

SOMERVILLS SCHOOL

DISCIPLINARY PROCEDURES
COMPENCES / CAPABILITIES TEACHERS
COMPENCES SUPPORT STAFF
GRIVANCE PROCEDURES
SCHOOL WHISTLE BLOWER CODE
ANTI-HARRASMENT POLICY

WRITTEN 8TH JANUARY 2007

STAFFING AND PAY COMMITTEE 16TH JANUARU 2007

FULL GOVERNING BODY 31ST JANUARY 2007

DISCIPLINE, CAPABILITY, GRIEVANCE AND COMPLAINTS

- 1 Disciplinary procedures and misconduct
 - 1.1 The School Staffing Regulations (England) 2003 require the governing bodies of schools with delegated budgets to establish procedures for the regulation of the conduct and discipline of staff at the school. Similar duties were imposed by earlier legislation.
 - 1.2 The local authority's model disciplinary procedures are commended to community, voluntary controlled, community special and maintained nursery schools. The current version of these procedures was published and sent to schools in 1993 and is reproduced in the following pages. In 2004, consequent on the School Staffing Regulations 2003 and accompanying statutory guidance, governing bodies were recommended to change the model by resolving that when the procedure led to a determination that a person should cease to work at the school the authority should be notified of that decision after the disciplinary hearing and before any appeal hearing, with the authority being notified subsequently of the outcome of the appeal hearing. It is the intention in due course to revise other aspects of the procedure in consultation with the teachers' associations and other unions.
 - 1.3 Supplementary provisions for the model staff disciplinary procedures, covering internal audit investigations, were issued in Circular 000217 (November, 1994) also reproduced in the following pages.
 - 1.4 The authority has also issued guidance on conduct in hearings of any kind, including disciplinary cases
(<http://ebriefing.bgfl.org/index.cfm?p=&showAll=y&showDesc=1&start=121&z=20060802103330849>)
 - 1.5 Voluntary aided schools have always controlled their own disciplinary procedures. Most church schools adopt model procedures prepared by the relevant diocesan authorities. Non-denominational voluntary aided schools are advised to adapt for their own use either a model diocesan procedure or the authority's model. If the latter is used, amendments will have to be made to account for the fact that in voluntary aided and foundation schools the governing body is the employer.
 - 1.6 Advice on the application of disciplinary procedures may be obtained from the Employee Relations Team. If there is a possibility that disciplinary proceedings may lead to a determination that the employee should cease to work at the school the Employee Relations Team must be consulted in good

time so that the authority can exercise its right to be present at the proceedings.

- 1.7 The statutory dispute resolution regulations also apply to cases of dismissal. For the authority's advice on the application of these regulations see <http://ebriefing.bgfl.org/content/resources/resource.cfm?id=1061&key=&zz=20060926120615209&zs=n> .
- 1.8 Head Teachers should be aware of the requirements of the Education (Prohibition from Teaching or Working with Children) Regulations 2004 (<http://www.opsi.gov.uk/si/si2004/20041493.htm>) in relation to certain kinds of misconduct. The Regulations cover agency workers and self-employed people as well as employees. When a relevant employer (including local authorities and governing bodies) has ceased to use a person's services because the person is unsuitable to work with children, or because of misconduct, or on health grounds where a relevant issue is raised, or might have ceased employing or engaging that person had the person not resigned or withdrawn his or her services, then the employer is under a legal duty to report the facts of the case to the Secretary of State for Education and Skills. The Regulations specify the information to be given to the Secretary of State. In the case of community, community special, voluntary controlled and maintained nursery schools this responsibility rests with the local authority, but in the case of voluntary aided and foundation schools the report to the Secretary of State must be made by the governing body. An employee deciding to resign in the face of disciplinary procedures should be advised that the case will be referred to the Department for Education and Skills and, unless an offence leading to automatic barring from teaching is involved, the Department will then refer the matter to the General Teaching Council.
- 1.9 Recommended procedures for dealing under the authority's Child Protection Procedures with allegations of assaults by staff should be followed.

MODEL DISCIPLINARY PROCEDURE FOR SCHOOLS (1993)

1. INTRODUCTION

- 1.1 The following procedures and guidance notes have been adopted by the Governing Body of Somerville Primary School in accordance with the requirements of paragraph 6 (1) and (2) of Schedule 3 of the Education Reform Act 1988. They apply to all staff employed to work at the school in accordance with that Schedule and Section 235 of the Act.
- 1.2 The procedures will operate in cases of misconduct, that is, when an employee has breached the rules of conduct which the governing body has established as required by Schedule 3 of the Education Reform Act.
- 1.3 The procedures do not affect the rights of employees under the separate grievance procedure which the governing body has established in accordance with paragraphs 6 (1) and (2) of Schedule 3 of the Education Reform Act 1988.
- 1.4 The procedures will be applied in accordance with the Instrument and Articles of Government of the School and in accordance with the Advisory, Conciliation and Arbitration Service's Code of Practice No. 1, 'Disciplinary practice and procedures in employment'.
- 1.5 An employee has the right to be accompanied by a representative of his/her choice at each stage of the disciplinary procedures.
- 1.6 In these procedures:-
 - the 'Local Education Authority' or the 'Authority' means Birmingham City Council acting in its capacity as a Local Education Authority;
 - references to the Chief Education Officer include any other officer designated by him;
 - 'employee' means a person employed to work at the school.

2. INFORMAL DISCUSSIONS

- 2.1 As part of their acknowledged management responsibilities, head teachers may from time to time discuss aspects of conduct with a member of staff on a one to one basis. Such discussions will take place informally and should not be constrained by, or come within, the scope of these procedures, nor shall counselling and advice given in this informal way count as warnings within the scope of these procedures. The status of the discussion should be made known to that member of staff. The fact that attempts have been made previously to resolve informally aspects of an employee's conduct may, however, be a valid reason for deciding that subsequent misconduct should be dealt with under the disciplinary procedures.
- 2.2 Should information emerge during the course of informal discussions which could subsequently require the matter to be dealt with under the formal disciplinary procedures, the employee should be advised immediately and the meeting closed. The head teacher should proceed to investigate the matter separately under Section 3 (below).
- 2.3 Whilst any cause for concern about the conduct of an employee will often have been the subject of informal discussions, such discussions are not a pre-condition to the exercise of the disciplinary procedures.
- 2.4 If the head teacher feels that it is necessary to record informal discussions with an employee about aspects of conduct, such a written record should be in the form of an 'aide memoire' and a copy of it should be given to the employee concerned, in the same way as notes can be made of discussions about other aspects of an employee's work such as development of teaching programmes.

3. INVESTIGATION

- 3.1 It is essential that all allegations of misconduct are investigated promptly to establish whether or not there is a case to answer. The investigation should seek to establish all the facts and collect the relevant supporting documents. Details of any current disciplinary warnings should be obtained by reference to the Chief Education Officer.
- 3.2 Where it appears that an employee's conduct has been, or is being, affected adversely by ill health, action under these procedures will be suspended pending medical advice. The head teacher/governing body should seek advice from the Chief Education Officer on the action to be taken in such cases.

- 3.3 If there are witnesses to the allegations, statements which are signed and dated should be obtained at the earliest opportunity.
- 3.4 Advice and guidance contained in the Birmingham Area Inter Agency Child Protection Procedures and associated guidance for schools must be followed when a member of staff is suspected or accused of child abuse.
- 3.5 The advice contained in the associated guidance for schools should also be followed when interviewing a child in respect of any allegations being investigated.
- 3.6 The employee against whom the allegation is made must be informed as soon as practicable that an investigation into his/her conduct is being made and the reason for it. If the employee is interviewed during the course of investigation, he/she must, prior to the interview, be informed of his/her right to be accompanied by a trade union representative or friend of his/her choice.
- 3.7 Where an employee is on sick leave medical advice should be sought. A hearing should not normally proceed during that absence unless the employee is able to attend or decides that his/her nominated representative can attend on his/her behalf.
- 3.8 Having gathered as many facts as possible, the head teacher (or nominated senior member of staff) shall decide whether the facts
- do not warrant further action; or
 - amount to a situation which can be resolved by informal discussions in accordance with Section 2 above; or
 - warrant a hearing in accordance with these procedures, including where appropriate the need to suspend the member of staff.
- 3.9 All information collected during investigations shall remain confidential to the person(s) directly involved.

4. SUSPENSION

- 4.1 Suspension is not a disciplinary sanction.
- 4.2 Under Schedule 3 (paragraph 7), Education Reform Act 1988 the governing body and the head teacher of a school with a delegated

budget both have the power to suspend any person employed at the school where, in the opinion of the governing body or (as the case may be) of the head teacher, the exclusion of that person from the school is required.

- 4.3 An employee who is suspected of gross misconduct (see paragraph 5.1, guidance notes) will normally be suspended immediately.
- 4.4 Any such suspension shall be without loss of emoluments.
- 4.5 The head teacher or governing body, when exercising that power, are required to inform the local education authority and the head teacher or (as the case may be) the governing body immediately.
- 4.6 Any such suspension may be ended only by the governing body, which shall inform the local education authority and the head teacher concerned immediately.
- 4.7 The employee along with two witnesses (one for head teacher and one for employee) should be informed in person of the decision to suspend (unless this is impractical due to absence on sick leave or other good reason) and written confirmation of the decision shall be sent immediately afterwards.

The formal letter of suspension shall include the following:

- (a) the specific reason for the suspension;
 - (b) the date and time from which it took effect;
 - (c) the likely duration of the suspension (if known);
 - (d) the rules of suspension eg the employee should not return to the place of work without prior permission or contact staff or pupils.
- 4.8 After a maximum twenty working days there should be a meeting between the head teacher and the employee's representative (or employee if not represented) to review the position and establish a likely timescale for the completion of investigations and a likely hearing date.
 - 4.9 The employee must not return to school (with the exception of 4.8 above) until the governing body's decision to end the suspension is communicated to the employee in writing.

5. MISCONDUCT AND GROSS MISCONDUCT

- 5.1 Misconduct may include, for example, criminal acts wherever and whenever committed, neglect of duty, child abuse, abuse of authority, disobedience of lawful instruction, insubordination, misuse of an employee's official position for personal gain, unauthorised absence from duty, physical assault, theft, malicious damage, falsification of documents including personal records and expense claim forms, abuse of alcohol or other drugs (other than those medically prescribed) (see paragraph 5.2 guidance notes), unauthorised use or removal of the Authority's or school's property and other conduct to the prejudice of efficient education in the school.
- 5.2 No employee will be dismissed for a first breach of discipline except in serious cases of such conduct which will be regarded as gross misconduct, that is misconduct of such a nature that the continued employment of the employee is in question (see paragraph 5.1 guidance notes).
- 5.3 The head teacher will present to the governing body disciplinary committee
- all allegations of gross misconduct
 - all allegations if an employee is in receipt of a current final written warning
 - any other cases of alleged misconduct, where after preliminary investigation the head teacher considers the case is sufficiently serious to warrant such a referral.

All other cases shall be dealt with by the head teacher or by the deputy head teacher who is acting as head teacher for the time being.

- 5.4 Any allegation about misconduct on the part of the head teacher shall be referred, through the chairman of the governing body, to the Chief Education Officer for investigation. If the Chief Education Officer finds that there is a case to answer he/she shall proceed in relation to the head teacher as the head teacher acts in relation to any other employee under paragraph 5.3 above, except that the option of referring the matter to the head teacher or deputy does not apply.
- 5.5 There may be cases in which an employee is simultaneously the subject of both allegations of misconduct and incompetence. If the allegations are related advice should be sought on how to proceed; otherwise they should be dealt with separately under the respective procedures.

6. PROCEDURES FOR HEARING CASES OF ALLEGED MISCONDUCT AND GROSS MISCONDUCT

- 6.1 If, following investigation, the head teacher decides, on the basis of the information available, that there is a case to answer and that a hearing is therefore required, he shall conduct such a hearing himself or, in the cases specified in 5.3 above, shall refer the case to the governing body which will arrange for the hearing to be conducted by its first committee.
- 6.2 The Chief Education Officer must be informed immediately of any allegation which, if upheld at the hearing, might lead the governing body to determine that the employee should cease to work at the school. Under the provisions of paragraphs 8 and 9 of Schedule 3, Education Reform Act 1988, the local education authority is obliged to dismiss an employee in respect of whom such a determination has been made and who works solely at the school.
- 6.3 Instructions to an employee to attend a hearing by the committee or the head teacher should be issued in writing, with an explanation of the hearing's purpose and its place in the disciplinary procedures. The letter should not only state the substance of the allegation but should also attach copies of any documents to be used at the hearing, remind the employee of the right to be accompanied and/or represented, and explain the procedures to be followed at the hearing. The employee should be asked to confirm that he/she will attend the hearing in person and to indicate whether he/she will be accompanied and call witnesses. Names of witnesses should be circulated in advance. A second set of papers should be enclosed for the employee's representative.
- 6.4 Notification of the hearing should also give the names of the committee and the names of witnesses to be called by the head teacher.
- 6.5 In order to ensure that the employee has enough time to prepare his or her response to the allegation(s) reasonable notice of the hearing should be given. This should be at least ten working days. It may be helpful to agree a date with the employee's union/professional association if they are already involved in the case, before sending the formal instruction to attend the hearing. The hearing may be deferred at the employee's request, but only by a limited period.
- 6.6 All documents relevant to a hearing by a committee shall be exchanged by the employee (or the employee's representative) and the head teacher as soon as possible and in any event be submitted to the clerk at least five working days before the hearing. If the employee

so wishes there is no requirement to submit any documentation. However, there should be a positive statement from the employee or the employee's representative that they will not be making a written submission.

- 6.7 The head teacher should present the case to the committee in the presence of the employee and the employee's representative and may call witnesses. The employee or the employee's representative may question the head teacher on the evidence presented and may cross-examine any witnesses. The committee may question the head teacher and any witnesses.
- 6.8 The employee or the employee's representative should respond to the allegation(s) in the presence of the head teacher and may call witnesses. The head teacher may question the employee or the employee's representative on the evidence and defence presented and may cross-examine any witnesses. The committee may question the employee, the employee's representative and any witnesses. It is acceptable for the employee's representative to present the case and not necessarily allow the employee to respond personally to questions.
- 6.9 The head teacher and the employee or the employee's representative may sum up their respective cases (in that order) and should then withdraw, leaving the committee to deliberate in private with only the clerk and the Chief Education Officer in attendance. The head teacher should ensure that any advice he wishes to give to the committee is given as part of his summing up. The committee may recall the head teacher and the employee with the employee's representative to clear points of uncertainty on the evidence which has been given, provided that both parties are recalled even if the point of uncertainty concerns the evidence of one party only.
- 6.10 The committee shall announce its decision to the parties in person or subsequently in writing as the committee shall determine. An oral announcement shall be confirmed in writing subsequently, including any rights of appeal.

7. DISCIPLINARY SANCTIONS

- 7.1 If the head teacher or the governing body's first committee finds at the hearing that the allegation of misconduct is substantiated, one of the following should be issued:-
 - a formal oral warning

 - a written warning

a final written warning

- 7.2 The committee also has the option of determining that the employee should cease to work at the school, in which case the provisions of Schedule 3 of the Education Reform Act, 1988, shall apply.
- 7.3 The oral warning will be recorded in writing and a copy given to the employee. The employee must be told that the oral warning constitutes the first stage in the disciplinary procedure, the duration of the warning (see 7.5 below) and of the right of appeal (see 8 below).
- 7.4 A written warning will include the following:-
- (a) the nature of the misconduct;
 - (b) the nature of the warning now issued;
 - (c) the consequences of further misconduct, including, for a final written warning, a statement that further misconduct of any kind will lead to proceedings resulting in dismissal;
 - (d) any support to be made available to the employee;
 - (e) the duration of the warning (see 7.5 below);
 - (f) details of any current, previous warnings;
 - (g) a statement that the warning will be forwarded to the Chief Education Officer to be placed on the employee's personal file;
 - (h) the right of appeal (see 8 below) including the period within which notice of appeal must be given;
 - (i) a copy of the letter to be given, should the employee so wish, to a friend or representative
- 7.5 Records of disciplinary warnings shall be current for the following periods. Such records and all relevant associated documentation shall be removed and destroyed at the end of those periods provided that no further disciplinary action has taken place in the meantime:-
- oral warning - six months
 - written warning - one year
 - final written warning - two years

7.6 In certain circumstances, however, a disciplinary record must be retained permanently on the personal file. This will apply where the disciplinary sanction is a final written warning for misconduct involving:

Sexual misconduct; or
Assault on a client or employee; or
Harassment or abuse (eg sexual or racial)

7.7 Where any warning is withdrawn by appeal at any stage in the procedure, any written reference thereto shall be removed from the employee's file and destroyed and the employee informed accordingly.

8. APPEALS

8.1 An employee has the right of appeal against any formal disciplinary decision.

8.2 An appeal against a disciplinary sanction taken by a head teacher or by the governing body's first committee shall be to the appeal committee established by the governing body.

8.3 An employee who receives a formal oral or written warning may appeal against it by giving written notice of the appeal and of the grounds on which it is made to the clerk to the governing body within five working days of receiving written confirmation of the warning. An employee who receives a final written warning may appeal against it by giving written notice of the appeal to the clerk to the governing body within ten working days of receiving written confirmation of the final written warning. The employee must state the grounds of appeal in advance of the appeal hearing.

8.4 The clerk to the governing body will advise the employee of the procedure for the appeal hearing, reminding the employee of the employee's rights at the hearing, including the right to be accompanied by a representative or a friend, the composition of the appeal committee, the names of witnesses, and the action which the appeal committee may take.

8.5 The clerk to the governing body will arrange an appeal committee hearing as quickly as possible. The employee should be given reasonable notice of the date, time and venue of the appeal hearing. The notice of all appeal hearings shall be at least ten working days.

8.6 The governing body's appeal committee will have regard to any guidance issued from time to time by the local education authority on conducting an appeal hearing.

- 8.7 The appeal committee may dismiss the appeal, uphold the appeal, and/or reduce the severity of the disciplinary sanction.
- 8.8 The appeal committee may announce its decision to the employee in person or subsequently in writing as it may determine. An oral announcement shall be confirmed in writing by the clerk to the governing body within ten working days of the hearing.

9. UNION OFFICERS

- 9.1 Normal disciplinary standards of behaviour should apply to trade union officers. However, disciplinary action against a trade union officer can be misconstrued as an attack on the union. Such problems can be avoided by early discussion with a full-time official or senior trade union representative.
- 9.2 Where an employee chooses to be accompanied or otherwise assisted by a representative from a recognised trade union, the head teacher, or the clerk to the governing body as the case may be, will seek to arrange hearings, etc, in consultation with the trade union officer.

GUIDANCE NOTES TO THE REVISED MODEL DISCIPLINARY PROCEDURE (1993)

1. INTRODUCTION

- 1.1 This model code of disciplinary procedures conforms to employment law and the ACAS Code of Practice and is intended to help governing bodies fulfil their responsibilities to comply with both.
- 1.2 The purpose of a disciplinary procedure is to help in the observation of rules and maintenance of standards in a fair and consistent manner. It provides a method of dealing with any shortcomings in conduct or performance and can help an undisciplined or poorly performing employee to become effective again. The consistent application of a fair and effective disciplinary procedure will help to minimise disagreements about disciplinary matters and regard dismissal as the last resort.
- 1.3 It is essential that the governing body should publish its rules of conduct to each individual employee and provide new staff with a copy.
- 1.4 All employees have the right to inspect a copy of the procedures. A copy should be readily accessible in the school office. It is also helpful to display copies on notice boards in school staff rooms or other areas in the school where employees meet together.
- 1.5 If a disciplinary case should lead ultimately to dismissal and a claim for unfair dismissal were made to an industrial tribunal, the tribunal would examine the procedures as well as the reasons which led to the dismissal. If the employer's stated procedures are not followed, the claim for unfair dismissal is likely to be upheld.
- 1.6 The ACAS Code of Practice was issued pursuant to section 6(1) and (8) of the Employment Protection Act 1975 and came into effect, by order of the Secretary of State on 20 June 1977. Any failure on the part of any person to observe any provision of a Code of Practice shall not of itself render him/her liable to any proceedings. However, in any proceedings before an industrial tribunal that Code of Practice is admissible in evidence and if any provision of the Code appears to the tribunal to be relevant to any question arising it shall be taken into account in determining that question. In short, failure to follow the Code of Practice makes an employer liable to lose a case at an industrial tribunal.
- 1.7 Under Section 222 of the Education Reform Act 1988 the Secretary of State has made an Order designating the governing body of a school

with a delegated budget as respondent in any application to an industrial tribunal which arises out of action taken by or on behalf of the governing body when exercising its powers in respect of discipline or dismissal or an action taken by the Authority on the instruction of the governing body.

- 1.8 In normal circumstances the Authority will bear the costs arising from dismissals for all schools. This will cover any compensation that results from unfair dismissal (and other industrial tribunal) cases. However, the Authority has the power to charge the school for the costs (or part of the costs) where it has "good reason" eg where the Chief Education Officer's representative has advised that dismissal should not take place, but the advice is ignored leading to a finding of unfair dismissal.
- 1.9 In order to defend disciplinary actions at an internal appeal or before an industrial tribunal, written records must be kept at all stages. Minutes of the hearing should be available to the employee or the employee's representative if requested.
- 1.10 Paragraph 10 of Schedule 3 to the Education Reform Act 1988 excludes school meals staff from the Schedule's provisions on discipline and dismissal.

2. INFORMAL DISCUSSIONS

- 2.1 Informal discussions should not be recorded on the employee's personal file and any aide memoire should be filed separately in confidence.

3. INVESTIGATION

- 3.1 Wherever possible the head teacher may wish to delegate the responsibility of investigating officer to another senior member of staff; he/she will then hear the case presented by that investigating officer.
- 3.2 The responsibility of the investigating officer is to gather evidence and establish the facts - it is not to make assumptions or jump to conclusions. He/she should:
 - investigate at the earliest possible stage whilst the incident is fresh in the minds of those involved
 - avoid encouraging or appearing to encourage particular evidence to prove or disprove an allegation

- having completed the investigation, produce a report setting out the facts and what further action is felt to be necessary
- in deciding whether to take disciplinary action in a case of alleged misconduct take into account not only the facts but also any shortcomings on the part of the school, any precedents and whether disciplinary action will be the most effective way of dealing with the matter.

3.3 It is important that school governors are not involved in the investigation of an allegation or make public comments as they may have the formal role of hearing the case should disciplinary proceedings follow (see 4.3 below).

3.4 Following receipt of an anonymous allegation, the investigating officer will judge, using his/her experience and taking advice from the Authority, what action is necessary. He/she will need to consider that an allegation made anonymously may well be founded on real concerns where the complainant is afraid to become personally involved. However, it can also be the case that an anonymous complaint is intended to be mischievous or misleading. The steps to be taken following receipt of such an allegation will depend on its nature. It is wise with such allegations to investigate them in a low key way by:

- reflecting on the allegation and the way staff or pupils concerned have behaved in relation to it to see if there is any evidence in support of or to detract from the allegation.
- observing members of staff involved in the context of the allegation to see if there is any evidence in support of or to detract from the allegation.

seeking advice from the Authority.

discussing the allegation with the member of staff, noting their response and deciding whether this supports or detracts from the allegation.

Where the above action leads the investigating officer to believe that there is a prima facie cause for concern, a formal investigation should then be initiated. Where there is no need for further action, the member of staff concerned should be advised.

3.5 An employee should not necessarily be subject to disciplinary action when charged with, or convicted of, a criminal offence. The action will depend on whether the employee's conduct warrants such action

because of employment implications. Guidance is given in Chapter 8 of the ACAS advisory handbook Discipline at Work. Advice should also be sought from the Chief Education Officer.

- 3.6 Officers responding to requests for information about current warnings will not give any indication of any known expired warnings.

4. SUSPENSION

- 4.1 Suspension is an aid to investigation and is used principally in cases of suspected gross misconduct or in cases where the allegation is of a particularly sensitive nature.
- 4.2 To allow an employee who is suspected of gross misconduct to continue to work pending investigations and disciplinary action would probably make any subsequent dismissal unfair.
- 4.3 To prevent inappropriate discussion/comment/rumour the head teacher should inform the Chairman of the Governing Body of the suspension. As it is likely that the Chairman will be involved at a later stage in the decision making process this information should be restricted to a simple statement without documentation.

5. MISCONDUCT AND GROSS MISCONDUCT

- 5.1 Gross misconduct will lead to dismissal without notice unless there are mitigating circumstances. The concept of gross misconduct is set out below.

Gross misconduct is misconduct of such a nature that the employer feels justified in no longer tolerating the continued presence at the place of work of an employee who commits such an action. A yardstick against which to decide whether an employee's action constitutes gross misconduct or not is for the employer to decide whether or not, in the light of the employee's action and his/her explanation for it, the employer can reasonably allow the continued presence of the employee at the school. If the answer is "NO" then the employer is, in effect, saying that the employee's actions constituted gross misconduct. If the answer is "YES" and the employee continues to work, the misconduct may not have been "gross" by the application of the criterion, and it may merit either a formal warning that repetition of misconduct may lead to a decision to dismiss the employee, or dismissal by notice if the employee has previously received a formal warning.

Further guidance on the difference between misconduct and gross misconduct is available from the Chief Education officer, both during investigations and in any subsequent hearing. It is imperative that advice is sought because of the employment law implications.

- 5.2 Great care is required when dealing with abuse of alcohol and drugs. The aim should be to identify employees affected and encourage them to seek help and treatment. There are a number of symptoms related to alcohol or drug abuse including poor performance, changes in personality, irritability, slurred speech, impaired concentration and memory, anxiety and depression. Where it is established that an employee is suffering from alcohol or drug abuse it will be necessary to consider whether it is appropriate (and it would be in the majority of cases) to treat the problem as a medical rather than a disciplinary matter. In all cases the employee should be encouraged to seek appropriate medical assistance. Advice and guidance is available on alcohol related problems from officers within the Personnel Section of the Authority.

6. PROCEDURES FOR HEARING CASES OF ALLEGED MISCONDUCT OR GROSS MISCONDUCT

- 6.1 The governing body will establish both a disciplinary committee and an appeal committee, in accordance with the Education (School Government) Regulations 1989. The disciplinary committee (known as the first committee) shall have a minimum of three members. The appeals committee shall also have a minimum of three members and no fewer members than the first committee and no member of the appeals committee shall be a member of the first committee. The membership of any such committee may include persons who are not members of the governing body but are not entitled to vote in any proceedings of that committee. The head teacher shall not be a member of any disciplinary committee or appeals committee, but is entitled to attend any of their meetings.
- 6.2 The governing body may delegate powers to first and appeals committees to act for it in all aspects of these procedures but any action or decision must be reported to the next meeting of the governing body for information. These powers should be delegated when the committees are established.
- 6.3 The proceedings of the committee should be organised and recorded by the clerk to the governing body.
- 6.4 The head teacher and the governing body's first committee will have regard to such guidance and advice on the arrangement and conduct

of disciplinary hearings as may be issued from time to time by the Authority.

- 6.5 The head teacher (except where he/she is the person concerned) and the Chief Education Officer of the authority shall be entitled to attend, for the purpose of giving advice, all proceedings of the governing body (this will include committees of the governing body) which may relate to a determination that a person employed at the school should cease to work there. The governing body shall consider any such advice. In such cases, in the interests of natural justice, the employee and the employee's representative shall have the right to be present whilst the head teacher gives his advice to the governing body and its committees.
- 6.6 When chairing a disciplinary hearing, the head teacher should be accompanied by a witness to record the proceedings.
- 6.7 Head teachers who hear a case of alleged misconduct are advised to follow the guidance in the ACAS advisory handbook Discipline at Work, chapter 5 - 'Holding a disciplinary interview'.

7. DISCIPLINARY SANCTIONS

- 7.1 In deciding on the most appropriate sanction the head teacher, or the first committee, should have regard to the facts of the case, any mitigating factors and any precedents. Advice may be sought from the Chief Education Officer. It must be remembered that the purpose of a disciplinary procedure is to bring about an improvement in the future conduct of an employee and not merely punish that individual.
- 7.2 In cases of final written warnings, it is essential to state what action will follow further misconduct. Any weakening of the statement, for example, using the words "is likely to" or "may", could invalidate any dismissal proceedings following further misconduct.

8. APPEALS

- 8.1 An appeals procedure is an essential feature of a disciplinary procedure (ACAS Code of Practice) and is required under Schedule 3, Education Reform Act 1988.

9. UNION OFFICERS

- 9.1 This section of the recommended procedures is designed to help the governing body demonstrate that it has no intention of contravening legislation which safeguards the rights of employees in relation to trade union membership and of trade union officers in relation to trade union membership and activities.

MODEL LETTERS TO BE USED WITH THE MODEL DISCIPLINARY PROCEDURE

- D1 Suspension
- D2 Request to attend hearing conducted by Head Teacher
- D3 Request to attend hearing conducted by Disciplinary Committee
- D4 Record of oral warning by Head Teacher
- D5 Written warning by Head Teacher
- D6 Final written warning by Head Teacher
- D7 Record of oral warning by Disciplinary Committee
- D8 Written warning by Disciplinary Committee
- D9 Final written warning by Disciplinary Committee
- D10 Outcome of appeal hearing
- D11 Notification to Local Education Authority of a determination that an employee should cease to work at the school

SUSPENSION

PRIVATE AND CONFIDENTIAL

Dear

SUSPENSION FROM DUTY

I am writing with reference to our meeting on and formally to confirm that you are suspended from duty with immediate effect and until further notice.

Your suspension, which will be with full salary, is to enable investigations to take place into allegations of (specify reason for suspension).

I will write to you again as soon as the outcome of the investigation is known. [(If known) The likely duration of the suspension is].

In the meantime, you should not attempt to visit the school premises or make contact with other parties involved in the matter unless you are given the express permission of the Head Teacher or the Chair of the Governing Body to do so.

The Local Education Authority has been informed.

Yours sincerely

Head Teacher or
Chair of Governing Body

Copy to Chief Education Officer

HEARING WITH HEAD TEACHER

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I am writing to confirm that you are required to attend a disciplinary hearing in accordance with the disciplinary procedures adopted by the Governing Body of [School] on (date)..... at (hours)..... in (venue)

The purpose of the hearing, which will be conducted by myself, is to give you an opportunity to comment on and explain or refute allegations that you committed an act(s) of misconduct in that you(details).

I enclose a copy of the documentation to which I intend to refer at the meeting, together with an outline of the procedure to be followed. *[It will also be the intention to call as witness(es)].

*[A representative of the Chief Education Officer will be in attendance.] [It is not envisaged that a representative of the Chief Education Officer would be in attendance.]

It would be helpful if you could send me copies of any papers which you intend to submit at the hearing beforehand. Please could you also tell me the names of any witnesses whom you would like to call.

You have the right to be accompanied by a Trade Union representative or a representative of your choice. An additional copy of this letter and the documentation is enclosed for your representative's use.

Please confirm that you will attend at the time and date stated and whether or not you will be accompanied by a representative.

Yours sincerely

Head Teacher

* Delete as appropriate

* [Copy to Chief Education Officer]

HEARING BY GOVERNING BODY

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I am writing to confirm that you are required to attend a disciplinary hearing on (date)..... at (hours)..... The hearing will be held in (venue)..... and will be before the Disciplinary Committee of the Governing Body appointed for the purpose. The meeting will be chaired by (name) and other governors in attendance will be (name) and (name)

The hearing will be conducted in accordance with the disciplinary procedures adopted by [School]. The purpose of the meeting is to give you an opportunity to comment on and explain or refute allegations that you committed an act of *[misconduct] *[gross misconduct] in that you(details).

The Chief Education Officer or his representative will be in attendance.

I enclose a copy of the documentation submitted to Governors, together with an outline of the procedure to be followed. The Head Teacher intends to call (names)..... as witnesses.

I shall be grateful if you could send me copies of any documentation which you wish to submit to the Governors at least five working days before the hearing. Please could you also notify me at the same time of the names of any witness(es) whom you wish to call.

You have the right to be accompanied by a Trade Union Representative or a Representative of your choice, and an additional copy of the documentation is enclosed for their use.

Please confirm that you will attend at the time and date stated and whether or not you will be accompanied by a representative.

Yours sincerely

Clerk to the Governing Body

* delete as appropriate

Copy to Chief Education Officer

RECORD OF FORMAL ORAL WARNING BY HEAD TEACHER

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I refer to our meeting on the(date) which was held in accordance with the disciplinary code adopted by the Governing Body of
[School]. I confirm that I issued you with an Oral Warning which relates to misconduct when you(details).

In the event of a repetition of this misconduct or another breach of discipline, further disciplinary action will be taken.

This warning will be notified to the Chief Education Officer to be placed on your personal file. It will remain there for six months after which, subject to satisfactory service, it will be disregarded and any papers removed and destroyed.

You may appeal against this warning by notifying the Clerk to the Governing Body in writing c/o
(address) writing within five working days of receipt of this letter, stating the grounds upon which the appeal is based.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

Copy to Chief Education Officer

WRITTEN WARNING BY HEAD TEACHER

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I am writing with reference to the meeting held on (date)..... in accordance with the disciplinary procedures adopted by the Governing Body of [School].

I confirm that arising from your action(s) on (date) when (details) you are formally warned that in the event of a repetition of this action or any further breach of discipline, further disciplinary action will be taken.

This warning will be forwarded to the Chief Education Officer to be placed on your personal file for one year. At the end of that period, subject to satisfactory service, it will be disregarded and any papers removed and destroyed.

You may appeal against this formal written warning by notifying the Clerk to the Governing Body, in writing, c/o (address) within five working days of receipt of this letter, stating the grounds upon which the appeal is based.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

Copy to Chief Education Officer

FINAL WARNING BY HEAD TEACHER

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I am writing with reference to the disciplinary hearing held on (date)..... in accordance with the disciplinary procedures adopted by the Governing Body of [School].

I confirm that arising from your action(s) on (date) when you (details) you are formally warned that in the event of a repetition of this action or any further breach of discipline, your contract of employment will be terminated.

This warning will be forwarded to the Chief Education Officer to be placed on your personal file. *[After two years, subject to satisfactory service, it will be disregarded and any papers removed and destroyed.] *[In view of the very serious nature of the misconduct the warning will remain on file indefinitely in accordance with the disciplinary procedure.]

You may appeal against this final written warning by notifying the Clerk to the Governing Body, c/o (address) within ten working days of receipt of this letter, stating the grounds upon which the appeal is based.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

* delete as appropriate

Copy to Chief Education Officer

RECORD OF ORAL WARNING BY DISCIPLINARY COMMITTEE

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I am writing further to the meeting held on (date) in accordance with the disciplinary procedures adopted by the Governing Body of [School]. I confirm that arising from your action(s) on (date) when (details), the Disciplinary Committee gave you an oral warning. If there should be a repetition of your misconduct or another breach of discipline, further disciplinary action will be taken.

The oral warning will be notified to the Chief Education Officer to be placed on your personal file. It will remain there for six months, after which, subject to satisfactory service, it will be disregarded and any papers removed and destroyed.

You may appeal against this written warning by notifying me in writing within five working days of receipt of this letter, stating the grounds upon which the appeal is based.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

Copy to Chief Education Officer

WRITTEN WARNING BY DISCIPLINARY COMMITTEE

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I am writing with reference to the meeting of the Disciplinary Committee of the Governing Body of (name) School which was held on (date) in accordance with the disciplinary procedures adopted by [School].

The Committee determined that arising from your action(s) on (date) when (details) you are formally warned that in the event of a repetition of this action or any further breach of discipline, further disciplinary action will be taken.

This warning will be forwarded to the Chief Education Officer to be placed on your personal file for one year. At the end of that period, subject to satisfactory service, it will be disregarded and any papers removed and destroyed.

You may appeal against this written warning by notifying me, in writing, at the above address within five working days of receipt of this letter, stating the grounds upon which the appeal is based.

A copy of this letter is enclosed for your representative.

Yours sincerely

Clerk to the Governing Body

Copy to Chief Education Officer

FINAL WARNING BY GOVERNING BODY

PRIVATE AND CONFIDENTIAL

Dear

DISCIPLINARY HEARING

I am writing with reference to the meeting of the Disciplinary Committee of the Governing Body of (name) School which was held on (date) in accordance with the disciplinary procedures adopted by [School].

The Committee determined that arising from your action(s) on (date) when you (details) you are formally warned that in the event of a repetition of this action or any further breach of discipline, your contract of employment will be terminated.

This warning will be forwarded to the Chief Education Officer to be placed on your personal file. *[After two years, subject to satisfactory service, it will be disregarded and any papers removed and destroyed.] *[In view of the very serious nature of the misconduct the warning will remain on file indefinitely in accordance with the disciplinary procedure.]

You may appeal against this final written warning by notifying me, in writing, at the above address within ten working days of receipt of this letter, stating the grounds upon which the appeal is based.

A copy of this letter is enclosed for your representative.

Yours sincerely

Clerk to the Governing Body

* delete as appropriate

Copy to Chief Education Officer

NOTIFICATION TO THE LEA OF TERMINATION OF SERVICE - GROSS MISCONDUCT/ COMPETENCE

PRIVATE AND CONFIDENTIAL

Chief Education Officer

Dear

TERMINATION OF EMPLOYMENT

EITHER

I am writing to advise you that at a meeting of the Appeal Committee of the Governing Body of (name) School held on (date) the Committee dismissed the appeal of (name) against the decision of the Disciplinary Committee that he/she should cease to work at the school by reason of *[gross misconduct/incompetence].

I should be grateful if, under paragraph 8(2) of Schedule 3 to the Education Reform Act 1988 you would terminate the contract of employment of (name) in accordance with the resolution of the Appeal Committee.

OR

I am writing to advise you that at a meeting of the Disciplinary Committee of (name) School held on (date) the Committee determined that (name) should cease to work at the school be reason of *[gross misconduct/incompetence.] (Name) has not appealed against the determination.

I shall be grateful if, under paragraph 8(2) of Schedule 3 to the Education Reform Act 1988 you would terminate the contract of employment of (name) in accordance with the resolution of the Disciplinary Committee.

Yours sincerely

Clerk to the Governing Body

* delete as appropriate

Copy to Chief Education Officer

APPEALS

PRIVATE AND CONFIDENTIAL

Dear

APPEAL HEARING

I am writing to confirm that at the meeting held on (date) the Appeal Committee of the Governing Body of (name) School having given careful consideration to the circumstances and evidence laid before them determined that:

EITHER

(i) your appeal against the Oral/Written/Final Written Warning issued to you by the Head Teacher/Disciplinary Committee on (date) should be upheld, and all reference to the warning should be deleted from your personal record and any papers destroyed. The Chief Education Officer will be informed of this decision.

OR

(ii) your appeal against the Oral/First Written/Final Written Warning issued to you by the Head Teacher/Disciplinary Committee on (date) should be dismissed, and that in these circumstances the warning will remain on your personal file held by the Chief Education Officer *[for six months/one year/two years with effect from the date that it was issued. After this period of time it will, subject to satisfactory service, and any papers removed and destroyed] *[indefinitely].

OR

(iii) The disciplinary warning issued to you by the Head Teacher/ Disciplinary Committee on (date) should be reduced from a Written Warning/Final Written Warning to an Oral/First Written Warning. In these circumstances the warning will remain on your personal file held by the Chief Education Officer for *[six months/ one year] and not *[one year/two years] as previously stated. After this period of time it will, subject to satisfactory service, be removed and any papers removed and destroyed.

OR

(iv) Your appeal against the decision of the Disciplinary Committee that you should cease to work at the school is upheld, and that in these circumstances all reference to the decision of the Disciplinary Committee will be deleted from your personal record held by the Chief Education Officer and any papers removed and destroyed.

OR

- (v) Your appeal against the decision of the Disciplinary Committee that you should cease to work at the school is upheld. However, the Appeal Committee resolved that you should receive a *[Oral Warning/Written Warning/ Final Written Warning.] This warning will remain on your personal file *[for six months/one year/two years, and at the end of that period it will, subject to satisfactory service, be removed and any papers destroyed.] *[indefinitely.] You are formally warned that in the event of a repetition of this action, or any further breach of discipline *[further disciplinary action will be taken] *[your contract of employment will be terminated].

OR

- (vi) Your appeal against the decision of the Disciplinary Committee held on (date) that you should cease to work at the school is dismissed, and the Local Education Authority be notified accordingly. The Local Education Authority will write to you terminating your employment at the school.

Yours sincerely

Clerk to the Governing Body

* delete as appropriate

Copy to Chief Education Officer

.....(name) SCHOOL

RECORD OF ORAL WARNING

Date:

Time:

Employee's Name:

Nature of Absence:

Trade Union/Other Representatives in Attendance YES/NO

Employee notified at Right of Appeal/Appeals Procedures YES/NO

Signed
(Head Teacher)

SUPPLEMENTARY PROVISIONS FOR LMS MODEL STAFF DISCIPLINARY PROCEDURE - INTERNAL AUDIT INVESTIGATIONS

1 Purpose of Document

- 1.1 This addition to the LMS Disciplinary Procedure is a guide to the conduct of Internal Audit investigations.

2 Principles

- 2.1 The governing body of a school is responsible for the management of that school's delegated budget.
- 2.2 The governing body may formally delegate its powers in relation to the management of any part of the budget to the head teacher. Where the governing body delegates powers to the head teacher, that decision must be formally recorded in the governing body minutes. The governing body must put in place reporting and monitoring arrangements to enable it to carry out its responsibilities for the management of the budget.
- 2.3 The approved LMS scheme and LMS financial regulations cover the management of official and unofficial funds which are the responsibility of governing bodies and head teachers.
- 2.4 The governing body and the head teacher must ensure they are familiar with these financial regulations and implement them in their management of official and unofficial funds. The governing body and head teacher must also put in place arrangements to enable staff who have budgetary responsibilities (such as handling cash, ordering goods and services and payment of accounts) to familiarise themselves with the financial regulations applying to their area of responsibility. Staff with such responsibilities must ensure they read and comply with the financial regulations.
- 2.5 The principles that Internal Audit would expect every school to apply in its management of official and unofficial funds are as follows:
- * The LMS' financial regulations must be followed.

- * There should be clear written records of financial transactions, properly certified by authorised staff and audited as required by LMS financial regulations.
- * There must be financial probity at all times in the management of public funds. Employees of the Authority are expected at all times to act honestly and with integrity.
- * There must be appropriate procedures in place to protect all assets in the custody of the school. This particularly applies to the handling and safe-keeping of cash.
- * There should be clear management responsibilities and procedures established within the school and approved by the governing body for all financial transactions.
- * The school's resources and finances should be managed in a way which secures value for money.

3 Role of Internal Audit

- 3.1 A key role of the City Council's Internal Audit Section is to provide support and advice to schools to enable them to comply with financial regulations and secure improvements in the management of financial systems. This support and advice is provided normally on request from the school or at the instigation of the Internal Audit Section. Internal Audit will make recommendations in these circumstances to schools which the governing body should apply to ensure financial regulations are met and good financial practice followed.
- 3.2 Specific referrals may be made for Internal Audit to consider particular concerns about a school's financial management and here again, advice and support will be offered and recommendations made to secure improvements. The day-to-day conduct of these activities by Internal Audit will normally involve:
- review of school systems
 - discussions with staff and governors
 - discussions with the head teacher.
- 3.3 Internal Audit will, as appropriate, make a record of these discussions to inform their report/recommendations concerning systems improvement.
- 3.4 Special Internal Audit Investigation

- The Internal Audit Section's objective is to secure systems improvements through the role described above. If however, as a result of any review of a school's financial system, there is evidence of
 - financial mismanagement
 - serious breaches of LMS Standing Orders or financial regulations
 - negligence
 - theft, fraud or dishonesty

the Internal Audit Section will conduct a special investigation and notify the governing body, the head teacher and the Chief Education Officer of that fact and may also make reference to the Police.

3.5 Internal Audit Powers

Internal Audit powers come from the Accounts & Audit Regulations 1983 and are contained in the LMS financial regulations. The Internal Audit Section has the right of access to premises and all records, documents and correspondence to enable the satisfactory conduct of an audit or special investigation. The Internal Audit Section has the authority to require and receive such explanations as are necessary concerning the matter under investigation.

Where a special investigation takes place, the following procedures will apply:

- Discussions will be held with appropriate staff initially to gather information.
- If that information is required to be quoted in the report then the staff will be formally interviewed. As part of these discussions, staff interviewed will be advised by Internal Audit that:
 - a) they may be requested to sign a formal statement;
 - b) their statement may be quoted in an audit report;
 - c) the audit investigation may lead to disciplinary action involving release of the audit report and their statement to the governing body and the individual against whom disciplinary action is proposed.

- Any staff formally interviewed has a right of representation by a friend or union/teacher association representative
 - A formal statement will be taken by Internal Audit and the interviewee asked to read and sign it as an accurate record. If the employee disagrees with any of its content, he/she must indicate to Internal Audit the areas of disagreement.
 - A member of staff declining to sign a formal statement may still be quoted in the audit report. Their refusal would also be noted in that report.
 - A formal record will be made of any documents removed from the school for further inspection and the date of removal and return will be received.
- 3.6 The Internal Audit Section will draw up a formal report of their findings and recommendations. This report must be presented to an appropriate committee (normally the committee responsible for finance) of the governing body. The report must also be forwarded to the Chief Education Officer.
- 3.7 The appropriate committee must inform Internal Audit of the decisions they have taken on the draft Internal Audit recommendations. These decisions will then be incorporated into a final Internal Audit report, which will be forwarded to the chair of the appropriate committee and the Chief Education Officer. Receipt of this final Internal Audit report must be acknowledged by both of them.
- 3.8 The Internal Audit Section may recommend that formal disciplinary action should be taken. In such circumstances, the committee of the governing body may accept or reject the recommendation. In either case the committee should seek advice from the Chief Education Officer in reaching their decision. If the governing body committee decides to reject the recommendation of disciplinary action, then its reasons for doing so must be clearly stated.
- 3.9 Where the appropriate committee of the governing body or the Chief Education Officer recommend disciplinary procedures, then the governing body should be asked to convene 'first' and appeals committees in accordance with the LMS Disciplinary Procedures. No member of the initial committee which received the formal report, or the 'first' committee, should be present on any appeals committee.
- 3.10 The individual subject to disciplinary procedures should be notified of the governing body decision to convene first and appeals committees and a copy of the final Internal Audit report forwarded to him/her and

their representative. The final Internal Audit report is provided to the individual on a confidential basis for the purpose of the disciplinary process only.

3.11 The LMS Disciplinary Procedures adopted by the school should apply concerning the conduct of the disciplinary hearing. These procedures include details on:

- the presentation of a case to governors
- calling of witnesses and documentary evidence to be referred to
- when suspension is appropriate
- the role of the Chief Education Officer
- sanctions
- appeals procedures.

3.12 At the end of the disciplinary process, the governing body must ensure all appropriate action is taken to rectify any matter discovered as part of the Internal Audit investigation.

3.13 Where the role of a governor is itself a matter of an Internal Audit investigation, then the procedures that will apply will be agreed with the Director of Legal Services, the Chief Education Officer, and the Director of Resources in accordance with the appropriate legislation.

2 Capability/Competence

- 2.1 The School Staffing Regulations (England) 2003 require the governing body to establish procedures for dealing with lack of capability on the part of staff at the school. Following consultation with the teachers' associations and statutory guidance issued by the Secretary of State revised capability procedures for teachers in community, community special, voluntary controlled and maintained nursery schools were published in 2002 and are reproduced in the following pages. (They replaced procedures published in 1998.) For support staff governing bodies are advised to continue to retain the earlier model competence procedures also reproduced below.
- 2.2 For centrally managed teachers, the special capability procedures approved by the former Education Committee on 21st April, 1998, apply, as they have not been revised subsequently.
- 2.3 The authority's guidance on the conduct of hearings applies to these procedures
(<http://ebriefing.bgfl.org/index.cfm?p=&showAll=y&showDesc=1&start=121&z=20060802103330849>).
- 2.4 Voluntary aided schools have always controlled their own capability procedures. Church schools may adopt model procedures prepared by the relevant ecclesiastical authorities. Non-denominational voluntary aided schools are advised to adapt for their own use either a model church procedure or the authority's model. If the latter is used, amendments will have to be made to account for the fact that in voluntary aided and foundation schools the governing body is the employer.
- 2.5 Advice on the application of capability procedures may be obtained from the Employee Relations Team. If there is a possibility that proceedings may lead to a determination that the employee should cease to work at the school the Employee Relations Team must be consulted in good time so that the authority can exercise its right to be present at the proceedings. If a voluntary aided or foundation school has accorded advisory rights to the local authority by a relevant agreement under the School Staffing Regulations, the Employee Relations Team must be consulted likewise.
- 2.6 The statutory dispute resolution regulations also apply to cases of dismissal. For the authority's advice on the application of these regulations see <http://ebriefing.bgfl.org/content/resources/resource.cfm?id=1061&key=&zz=20060926120615209&zs=n>

- 2.7 If a teacher is dismissed for lack of capability the case must be reported to the General Teaching Council in accordance with the General Teaching Council for England (Disciplinary Functions) Regulations 2001 as amended by the General Teaching Council for England (Disciplinary Functions) (Amendment) Regulations 2003 (http://www.opsi.gov.uk/si/si2001/uksi_20011268_en.pdf and http://www.opsi.gov.uk/si/si2003/uksi_20031186_en.pdf). Where the local authority is the employer, it will make such a report. With voluntary aided and foundation schools the responsibility rests with the governing body, but the Employee Relations Team should be consulted on the information to be provided to the Council.

BIRMINGHAM CITY COUNCIL EDUCATION DEPARTMENT

PROCEDURES FOR CASES OF ALLEGED LACK OF CAPABILITY IN COMMUNITY, VOLUNTARY CONTROLLED AND COMMUNITY SPECIAL SCHOOLS

1. POLICY

In order to ensure that acceptable professional standards of teaching are achieved and maintained the governing body of Somerville Primary School will adopt the following capability procedures to be implemented if a teacher fails, on a regular basis, to perform his or her duties to an acceptable professional standard in accordance with the duties set out in the School Teachers' Pay and Conditions Document.

2. INTRODUCTION

2.1 In these procedures:-

- the 'Local Education Authority' or the 'Authority' means Birmingham City Council acting in its capacity as a Local Education Authority;
- references to the Chief Education Officer include any other senior officer designated by him/her;
- 'teacher' means a teacher, including a head teacher, employed to work at the school.

2.2 As part of their acknowledged management responsibilities, and as part of the arrangements for the supervision, support and training of teachers, head teachers may from time to time discuss aspects of capability with a teacher on a day to day basis. Such discussions should not be regarded as falling within the scope of the formal capability procedures but should ensure staff receive fair and honest feedback on their performance and advice on how their performance may be improved.

2.3 For the purpose of these procedures, lack of capability is defined as a situation in which a teacher fails on a regular basis to perform his or her duties to an acceptable professional standard.

2.4 The procedures are to be implemented with the intention of supporting the teacher in achieving the required standards. The teacher needs to be aware

that failure to achieve the required standard may lead to termination of their employment.

- 2.5 In order to facilitate the smooth implementation of these procedures the teacher should be advised to contact his/her Teacher Association for advice before any meetings are arranged and dates for meetings should be agreed in advance if possible.
- 2.6 The procedures are distinct from the disciplinary procedures which are used in cases of misconduct and from the rights of teachers under the separate grievance procedure which the governing body has established in accordance with the Schools Standards and Framework Act Schedule 16.
- 2.7 These procedures do not apply to newly qualified teachers whose appointment has been made subject to induction and the provisions of the probationary scheme for teachers.
- 2.8 Normal standards of capability and normal procedures should apply to employees who are school trade union representatives or local officers, except that no action will be taken until the circumstances of the case have been discussed with a local or regional officer.
- 2.9 These procedures will be applied in accordance with the Instrument and Articles of Government of the School, any other statutory provisions which may apply from time to time, and Paragraphs 22-25 of the Advisory, Conciliation and Arbitration Service's Code of Practice No. 1 'Disciplinary Practice and Procedures in Employment'.
- 2.10 The attached Guidance Notes should be read before embarking upon the procedure.

3. Investigation and Counselling – Stage 1

- 3.1 Where a teacher's performance may not be reaching an acceptable professional standard and the discussions held under 2.2 have not resolved the matter, the Head Teacher should investigate and collect evidence. Once the facts are gathered and the seriousness of the problem established the head shall decide whether
- the matter does not warrant further action under the procedure.
 - the situation should have been dealt with under the normal arrangements for staff supervision and support and make arrangements for this to take place.
 - to arrange a meeting to discuss concerns and counselling.

Where it is decided to arrange a meeting to discuss counselling, the teacher should be advised to consult his/her Teacher Association.

The procedure to be applied where a Head Teacher 's performance may not be reaching an acceptable professional standard is detailed in Section 7.

3.2 Counselling

The teacher should be invited in writing to a meeting where the head teacher's concerns are presented to him/her. At least five working days notice of the meeting be given and shall include a copy of these procedures if one has not been given to the teacher previously. The teacher is entitled to be accompanied by a Teacher Association representative or a friend of his/her choice.

The head teacher should explain the nature of the concerns. Discussion should not harass the teacher or turn into a formal interview. The teacher should be given the opportunity to respond. Explanations should be considered carefully and the procedure discontinued if it becomes evident that there is no case to answer or that the performance is related to other factors which are more appropriately addressed outside these procedures (see guidance notes).

If the Head teacher decides to proceed with the counselling stage the teacher must be clear what is required, how performance will be reviewed and that the formal procedure will commence if there is insufficient improvement. Counselling and informal coaching should be offered to encourage and help the teacher to improve over a review period of 7 weeks.

A date should be set in discussion with the teacher and representative for a review meeting at the end of the 7th week. A brief written record of the meeting should be made which will include the agreed outcomes. A copy of the record will be given to the teacher and a further copy included for their representative.

Counselling should be conducted discreetly and a brief note of any advice or coaching given over the 7 week review period should be kept and a copy given to the teacher.

3.3 Review meeting

At the end of the review period a meeting will be held to discuss and share evidence as to whether satisfactory progress has been made.

The options will be:

- to decide that the matter does not warrant further action under the procedure.; or
- to extend the informal counselling where only minor concerns remain, or

- to convene a formal meeting under Stage 2 below. The date for that meeting should be set in discussion with the teacher and representative. This should be within a reasonable time scale of normally no more than 10 working days.

Where the teacher's performance improves sufficiently for no further action to be taken at any stage of the procedure, the procedure will be terminated. However where there is renewed concern within the following twelve months there is no requirement to repeat the Counselling stage.

4 FORMAL ACTION – Stage 2

4.1 The head teacher shall review the facts and information gathered, adding to it where appropriate and then write to the teacher setting out the area(s) of concern and the evidence supporting the concerns and inviting the teacher to a meeting. The teacher may be accompanied by a trade union representative or a friend of his/her choice. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this Section of the procedures. Copies of any documentation to be used at the meeting shall be sent with the written notice at least five days before the meeting to ensure that the teacher has enough time to prepare his or her response to the concern(s). A copy should be included for the teacher's representative.

4.2 First meeting

The purpose of the meeting shall be:-

- (a) to define the aspects of capability which are a matter of concern to the head teacher;
- (b) to allow the teacher and/or the teacher's representative to comment and/or offer an explanation;
- (c) for the head teacher to decide, having regard to (a) and (b) above, whether his or her concern(s) remain and if no concern remains, for the head teacher to confirm in writing that no further action will be taken.
- (d) for the head teacher, if concern(s) remain, to inform the teacher of them and decide what reasonable targets and standards are to be set, what programme of action, including support, is to be arranged, how long each part of that programme shall last, and how it shall be monitored and evaluated. This will be known as the first assessment period.
- (e) where (d) applies, to arrange for the programme of action to be reviewed in a second meeting in the thirteenth working week from the

date of the first meeting under the formal stage and set the date for that meeting in discussion with the teacher and the teacher's representative.

4.3 Notes of the meeting, including the programme of action shall be sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.

4.4 Second meeting

At the second meeting in the thirteenth working week from the date of the first meeting under the formal stage, progress will be reviewed against the targets, standards and programme of action. Copies of any evidence to be presented on the teacher's performance should be sent to the teacher at least five working days beforehand, including a copy for the teacher's representative. The teacher or the teacher's representative will have the opportunity to comment upon his or her performance and make appropriate representations. At the conclusion of the meeting the head teacher will either

- (a) decide that performance is now reaching an acceptable professional standard, which will be confirmed in writing and to take no further action; or
- (b) decide that the teacher's performance, or certain aspect(s) of it, remains a cause for concern, confirm the nature of that concern, note any improvements, decide whether to modify the targets, standards, programme of action and arrangements for monitoring and evaluation over a period of a further thirteen weeks. This will be known as the second assessment period. The Head Teacher will arrange a third meeting which will review progress and will take place in the thirteenth working week after the date of the second meeting and the date for that meeting should be set in discussion with the teacher and the teacher's representative.

In the case of (b) the Head Teacher will warn the teacher that if the improvement which is still required has not been achieved by the date of the third meeting the matter will be referred for a formal hearing which may lead to the dismissal of the teacher and be referred to the General Teaching Council. This formal capability warning must be confirmed in writing and the teacher told of their right of appeal against the warning.

Notes of the meeting, including the programme of action and formal capability warning where appropriate shall be sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.

4.5 If the teacher wishes to appeal against the warning then they must put their appeal in writing within 10 working days of the date of the letter confirming

the warning. The letter must give the basis for the appeal and be sent to the Clerk to the Governors who will arrange for the appeal to be heard by the Appeals Committee within 15 working days. Arrangements will be in accordance with the disciplinary procedures adopted by the school. The teacher will be given 5 days notice of the date of the hearing. Where the teacher's representative cannot attend on the date proposed the teacher can offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the date proposed by the employer.

The Appeals Committee may determine:

either

- that the appeal should be upheld, the warning lifted and the matter referred back to the Head Teacher to review their concerns and the teacher's performance

or

- that the appeal be dismissed and the warning stands.

The appeal process will run concurrently with the second assessment period of thirteen weeks.

4.6 Third meeting

The third meeting under the formal stage will take place within the time set out in 4.4 (b) above. Progress will again be reviewed against the targets, standards and programme of action, subject to any modifications to these as a result of the second meeting. As with the previous meetings, copies of the evidence on the teacher's performance should be sent to the teacher five working days beforehand, with a copy for the teacher's representative. The teacher may be accompanied by a teacher association representative or friend of the teacher's choice and the teacher or the teacher's representative will have the opportunity to comment on his or her performance. At the conclusion of the meeting the head teacher will either

- (a) decide that performance is now reaching an acceptable professional standard and to take no further action; or
- (b) decide that the teacher's capability remains a cause of concern and this matter should be referred to the governors for a formal hearing under stage 3 of this procedure.

4.7 The third meeting shall be recorded in writing and a copy sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.

5 PROCEDURES FOR A FORMAL HEARING BY THE STAFF DISMISSAL COMMITTEE – Stage 3

5.1 The procedures for conducting a formal hearing by a committee of the governing body shall be in accordance with the disciplinary procedures adopted by the school.

5.2 The options available to the Staff Dismissal Committee hearing the case are to:

- take no action in relation to the teacher
- determine that a further defined period for improvement should be allowed
- determine that the teacher should cease to work at the school.

6. APPEALS

6.1 The teacher will have the right of appeal against a decision that he/she should cease to work at the school. A teacher who wishes to exercise the right of appeal should notify the clerk to the governors within ten working days of the date of the letter notifying them of the decision of the Staff Dismissal Committee.

6.2 An appeal against the decision of the Staff Dismissal Committee shall be heard in accordance with the appeals process within the disciplinary procedures adopted by the school.

6.3 The options available to the Appeals Committee are to:

- dismiss the appeal
- uphold the appeal.

7. HEAD TEACHERS

7.1 In the event of concerns arising about the capability of a Head Teacher (as defined) in 2.3 above) the Chair of Governors will refer them to the Chief Education Officer for action in accordance with these procedures. Simultaneously the Chair of Governors will inform the Head Teacher that such action is being taken.

7.2 The CEO will investigate and if the conclusion is that there are no concerns or concerns which are more appropriately addressed outside this procedure, the CEO will notify the Chair of Governors and the Head Teacher in writing.

7.2.1 (a) Where concerns exist the CEO shall discuss with the Head Teacher ways in which these can be addressed and offer such support as may be appropriate in accordance with the Investigation and Counselling Stage, Section 3 of these procedures.

(b) If the concerns are serious, the CEO will also make a written report to the Chair of Governors and at the same time send a copy to the Head Teacher as required by Schedules 16 of the School Standards and Framework Act 1998.

7.3 Where action under Section 3 of the procedures does not resolve the concerns then the CEO will make a written report to the Chair of Governors and will proceed under Sections 4 and 5 of these procedures as appropriate.

7.4 Where the CEO believes the education of children is likely to be seriously jeopardised then he/she may proceed under Section 8 of the procedure.

7.5 The CEO will act in relation to the Head Teacher as the Head Teacher acts in relation to any other teacher.

7.6 The CEO will report back to the Governing Body via the Chair of Governors at each stage of the procedures, although there shall be no report on the detail of the concerns.

8. EXCEPTIONAL CIRCUMSTANCES

8.1 This Section of the procedures may not be used during the Investigation and Counselling Stage (1) of these procedures.

8.2 In extreme cases where the education of children is likely to be seriously jeopardised the period of improvement shall be four weeks. The guidance notes should be read and advice sought before embarking on this Section of the procedures. The Head teacher shall write to the teacher explaining that he or she considers that this is an extreme case in which the education of pupils is jeopardised, setting out the evidence supporting this allegation, and inviting the teacher to a meeting, at which the teacher may be accompanied by a teacher association representative or a friend of the teacher's choice. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this Section of the procedures. Copies of any documentation to be used at the meeting shall be sent with the written notice. In order to ensure that the teacher has enough time to prepare his or her response to the concern(s) reasonable notice of the hearing should be given. This should be at least ten working days. It is advisable to agree a date with the teacher's union/professional association before sending the formal instruction to attend the hearing.

8.3 The purpose of the meeting shall be:-

- (a) to define the aspects of capability which lead the head teacher to allege that the education of pupils is jeopardised and why it is not appropriate to use or continue to use the formal procedure set out in Section 4;
- (b) to allow the teacher and/or the teacher's representative to comment and/or offer an explanation;
- (c) for the head teacher to decide, having regard to (a) and (b), above whether to confirm or withdraw the allegation(s) of lack of capability which severely jeopardises the education of the pupils;
- (d) for the head teacher, in the light of (c) above, to take one of the following options
 - take no further action under this Section of the procedures;
 - follow or continue to follow Section 4 of these procedures;
 - issue a formal capability warning to the effect that a period of four working weeks will be given for the teacher to achieve reasonable targets and standards set by the head teacher. At the end of which period, if those targets and standards have not been met, the matter will, subject to the teacher's right of appeal under this Section of the procedure, be referred for a formal hearing, which may lead to the dismissal of the teacher;

If the head teacher adopts either of the last of these options the head teacher will also decide what targets and standards are to be set, what programme of action, including support, is to be arranged, how long each part of that programme shall last and how it shall be monitored and evaluated.

Under (d) above the head teacher may decide to arrange for direct supervision of the teacher's work for a specified period during the four weeks.

- 8.4 A copy of the notes of the meeting shall be sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.
- 8.5 The Head teacher should arrange for a review meeting to be held after four weeks unless the teacher appeals against the warning under this Section, in which case the review meeting will take place as early as possible after the outcome of the appeal is known. The date of the meeting should be set in discussion with the teacher and their representative.
- 8.6 The teacher shall have the right of appeal against a formal capability warning given under 8.2 (d) above. The teacher may appeal by giving written notice

of the appeal and the grounds on which it is made to the clerk to the governing body within ten working days of the date of the letter confirming the warning. The teacher must state the grounds of appeal in advance of the appeal hearing. The hearing of the appeal shall be in accordance with the procedures set detailed in the disciplinary procedures adopted by the school. The teacher will be given 5 days notice of the date of the hearing. Where the teacher's representative cannot attend on the date proposed the teacher can offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the date proposed by the employer.

The options available to the Appeals Committee which shall be as follows:

- dismiss the appeal;
- uphold the appeal and direct that the head teacher shall proceed under Section 4 of these procedures
- uphold the appeal and direct that no further action shall be taken under these procedures.

8.7 At the second meeting, under Section 8, the teacher may be accompanied by a teacher association representative or friend of the teacher's choice and at that meeting progress will be reviewed. At the conclusion of that meeting the Head Teacher will either:

- (a) decide that performance is now reaching an acceptable professional standard and to take no further action
- (b) decide that the extreme concerns no longer apply and that action may now be taken in accordance with Section 4 of this procedure
- (c) decide that the teacher's capability remains a cause of concern and this matter should be referred to the governors for a formal hearing.

8.8 The second meeting shall be recorded in writing and a copy sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.

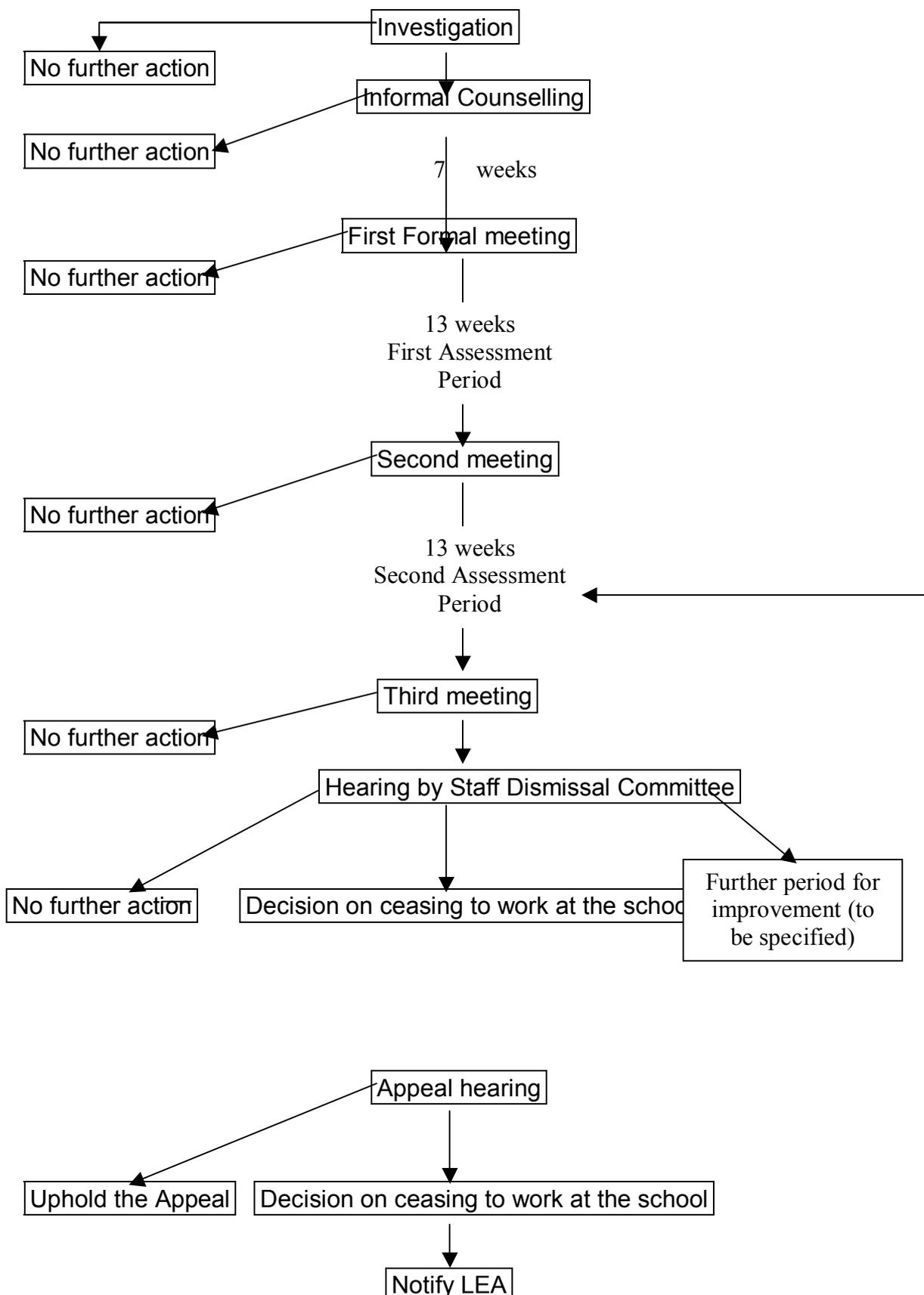
9 SUSPENSION

9.1 Under Schedule 16 of the School Standards and Framework Act 1998 the governing body and the head teacher of a school with a delegated budget both have the power to suspend any person employed to work at the school where, in the opinion of the governing body, or, as the case may be, of the

head teacher, the exclusion of that person from the school is required. Any such suspension should be carried out in accordance with the procedure detailed in the Model Disciplinary Procedure adopted by the school.

- 9.2 The suspension of a teacher or a head teacher should only be carried out in relation to these procedures after consultation with appropriate named officers in the LEA and in circumstances in which the physical well-being of pupils is at risk.
- 9.3 If, following any necessary investigation, suspension is not lifted, then Section 5 of these procedures shall apply.

DIAGRAM TO ILLUSTRATE CAPABILITY PROCEDURES



MODEL LETTERS TO BE USED WITH THE MODEL CAPABILITY PROCEDURES

N.B. SOME OF THESE LETTERS WILL NEED MODIFICATION WHERE A HEAD TEACHER IS THE SUBJECT OF THE CAPABILITY PROCEDURES

Request to attend an Investigation and Counselling meeting with Head Teacher

Request to attend first formal meeting with the Head Teacher

Record of first formal meeting with Head Teacher

Record of second formal meeting with Head Teacher

Record of third formal meeting with Head Teacher

Exceptional circumstances - request to attend first formal meeting with Head Teacher

Exceptional circumstances - record of first formal meeting with Head Teacher

Exceptional circumstances - hearing of appeal against formal capability warning

Exceptional circumstances- outcome of appeal against formal capability warning

Exceptional circumstances - record of second formal meeting with Head Teacher

Suspension

Request to attend hearing conducted by Staff Dismissal Committee

Adjournment of hearing by the Staff Dismissal Committee

Notification of outcome of hearing of Staff Dismissal Committee

Notification of outcome of appeal hearing

Notification to Local Education Authority of a determination that an employee should cease to work at the school

INFORMAL COUNSELLING (Paragraph 3)

PRIVATE AND CONFIDENTIAL

Dear

INFORMAL COUNSELLING UNDER THE CAPABILITY PROCEDURES

I am writing to confirm the request to attend a meeting at (time) on (date) as previously arranged. The meeting will be held in (venue) and will be held in accordance with the capability procedure adopted by the school, a copy of which is enclosed.

The purpose of the meeting, which will be conducted by me, is to give you an opportunity to comment on the following concerns about your capability:

I will be accompanied by _____ and a note taker will be present.

You have the right to be accompanied by a Teacher's Association representative or a representative of your choice. An additional copy of this letter is enclosed for your representative.

Please confirm that you can attend and whether or not you will be accompanied by a representative.

Yours sincerely

HEARING WITH HEAD TEACHER (paragraph 4.1)

PRIVATE AND CONFIDENTIAL

Dear

FORMAL MEETING IN ACCORDANCE WITH STAGE TWO OF THE CAPABILITY PROCEDURE

Following a period of informal counselling in accordance with the capability procedures adopted by the Governing Body of [School], I am writing to confirm the request to attend a meeting on (date)..... at (hours)..... in (venue)

The purpose of the meeting, which will be conducted by myself, is to give you an opportunity to comment on and explain or refute the following concerns about your capability:

I enclose a copy of the evidence of my concerns, together with an outline of the procedure to be followed at the meeting. *[It will also be the intention to call as witness(es)].

*[A representative of the Chief Education Officer will be in attendance.] [It is not envisaged that a representative of the Chief Education Officer would be in attendance.]

It would be helpful if you could send me copies of any papers which you intend to submit at the hearing beforehand. Please could you also tell me the names of any witnesses whom you would like to call.

You have the right to be accompanied by your Teacher Association representative or a representative of your choice. An additional copy of this letter and the documentation is enclosed for your representative's use.

Please confirm that you will attend at the time and date stated and whether or not you will be accompanied by a representative.

Yours sincerely

Head Teacher

* Delete as appropriate

* [Copy to Chief Education Officer]

RECORD OF FIRST FORMAL MEETING WITH THE HEAD TEACHER (paragraphs 4.2 - 4.3)

PRIVATE AND CONFIDENTIAL

Dear

FIRST FORMAL MEETING UNDER STAGE TWO OF THE CAPABILITY PROCEDURE

I refer to our meeting on _____ which was held in accordance with the capability procedure adopted by the Governing Body. I confirm that I defined aspects of your capability which were a matter of concern to me and that you responded to those concerns as set out in the attached record of the meeting.

At the conclusion of the meeting I decided that

*[either]there was no further cause for concern and to take no further action

*[or] I remained concerned about all/some of [specify] the aspects of capability which I had defined at the outset of the meeting and set the targets, standards and programme of action, including support, described in the attached paper. I am arranging for your work to be monitored by _____ . [I am also arranging for your work to be supervised directly for a period of weeks by _____ .]

I confirm that this constitutes a formal notification of action under the capability procedure and that the procedure has begun with effect from the date of our meeting. We will meet again to review progress on _____ .

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

*delete as appropriate

Copy to Chief Education Officer

RECORD OF SECOND FORMAL MEETING WITH THE HEAD TEACHER
(paragraphs 4.5 - 4.6)

PRIVATE AND CONFIDENTIAL

Dear

SECOND FORMAL MEETING UNDER THE CAPABILITY PROCEDURE

I refer to our meeting on _____ which was held in accordance with the capability procedure adopted by the Governing Body. I confirm that we reviewed progress against the targets and standards and programme of action and support which I set following the first meeting and attach a summary of the discussion.

At the conclusion of the meeting I decided that

*[either]there was no further cause for concern and to take no further action

*[or] I remained concerned about all/some of [specify] the aspects of capability which I had defined at our first meeting and to continue/modify the targets, standards and programme of action and support as described in the attached paper. Your work will continue to be monitored by _____. [I am also arranging for your work to be supervised directly for a period of _____ weeks by _____.]

I confirm that we will meet for a third time on _____. We will again review progress against the targets, standards and programme of action.

I confirm that I also warned you that if there the improvement which is still required has not been achieved by the third meeting the matter will be referred for a formal hearing under Section 5 of the procedures, which may lead to your dismissal. This letter therefore constitutes a final written warning against which you have the right of appeal to the Appeals Committee of the Governing Body. If you wish to appeal against this warning then you should notify me in writing within five days of receipt of this letter stating the basis of your appeal.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

*delete as appropriate

Copy to Chief Education Officer

RECORD OF THIRD FORMAL MEETING WITH THE HEAD TEACHER
(paragraphs 4.7 - 4.8)

PRIVATE AND CONFIDENTIAL

Dear

THIRD FORMAL MEETING UNDER THE CAPABILITY PROCEDURE

I refer to our meeting on the _____ which was held in accordance with the capability procedure adopted by the Governing Body. I confirm that we reviewed progress against the targets and standards and programme of action which I confirmed/modified following the second meeting and attach a summary of the discussion.

At the conclusion of the meeting I decided that

*[either]there was no further cause for concern and to take no further action

*[or] I remained concerned about all/some of [specify] the aspects of capability which I had defined at the first and second meetings and that the matter would accordingly be referred to the Staff Dismissal Committee of the governing body. As explained in my letter following our second meeting, this may lead to your dismissal.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

*delete as appropriate

Copy to Chief Education Officer

EXCEPTIONAL CIRCUMSTANCES: HEARING WITH HEAD TEACHER (paragraph 8.2)

PRIVATE AND CONFIDENTIAL

Dear

FORMAL MEETING IN ACCORDANCE WITH THE CAPABILITY PROCEDURE:
EXCEPTIONAL CIRCUMSTANCES

I am writing to confirm the request to attend a meeting in accordance with the capability procedures adopted by the Governing Body of [School] on (date)..... at (hours)..... in (venue)

The purpose of the meeting, which will be conducted by myself, is to give you an opportunity to comment on and explain or refute the following concerns about your capability which lead me to consider that the education of pupils is jeopardised:

I enclose a copy of the evidence of my concerns, together with an outline of the procedure to be followed at the meeting. *[It will also be the intention to call as witness(es)].

*[A representative of the Chief Education Officer will be in attendance.] [It is not envisaged that a representative of the Chief Education Officer would be in attendance.]

It would be helpful if you could send me copies of any papers which you intend to submit at the hearing beforehand. Please could you also tell me the names of any witnesses whom you would like to call.

You have the right to be accompanied by your Teacher Association representative or a representative of your choice. An additional copy of this letter and the documentation is enclosed for your representative's use.

Please confirm that you will attend at the time and date stated and whether or not you will be accompanied by a representative.

Yours sincerely

Head Teacher

*delete as appropriate

Copy to Chief Education Officer

EXCEPTIONAL CIRCUMSTANCES: RECORD OF FIRST FORMAL MEETING WITH THE HEAD TEACHER (paragraphs 8.3 – 8.5)

PRIVATE AND CONFIDENTIAL

Dear

FIRST FORMAL MEETING UNDER THE CAPABILITY PROCEDURE: EXCEPTIONAL CIRCUMSTANCES

I refer to our meeting on _____ which was held in accordance with the capability procedures adopted by the Governing Body. During that meeting I explained that I considered this to be an extreme case of concern about your capability in which the education of pupils is jeopardised and that I had taken the advice of the appropriate named officer of the LEA before proceeding to call the meeting. You responded to my concerns as set out in the attached record of the meeting.

After considering your response I decided

*[either]to take no further action under the procedures;

*[or] to follow Section 4 of the procedures;

[or] that the aspects of capability specified in the attached record of the meeting jeopardised the education of pupils. I then issued you with a formal capability warning to the effect that, subject to your right of appeal under Paragraph 8.6 of the capability procedure, a period of four working weeks will be given for you to achieve targets and standards set by me. Accordingly I have set the targets, standards and programme of action described in the attached paper and am arranging for your work to be monitored by _____. [I am also arranging for your work to be supervised directly for a period of _____ weeks by ____].

The programme of action will be reviewed in a meeting to be held four working weeks after the day on which any appeal made by you is dismissed or, if you make no appeal, four working weeks after the period of ten working days allowed to you to give written notice of appeal. If there has been insufficient improvement by the date of the second meeting the matter will be referred for a formal hearing under Section 8 of the capability procedure and may lead to your dismissal.

You may appeal against this formal capability warning by giving written notice of that appeal and the grounds on which it is made to the clerk to the governing body within ten working days of receiving this letter.

I confirm that this constitutes a formal notification of action under the capability procedure and that, subject to appeal against the formal capability warning, the procedure has begun with effect from the date of our meeting.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

*delete as appropriate

Copy to Chief Education Officer

EXCEPTIONAL CIRCUMSTANCES: HEARING OF APPEAL AGAINST FORMAL
CAPABILITY WARNING (paragraph 8.6)

PRIVATE AND CONFIDENTIAL

Dear

APPEAL AGAINST FORMAL CAPABILITY WARNING – EXCEPTIONAL
CIRCUMSTANCES: HEARING BY THE APPEALS COMMITTEE OF THE
GOVERNING BODY

I am writing to confirm that you are invited to attend the hearing of your appeal against the formal capability warning given to you by the Head Teacher. The hearing will be conducted by the Appeals Committee of the governing body on at hours in . It will be chaired by and other governors in attendance will be and .

The hearing will be conducted in accordance with the disciplinary procedures adopted by the governing body.

The Chief Education Officer or his representative will be in attendance.

I shall be grateful if you could send me copies of any documentation which you wish to submit to the Governors at least five working days before the hearing. Please could you also notify me at the same time of the names of any witness(es) whom you wish to call.

You have the right to be accompanied by a Trade Union Representative or a Representative of your choice, and an additional copy of the documentation is enclosed for their use.

Please confirm that you will attend at the time and date stated and whether or not you will be accompanied by a representative.

Yours sincerely

Clerk to the Governing Body

Copy to Chief Education Officer

EXCEPTIONAL CIRCUMSTANCES: OUTCOME OF APPEAL AGAINST FORMAL CAPABILITY WARNING (paragraph 8.6)

PRIVATE AND CONFIDENTIAL

Dear

OUTCOME OF APPEAL AGAINST FORMAL CAPABILITY WARNING –
EXCEPTIONAL CIRCUMSTANCES

I am writing to confirm that at the meeting held on _____ the committee of the Governing Body, having given careful consideration to the circumstances and evidence laid before them, determined that:

*EITHER

(i) Your appeal against the formal capability warning should be upheld, and no further action should be taken under the capability procedures.

*OR

(ii) Your appeal against the formal capability warning should be upheld but directed the Head Teacher to proceed under Section 4 of the capability procedures.

*OR

(iii) that your appeal against the capability warning should be dismissed.

Yours sincerely

Clerk to the Governing Body

*delete as appropriate

Copy to Chief Education Officer

EXCEPTIONAL CIRCUMSTANCES: RECORD OF SECOND FORMAL MEETING
WITH THE HEAD TEACHER (paragraphs 8.7 – 8.8)

PRIVATE AND CONFIDENTIAL

Dear

SECOND FORMAL MEETING UNDER THE CAPABILITY PROCEDURE –
EXCEPTIONAL CIRCUMSTANCES

I refer to our meeting on _____ which was held in accordance with the capability procedure adopted by the Governing Body. I confirm that we reviewed progress against the targets and standards and programme of action which I set following the first meeting and attach a summary of the discussion.

At the conclusion of the meeting I decided that

*[either]there was no further cause for concern and to take no further action

*[or] I remained of the opinion that this was an extreme case of concern about your capability in which the education of pupils is jeopardised on the grounds set out in the attached record of the meeting. I informed you that the matter would be referred to the Staff Dismissal Committee of the governing body in accordance with Section 5 of the capability procedure. As explained in my letter following our first meeting, this may lead to your dismissal.

A copy of this letter is enclosed for your representative.

Yours sincerely

Head Teacher

*Delete as appropriate

Copy to Chief Education Officer

SUSPENSION (paragraph 9)

PRIVATE AND CONFIDENTIAL

Dear

SUSPENSION FROM DUTY

I am writing formally with reference to our meeting on to confirm that you are suspended from duty with immediate effect and until further notice.

Your suspension, which will be in accordance with your contract of employment, is to enable investigations to take place into the following circumstances:

I will write to you again as soon as the outcome of the investigation is known. [(If known) The likely duration of the suspension is].

In the meantime, you should not attempt to visit the school premises or make contact with other parties involved in the matter unless you are given the express permission of the Head Teacher or the Chair of the Governing Body to do so.

The Local Education Authority has been informed.

Yours sincerely

Head Teacher or
Chair of Governing Body

Copy to Chief Education Officer

HEARING BY GOVERNING BODY'S STAFF DISMISSAL COMMITTEE (paragraph 5.1)

PRIVATE AND CONFIDENTIAL

Dear

CAPABILITY PROCEDURE - HEARING BY THE STAFF DISMISSAL COMMITTEE

I am writing to confirm that you are required to attend a hearing before the Staff Dismissal Committee of the governing body on _____ at _____ hours. The hearing will be held in _____. It will be chaired by _____ and other governors in attendance will be _____ and _____.

The hearing will be conducted in accordance with the disciplinary procedures adopted by the governing body. The purpose of the meeting is to give you an opportunity to comment on and explain or refute allegations about your capability as set out in the attached papers.

The Chief Education Officer or his representative will be in attendance.

I enclose a copy of the documentation submitted to Governors, together with an outline of the procedure to be followed. The Head Teacher intends to call [_____] as witnesses.

I shall be grateful if you could send me copies of any documentation which you wish to submit to the Governors at least five working days before the hearing. Please could you also notify me at the same time of the names of any witness(es) whom you wish to call.

You have the right to be accompanied by your Teacher Association Representative or a Representative of your choice, and an additional copy of the documentation is enclosed for their use.

Please confirm that you will attend at the time and date stated and whether or not you will be accompanied by a representative.

Yours sincerely

Clerk to the Governing Body

Copy to Chief Education Officer

ADJOURNMENT OF THE STAFF DISMISSAL COMMITTEE (paragraph 5.2)

PRIVATE AND CONFIDENTIAL

Dear

CAPABILITY PROCEDURE - ADJOURNMENT OF HEARING BY THE STAFF
DISMISSAL COMMITTEE

I am writing to confirm that the Staff Dismissal Committee of the governing body decided to adjourn the hearing held on _____ in order to give you a further, defined period for improvement. This period will last for _____ working weeks and the committee will reconvene on _____ to resume the hearing.

Details of the targets and standards set by the committee, the programme of action, including support, and the arrangements for monitoring and evaluation are set out in the attached paper.

An additional copy of this letter and its attachment is enclosed for your representative.

Yours sincerely

Clerk to the Governing Body

Copy to Chief Education Officer

NOTIFICATION OF OUTCOME OF HEARING OF THE STAFF DISMISSAL
COMMITTEE (paragraph 5.2)

PRIVATE AND CONFIDENTIAL

Dear

HEARING BY THE STAFF DISMISSAL COMMITTEE

I am writing following the meeting of the committee held on _____ in accordance with the capability procedure adopted by the Governing Body to inform you that the Committee decided that

*[either]no further action should be taken against you under the procedure

*[or] you should cease to work at the school on the grounds of your lack of capability. You may appeal against this decision by notifying me, in writing, at the above address within ten working days of receipt of this letter, stating the grounds upon which the appeal is based.

A copy of this letter is enclosed for your representative.

Yours sincerely

Clerk to the Governing Body

*delete as appropriate

Copy to Chief Education Officer

OUTCOME OF APPEAL (paragraph 6.3)

PRIVATE AND CONFIDENTIAL

Dear

APPEAL HEARING

I am writing to confirm that at the meeting held on _____ the Appeal Committee of the Governing Body, having given careful consideration to the circumstances and evidence laid before them, determined that:

***EITHER**

- (i) Your appeal against the decision of the Staff Dismissal Committee that you should cease to work at the school is upheld, and that in these circumstances all reference to the decision of the Staff Dismissal Committee will be deleted from your personal record held by the Chief Education Officer and any papers removed and destroyed.

***OR**

- (ii) Your appeal against the decision of the Staff Dismissal Committee held on _____ that you should cease to work at the school should be dismissed, and the Local Education Authority notified accordingly. The Local Education Authority will write to you terminating your employment at the school.

Yours sincerely

Clerk to the Governing Body

*delete as appropriate

Copy to Chief Education Officer

NOTIFICATION TO THE LEA OF TERMINATION OF SERVICE - LACK OF CAPABILITY (paragraph 5.2 or 6.3)

PRIVATE AND CONFIDENTIAL

Chief Education Officer

Dear

TERMINATION OF EMPLOYMENT

EITHER

I am writing to advise you that at a meeting of the Appeal Committee of the Governing Body of _____ School held on _____ the Committee dismissed the appeal of _____ against the decision of the Staff Dismissal Committee that he/she should cease to work at the school by reason of lack of capability.

I should be grateful if, under paragraph 25(2) of Schedule 16 of the School Standards and Framework Act 1998, you would terminate the contract of employment of _____ in accordance with the resolution of the Appeal Committee.

OR

I am writing to advise you that at a meeting of the Staff Dismissal Committee of _____ School held on _____ the Committee determined that _____ should cease to work at the school by reason of gross lack of capability. There has been no appeal against the determination.

I should be grateful if, under paragraph 25(2) of Schedule 16 of the School Standards and Framework Act 1998, you would terminate the contract of employment of _____ in accordance with the resolution of the Staff Dismissal Committee.

Yours sincerely

Clerk to the Governing Body

Copy to Chief Education Officer

GUIDANCE NOTES

1. INVESTIGATION AND COUNSELLING

- (a) The head teacher must ascertain during the investigation and counselling stage whether the poor performance is attributable to other factors, particularly ill health, and have regard to the normal arrangements and standards for supervision and support. If other factors are identified then the head teacher should consult the appropriate personnel in the Education Department about appropriate action and procedures.
- (b) The teacher should be told at the start of Stage 1 (Investigation and Counselling) that an investigation is to take place in accordance with this procedure. The investigation should seek to establish all the facts and collate relevant information. This should include supporting documentation, recorded events and observations and witness statements where appropriate. This information will be shared with the teacher if the head teacher decides to proceed with a meeting to arrange counselling.
- (c) If the investigation requires information to be obtained from pupils the head teacher should follow the arrangements for collecting information from pupils set out in the appropriate Section of the Authority's Child Protection Procedures.
- (d) All information collected during investigations shall remain confidential to the person(s) directly involved, including the teacher's representative, and the LEA. All information collected and all recorded incidents or observations to be used must be brought to the teacher's attention at the time of the occurrence or as soon as possible thereafter in order that they can recollect the event and respond appropriately at a later date.
- (e) The OFSTED Requirements and Guidance on Inspection and Re-Inspection of Schools from September 1997 provides for a report to be given to the teacher and Head Teacher on the individual quality of teaching observed by the Registered Inspector and states that "the profile for the teaching of an individual teacher cannot on its own be used to justify disciplinary action against a teacher." Such a report should therefore not be that basis of initiating these procedures. However, where these procedures have been invoked on the basis of other information, the Head Teacher or the teacher may quote such a report in the evidence presented at a formal hearing.
- (f) Nothing in these procedures shall prevent the teacher's representative approaching the head teacher or Chief Education Officer as appropriate to discuss a possible alternative course of action. The advice of the LEA should be obtained in such cases.

- (g) All teachers should have the right to inspect a copy of the procedures. A copy should be readily accessible in the 'Notes for Guidance: Teaching Staff'.
- (h) At any stage in these procedures a teacher is entitled and is recommended to seek advice from his or her union or professional association.
- (i) Schools are recommended to use the competence procedure previously adopted for all staff for dealing with the capability of support staff.
- (j) Where schools have failed to follow the Authority's advice and are challenged in an employment tribunal or other courts, the Authority reserves the right to require governing bodies to meet any costs arising from the employment tribunal or court proceedings as a charge to the school's budget share.

2. IMPLEMENTATION OF FORMAL ACTION

- (a) At all stages in these procedures the teacher should receive appropriate support and/or training to help towards the achievement of an acceptable level of capability. Observations on the teacher's performance between meetings, including any documents such as notes on lessons observed, should be shared with the teacher at the earliest possible opportunity to ensure that the teacher shall be given the opportunity to respond to the observations.
- (b) The thirteenth week is calculated from the date of the first meeting, e.g. if the meeting is held on a Wednesday, the working week is deemed to start on the Thursday.
- (c) Meetings may be held outside of term time by agreement with all parties.
- (d) Nothing in these procedures shall prevent all parties agreeing to meet informally between formal meetings.
- (e) It is recommended that an appropriate adviser(s) from the Local Education Authority be invited to monitor the teacher's work. Consideration shall be given to the views of the teacher's representative when deciding on the appropriate adviser(s).
- (f) If at the second meeting under the formal stage, a teacher's performance remains a cause for concern then consideration should also be given to a different balance of duties or alternative posts, but such consideration would not normally be appropriate in respect of a head teacher who is the subject of these procedures.

3. HEAD TEACHERS

- (a) The School Standards and Framework Act 1998 (Schedule 16) states that where the authority has any serious concerns about the performance of the head teacher of the school it shall make a written report of those concerns to the chairperson of the governing body at the same time sending a copy to the head teacher and that the chairperson of the governing body shall notify the authority in writing of the action which s/he proposes to take in the light of the report. In determining whether to make such a report the authority is required to have regard to any guidance given from time to time by the Secretary of State. This guidance is currently contained in the Code of Practice on LEA-School Relations.
- (b) It is possible that serious concerns about a head teacher's performance may be expressed by members of the governing body, or persons outside the school, rather than by the Authority or that the Authority may have concerns which are real but not serious within the definition of the School Standards and Framework Act. These procedures are designed to deal with such possibilities.
- (c) The Governing Body as a whole should not consider the concerns in any detail so as to avoid its members becoming prejudiced and thereby be precluded from action should this become necessary. Any concerns over the Head Teachers performance should therefore be raised directly with the Chair of Governors.
 - (d) The Chair of Governors should inform the Head Teacher in writing that he/she is referring concerns about the Head Teacher's performance to the CEO and indicate the areas of concern.
- (e) The Governing Body should be informed that the Head Teacher is being supported through the capability procedures but should not consider the details of any concerns. An LEA Adviser will attend Governing Body meetings in these circumstances.
- (f) This procedure does not restrict the power of the chairperson (or vice-chairperson) of the Governing Body to act in a case of urgency in accordance with the Education (School Government) (England) Regulations 1999 as amended.
- (g) It is expected that the Chief Education Officer will designate a senior officer, under paragraph 7.2 – 7.7 above, to act on his/her behalf. In making this designation the Chief Education Officer will have regard to the deployment of senior officers in advising the head teacher or governing body on matters

which may come within the scope of these procedures to avoid any conflict of interest.

4. EXCEPTIONAL CIRCUMSTANCES

- (a) The LEA strongly recommends that no action is taken under this Section of the procedures without prior discussion with appropriate named officers in the LEA. If action is then taken in accordance with this Section of the procedures the LEA's written advice may be available on request to any of the parties.
- (b) For the purposes of this Section exceptional circumstances will only be appropriate where the reason is substantial enough to satisfy the test of fairness as determined by the Employment Tribunals. Advice should be sought from LEA personnel staff on this point.
- (c) The teacher must be performing their full range of duties during the four week review period.
- (d) An appropriate adviser(s) from or nominated by the Local Education Authority should normally be invited to monitor the teacher's work. The views of the teacher's representative will be taken into account when deciding on the appropriate adviser(s).
- (e) Sudden deterioration in performance may well be attributable to other factors which may not be appropriate to these procedures. It is particularly important, before implementing Exceptional Circumstances, to investigate under Section 3 (Stage 1) of these procedures any possibility that the deterioration is due to ill health and advice should be obtained from the LEA on this matter at that stage.

5. ARRANGING MEETINGS AND HEARINGS

Where possible, arrangements for meetings should be made in consultation with the teacher and his/her representative. Where this is not possible the teacher may be given notice of the date of the meeting or hearing. Where the teacher's representative cannot attend on the date proposed the teacher can offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the date proposed by the employer

6. DISMISSAL AND APPEAL HEARINGS

The Governing Body will have an established Staff Dismissal and Appeals Committee in accordance with the School Government Regulations. Both Committees will normally have a minimum of three members and the Appeals Committee must have no fewer members than the Staff Dismissal

Committee. Where, in exceptional circumstances, membership of the Staff Dismissal Committee has to be reduced to two members the Appeals Committee, considering a determination that a person employed to work at the school ceases to work there, must consist of at least three members.

It is preferable that governors who hear an appeal from a teacher against a formal capability warning shall not be members of a Staff Dismissal Committee or Appeals Committee determining whether the teacher concerned should cease to work at the school. It is recognised that this may be difficult to achieve and therefore the Appeals Committee hearing an appeal against the issuing of a formal capability warning may consist of two governors.

The proceedings of the committees should be organised and recorded by the clerk to the governing body.

The head teacher is entitled to attend any of these meetings.

The Chief Education Officer (or his/her representative) will be entitled to attend any meeting of the governing body (or committees of the governing body) which may relate to a determination that a teacher should cease to work at the school, for the purpose of giving advice.

The procedure to be followed at the hearings will be in accordance with hearings convened under the Model Disciplinary Procedures adopted by the school.

7. GENERAL TEACHING COUNCIL

The employer is required by government regulation to refer a teacher to the General Teaching Council if

- (a) the employer has dismissed a teacher on the grounds of incompetence; or
- (b) a teacher has resigned in circumstances where the employer would have dismissed him/her or considered dismissing him/her, had he/she not resigned, on such grounds.

PROCEDURES FOR CASES OF ALLEGED LACK OF STAFF SKILLS AND/OR APTITUDE IN COUNTY SCHOOLS WITH DELEGATED BUDGETS (recommended for use with support staff)

1 INTRODUCTION

- 1.1 The following procedures have been adopted by the governing body of Somerville Primary School to apply to any person employed to work at the school.
- 1.2 The procedures are distinct from the disciplinary procedures and from the rights of employees under the separate grievance procedure which the governing body has established in accordance with paragraphs 6(1) and (2) of Schedule 3 of the Education Reform Act 1988.
- 1.3 These procedures are subject to any arrangements made within an agreed national framework for the appraisal of teachers.
- 1.4 These procedures do not apply to probationary teachers whose competence will be assessed by the Local Authority in accordance with Schedule 6 of the Education (Teachers) Regulations 1989.
- 1.5 The procedures will be applied in accordance with the Instrument and Articles of Government of the school and in accordance with Section 10 of the Advisory, Conciliation and Arbitration Service's Code of Practice No 1 'Disciplinary practice and procedures in employment'.
- 1.6 In these procedures:
 - the 'Local Education Authority' or the 'Authority' means Birmingham City Council acting in its capacity as a Local Education Authority;
 - references to the Chief Education Officer include any other officer designated by him;
 - 'employee' means a person employed to work at the school.

Notes

- (a) These procedures relate solely to lack of skills and/or aptitude. They do not extend to incapability or poor performance arising from ill health or from urgent personal circumstances which can be distinguished from the employee's normal performance. Skills and aptitude enable

the employee to perform satisfactorily given appropriate support, supervision and training.

- (b) Although the Education Reform Act 1988 does not require a governing body to establish formal procedures specifically to deal with this aspect of capability, such procedures are very useful in improving the performance of employees who are experiencing difficulties and are therefore commended to governing bodies as good employment practice. Moreover, in an exceptional case of irredeemable incapability which had resulted in dismissal, the evidence arising from such procedures would be very useful to a governing body in defending its actions in an industrial tribunal.
- (c) If an employer's stated procedures are not followed, a claim for unfair dismissal is likely to be upheld by an industrial tribunal.
- (d) Further guidance on dismissal is given in the relevant section of the Authority manual of guidance to schools with delegated budgets.
- (e) All employees should have the right to inspect a copy of the procedures. A copy should be readily accessible in the school office. It is also helpful to display copies on notice boards in the school where employees meet together.

2 INFORMAL DISCUSSIONS

- 2.1 As part as their acknowledged management responsibilities, and as part of arrangements for supervision, support and training, head teachers may from time to time discuss aspects of skills and/or aptitude with an employee. Such discussions will take place on an informal basis and should not be constrained by, or come within, the scope of these procedures, nor shall counselling and advice given in this way count as warnings within the scope of these procedures.
- 2.2 However, the failure of the normal arrangements for maintaining or improving an employee's skills and/or aptitude will be grounds for invoking these procedures.
- 2.3 If the head teacher feels that it is necessary to record informal discussions with an employee about aspects of competence, such a written record shall be in the form of an aide memoire and a copy of it shall be given to the employee concerned.

Notes

- (a) Informal discussions should not be recorded on the employee's personal file. Any aide memoire should be filed separately.

3 INVESTIGATIONS

- 3.1 Before any action is taken in respect of an employee in accordance with paragraph 4 of these procedures, the head teacher shall investigate fully the circumstances of the alleged lack of skills and/or aptitude. This investigation should seek to establish all the facts and collect relevant, supporting documents, including statements from witnesses where appropriate.
- 3.2 In particular, the head teacher must ascertain whether the poor performance is attributable to other factors. If this proves to be the case, no further action will be taken under these procedures.
- 3.3 If the investigation requires information from pupils the head teacher should follow the arrangements set out in the Authority's procedures for dealing with the allegations of sexual assault made by pupils, regardless of the nature of the situation about which information is required.
- 3.4 Having gathered as many facts as possible the head teacher shall decide whether the facts
- do not warrant further action; or
 - amount to a situation which should have been dealt with under the normal arrangements for staff supervision and support and for which such arrangements should now be made;
 - warrant further action in accordance with paragraph 4 of these procedures.
- 3.5 Where an employee is on sick leave, the illness being unconnected with skills or aptitude, or is on other authorised absence, a meeting or hearing under these procedures shall not proceed during that absence unless the employee is able to attend or decides that his/her nominated representative can attend on his/her behalf.

Notes

- (a) In addition to ascertaining the facts about alleged lack of skills and/or aptitude, a check should also be carried out on the school's management role in relation to the normal arrangements for staff supervision and support.

ARRANGEMENTS FOR HELPING EMPLOYEES IMPROVE THEIR COMPETENCE

- 4.1 The head teacher shall draw the employee's attention to the areas of concern and shall invite the employee to a meeting, at reasonable notice, at which the employee may be accompanied by a friend or representative of the employee's choice. The purpose of such a meeting shall be
- (a) to define those skills and/or area of aptitude which are a matter of concern;
 - (b) to allow the employee or the employee's representative to express views and/or offer an explanation;
 - (c) to determine a programme of action designed to improve skills and/or aptitude; and
 - (d) to draw the employee's attention to the existence of this document and to supply a copy of it.

Under (c) the head teacher may decide to arrange for direct supervision of the employee's work for a specified period and in this event shall inform the employee of the nature and duration of such supervision.

- 4.3 After a period of not less than twelve and not more than twenty-four full working weeks a further meeting will be held to review progress, at which meeting the employee may be accompanied by a friend or representatives of the employee's choice. The employee or the employee's representative will again have the opportunity to comment upon his/her performance. At the meeting the head teacher shall either
- (a) decide that performance has improved to the point where no further action is necessary; or
 - (b) extend or modify the programme of action designed to improve performance; or
 - (c) decide that the lack of skills and/or aptitude is serious enough to warrant a formal hearing in accordance with paragraph 5 below.
- 4.4 In the event of 4.3(b) above, the terms of paragraph 4.3 shall be repeated no more than twice at which point either 4.3(a) or 4.3(c) shall be the decision.

- 4.5 In the event of any warning under 5 below there shall follow a period of not less than twelve full working weeks during which the work of the employee shall be supervised directly by a more senior and appropriately experienced person. In the case of a teacher an appropriate Adviser from the Authority shall be invited to monitor the teacher's work and shall provide the teacher with written advice and comment.
- 4.6 In exceptional circumstances, where the interests of pupils are deemed to be at risk, consideration may be given to variations in this part of the procedures or in the intervals between the stages in 4.3 and 4.4 above. This consideration should include consultation with the employee's recognised union or professional association.
- 4.7 In very exceptional circumstances, consideration may be given to suspending the employee in accordance with paragraph 7 of schedule 3 of the Education Reform Act 1988 and paragraphs 5.4 to 5.7 of the disciplinary procedures.
- 4.8 At all stages in these procedures the employee should receive appropriate support and/or training to help towards the achievement of an acceptable level of skill and aptitude.
- 4.9 In appropriate cases and at the discretion of the Chief Education Officer, suitable alternative employment may be offered if this is available.

Notes

- (a) In arranging additional direct supervision of support staff where there is no suitable person available at the school, the head teacher should seek advice from appropriate personnel in the Education Department.

5 PROCEDURES FOR A FORMAL HEARING

- 5.1 A formal hearing under paragraph 4.3(c) above shall follow the procedures set out in the disciplinary procedures (paragraph 6).
- 5.2 The head teacher will refer to the governing body's first committee
- all cases of alleged gross lack of skills and/or aptitudes
 - any case of alleged lack of skills and/or aptitude where an employee is in receipt of a current final written warning

- any other cases of alleged lack of skills and/or aptitude where the head teacher considers the case is sufficiently serious to warrant such a referral.

All other cases shall be dealt with by the head teacher or by the deputy head teacher who is acting as head for the time being.

- 5.3 If the alleged lack of skills and/or aptitude is substantiated at the hearing one of the sanctions permitted under the disciplinary procedures shall be selected in accordance with those procedures (paragraph 7).
- 5.4 There may be cases in which an employee is simultaneously the subject of allegations under these procedures and allegations of misconduct. If the allegations are related, advice should be sought on how to proceed; otherwise they should be dealt with separately under the respective procedures.

Notes

- (a) Joint hearings of allegations under these procedures and misconduct must take place in accordance with the governing body's disciplinary procedures because the governing body is obliged by Schedule 3 of the Education Reform Act to have such procedures and follow them in any cases involving misconduct.

6 APPEALS

- 6.1 Appeals shall be heard in accordance with the arrangements set out in the disciplinary procedures (paragraph 8).

7 HEAD TEACHERS

- 7.1 Any allegations about lack of skills and/or aptitude on the part of a head teacher shall be referred, through the chairman of the governing body, to the Chief Education Officer for investigation. If the Chief Education Officer finds that there is a case to answer he shall proceed in relation to the head teacher as the head teacher acts in relation to an employee under these procedures.

8 UNION OFFICERS

- 8.1 Normal standards of capability and normal procedures should apply to employees who are trade union officials, except that no action will be taken until the circumstances of the case have been discussed with a senior trade union representative or full-time official.

- 8.2 Where an employee chooses to be accompanied or otherwise assisted by a representative from a recognised trade union, the head teacher, or the clerk to the governing body as the case may be, will seek to arrange meetings, hearings, etc, in consultation with the trade union.

Notes

- (a) This section of the procedure is designed to help the governing body demonstrate that it has no intention of contravening legislation which safeguards the rights of employees in relation to trade union membership and of trade union officials in relation to trade union membership and activities.

3 Grievance procedures

- 3.1 The School Staffing (England) Regulations 2003 require the governing bodies of schools with delegated budgets to establish procedures by which staff may seek redress for any grievance relating to their work at the school. The authority has commended a model grievance procedure to the governing bodies of community, community special, voluntary controlled and maintained nursery schools with delegated budgets. The model procedure is reproduced in the following pages.
- 3.2 The authority's guidance on the conduct of hearings applies to these procedures
(<http://ebriefing.bgfl.org/index.cfm?p=&showAll=y&showDesc=1&start=121&z=20060802103330849>)
- 3.3 Voluntary aided schools and foundation schools control their own grievance procedures. Most church voluntary aided schools are advised to adopt model procedures prepared by the relevant diocesan authorities. Non-denominational voluntary aided schools adapt for their own use one of the church procedures or the authority's model.
- 3.4 Schools may seek advice on the application of grievance procedures from the Employee Relations Team. Advice will include the implications of the statutory dispute resolution regulations.

RECOMMENDED GRIEVANCE PROCEDURES FOR COMMUNITY, COMMUNITY SPECIAL, VOLUNTARY CONTROLLED AND MAINTAINED NURSERY SCHOOLS

1. INTRODUCTION

- 1.1 The following procedures have been adopted by the governing body of Somerville Primary School in accordance with the requirements of paragraphs 6(1) and (2) of Schedule 3 of the Education Reform Act 1988. They apply to all staff employed to work at the school.
- 1.2 The procedures will apply to grievances, that is, situations where employees are aggrieved on any matter arising out of their employment. The only subjects excluded from consideration are discipline, which is covered by separate procedures, and matters relating to national insurance, income tax and rules of pension schemes.
- 1.3 A collective dispute occurs where more than one employee has the same grievance against the same person(s) or body. The procedure set out below should apply to collective disputes as appropriate.
- 1.4 The procedures do not affect the rights of employees under the separate disciplinary procedures which the governing body has established under paragraphs 6(1) and (2) of Schedule 3 of the Education Reform Act 1988.
- 1.5 A grievance against the Local Education Authority or against an officer of that Authority is a matter for the Authority or the Chief Education Officer to determine in accordance with such procedures as they may devise.
- 1.6 Employees' grievances can arise from a variety of sources. They can be of a relatively simple nature or of fundamental importance. These procedures are designed to enable a grievance to be resolved informally wherever possible. Where informal procedures are inappropriate or have failed, provision is made for formal procedures. The overall aims are to settle the grievance fairly, simply and quickly and as near as possible to the point of origin.

2. EMPLOYEES OTHER THAN HEAD TEACHERS

Informal Procedures

- 2.1 Where a person employed to work at the school has a grievance which is against another employee or employees at the school and wishes to pursue that grievance, he/she will first endeavour to resolve

the matter by a direct approach to the employee(s) involved or by discussions with the head of department, supervisor or other appropriate senior member of staff, including, if necessary, the head teacher.

- 2.2 Where a person employed to work at the school has a grievance with a governor or governors of the school or with the local authority which does not involve any other employee at the school and wishes to pursue that grievance, he/she will first endeavour to resolve the matter by a direct approach to the governor(s) or the appropriate officer of the local authority.
- 2.3 Where an employee requests a personal interview with the head of department, supervisor or other appropriate senior member of staff or head teacher, it will be granted within five working days of the request being made unless this is impossible due to sickness or other unavoidable absence.
- 2.4 The head of department, supervisor or other appropriate senior member of staff or the head teacher, as the case may be, will seek to resolve the problem personally. With the consent of the employee who has raised the grievance there may be consultation with other persons employed to work at the school, or, through the head teacher, with the chairman of the governing body, officers of the local authority, representatives of recognised trade unions and professional associations as may be thought appropriate.

Formal Procedures

- 2.5 Where the matter has not been resolved under any of the procedures in 2.1 to 2.4 above, the employee concerned should submit a formal, written notice of the grievance to the head teacher or the Chief Education Officer as appropriate to the nature of the grievance, with a copy to the person against whom the grievance lies if that person is other than the head teacher.
- 2.6 The head teacher who receives such a notice will thereupon make a formal, written report to the chairman of the governing body.
- 2.7 Where a formal report is made to the chairman of the governing body, he/she will seek to settle the problem. All relevant documents will be submitted to him/her by the parties concerned and he/she will allow those parties, if they so wish, to make submissions in person. The employee who has raised the grievance may be accompanied by a friend or by an official representative from a recognised trade union or professional association. This meeting will take place within ten working days of the formal report being sent to the chairman of the

governing body, unless this is impossible due to sickness or other unavoidable absence.

- 2.8 Where the grievance lies with the local education authority the authority's grievance procedures will apply.
- 2.9 There will be a right of appeal on the part of any employee who raises a grievance formally. If the appeal is against the handling of the grievance by the local authority alone the appeal will be to such person or body as the local authority may determine. Otherwise the appeal will be to the appeal committee of the governing body, constituted under the Education (School Government) Regulations, 1989.
- 2.10 The clerk to the governing body will advise the employee of the procedure for the appeal hearing, reminding the employee of the employee's rights at the hearing, including the right to be accompanied by a representative or a friend, and the action which the appeal committee may take.
- 2.11 The clerk to the governing body will arrange an appeal committee hearing as quickly as possible. The employee should be given reasonable notice of the date, time and venue of the appeal hearing.
- 2.12 The governing body's appeal committee will have regard to any guidance issued from time to time by the local education authority on conducting an appeal hearing.
- 2.13 There will be an opportunity for the employee, or the employee's representative, to comment on any new evidence arising during the appeal before any decision is taken.
- 2.14 The appeal committee may dismiss the appeal, uphold the appeal or modify the action which the head teacher or the chairman of the governing body proposed to take to resolve the grievance.
- 2.15 The appeal committee may announce its decision to the employee in person or subsequently in writing as it may determine. An oral announcement shall be confirmed in writing by the clerk to the governing body within ten working days of the hearing.
- 2.16 (OPTIONAL)
The governing body will provide a further right of appeal to an independent person or body constituted as follows and will abide by the decision of that person or body:-

3. HEAD TEACHERS

Informal Procedures

- 3.1 When a head teacher has a grievance he should first endeavour to resolve the matter by a direct approach to the person(s) concerned.
- 3.2 Where the matter remains unresolved the head teacher should discuss it with the chairman of the governing body or with the Chief Education Officer or his representative, according to the nature of the grievance.

Formal Procedures

- 3.3 Where the matter is not resolved under 3.1 and 3.2 above the head teacher should submit a formal, written notice of the grievance to the clerk to the governing body or to the Chief Education Officer, according to the nature of the grievance.
- 3.4 Where the grievance lies with the governors a meeting of the governing body's grievance panel will be arranged by the clerk to the governing body within ten working days. The head teacher will be entitled to be accompanied by a friend or by a representative of his/her trade union or professional association.
- 3.5 Where the grievance lies with the local education authority the authority's grievance procedures will apply.
- 3.6 The head teacher will have a right of appeal as set out in 2.9 to 2.16 above.

4 Anti harassment policy and procedure

- 4.1 The authority, after consultation with the teachers' associations and other unions, published in 2002 a model anti harassment policy and procedure, reproduced in the following pages. This deals with all kinds of harassment and replaced the 'Management Strategies for Dealing with Sexual Harassment in Schools', approved by the Education (Policy and Finance Sub-) Committee in July 1988. The 2002 procedure is currently under review and a revised version will be published in due course. The Employee Relations Team will give support either in interpreting the policy and procedure or on an individual casework basis.
- 4.2 The authority's guidance on the conduct of hearings applies to these procedures
(<http://ebriefing.bgfl.org/index.cfm?p=&showAll=y&showDesc=1&start=121&z=20060802103330849>).

BIRMINGHAM CITY COUNCIL EDUCATION SERVICE
PERSONNEL & EQUALITIES DIVISION

MODEL ANTI HARASSMENT POLICY AND PROCEDURE

1. Introduction.

- 1.1 The Governing Body of Somerville Primary School has adopted this policy and procedure in order to promote positive working relationships where all employees feel free to develop their abilities to the full. To this end, it is committed to achieving a working environment which is free from harassment. The Governing Body will ensure that prompt and appropriate action is taken to deal with any complaints, which come under the purview of this policy, including where there is a possibility of victimization for making or otherwise being involved in a complaint.
- 1.2 This policy reflects the Birmingham City Council Policy and Procedure, agreed with the Trade Unions at the Personnel (Joint Consultations) Sub-Committee (23rd June 1998). It recognizes that discussions with the Trade Unions are on going and attempts to reflect that within this policy.
- 1.3 This policy is adopted from a period of approximately 18 months to end 30 April 2004. The LEA will carry out a review of the policy with the Trade Unions in approximately 12 months and in any case no later than the autumn term 2003.
- 1.4 During that review, account will be taken of any developments agreed between the Trade Unions and Birmingham City Council.
- 1.5 This policy and procedure will be applied in accordance with the Instruments and Articles of Government of the school and any of the statutory provisions, which may apply from time to time.
- 1.6 The Governing Body is responsible for ensuring that the policy and procedures are implemented as part of the normal arrangements for the management of the school. The policy and procedure must be drawn to the attention of all staff at the school. All individuals must comply with this policy and procedure.
- 1.7 The Head teacher and Governing Body are responsible for the elimination of harassment and bullying of staff employed at the school and therefore for the conduct of any investigation which takes place after an allegation has been made. The role of the Education Service is to provide help and support to allow schools to identify unacceptable behaviour, to deal with it effectively, thereby enabling the working environment to be a happy and fulfilling place.
- 1.8 Any employee who is subject to harassment during his/her employment may initiate action under this policy. The Trade Unions have a key role to play at all stages when complaints are made and staff have a right to consult their Union at any stage of the process.

2. The Purpose

2.1. In its Equal Opportunity in Employment Policy Statement, the City Council and the LEA state their commitment to eliminating unlawful discrimination and the promotion of equality of opportunity in employment. The Purpose of this policy and procedure is to deal with discrimination and harassment, which can be a form of discrimination.

3. The Policy

3.1 The City Council wants to promote positive working relationships where all employees feel free to develop their abilities to the full.

3.2 The City Council is committed to achieving a working environment free from harassment. This policy covers not only those aspects of harassment for which there is statutory protection but also bullying (see Appendix 1).

3.3 Racial Harassment is unwanted conduct of a racial nature or other conduct based on race affecting the dignity of women and men at work. This can include unwelcome physical, verbal and non-verbal conduct.

3.4 Sexual Harassment is unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This can include unwelcome physical, verbal and non-verbal conduct.

3.5 Harassment on the grounds of sexuality is unwanted conduct on the grounds of an employee's sexuality which affecting the dignity of women and men at work. This can include unwelcome physical, verbal and non-verbal conduct.

3.6 Harassment on the grounds of disability is any behaviour on the grounds of an employee's disability that affect the dignity of women and men at work. This can include unwelcome physical, verbal and non-verbal conduct.

3.7 Harassment creates an intimidating and unpleasant atmosphere at work which affects an employee's health, safety and welfare and prevents employees contributing effectively to the organisation. The City Council, the LEA and the School Governors take any harassment seriously and will provide formal and informal methods for resolving the problems it creates. Complaints will be handled sensitively and employees will be protected against victimization for making or being involved in a complaint.

4. The Law.

Harassment can amount to unlawful discrimination under the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995. Claims of harassment under this legislation can be brought against the alleged harasser and against the employer. An employer is liable for the discriminatory acts of employees acting in the course of their employment, whether or not they are done with the employer's knowledge or approval unless they are able to show that they took all reasonably practical steps to prevent employees carrying out unlawful discrimination. Employers are expected to have taken steps to prevent harassment. Additionally harassment can be a crime (the criminal Justice and Public Order Act 1994 and the Protection from Harassment Act 1997) – See Appendix 3.

5. THE PROCEDURE FOR DEALING WITH COMPLAINTS.

5.1 This procedure is designed to deal with harassment by employees of the school. Other complaints should be raised through the appropriate process. (See Appendix 2).

5.2 Role of Witnesses

5.2.1 An employee who witnesses behaviour, which they deem to be inappropriate (and which in their view may constitute harassment or bullying) should initially discuss the matter with the person they believe is being harassed. The decision whether to pursue the matter further normally remains with the person subjected to the alleged harassment but in the event of repeated harassment of the same person or a single incident of extreme seriousness the individual should report the matter to their line manager or in the cases of harassment by the Head teacher to the Chair of Governors. It could also be appropriate at this stage to discuss the situation with their Trade Union who can offer advice.

5.3 Informal Action.

5.3.1 The purpose of the informal stage is to bring the matter to the attention of the alleged harasser and to give them an opportunity to change their behaviour. At any stage in this procedure the employee may contact their Trade Union.

5.3.2 It is preferable for all concerned to try to resolve matters informally if at all possible. This is likely to produce solutions, which are speedy, effective and restore positive relationships in the workforce. It will also help to minimize embarrassment and the risk of breaching confidentiality.

5.3.3 Wherever possible, employees should tell the person who is causing the problem that the conduct in question is unwanted and/or offensive and must stop. This is a positive step and may help to resolve the situation.

5.3.4 Individuals may wish to ask for support in bringing the matter to someone's attention. This should be a matter of personal choice but could include their line manager, a colleague, or Trade Union representative. Such approaches may be particularly helpful where the complaint is about the employee's Head teacher.

5.3.5 At this stage, so as not to prejudice any subsequent action, Governors should not be approached.

5.3.6 The role of an intermediary in these circumstances is non-judgmental.

5.3.7 Mediation may also be appropriate at this stage and a request should be made via their line manager.

5.3.8 Consideration of Further Action. The benefits of informal solutions should not discourage employees subject to harassment from using formal procedures where they prefer that option. Furthermore, there

will be some instances where the seriousness of the complaint warrants formal action, and possible criminal proceedings. Formal proceedings maybe appropriate where a previous attempt at informal resolution has proved unsuccessful.

- 5.3.9 All parties are entitled and encouraged to keep a record of incidents and actions taken throughout this procedure by the use of aide-memoire and should keep this information safely.

5.4 Formal Action

- 5.4.1 If the employee decides to raise the matter formally then contact should be made with the Head teacher. The complainant should identify the harasser, identify the behaviour which is unacceptable and the allegation should be put in writing. If the complaint is about a Head teacher see section 7.3.
- 5.4.2 The Head teacher in exceptional circumstances (e.g. where there are Health and Safety issues) may request both parties to agree to remain off work, as paid leave of absence, until advice from Personnel and Equalities has been received on how to proceed.
- 5.4.3 The Head teacher will then follow the procedure outlined below immediately:
- a) acknowledge the complaint in writing (and refer to the date of receipt)
 - b) inform and seek advice from the Personnel and Equalities Division
 - c) consider whether to re-arrange work so that contact between the parties is minimized
 - d) offer mediation and make arrangements where this is agreed by both parties
 - e) if mediation is not agreed or is unsuccessful decide whether to conduct the investigation him/herself or ask a senior nominated member of staff to carry it out
 - f) investigate the matter formally (at this stage it is appropriate to consult the Disciplinary Procedure for advice on how to conduct an investigation and advice should be sought from the Personnel & Equalities Division).
- 5.4.4 Where an investigation takes place, the Head teacher can ask for the advice and/or participation in the investigation of other senior members of staff where appropriate.
- 5.4.5 The investigation must be objective and handled with sensitivity and due respect for the rights of both the complainant and the alleged harasser, who will both be entitled to representation by a trade union, colleague or friend of their choice.
It is essential that at the start of any formal investigation the Headteacher or Investigating Officer inform the alleged harasser of the details of the allegation in writing.
- 5.4.7 The individual against whom the complaint has been made is entitled to respond in writing and/or by an interview before a decision is

taken to refer the matter to a Disciplinary Hearing. If the person against whom the allegations are made chooses to respond in writing the investigator may write back to seek clarification on certain points.

5.4.8 If there are witnesses to the allegations they should be encouraged to provide a statement, which should be signed and dated wherever possible.

5.4.9 The investigation should be completed as quickly as possible, and within the following time-scales: 5 working days to identify an investigating officer, 20 working days for the investigation to be completed and 5 working days to produce the report. If it proves impossible to adhere to these time-scales then the investigating officer should report the matter to an Employee Relations Officer in Personnel and Equalities Division, who will consider what action can be taken to expedite the investigation.

5.4.10 The Head teacher will then decide from the results of the investigation that one of the following options is appropriate:

- a) the case does not warrant further action
- b) that standards for future conduct need to be set, which could involve training
- c) warrant a hearing in accordance with the disciplinary procedures, including where appropriate, the need to suspend the member of staff. (See section 9).

5.4.11 The Head teacher will notify all concerned promptly and in writing, within five working days of the results of the investigation and be prepared to discuss the decision with either party.

5.4.12 Mediation may be offered again to both parties unless the outcome of the investigation is (c) i.e. warrants a disciplinary hearing.

5.5 Malicious Allegation. The fact that an allegation has not been substantiated does not mean that it is malicious. In order for it to be deemed malicious there would have to be independent corroboration, for example, evidence of the falsification of information. Nevertheless, there may be exceptional cases in which the allegations of harassment are, in the opinion of the investigator, thought to be malicious. In such cases the investigator should refer his/her concerns to a Senior Officer of Personnel and Equalities for further advice. If, following further investigation, the latter shares this view then all parties will be informed and it should be noted that allegations deemed to be malicious could result in recourse to the disciplinary procedure.

Appeal

If either party is dissatisfied with the conduct of the investigation and/or the decision to follow either option (a) or (b) in Section 5.4.10 they have the right, following consultation with their Trade Union where appropriate, to refer the matter to a sub-committee of the Governing Body. The aggrieved

party must put their reason for appealing in writing (together with any supporting documentation). This right of appeal must be taken up within ten working days from receipt of the report.

In exercising this right they may ask for their case to be reviewed by a Review Body (RB) as constituted in Appendix 4. This will be arranged by the Appeals Sub-committee.

At the conclusion of its investigation (see Section 5.4.9 and Appendix 4 for guidance on time-scales) the RB will present its findings to the sub-committee. The report will then be made available to the aggrieved party and respondent. If the appellant wishes to pursue the matter further they should notify the Appeals Sub committee within 5 working days of receiving the report that they wish to make representations to a further meeting of the committee.

7 Head teachers

7.1 Harassment of Head teachers. Head teachers who are harassed should seek advice from Schools Management Support who will make appropriate recommendations to try to resolve the matter without the need to move to the formal stage of the procedure.

7.2 Complaint from a Head teacher. If a complaint is received from a Head teacher then the Chair of Governors will acknowledge the complaint in writing and will seek advice from Schools Management Support.

7.3 Complaint against a Head teacher. If a complaint is made against a Headteacher then the Chair of Governors will refer the matter to a designated officer in Schools Management Support who will arrange for the matter to be investigated. The procedure outlined in Section 5.4 should be followed as appropriate. It must be borne in mind that the need to maintain impartiality is paramount. The complainant should seek the advice of their trade union. At the conclusion of his/her investigation (see Section 5.4.9 for guidance on timescales) the Officer will present his/her findings to the Chair of Governors. The Chair of Governors will decide what action to take in accordance with 5.4.10. S/he will notify the investigating officer of his/her decision in writing.

8 Complaint against a Trade Union Representative (on the staff of the school).

8.1 Normal standards of behaviour should apply to Trade Union representatives. However, complaints against a Trade Union representative can be misconstrued as an attack on the union. In the circumstances of a complaint against a Trade Union representative employed at the school, no action should be taken until the matter has been raised with a full-time official or senior trade union representative or teacher association officer of the relevant union.

9 Suspension

9.1 In certain rare cases where the allegations are sufficiently serious it may be appropriate to consider suspending the individual in accordance with the procedure set out in the School's Disciplinary Procedures. Section 4 of the Model Staff Disciplinary Procedure contains advice on the suspension of staff. It is essential that the Personnel and Equalities Division is consulted for further advice if this is felt to be the case. This does not affect suspension for allegations of gross misconduct under the disciplinary procedure. A decision will have to be taken about the conduct of the investigations under each procedure in these circumstances. It may be that the investigation under the Anti-harassment policy should be held under abeyance until the outcome of the disciplinary investigation is known.

10 Confidentiality

10.1 At all stages of the procedure, the importance of confidentiality will be borne in mind. Attention will be given to considering what information needs to be shared and the way in which this is done.

APPENDIX 1

BULLYING: A GUIDE FOR SCHOOLS, MANAGERS AND EMPLOYEES

1. This Section only relates to bullying which is a particular form of harassment – the bully seeks to humiliate and eventually destroy the person subject to their unfair treatment as the definition below illustrates. In a BBC Information Sheet on “Bullying at Work” Elaine Bennett defined bullying in the following terms:-

“Workplace bullying is intimidation on a regular and persistent basis which serves to undermine the competence, effectiveness, confidence and integrity of the bully’s target. The bully misuses their power, position or knowledge to criticise, humiliate and destroy a subordinate, a colleague or even their own boss.

Bullying is not an occasional spontaneous outburst of anger or, more plainly, just someone losing their temper with you. Bullying is an attack, which you may experience as constant verbal assaults, criticism or even condemnation of your work, which you regard as unwarranted or unfair.

Sometimes the bully is more underhand in their actions and uses more subtle devices to dominate and manipulate.

It is unfortunate that people find it sometimes impossible to call this form of intimidation by its proper name – bullying!”

2. How to Recognise Bullying

- (a) There are a number of signs and symptoms (which may be combined) you may be able to recognise, for example:-
- (b) Signs in the Bully
 - Shouting and uncontrolled anger often over comparatively trivial matters.
 - Difficulty in delegating and believing that no one else can do the job as well.
 - Impossible deadlines being set, instructions that are changed without notice so that failure seems inevitable.
 - Taking credit for other people’s ideas and work but never accepting responsibility and being only too willing to blame when things go wrong.
 - Persistent criticisms and sarcasm.
 - Ignoring and isolating someone on purpose.
 - Withdrawing or overruling someone’s authority without proper warning or consultation.
 - Continually refusing reasonable requests without good reason; blocking promotion; cancelling holiday leave at unreasonably short notice.

- Thinking you are always right and liking to keep everything and everybody under your control.

(c) Signs in the Organisation of a Bully

- Rapid staff turnover; rising sickness and absenteeism rates.
- Departments or Sections losing effectiveness.
- Lack of motivation, low morale and loss of respect for management.

3. How Bullying can affect the Individual

Being bullied at work can be highly stressful for the individual and cause both physical and emotional problems, for example:-

Emotional Symptoms

Feeling that whatever you do is belittled
Worry, anxiety or fear
Low self-esteem and feeling that you are not valued
Confusion
Depression
Mood Swings
Lack of motivation
Tearfulness
Anger
Being ultra-sensitive to comments

Physical Symptoms

Feeling Sick
Crying
Disturbed sleep and tiredness
Eating difficulties
Greater use of alcohol, caffeine, nicotine and drugs
Sweating, shaking
Irritable stomach and bowel
Palpitations
Headaches, migraines
Loss of libido
Loss of energy

For further information about Anti-Harassment Policy and Procedure document, please contact Education Service, Personnel and Equalities Division.

APPENDIX 2

COMPLAINTS AGAINST PERSONS NOT EMPLOYED BY THE SCHOOL

Complaint against a pupil

Complaints about the behaviour of pupils should be dealt with by application of the school's Behaviour Management Policy. If the harassment is directed at a member of staff from one of the pupils (or group of pupils) then the Headteacher should be informed and he/she will resolve the matter using the school's Behaviour Management Policy (see Section 4.5).

Complaint against a parent

Complaints of harassment by parents should be referred to the Headteacher who should either address the matter with the parent or seek professional guidance from Schools Management Support. There is legislation that makes it an offence for any person who, without lawful authority, is present on school premises and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises. Before consideration is given to the use of any of these provisions Headteachers should refer to the "Security and Safety Strategy in the Education Service" document for further advice.

Complaints against members of the public

The Security and Safety Strategy in the Education Service should be consulted.

Complaint against a Trade Union Officer (not employed at the school)

Normal standards of behaviour are expected of Union officers. However, where an allegation is made the matter should be referred in writing to the Assistant Director, Personnel and Equalities who will decide if further follow-up action is appropriate and specifically whether it is necessary to refer the matter formally to a Regional or National Officer of the Trade Union concerned.

Complaint against a Governor and/or the Governing Body

All employees should seek the advice of their Trade Union. The Head teacher should be informed and s/he should make contact with Schools Management Support who will advise on what action may be appropriate and if necessary arrange for an investigation to be carried out.

Complaint against another City Council employee not employed at the school

If the harassment comes from an employee of the City Council (not on the staff of the school) the Head teacher should be informed. The Head teacher has a duty to

refer the matter to the relevant line manager of the person against whom the complaint is made who will decide what action to take. The City Council's Anti-Harassment Policy operates in these cases.

APPENDIX 3

THE LEGAL ASPECTS OF HARASSMENT

1. INTRODUCTION

Legislation exists to prevent harassment and bullying at work. This Appendix gives an overview of the legislation that exists in this area. It is emphasised, however, that before consideration is given to using any legislation it is important that the person concerned makes certain that professional advice is obtained.

2. THE RACE RELATIONS ACT 1976 & (AMENDMENT) ACT 2000, SEX DISCRIMINATION ACT 1975 AND DISABILITY DISCRIMINATION ACT 1995

Race Relations. Section 71 of the Race Relations Act 1976 reads as follows:

Without prejudice to their obligation to comply with any other provision of this Act, it shall be the duty of every local authority to make appropriate arrangements with a view to securing that their various functions are carried out with due regard to the need:

to eliminate unlawful racial discrimination; and
to promote equality of opportunity and good relations between persons of different racial groups.

Sex Discrimination Act 1986

The Sex Discrimination Act makes it unlawful to discriminate against someone on the grounds of his or her sex. Sexual harassment is a form of discrimination and is behaviour by one sex, which is intended to embarrass, humiliate or threaten a member of the opposite sex. It can include unwanted physical advances, verbal abuse and even non-verbal gestures or looks. An employer is under a legal obligation to prevent sexual harassment. Complaints of sexual harassment may constitute sex discrimination where it is established that the claimant has been treated in a way which would not have been applied to someone of the opposite sex in the same circumstances, and that this treatment has resulted in some loss such as disciplinary action, dismissal, transfer or failure to promote or to train.

Disability Discrimination Act 1995

The Disability Discrimination Act 1995 makes it unlawful “unjustifiably” to discriminate against an individual with a disability on the grounds of his or her disability in relation to recruitment, promotion, training, benefits, terms and conditions of employment and dismissal.

3. THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT (1994)

The Act introduced a new criminal offence of intentional harassment further information can be obtained from the Equalities unit or employee relations team.

APPENDIX 4

CONSTITUTION OF THE REVIEW BODY

1. The Body constituted to review the findings of an investigation of bullying/harassment shall consist of the following elements:
 - the Chief Education Officer's nominee. This person will Chair any meeting of the RB, write and present any report.
 - A Teacher Association representative or other Trade Union where appropriate. The individual shall have had no prior involvement in the case.
2. If an allegation is concerned with sex and/or race discrimination the panel should consider the composition of the RB to ensure the matter can be dealt with sensitively.
3. The role of the RB is to consider the basis of the appellant's case; to review the evidence from the investigation; to review the process if necessary; to re-interview individuals and take evidence from other people where it deems this appropriate. The RB has no power to exercise disciplinary sanctions.
4. The RB will report its findings to the Appeal Sub-Committee.
5. The Appeals Sub-Committee will issue the report to the aggrieved party and respondent. It can be used in evidence by either party at subsequent proceedings. If the appellant decides to continue with their allegation after the RB finding then they have an individual right to attend a further meeting of the Appeal Sub-Committee.

In those cases where there is a significant difference of opinion the Review Body have the authority to enlist the assistance of a third person to assist with the interpretation of the evidence submitted.

5. 'Whistle-blowing'

- 5.1 The Public Interest Disclosure Act 1998 requires public bodies to have procedures for employees to report certain matters confidentially. School governing bodies count as public bodies for this purpose.
- 5.2 To help governing bodies fulfil their legal obligations the attached model confidential reporting code or policy, commonly known as a whistle blowers' charter, was devised in detailed discussions with the teachers' associations and the City Council's Chief Legal Officer and Monitoring Officer and is commended to governing bodies for adoption. It is based on the City Council's procedures, with appropriate adjustments for schools.
- 5.3 The code is intended to protect individuals, as well as the public interest. To obtain protection under the Public Interest Disclosure Act employees must first disclose information to their employer in accordance with that employer's procedure, hence the need for a procedure or code in schools. Employees uncertain what to do when they have concerns apparently within the scope of the code are advised to consult their trade union or professional association or the independent charity Public Concern at Work.

BIRMINGHAM CITY COUNCIL EDUCATION DEPARTMENT SCHOOLS WHISTLE BLOWING CODE

A. INTRODUCTION

The Code is intended to help employees in or working with or assisting schools maintained by Birmingham City Council who have major concerns over any wrongdoing within such Schools relating to unlawful conduct, financial malpractice or dangers to the public or the environment. Specific examples could include:-

- a criminal offence (e.g. fraud, corruption or theft) has been/is likely to be committed
- a miscarriage of justice has been/is likely to occur
- the health or safety of any individual has been/is likely to be endangered
- the environment has been/is likely to be damaged
- public funds are being used in an unauthorised manner
- the School's Governance arrangements have or are not being observed or are being breached by pupils, staff employed in or those working with or assisting Birmingham Schools
- sexual or physical abuse of any employee or service recipient is taking place (subject to the Child Protection Procedure in the case of children)
- discrimination is occurring to any member of staff or service recipient on grounds of sex, race or disability
- any other form of improper action or conduct is taking place
- information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.

The School's Governing Body, based on advice received from Birmingham City Council's Chief Legal Officer, has issued this Code so as to enable you to raise your concerns about such malpractice(s) at an early stage and in the right way. The

School's Governing Body would rather that you raised the matter when it is just a concern rather than wait for concrete proof.

If something is troubling you, which you think we should know about or look into, please use this policy. If, however, you are aggrieved about your personal position, please use any appropriate Staff Grievance Policy - which you can get from your head teacher. This Whistleblowing Code is primarily for concerns where the interests of others or of the organisation itself are at risk.

If in doubt - raise it!

B. AIMS OF THE SCHOOLS WHISTLEBLOWING CODE

The Code aims to:

- encourage employees in or working with or assisting Birmingham Schools to feel confident in raising serious concerns and to question and act upon their concerns;
- provide ways for employees in or working with or assisting Birmingham Schools to raise those concerns and get feedback on any action taken as a result;
- ensure that employees in or working with or assisting Birmingham Schools get a response to their concerns;
- ensure that employees in or working with or assisting Birmingham Schools are aware how to pursue their concerns and the appropriate steps to take if they are not satisfied with any action;
- reassure employees in or working with or assisting Birmingham Schools that if they raise any concerns in good faith and reasonably believe them to be true, they will be protected from possible reprisals or victimisation.

It is not intended to be used where other more appropriate procedures are available, for example:

- grievances - (see Grievance Procedure)
- harassment - (see Anti-Harassment Policy and Procedure)
- complaints of misconduct against Governors (For further information, please contact Birmingham City Council's School Support Section of the School Effectiveness Division)
- complaints of misconduct against City Councillors (For further information, please contact Birmingham City Council's Chief Legal Officer)
- child protection (see Child Protection procedures)

C. WHO IS COVERED BY THE SCHOOLS WHISTLEBLOWING CODE?

All employees in or working with or assisting Birmingham Schools may use this Code. This includes permanent and temporary employees, and employees seconded to a third party. Any concerns relating to the third party, if relevant to the employee's secondment, can also be raised under this Code.

This Schools Whistleblowing Code has been drafted to help employees in or working with or assisting Birmingham Schools. It is based upon Birmingham City Council's Whistleblowing Code and has been the subject of consultation with the relevant teacher and other professional associations and trade unions.

This Schools Whistleblowing Code will be operative from 1st September 2003 and will be kept under review, on an annual basis, by the Head Teacher and the School's Governing Body.

D. WHAT ASSURANCE DO YOU GET?

If you do raise a genuine concern under this Code, you will not be at risk of losing your job or suffering any form of retribution as a result. Provided you are acting in good faith, it does not matter if you are mistaken. Of course, this assurance is not extended to someone who maliciously raises a matter that s/he knows to be untrue.

The Governing Body and City Council will not tolerate the harassment or victimisation of anyone raising a genuine concern. However, we recognise that you may nonetheless want to raise a concern in confidence under this Code. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. If the situation arises where we are not able to resolve the concern without revealing your identity (for instance because your evidence is needed in court), we will discuss with you whether and how we can proceed.

Remember that if you do not tell us who you are, it will be much more difficult for us to look into the matter or to protect your position or to give you feedback. Accordingly, while we will consider anonymous reports, this policy is not well suited to concerns raised anonymously.

E. WHAT IS THE LEGAL BACKGROUND?

The Public Interest Disclosure Act 1998 (hereinafter referred to as 'the Whistleblowers Act') protects employees against detrimental treatment or dismissal as a result of any disclosure of normally confidential information in the interests of the public. The Act only covers protected disclosures under six categories, namely; crime, illegality, miscarriage of justice, damage to health and safety, damage to the environment, and 'cover-ups' about these issues. To obtain protection employees must first disclose the information to the employer.

Therefore this Code has been adopted to provide an avenue within the School to raise concerns. If an employee takes the matter outside the School, s/he should ensure that no disclosure of confidential information takes place and should take advice, if unsure, as the Public Interest Disclosure Act does not provide blanket protection and could leave employees in or working with or assisting Birmingham Schools vulnerable to disciplinary or other action, if they disclose confidential information in circumstances not covered by the Act.

If you are unsure whether to use this Schools Whistleblowing Code or you want independent advice at any stage, you are advised to contact

- if applicable, your relevant trade union; or
- the independent charity Public Concern at Work on 020 7404 6609. Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

F. HOW SHOULD A CONCERN BE RAISED?

As soon as you become reasonably concerned you should firstly raise the issue with your Head Teacher and/or Chairman of Governors (unless s/he is the potential transgressor, in which case write to the Chief Education Officer, for the attention of the appropriate Schools Support Manager in the School and Governor Support Section, and/or the Chief Legal Officer).

Concerns may be raised orally or in writing. Employees who wish to make a written report should use the following format:

- the background and history of the concern (giving relevant dates)
- the reason why they are particularly concerned about the situation.

G. HOW WILL THE GOVERNING BODY RESPOND?

If the concern is raised orally, the person receiving the information should ask the employee to put it in writing as soon as practicable to ensure that it properly reflects the concerns that have been raised. The employee must also indicate if the concern is to be treated in confidence. The limit of that confidence will be checked out by the person receiving the information.

The relevant person and/or the Departmental Personnel Officer will also ensure that, in the most serious of concerns, the Chief Education Officer and / or the Chief Legal Officer receives adequate details of the employees using this code for the purpose of corporate recording and monitoring purposes.

Once you have told the governing body of your concern, the governing body will look into it to assess initially what action should be taken. This may involve an

internal inquiry or a more formal investigation. You will be told who may be handling the matter, how you can contact him/her and whether your further assistance may be needed. If you request it, the governing body or head teacher will write to you summarising your concern(s) and setting out how it will be handled.

When you raise the concern you may be asked how you think the concern(s) might best be resolved. If you do have any personal interest in the matter, we do ask that you tell us at the outset. Should your concern fall within another policy of the School (for example, the Grievance Policy), we will tell you.

While the purpose of this Code is to enable us to investigate possible malpractice and take appropriate steps to deal with it, we will give you as much feedback as we properly can. If requested, we will confirm our response to you in writing. Please note, however, that we may not be able to tell you the precise action we take where this would infringe a duty of confidence owed by us to someone else.

Concerns or allegations which fall within the scope of specific procedures (for example child protection) will normally be referred for consideration under that relevant procedure. Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.

Where appropriate, the matters raised may:

- be investigated by management, internal audit, the Chief Education Officer, the Chief Legal Officer or through the disciplinary process
- be referred to the police
- be referred to the external auditor
- form the subject of an independent inquiry.

Usually, within two weeks of a concern being raised, the person looking into the concern will write to the person raising the concern:

- acknowledging that the concern has been received
- indicating how the School propose to deal with the matter
- giving an estimate of how long it will take to provide a full response
- saying whether any initial enquiries have been made
- supplying information on support available to you; and

- saying whether further investigations will take place and if not, why not.

Subject to any legal constraints, the relevant employee will normally be informed of the final outcome of any investigation.

H. WHAT SAFEGUARDS ARE THERE FOR THE PERSON RAISING THE CONCERN?

- The Governing Body will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect employees who raise a concern in good faith.
- Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures already taking place concerning the employee.
- No action will be taken against anyone who makes an allegation in good faith, reasonably believing it to be true, even if the allegation is not subsequently confirmed by the investigation.
- Every effort will be made to ensure confidentiality as far as this is reasonably practical.
- Help will be provided to you in order to minimise any difficulties which you may experience. This may include advice on giving evidence if needed. Meetings may, if necessary be arranged off-site with you and for you being represented, if you so wish.

I. HOW CAN A CONCERN BE TAKEN FURTHER?

If you are unsure whether to use this Schools Whistleblowing Code or you want independent advice at any stage, you may contact

- if applicable, your relevant trade union; or
- the independent charity Public Concern at Work on 020 7404 6609. Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

Employees in or working with or assisting Birmingham Schools who are not satisfied with the action taken by the Governing Body and feels it right to question the matter further, may consider the following possible contact points:

- Birmingham City Council's Chief Education Officer and / or Chief Legal Officer
- Birmingham City Council's Internal Audit and/or the District Auditor
- the employee's Trade Union
- the Citizens Advice Bureau and / or law centre / firm
- relevant professional bodies or regulatory organisations
- the Local Government Ombudsman
- the Information Commissioner
- a relevant voluntary organisation
- the Police and/ or Health and Safety Executive.

J. CORPORATE RECORDING & MONITORING

The Governing Body will ensure it has sufficient internal arrangements to address the requirements of the Code, including appropriate support for the Head Teacher in implementing the Code and the Chief Education Officer shall ensure that Personnel Officers are sufficiently trained to support schools in implementing this Code and offer training to Head Teachers.

The Chief Education Officer will maintain a Schools Whistleblowing Register containing all concerns that are brought to his attention. All Head teachers and/or officer(s) allocated to look into the concern arising from or related to a School must ensure the Chief Education Officer is provided with sufficient details of the concern for Birmingham City Council's Corporate Register, which is maintained by the Chief Legal Officer.

The City Council's Monitoring Officer will review the Corporate Register and produce an annual report for the Chief Executive and any other relevant member / officer forum. The report will not mention any employees, only the concerns raised, the number of such concerns, the fact that the concern relates to a school or other education service, and the nature of the job held by the person over whom the concerns were raised (if not confidential). The report will also note any issues arising from the same with the intention of:-

- (a) preventing the occurrence of similar concerns in future; and
- (b) consistency of treatment across schools and the education service.

For the avoidance of doubt, the Corporate Register – along with any annual reports referred to above - will be available for inspection by Internal and District Audit, after removing any items which any employee in or working with or assisting Birmingham Schools has asked should remain confidential.

PROFESSIONAL DEVELOPMENT AND TRAINING

1 Performance management

- 1.1 During 2007 the Education (School Teacher Performance Management) (England) Regulations 2006 will replace the Education (School Teacher Appraisal) (England) Regulations 2001. In the meantime the 2001 regulations will apply. The regulations provide for the management and review of the performance of all teachers, including head teachers, deputy head teachers and unqualified teachers, employed at one or more schools by a local authority or by the governing body of a foundation, voluntary aided or foundation special school. Teachers undergoing statutory induction or capability procedures are excluded. The Regulations also provide for the performance management and review of teachers in pupil referral units and other services managed directly by the local authority. The conditions of employment set out in the School Teachers' Pay and Conditions Document require teachers to participate in their own review and, where so directed, in that of other teachers.
- 1.2 Full guidance on the new regulations will be published on e-briefing as soon as possible.
- 1.3 Guidance on the 2001 appraisal regulations is given below.
- 1.3 The requirement to agree objectives for performance management is separate from the requirement of the School Teachers' Pay and Conditions Document for agreeing objectives in relation to the pay of teachers on the leadership spine, but the Government links the two sets of objectives in its statutory guidance on the Document. However, the external adviser for appraisal of head teachers has no duty to give advice on salary levels for progression up the pay range.

To comply with DfEE regulations, the information in bold italics should not be changed.

MODEL PERFORMANCE MANAGEMENT POLICY

1. Introduction and Rationale

Our definition of Performance Management is where possible:

A process for establishing a shared understanding about what is already in place and what is to be achieved in Somerville Primary School. Our approach to how this is to be achieved is based upon an approach to managing our work which increases the probability of enhancing the professionalism of our staff and therefore the success of our pupils.

(optional for Investors in People schools) This policy will form part of our existing commitment to Investors in People.

As a result of our recognition as /commitment to Investors in People, we involve all staff appropriately in communication, planning, training/development, review and evaluation. We have, therefore, extended the principles of this policy to include all staff.

The following are our key principles.

- i. Fairness. We all need to be aware of the potential for unconscious discrimination and to avoid assumptions about individuals based on stereotypes.
- ii. Equal Opportunity. All staff shall have the opportunity to achieve their potential through agreeing objectives, accessing development and assessing performance.
- iii. Maintenance of distinctive ethos of this school.
- iv. Commitment. The head teacher and Governors are committed to ensuring –
 - ◆ the entitlement of all (teaching) staff to professional development in order that they can make their contribution to the achievements of the School.
 - ◆ that opportunities are provided to develop personal and career aspirations
 - ◆ that all (teaching) staff have access to appropriate and up to date knowledge and skills.
 - ◆ that all (teaching) staff know and understand their own individual contribution to achieving School Plans and what is expected of them in their work (standards, objectives and key tasks) and that teachers are recognised as leaders of learning.
 - ◆ that all (teaching) staff are encouraged to improve their own and others' work and have their contributions and achievements recognised.
 - ◆ that all (teaching) staff are given timely and constructive feedback on their performance
 - ◆ that this policy is implemented.

2. Roles and 2. Responsibilities of Team Leaders (Appraisers)

- ◆ Team leaders should support the entitlement of all (teaching) staff to contribute towards their own performance management and review
- ◆ : Team leaders including the head teacher and others in the leadership group are responsible for supporting the development of their designated team members in order to improve teaching and raise standards.
- ◆ The Governors and head teacher have a responsibility for drawing up this policy, and reviewing, monitoring and evaluating its implementation and effectiveness year on year
- ◆ We recognise that the role of the team leader is crucial in establishing a genuine two way process based on trust and shared commitment to success for pupils and colleagues. To achieve this, team leaders tasks may include:
 - ◆ Communicating and agreeing objectives
 - ◆ Planning for improvement
 - ◆ Allocating work
 - ◆ Monitoring performance including classroom observation
 - ◆ Supporting the identification of staff development needs
 - ◆ Planning to address these needs
- ◆ Coaching/facilitating/mentoring to address learning needs
- ◆ Encouraging and supporting improved performance
- ◆ Assessing performance
- ◆ Giving oral and written feedback
- ◆ Recognising/celebrating achievement
- ◆ Writing review (appraisal) statements

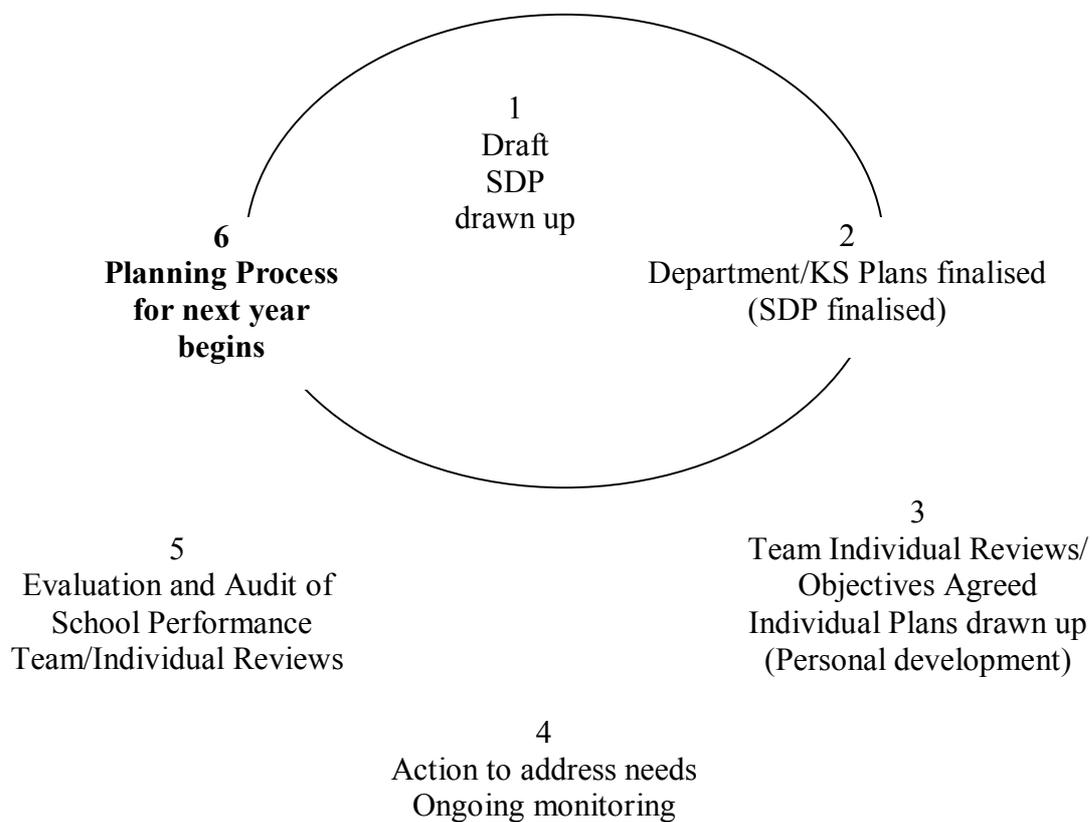
3. Performance Management Cycle

Performance Management is an integral part of our SDP cycle, against the background of the LEA's development plan (EDP) and national and local initiatives.

Performance Management is an on-going cycle, not an event (overleaf).

- The timing of our schools Performance Management cycle is shown on the diagram overleaf within the overall SDP cycle.
- *This one year performance management cycle links with our school planning and target setting processes.*
- *The governing body will ensure that objectives have been agreed with the head teacher by 6th April, 2001, in respect of the first appraisal cycle, 31st December, 2001, in respect of the second cycle and 31st December each year thereafter.*
- *The governing body will ensure that objectives have been agreed for all other teaching staff by the end of February 2001 in respect of the first cycle, by _July 2001 by December each year]*

Suggested Performance Management Cycle



**NB: Where appropriate,
stages 3 & 5
may happen at the
same time**

4. Planning Stage

Each member of staff will discuss and agree objectives with their team leader and these will be recorded. Objectives should be concise, challenging but realistic and take account of the individual's job description and of the existing skills and knowledge base.

There can be no hard and fast rule about how many objectives there should be for an individual but we expect no more than 3 to be agreed, reflecting key expectations, tasks and benchmarks.

Teacher objectives will cover pupil progress as well as ways of developing and improving teachers' professional practice. Leadership group staff and those with management allowances will have objectives relating to their additional responsibilities. The head's objectives will cover school leadership and management as well as pupil progress. The governing body defines pupil progress as the value added to pupils achievements.

The following principles will be used in discussing objectives:

- ◆ the team leader should ensure that the individual understands and has time to consider what his or her objectives involve, is in a position to achieve them, knows what they need to do to achieve them and understands when and how they will be reviewed;
- ◆ objectives are written clearly and concisely and focus on outcomes
- ◆ objectives focus on issues/matters over which an individual has direct influence/control and take into account fully the wider socio-economic, cultural and other external influences on pupils; and
- ◆ objectives for each person should relate to the objectives in the school development plan and any departmental or team plans as well as to his/her own professional/work needs

The team leader will record the objectives which will apply for the review period. These should be jointly agreed if possible. If there are any differences of opinion about the objectives, the person has the right to make and add comments in writing comments to the written record of objectives.

If the head and the governing body are unable to agree objectives, the governors appointed to review the performance of the head will set and record the objectives. The head may add comments to the record of objectives.

Learning opportunities should reflect the aspirations of each individual over and above the immediate demands of their job. They should be designed to help and not inhibit the individual. The development page of the individual plan will be used to record action needed to support agreed objectives, to develop strengths and address areas for development or professional growth.

5. Monitoring Progress

Planned actions should happen. In the event of cancellation every reasonable endeavour should be made to make appropriate alternative arrangements.

Monitoring Progress - the member of staff and his/her team leader will keep progress under active review throughout the year using classroom observation and other relevant information from a range of sources, e.g. pupils work scrutiny, pupil data etc. They will discuss any supportive action needed and keep development plans up-to-date. Feedback should take account of how much time the teacher spends on different activities.

The team leader will record their monitoring activities
A standard proforma for observations will be used– see Annex (to be inserted by the governing body).

The Governing Body expects the head teacher to ensure that team leaders make a written record of the lesson observation using the school's agreed proforma and that a copy is given to the teacher and a further confidential copy is kept centrally in the school. Team leaders will have access to the confidential copy for monitoring and review purposes.

The team leader will consult the team member before seeking to obtain information, written or oral, relevant to the member's performance from other people. Classroom observation is accepted good practice with a minimum of one observation each year required by regulations. It is not a requirement to observe head teachers with teaching responsibilities.

In our school we have agreed that for performance management purposes there should be one full lesson observation a year. However, by agreement between the teacher and the team leader other observations may take place where it would enhance the development of the teacher.

The Governing Body accepts that it is reasonable to set a maximum of three hours of observation per year for the purposes of appraisal.

In planning observation, we will follow these principles:

- ◆ successful observation requires preparation and training, and a clear understanding on the part of the teacher and team leader of its purpose;
- ◆ the nature of the observation will depend on its purpose;
- ◆ it is important that the observer ensures that the lesson proceeds in as normal an atmosphere as possible;
- ◆ full, constructive and timely feedback offers an opportunity to discuss what went well, what might be done better or differently next time. Appropriate time will be allocated to ensure feedback is effective.
- ◆ Reasonable notification of the intended lesson observation should always be given by the team leader.

- ◆ The school's agreed expectations for recording the planning of lessons to be observed should operate.
- A school teacher's objectives may be revised at any time during the appraisal cycle where the school teacher and the appropriate team leader, or in the case of the head teacher the governors appointed to review his/her performance under the Appraisal Regulations, agree and the statement of objectives shall be amended to show any agreed revision.

The governing body expects this facility to be used only at the request of the teacher and in cases where there has been a material change in circumstances and then only if there is sufficient time in the appraisal cycle for the new objective(s) to be assessed against new criteria by the end of that cycle.

6. Reviewing Performance

The annual review of the teacher's performance will use the recorded objectives as a focus to discuss achievements and identify any development needs.

The focus of the review is on;

- ◆ Reviewing and discussing the recorded objectives.
- ◆ recognising strengths and achievement, taking account of factors outside the individual's control;
- ◆ confirming action agreed with the individual at other reviews;
- ◆ identifying areas for development and how these will be met;
- ◆ recognising personal development needs
- ◆ agreeing new clear objectives and agreeing a work and development plan for the year ahead (optional unless planning and review meetings are combined).

The team leader should be informed by and consider the individual's total contribution to the life of the school during the review. It should take account of the stage the person is at in his or her career e.g. teacher with 2 – 3 years service, advanced skills teacher, senior manager.

Within 10 school days of the review meeting, the team leader will prepare a written review statement recording the main points made at the review and the conclusions reached, including any identified development needs and activities recorded in a separate annex (but forming part of) the review statement. Once written, the team leader will give the individual a copy of the statement. The individual may within 10 days of first having access to the finalised statement, add to it comments in writing. *Good practice shows that the review statement should be written as soon as possible after the review, whilst the issues are still fresh in the team leader's memory.*

The review statement should be kept for three years and then returned to the teacher or destroyed.

7. Confidentiality and access to outcomes

There will only be two copies of the review statement – one held by the member of staff and another held by the head on a central file, to which the team leader or Governors responsible for making decisions regarding pay could request access. A copy of the head's review statement should go to the Chair of Governors.

The principles and provisions of the Data Protection Act 1998 should be followed at all times by those who have access to the documents.

Information about performance reviews will be made available as listed below:

- ◆ *the head teacher will ensure where possible that individual training and development needs are reflected in the school development plan and the programme for professional development;*
- ◆ *The head teacher will ensure that training and development needs from the review statement are given to the person responsible for training and development at the school*
- ◆ *the head teacher will report annually to the full governing body on performance management in the school, including the effectiveness of the performance management procedures in the school, and the training and development needs of staff*
- ◆ *The governing body will provide a summary of the performance assessment section of the head's review statement if requested to do so by the Chief Education Officer*

The head teacher must keep review statements for at least three years.

8. Complaints

The Governing Body recognises that the current Appraisal Regulations (September 2000) make the following requirements.

The Governing Body will give effect to the requirements of the Appraisal Regulations governing the review statements and any objections to them.

Within 10 school days of receiving the review statement:

Teachers can record their dissatisfaction with aspects of the review on the review statement. Within the same period they may also complain to the head teacher, or, if the head teacher has fulfilled the role of team leader, to the chair of the governing body.

Head teachers can record their dissatisfaction with aspects of the review on the review statement. Within the same period they may also complain to the chair of governors, but where the chair of the governing body has been one of the appointed

governors, the governing body will appoint one or more governors who have not participated in the review as the review officer(s). No governor who is a teacher or other member of staff at the school can be a review officer.

The governing body will ensure that the review officer receives a copy of the disputed appraisal statement and, within ten school days of receiving that copy, investigates the complaint and take account of comments made by the teacher. In accordance with the Regulations the review officer may

- *decide that the review statement should remain unchanged or may add any observations of his/her own; or*
- *with the agreement of the team leader, or in the case of the head teacher all the appointed governors, amend the review statement; or*
- *order that the review statement be expunged, a new review statement prepared and which steps in the review shall be repeated to that end, the new review statement to be completed within 15 school days beginning with the date on which the review officer made the order.*

Where a new review statement is ordered for the head teacher the governing body will appoint new governors. Where a new review statement is ordered for a teacher other than the head teacher the governing body will ensure that the head teacher appoints a new team leader, unless the head teacher had acted as team leader, in which case the governing body will ensure that the review officer appoints the head teacher of another school or such other person of suitable seniority, expertise and experience as the review officer considers fit. In such circumstances the governing body will expect the review officer to seek advice from an appropriate adviser in the Birmingham Advisory and Support Service.

9. Links between pay, career stages and performance management

Induction – the Governing Body accept that where appropriate the final meeting of the induction period can be used to agree objectives and professional development planning which will form the basis for performance review subsequently; (reference may be made to circular 0090/2000, "Induction Period for NQTs" paragraph 60)

The head teacher will be expected to give due consideration to the circumstances of the individual teacher, including whether the induction tutor should be the team leader in the performance management cycle.

The Governing Body sees the support of the professional development of teachers for their unfolding career profile as an important purpose of the Performance Management Policy.

Pay- Issues of pay are dealt with under the school's pay policy

Managing Performance - the review meeting and review statement itself does not form part of any formal disciplinary or capability procedures. The performance management process may, however, identify weaknesses in a teacher's performance. Where this occurs, performance management will be replaced by the capability procedure in line with the agreed local scheme.

The Governing Body recognises that *relevant information from review statements may be taken into account by those who have access to them in making decisions and in advising those responsible for taking decisions, or making recommendations about performance, pay, promotion, dismissal or disciplinary matters.*

10. Evaluation

The head teacher will provide an annual written report to the Governing Body on how effective the performance management procedures have been, in line with the requirements of the statutory Appraisal Regulations.

Evaluation of work performance takes account of

- ◆ Learning achieved and skill development
- ◆ Impact of the above on work performance
- ◆ Impact on pupil/team/whole school performance

Additional (optional) sections/appendices

Linked policies/documents

The schools Performance Management Policy may be complemented by the following existing school policies:

School Aims/Objectives
Staff Development Policy
Pay Policy
Monitoring Policy
Teaching and Learning Policy
Equal Opportunities policy
Induction Policy
Staff Handbook
Behaviour Policy

Standard Documents linked to Performance Management

e.g.

- SDP
- Training plan
- Job description
- Review Document Pro-forma
- Training and Development Plan Pro-forma

Location

Staff room

“

with individual's
line manager

- Training and Development Procedure Documentation Staff Dev. Co-ord.
- Application Form “
- Evaluation form “

Resources Available for Training and Development

These include

- Five staff training and development days per annum
- Standards Fund allocation
- The service of the Staff Development Co-ordinator
- Additional funds from capitation – variable year-on-year
- In house expertise/coaching
- Etc (list)

Staff entitlement

All staff are entitled to:

- A clear, explicit and up-to-date job description
- An annual review at least
- Constructive feedback on performance
- A copy of the review statement
- Training and development as required in order to achieve key tasks/performance requirements in line with SDP with a minimum of 5 days.
- Information on training and development opportunities available to them
- Have their achievements/successes recognised
- Take part in evaluating performance management policy and practices

Training and Development Strategies and Activities

- A range of training and development strategies and activities are used including formal external and in-house training, coaching, work shadowing placements, project leadership, seminars, workshops, provision of learning materials
- A fully costed training plan is drawn up year-on-year which is linked to the School Development Plan

2. Continuing professional development

- 2.1 Full information is available from the authority's advisory and support service for teachers or from STEP for support staff. Links are given on the school workforce website.

