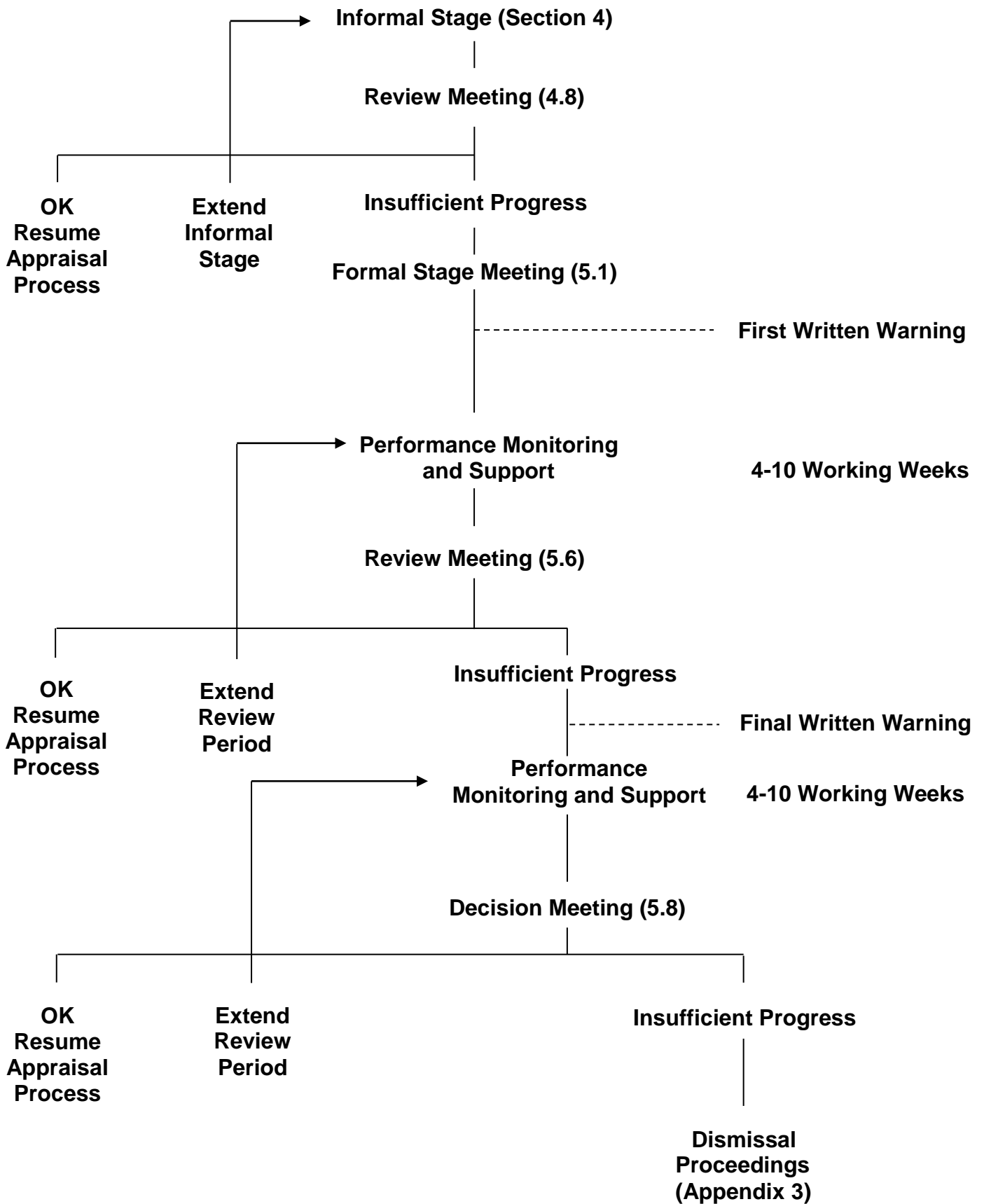
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## **1. Introduction**

- 1.1 There may be occasions when the professional performance of a teacher is alleged to be unsatisfactory. This procedure is intended to provide a way in which such a problem can be resolved in a fair and reasonable manner. For the purposes of this procedure, a lack of capability in terms of professional performance is defined as a situation in which a teacher fails consistently to perform his or her duties to a professionally acceptable standard. The procedure does not deal with lack of capability due to ill-health, nor with misconduct, which may be defined as an act or omission by a teacher which is considered to be unacceptable professional behaviour.
- 1.2 This procedure complies with statutory guidance from the DfE published in January 2012 and the School Staffing (England) Regulations 2009.
- 1.3 It should be noted that Voluntary Aided Schools and Academies may have their own separate arrangements. Where Voluntary Aided Church Schools take action they should always keep the appropriate diocesan authorities informed.
- 1.4 At any stage of the procedure, as part of the support or monitoring measures, the Headteacher may involve a suitably experienced external person.
- 1.5 The teacher should be advised at all stages to seek Union advice.
- 1.6 Trade Union Officials: This covers any local or national officer and would include any elected school representative for a recognised union. The same standards should apply to him/her as to other members of staff but no action should be taken under this procedure until the circumstances have been discussed with a senior trade union representative or full-time official. HR Consultancy for Schools can provide advice on this.
- 1.7 If justified by the circumstances, consideration could be given to the omission or shortening of stages in the procedure. In exceptional circumstances, where the interests of pupils are deemed to be seriously at risk, a short procedure of up to 4 weeks in total could apply.

## **2. Interpretation**

- 2.1 Reference to the Chair of Governors shall include any Governor or Governors acting on his/her behalf or in conjunction with him/her.
- 2.2 In all cases where the Headteacher is the subject of action references to the Headteacher shall mean the Chair of Governors who should be guided by Advisers working on behalf of the Local Authority or Diocese.
- 2.3 In relation to support for teachers, references to the Headteacher shall include any nominated Deputy Headteacher acting on his/her behalf. (This does not include dismissal proceedings).

References to the Appraiser shall include teachers to whom the Headteacher has delegated responsibility for appraisal. Typically, this may be the teacher's line manager.

- 2.4 Periods of time and deadlines in this document may be varied by the mutual agreement of the parties concerned. (Governing Bodies are asked to give particular consideration to this when employees are unable to obtain representation for a particular date.)
- 2.5 For the purposes of this procedure 'working days' shall mean a designated term-time or Teacher Education Training Day. Where the teacher is employed on a part-time basis, meetings should be arranged to take place on his/her normal working day, unless this is impossible or an alternative day is mutually beneficial.

### **3. Principles**

- 3.1 As part of their normal management and staff development responsibilities Headteachers and line managers will from time to time discuss aspects of a teacher's performance with him/her. Such discussions will take place on an informal basis and should not be constrained by, or come within, the scope of this procedure, nor shall any counselling and advice given in this way count as warnings within the scope of this procedure.
- 3.2 Problems should be raised and discussed at the earliest possible moment and resolved where possible without recourse to the formal procedure.
- 3.3 As part of Appraisal arrangements, where there are concerns about any aspects of the teacher's performance, the appraiser will meet the teacher formally to:
- give clear feedback to the teacher about the nature and seriousness of the concerns;
  - give the teacher the opportunity to comment and discuss concerns;
  - discuss targets for improvement and agree any support that will be provided to help address those specific concerns;
  - make clear how, and by when, the appraiser will review progress;
  - explain the implications and process if no - or insufficient - improvement is made.
  - The teacher will be given a written record of this meeting

### **4. Informal Stage**

- 4.1 If the appraiser is not satisfied with progress or if concerns arise about a teacher's performance through means other than appraisal, issues should be addressed at a meeting under the Informal Stage. It is expected that, before progressing to this stage, the appraiser/Headteacher should be able to demonstrate that concerns have already been raised with the teacher and appropriate support given.
- 4.2 Meetings under this stage should be conducted by the Headteacher or another suitable senior leader, although it may also be helpful for the appraiser to attend. The teacher should be given at least 5 working days' notice of this meeting and should be informed that he/she has the right to be accompanied by a colleague or trade union representative. Schools are advised to consult HR Consultancy for Schools.
- 4.3 Some schools may have policies for Appraisal which include a formal meeting for Teachers Experiencing Difficulties, where he/she is given notice of the meeting, is invited to be accompanied by a colleague or trade union representative and where an Action Plan for support is drawn up. Where this meeting and the support offered effectively replicates the informal stage of the Capability Procedure (4.4 – 4.8), then the equivalent stage of the capability procedure does not need to take place. In such cases, if it is determined at a review meeting that there has been insufficient progress, then the process will move directly to the Formal Stages (Section 5).

- 4.4 The manager will need to consider fully the context of the concerns and consider, in particular, whether the poor performance relates to the teacher themselves or to external factors.
- 4.5 The purpose of the meeting is to discuss those areas of the teacher's performance which need attention and to consider supportive measures. A programme of support may include coaching, mentoring, structured observation, observation of good practice within school or at another school. The programme must be pursued positively and constructively by both parties with advice, encouragement and feedback automatically available for the teacher as part of the support for the teacher. See Appendix 1.
- 4.6 The period of review will be made clear and will allow time for improvement. It will be negotiated between the parties, taking account of the degree of support already given.
- 4.7 The manager will produce a written record of the meeting (an Action Plan is often helpful – see Example at Appendix 2) and will keep details of the activities which take place during this stage.
- 4.8 At the end of the period of review, there should be a meeting to consider the teacher's performance and to form a view that either:
- the teacher's performance has improved, in which case the appraisal process should resume;
  - further support under the informal stage is appropriate;
  - or, where there has been no, or insufficient, improvement, the teacher should be invited to a meeting under the Formal Stages of the Capability Procedure (Section 5). Where all parties agree, the first formal meeting may follow directly on from the review meeting.
  - all parties may consider whether it is appropriate for the teacher to move to an alternative post within the school
- 4.9 In exceptional circumstances, where the interests of pupils are deemed to be seriously at risk, the manager may refer to the Headteacher who may have to consider an improvement period of no more than 4 weeks during which a period of support and monitoring shall be conducted in accordance with section 5.4 of this procedure, and a final written warning may be issued at the meeting.

## **5. Formal Stages**

### Formal Meeting

- 5.1 This part of the procedure applies only to teachers or Headteachers about whose performance there are serious concerns which an action plan of support under the appraisal and/or informal stages has been unable to address.
- 5.2 Meetings under the Capability Procedure will be conducted by the Headteacher (or delegated to a nominated Deputy Headteacher) or, in the case of a Headteacher, by the Chair of Governors (or nominated Governor).

5.3 When there has been insufficient improvement following a formal meeting and action plan under the appraisal and/or informal stages, the Headteacher will invite the teacher concerned to a meeting, giving at least 5 working days' notice of that meeting. The teacher must be informed of his/her right to be accompanied by a colleague or trade union representative, given a copy of this procedure and any relevant documentation and told who will be present. It may be appropriate to invite the manager to all or part of this meeting to clarify any points.

5.4 The purpose of this meeting is:

- (a) to detail and review the support measures which have already been provided;
- (b) to define the precise aspects in which the teacher's performance is still considered to be inadequate;
- (c) to allow the teacher and/or their colleague or trade union representative to express views and/or offer an explanation;
- (d) to decide on a formal programme of further support **designed to help the teacher improve his/her performance** including targets and performance standards, together with an appropriate support programme and structured timetable, designed to improve his/her performance. Wherever possible, the period of review should be agreed by all parties, although the decision remains the responsibility of the Headteacher. The review period will usually last between 4 and 10 working weeks, allowing sufficient opportunity for an improvement to take place. The period required will depend upon the nature of the concern and will need to be reasonable and proportionate. The meeting will agree the date of the Review Meeting, at which the teacher may be accompanied by a colleague or trade union representative. It may be helpful to keep notes of this meeting and to send these to the teacher;
- (e) to inform the teacher, if necessary, of the potential consequences of failure to improve, and the teacher will be given a first written warning, sent within 5 working days of the meeting setting out:
  - (i) the date of the meeting
  - (ii) details of the unsatisfactory performance
  - (iii) the standards expected
  - (iv) details of the support and monitoring measures to be made available over the review period
  - (v) the date of the Review Meeting
  - (vi) a warning that further unsatisfactory performance may lead to further and more serious action under this procedure
  - (vii) that the warning will lapse after 6 months
  - (viii) the right to lodge an appeal within 10 working days of receipt of this letter and the right to representation at any appeal (see Appendix 5)
  - (ix) where no appeal is made, the employee may submit a statement of mitigation to be held on file with the warning.

5.5 The notification of action under paragraph 5.4(e) above will constitute the date of entry into the Capability Procedure.

### Review Meeting

- 5.6 At the Review Meeting the teacher may be accompanied by a colleague or trade union representative. At that meeting the Headteacher may:
- (a) decide that the teacher has made sufficient improvement, the Capability Procedure will cease; or
  - (b) that some progress has been made and there is confidence that more is likely; the monitoring and review period under the first written warning will be extended; support will be provided and a date set for a Review Meeting; or
  - (c) that no (or insufficient) improvement has been made; the teacher will receive a final written warning and a further review period will be put in place. The warning letter will be issued within 5 working days of the meeting and should clearly set out:
    - (i) the date of the Review Meeting
    - (ii) details of the unsatisfactory performance
    - (iii) the standards expected
    - (iv) details of the support and monitoring measures to be made available over the forthcoming review period
    - (v) the date of the Decision Meeting
    - (vi) a warning that further unsatisfactory performance may lead to further and more serious action under this procedure
    - (vii) that the warning will lapse after 18 months
    - (viii) the right to lodge an appeal within 10 working days of receipt of the letter and the right to representation at any appeal (see Appendix 5)
    - (ix) where no appeal is made the employee may submit a statement of mitigation to be held on file with the warning.
- 5.7 In the event of a final written warning having been issued, there shall be a further period of 4 to 10 working weeks during which support and advice shall continue and the progress of the teacher shall be monitored.

### The Decision Meeting

- 5.8 At the end of this period the teacher shall be called to a Decision Meeting at which he/she may be accompanied by a colleague or trade union representative. At that meeting the Headteacher may:
- (a) decide that the teacher has made sufficient improvement, the Capability Procedure will cease; or
  - (b) that some progress has been made and there is confidence that more is likely; the monitoring and review period under the final written warning will be extended; or
  - (c) that no (or insufficient) improvement has been made; the teacher will be invited to a hearing where dismissal may be considered.
  - (d) choose to take independent advice on the significance of the concerns or the support given.



## General Points

- 5.9 At all stages in the procedure the teacher should receive appropriate support and/or training to assist him/her to improve performance to the standard required.
- 5.10 At any stage in the procedure the teacher may be placed under the direct supervision of an experienced colleague.
- 5.11 In cases where a teacher's performance is adversely affected by ill-health, the school may seek medical advice in order that full consideration shall be given to medical factors. If the teacher is absent for an extended period, Capability Procedures may need to be suspended to allow support and monitoring to take place once the teacher is back at work. In this instance, assistance should be given under Managing Sickness Absence Procedures.
- 5.12 In the event of a teacher being subject to separate procedures in relation to both performance and conduct, they shall proceed separately unless and until the school decides to consider the totality of a teacher's performance. In such cases the appropriate procedure shall be determined by the school although matters related to performance and conduct shall be delineated.

## **6. Headteachers**

- 6.1 Any concerns about unsatisfactory performance on the part of the Headteacher shall be dealt with by the Chair of Governors (as the Headteacher would in relation to any other teacher). The Chair of Governors should be guided by Advisers working on behalf of the Local Authority or Diocese.

## MENU OF POSSIBLE SUPPORT MEASURES

*The manager and teacher should discuss and, where possible, agree upon a programme of support designed to help the teacher improve his/her performance. This should be flexible to focus on individual needs and take account of the area of concern and outcome required; individual learning style; and time available. The teacher should be encouraged to take personal responsibility for this programme and not feel that it is something which is 'done to him/her'.*

*The list below offers some ideas – it is not intended to be either exhaustive or exclusive.*

- Classroom observation with verbal and written feedback
  - Headteacher/SLT
  - external observer, e.g. School Improvement Adviser; Leading Practitioner from another setting
- Observation/discussion of good practice (with clear focus)
  - within school
  - at another school
  - joint observation with mentor/SLT
- Mentor within school
  - regular meetings
  - observing and advising on classroom practice
  - feedback on planning/assessment
- Self-evaluation
  - use of CCTV or videotaping via a Tablet to observe own performance
- Working within a team
  - moderation activities
  - shared planning activities
  - team teaching or shadowing a colleague
- INSET
  - attendance at a professional course or conference
  - on-line or distance learning, e.g. DVDs or websites
  - in-school CPD (twilight or TED days)
- Support from a specialist, e.g. Learning and Teaching Adviser
- Counselling or other therapies

EXAMPLE

**Teacher Action Plan**

**Name:**

**Date:**

**Professional partner/mentor:**

**Planned review date:**

Areas for development*	Actions to be taken (and by whom)	Timeframe (to be completed by)	Success Criteria	Monitoring and evaluating (who, date and method for review)

<p><b>Additional Support plan</b></p> <ul style="list-style-type: none"> <li>•</li> <li>•</li> </ul>
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\*reference may be made to the Teachers' Standards

## DISMISSAL PROCEEDINGS

### 1. Delegation of Authority

#### Dismissal of Staff other than Headteacher

Under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that any person employed or engaged by the LA to work at the school should cease to work there (Community, Voluntary Controlled, Community Special and Maintained Nursery) or to dismiss its staff (Foundation, Voluntary Aided, Foundation Special) to:

- (a) one or more Governors and the Headteacher
- (b) one or more Governors
- (c) the Headteacher.

For options (a) and (b), it is recommended to have an odd number of members to avoid the possibility of a split decision.

For the purposes of Appeal rights, the Governing Body must appoint a Dismissal Appeal Panel. This should be a panel of three Governors, other than in exceptional circumstances. No Governor to whom the power to dismiss was delegated may sit on the Dismissal Appeal Panel. The Headteacher may not sit on the Dismissal Appeal Panel.

#### Dismissal of the Headteacher

Under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that the Headteacher should cease to work at the school or be dismissed to one or more Governors.

For the purposes of Appeal rights, the Governing Body must appoint a Dismissal Appeal Panel. This should be a panel of three Governors, other than in exceptional circumstances. No Governor to whom the power to dismiss was delegated may sit on the Dismissal Appeal Panel.

**For ease of understanding, those who have the delegated authority to dismiss will be referred to in these proceedings as 'Decision-Makers'.**

#### Rights of Attendance/Advisory Rights

Where the Governing Body has delegated dismissal powers of staff other than the Headteacher to one or more Governors, the Headteacher has a right under the 2009 Regulations to attend and give advice to all relevant meetings/hearings held by those Governors and they must consider that advice in coming to their decisions. That advice shall be given by the Headteacher in the course of the presentation of the case against the employee.

A representative of HR Consultancy for Schools may attend and offer advice to all proceedings relating to the dismissal and those to whom the function has been delegated must consider that advice in coming to their decision.

**Note:** Reserves will only be used in emergencies and following consultation with HR Consultancy for Schools and the recognised unions.

At formal hearings, the employee/representative may take notes for their own use. The Clerk would take notes for the Decision-Maker/s or Appeal Panel. In the event of the Clerk to the Panel being unavailable, notes may be taken by another person requested by the Decision-Maker/s. A copy of the notes taken can be made available to the employee on request.

## **Process**

2. The teacher must be given written notice of the hearing setting out:
  - (a) the date, time and location of the hearing
  - (b) the right of the teacher to be accompanied by a colleague or trade union representative and to call witnesses
  - (c) details of the unsatisfactory performance, together with copies of any documentary information which it is proposed to present to the 'Decision-Maker/s'
  - (d) that the result of the hearing could be a recommendation for dismissal and that it is very important for him/her to attend.
3. Notice of the hearing must be sent to the teacher at least 10 working days before the date of the hearing in order to allow reasonable time for him/her to arrange representation.
4. A copy of these procedures must be sent with the notice of the hearing.
5. The 'Decision-Maker/s' must ensure that the hearing is conducted in a fair and reasonable manner and in accordance with the principles of natural justice.
6. The procedure to be followed at the hearing will be laid out in Appendix 3 to these procedures.
7. At this hearing, the 'Decision-Maker/s' may exercise their discretion to recommend dismissal, no action or an alternative course of action. This action may involve an extension of the period of final warning with further support and monitoring; transfer to an alternative, possibly differently graded post, together with any training thought necessary; other action thought appropriate in the circumstances.
8. If, having regard to all the circumstances, the decision of the 'Decision-Maker/s' is that the teacher should cease to be employed at the school, this will be confirmed by letter to the teacher concerned within 5 working days. The letter should set out:
  - (a) the date of the hearing
  - (b) details of the unsatisfactory performance, including reference to any previous warnings under this procedure
  - (c) a statement that the Governing Body (through delegated responsibility) has determined that the teacher should cease to be employed at the school
  - (d) the effective date of the cessation bearing in mind the period of contractual notice required
  - (e) the right to lodge an appeal within 10 working days and the right to representation in an appeal.
9. The Governing Body must notify the Local Authority of the determination that the teacher should cease to work at the school and the reasons for it. The LA must give the teacher notice of the termination of his/her contract, within 14 days.

**RECOMMENDED PROCEDURE FOR A DISMISSAL HEARING**

1. Pre-meeting of 'Decision-Maker/s', Clerk to take notes for the Decision-Maker/s and HR Adviser(s) to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting:  
Employee and representative  
Headteacher and/or other management/adviser ('Management')

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

**Order of Business:**

- (a) Chair to introduce those others present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) 'Management' will state the case against the employee and may call witnesses.
- (d) The employee and/or his/her representative may ask questions of 'Management' and witnesses.
- (e) The 'Decision-Maker/s' may ask questions of the witnesses and 'Management' as appropriate.
- (f) Any final questions before the witness retires/ management completes its case.
- (g) The employee or representative will state the case and may call witnesses.
- (h) 'Management' may ask questions of the employee and/or witnesses.
- (i) The 'Decision-Maker/s' may ask questions of the employee and/or witnesses as appropriate.
- (j) Any final questions before the witness retires/ the employee/representative completes their case.
- (k) 'Management' will conclude with a concise summary of the case but will introduce no new factors.
- (l) The employee or representative will conclude with a concise summary of the case but will introduce no new factors.
- (m) Management, employee and representative withdraw while the 'Decision-Maker/s' consider the case.
- (n) 'Decision-Maker/s' to consider the action open to them and to reach a decision.
- (o) 'Management', employee and their representative to be recalled and informed of the decision by the Chair.
- (p) The employee to be informed by the HR Adviser of any implications of the decision and any appeal rights.
- (q) A formal minute will be made of the outcome of the hearing.

**Note:** The HR Adviser to the 'Decision-Maker/s' may attend any such hearing, ask questions at any point and advise the 'Decision-Maker/s' as appropriate, including once management and the employee have withdrawn during consideration of the case.

**APPEALS PROCEDURE**

1. The Appeals Procedure is intended to afford an employee a full and fair opportunity to present an appeal to the Governing Body against any decision of the Headteacher or Governors in respect of a first or final warning, dismissal or action as an alternative to dismissal.
2. The appeal must be lodged in writing and must set out the grounds of the appeal. It must be addressed to the Headteacher who will ensure that it is referred to the Governors. The appeal must be lodged within 10 working days of the notification of the sanction or determination that an employee should cease to work at the school.
3. The hearing of an appeal in respect of a warning or a decision that a person should cease to work at the school shall be delegated to a panel appointed by the Governing Body. This should be a panel of three Governors other than in exceptional circumstances and must exclude any Governors involved in the hearing leading to the appeal.
4. The appeal may be presented by the employee or his/her representative. An HR Adviser will attend to give advice to the panel.
5. The teacher will be given at least 10 working days notice of the date, time and location of the hearing and must be advised of the right to representation and the procedural conduct of the hearing as described in Appendix 5.
6. At the end of the hearing a decision shall normally be announced but exceptionally it may be appropriate to reserve a decision so that fuller consideration can be given to all matters raised at the appeal.
7. The Appeal Panel may decide to:
  - (a) allow the appeal wholly or in part, in which case any subsequent action should be considered and specified in the decision
  - (b) dismiss the appeal.

If an appeal against dismissal is upheld, notification of dismissal would be rescinded.
8. The decision will be communicated in writing to the employee and his/her colleague or trade union representative within 5 working days of the decision.

**RECOMMENDED PROCEDURE FOR MEETING OF AN APPEAL PANEL**

1. Pre-meeting of Governing Body representatives, Clerk to take notes for the Panel and HR Adviser(s) to clarify any procedural matters.

2. Hearing: In addition to those attending the pre-meeting:  
Appellant (Employee and representative)  
Respondent (Headteacher and/or other management/adviser)

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

**Order of Business:**

- (a) Chair to introduce the members of the Committee/Panel and others present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) The Chair will either read or circulate to all those present a copy of the warning or decision against which the appeal is being made.
- (d) The Appellant will state his/her case and may call witnesses.
- (e) The Respondent may ask questions of the witnesses.
- (f) The Governors and the HR Adviser may ask questions of the Appellant and witnesses as appropriate.
- (g) Any final questions before the witness retires / the Appellant completes their case.
- (h) The Respondent will state his/her case and may call witnesses.
- (i) The Appellant may ask questions of the witnesses.
- (j) The Governors and the HR Adviser may ask questions of the Respondent and witnesses as appropriate.
- (k) Any final questions before the witness retires / the Respondent completes their case.
- (l) The Appellant will conclude with a concise summary of the case but will introduce no new factors.
- (m) The Respondent will conclude with a concise summary of the case but will introduce no new factors.
- (n) The Appellant and Respondent will withdraw while the Appeal Panel consider the case.
- (o) The Panel will consider the case and the action open to them and reach a decision.
- (p) Appellant and Respondent will be recalled and informed of the decision by the Chair.
- (q) A formal minute will be made of the outcome of the hearing.

**Note:** The HR Adviser to the Governors may attend any such hearing, ask questions at any point and advise the Governors as appropriate, including once management and the employee have withdrawn during consideration of the case