



Capability Policy

Headteacher	Mr Andrew Burcher
Approved by	Mrs Victoria Cole
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Approved by the Governing Body	Adopted awaiting approval at FGM 10 th December 2023
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Statement of intent

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Kelbrook Primary School we believe that everyone is entitled to an education that enables them to achieve their best, become confident individuals living fulfilling lives.

Our policy is adopted from Lancashire County Council and based on our Vision Statement:

‘Developing a love for learning to fulfil our potential and be our best.’

These core school values support our vision:

Kindness
Honesty
Independence

Kindness
Honesty
Independence

LANCASHIRE COUNTY COUNCIL

MODEL CAPABILITY POLICY FOR TEACHERS IN CENTRALLY MANAGED SERVICES (SEPTEMBER 2023)

This Policy has been developed in consultation with the teacher trade unions.

1. PURPOSE

- 1.1 This policy sets out the arrangements that will apply when teachers fall below the level of performance that is expected of them.

2. APPLICATION

- 2.1 This policy applies to all teachers employed within centrally managed services, about whose performance there are serious concerns that the appraisal process has been unable to address.
- 2.2 The Service has a separate policy in place for teacher appraisal.
- 2.3 Sections 8-16 of this policy outline the procedure that should be followed to manage matters of capability for all teachers in centrally managed services. A flowchart outlining this procedure is at Appendix 1 of this policy.
- 2.4 A separate Capability Policy exists for support staff.
- 2.5 Separate procedures exist for handling matters of misconduct or complaints made by persons outside the Local Authority.
- 2.6 The senior manager may wish to contact the appropriate representative of the HR Service for advice on the implementation and application of this policy.
- 2.7 This procedure should be applied consistently and fairly so as not to discriminate against any particular group on the grounds of a protected

characteristic under the Equality Act e.g. age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

- 2.8 The right to representation by a representative of a recognised trade union or work colleague applies at the formal stages of this policy (section 9 to 16).

3. GLOSSARY OF TERMS

Teacher	Any reference to teacher within this policy refers to the person being monitored under this policy
Companion	The person who accompanies the teacher to any meeting under the formal stage of this policy, who could be a work colleague or representative of a recognised trade union. The companion has the right to make statements, provide advice and ask questions on behalf of the teacher, but not to answer questions on the teacher's behalf
Capability Hearing	This meeting will be chaired by the Head of Service, who will be advised by a member of the Human Resources Service

4. KEY PRINCIPLES

- 4.1 In most cases, issues relating to professional capability can be dealt with informally through the appraisal process without recourse to the formal Capability Policy.
- 4.2 Teachers, as professionals, are constantly striving to improve their skills and expertise in order to develop their effectiveness. In this regard, they may draw upon support available within the service and from the network of professional services provided by the Authority and from their own professional associations.
- 4.3 At service-level, teachers may look to the advice, support and encouragement available from colleagues, particularly those with professional leadership roles, including service managers or the Head of Service.
- 4.4 All teachers should have clear job descriptions and be aware of the appropriate teacher standards, to ensure they fully understand their role as a teacher.
- 4.5 New teachers and experienced teachers taking up new posts may require induction support, particularly where there are changes to the role or additional responsibilities. Developments in the curriculum may require appropriate INSET and support programmes for the staff involved.
- 4.6 Early Career Teachers should also benefit from the structured statutory induction programme.
- 4.7 These everyday processes of support, training and advice are fundamental to professional effectiveness and wherever possible any difficulties should be

resolved informally in a spirit of partnership. Only where these processes do not succeed in overcoming the difficulties should consideration be given to entering the formal stage of the Capability Policy.

5. DEFINITIONS

- 5.1 'Incompetence/lack of capability' refers to situations where a teacher fails to perform their duties to a professionally acceptable standard. This could be due to a lack of ability or application. Such situations should be dealt with through the Appraisal process initially, and this policy if there is insufficient improvement under the Appraisal process.
- 5.2 'Misconduct' is an act or omission by a teacher which is considered to be unacceptable professional behaviour. It can range in seriousness from minor to gross misconduct. Such matters should be dealt with under the Disciplinary Procedure for teachers in centrally managed services.
- 5.3 Where complaints are made against teacher from persons outside the Authority, the Council's Complaints Procedure should be used to investigate such complaints. At the conclusion of the investigation, the service manager/ Head of Service should inform the teacher in writing of the outcome and of any subsequent action that may be taken, including action under this procedure, where relevant.

6. CONFIDENTIALITY STATEMENT

- 6.1 All documentation and discussions at meetings within this procedure are confidential. The council processes personal data collected during the informal and formal stages of the Capability Procedure in accordance with its data protection policy. Data collected under this procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of conducting the Capability Procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the council's data protection policy. It may also constitute a disciplinary offence, which will be dealt with under the disciplinary procedure.
- 6.2 Any correspondence or record of action taken will be retained in the teacher's personal file and will not be recorded in any place where there is a risk of information being disclosed to any person who does not have a genuine reason for access to the information.
- 6.3 Documentation arising from the procedures involved in this policy will only be shared with individuals who have genuine reason for accessing this information, including those involved in monitoring performance in the Service, or those involved in any capability proceedings that may follow. The teacher should be informed if documentation relating to their appraisal is shared.
- 6.4 Specific information about any teacher being dealt with under these procedures should not be shared at meetings of the service's senior management. This will avoid the tainting of any manager required to conduct a Capability or Appeals Hearing. Any attempt by another manager to elicit information about a specific

case would be inappropriate and could be prejudicial to the case. Any manager that is provided with detailed information on a specific case would be disqualified from being a member of the appeal panel convened to consider that case, with the exception of the information that is circulated to a senior manager, director or executive director in advance of an Appeal Hearing taking place.

7. HEALTH & ATTENDANCE ISSUES

- 7.1 In the event that a teacher commences a period of sickness absence during action under this policy, action under this policy should temporarily be postponed. Monitoring and assessment under this policy should be based on evidence of performance at work, which normally requires the teacher to be at work.
- 7.2 Where a teacher commences a period of sickness absence whilst being monitored under this policy, the senior manager/head of service should consider a referral to the Occupational Health Unit (OHU). The teacher should also be reminded of the support that may be available to them from their trade union.
- 7.3 Cases of sickness absence during the operation of the Capability Policy should be dealt with under the Service policy on the management of sickness absence.
- 7.4 In cases where the employee attributes the concerns about their performance to a disability or other ill health, the senior manager should consider making a referral to the OHU. The senior manager should then consider any advice provided by OHU, including any provided about making reasonable adjustments for the employee.

8. INFORMAL PROCEDURE

- 8.1 Where concerns arise about any aspects of the teacher's performance, which cannot be resolved through the appraisal process, the appraiser and/or a senior manager will meet the teacher to:
 - give clear feedback to the teacher about the nature of the concerns;
 - give the teacher the opportunity to comment and discuss the concerns, including any extenuating circumstances that have led to the concerns being raised;
 - agree any support (eg coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
 - make clear how, and by when, the appraiser and/or senior manager will review progress. It may be appropriate to revise any objectives/targets, and it will be necessary to allow sufficient time for improvement. Objectives should be SMART (Specific, Measurable, Achievable, Realistic, Timebound);
 - explain the implications and process if no or insufficient improvement is made. This may include reference to the formal stages of the Capability Policy, and if so, a copy of this policy should be provided;

- indicate a meaningful timeframe during which the improvement should be demonstrated.
- 8.2 A model letter, which may be used to invite the teacher to this meeting is provided at Appendix 2. A record of such a meeting should be taken and shared with the teacher.
- 8.3 The appraiser (if not the head of service), should advise the head of service that this meeting is taking place and then discuss the content and outcomes of the meeting with the head of service.
- 8.4 Whilst there is no right to representation by a work colleague/trade union representative at this meeting, the senior manager may decide to offer that right. At the very least, the teacher should be advised to consult their trade union representative.
- 8.5 When progress is reviewed following this meeting, if the appraiser is satisfied that the teacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.
- 8.6 When progress is reviewed following this meeting, if the appraiser is not satisfied that the teacher has made, or is making, sufficient improvement, the teacher should be advised to seek the support of their trade union, and the senior manager should consider whether to convene a Formal Capability Meeting.

9. FORMAL PROCEDURE - FORMAL CAPABILITY MEETING

- 9.1 Where the informal capability process has failed to resolve concerns about a teacher's performance, the senior manager will invite the teacher to a Formal Capability Meeting. At least 7 working days' written notice will be provided of such a meeting.
- 9.2 During the meeting, the senior manager may be accompanied by a member of the school improvement service and a representative of the HR Service. A note-taker may also attend to clerk the meeting.
- 9.3 The notification of the meeting will outline the concerns about performance and the possible consequences, along with any written evidence, in order to give the teacher the ability to adequately prepare to answer the case at the formal capability meeting. The notification will also provide the date, time and location of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a work colleague or a trade union representative. The teacher should also be provided with a copy of this policy.
- 9.4 If the teacher's trade union representative is not available at the time allocated for the meeting, the meeting should be postponed and reconvened within 5 working days of the original date. The senior manager may liaise with the trade union representative to identify a mutually convenient date for the meeting.

- 9.5 The meeting is intended to establish the facts. It will be conducted by the senior manager. The meeting allows the teacher to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 9.6 During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
- identify the areas of concern. For example, which of the standards expected of the teacher are not being met;
 - give clear guidance on the improved standard of performance expected, identifying any success criteria that might be appropriate and that may assess whether or not the necessary improvement has been made;
 - invite the teacher to provide an explanation/response to the concerns raised
- 9.7 At the end of the meeting, the person conducting the Formal Capability Meeting may conclude one of the following outcomes:
- i. that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process;
 - ii. that there are insufficient grounds for pursuing the capability issue and that the concerns should be addressed through the appraisal process, but that the teacher should be provided with informal counselling/advice and/or written guidance or instruction;
 - iii. that the concerns are not those of capability, but misconduct and as such, the person conducting the meeting may consider referring the matters through the disciplinary procedure;
- In i.-iii. above, action under the Capability Policy would cease;
- iv. In cases where the person conducting the meeting believes that the formal capability procedure should continue, the person conducting the meeting will:
 - (a) remind the teacher of the improved standard of performance expected, identifying any success criteria that might be appropriate and that may assess whether or not the necessary improvement will be made;
 - (b) explain any support that will be available to help the teacher improve their performance and consider any requests from the teacher for such support;
 - (c) set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the nature and seriousness of the concerns within the individual case, and should

be between four and ten weeks. It is for the senior manager to determine the set period in each case. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and

(d) warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

- 9.8 A suggested template for an action plan covering iv. (a)-(c) above, is contained at Appendix 3.
- 9.9 The person conducting the meeting may adjourn the meeting at any time in order to seek advice, to arrange for further investigations, or because more time is needed in which to consider any additional information.
- 9.10 A request for an adjournment by any party should not be unreasonably refused.
- 9.11 Notes will be taken of the Formal Capability Meeting and a copy provided to the member of staff.
- 9.12 A written outcome of the Formal Capability Meeting will be provided to the teacher within 5 working days. The written outcome will include the matters covered in (a)-(d) above and give information about the timing of the review stage. The outcome will contain the procedure and time limits for appealing against the warning. If a final written warning has been issued, the teacher will also be informed that failure to achieve an acceptable standard of performance within the set timescale, may result in referral to the head of service for a Capability Hearing, with dismissal a possible outcome.

10. MONITORING AND REVIEW PERIOD

- 10.1 A performance monitoring and review period will be set during the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.
- 10.2 If the teacher was issued with a warning other than a final written warning, they will be invited to a Formal Review Meeting at the conclusion of the monitoring and review period.
- 10.3 If the teacher was issued with a final written warning, they will be invited to a Decision Meeting at the conclusion of the monitoring and review period.

11. FORMAL REVIEW MEETING

- 11.1 The Formal Review Meeting will be conducted by the senior manager.
- 11.2 At least 5 working days' written notice of a Formal Review Meeting will be provided and the notification will contain details of the time, date and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a work colleague or trade union representative.

- 11.3 During the meeting, the senior manager may be accompanied by a member of the school improvement service and a representative of the HR Service. A note-taker may also attend to clerk the meeting.
- 11.4 If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, action under the Capability Policy will cease and the appraisal process will re-start.
- 11.5 In cases where the person conducting the meeting believes that there has been some progress/improvement and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period for a further 4-10 weeks. In such cases, a further Formal Review Meeting will take place at the conclusion of the monitoring and review period.
- 11.6 If the person conducting the meeting believes that there has been no or insufficient progress/improvement during the monitoring and review period, the teacher will be issued with a final written warning and the monitoring and review period extended for a further 4-10 weeks.
- 11.7 Notes will be taken of formal review meetings and a copy will be provided to the teacher. The final written warning will mirror any previous warnings that have been issued.
- 11.8 The teacher should be provided with a written outcome of the meeting within 5 working days, which should provide details of any further monitoring and review period and the procedure and time limits for appealing against the final written warning. The outcome should also inform the teacher that they will be invited to a Decision Meeting at the conclusion of the further monitoring period, or earlier if additional performance concerns arise during the further monitoring period. Where a final written warning has been issued, the teacher will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in a referral to the head of service for a Capability Hearing, with dismissal a possible outcome.

12. FINAL REVIEW & DECISION MEETING

- 12.1 The Decision Meeting will be conducted by the senior manager.
- 12.2 At least 5 working days' written notice of a Decision Meeting will be provided and the notification will contain details of the time, date and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a work colleague or trade union representative.
- 12.3 During the meeting, the senior manager may be accompanied by a member of the school improvement service and a representative of the HR Service. A note-taker may also attend to clerk the meeting.
- 12.4 If an acceptable standard of progress/improvement has been achieved during the further monitoring and review period, action under the Capability Policy will end and the appraisal process will re-start.

- 12.5 If the teacher's performance continues to be a cause for concern, a decision will be made to refer the matter to the head of service for a Capability Hearing, with a recommendation that the teacher should be dismissed from their role within the service.

13. CAPABILITY HEARING

- 13.1 During a Capability Hearing, the head of service will be accompanied by a member of the HR Service.
- 13.2 At least 7 working days' written notice of a Capability Hearing will be provided. The notification will contain details of the time, date and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a work colleague or trade union representative. The teacher will also be provided with a copy of the report that is to be presented by the senior manager at the same time as the notification.
- 13.3 The teacher has the right to present documentation to the Hearing and this should normally be provided in advance of the meeting. Requests to present additional documentation during the hearing will be considered by the head of service.
- 13.4 Prior to a dismissal decision being taken, the head of service will consult with the HR Service.
- 13.5 The procedure to follow at a Capability Hearing is contained at Appendix 3.

14. DISMISSAL

- 14.1 In the event that a decision to dismiss is taken, the teacher will receive due notice.
- 14.2 The notice period will commence from the date that the decision to dismiss is taken.

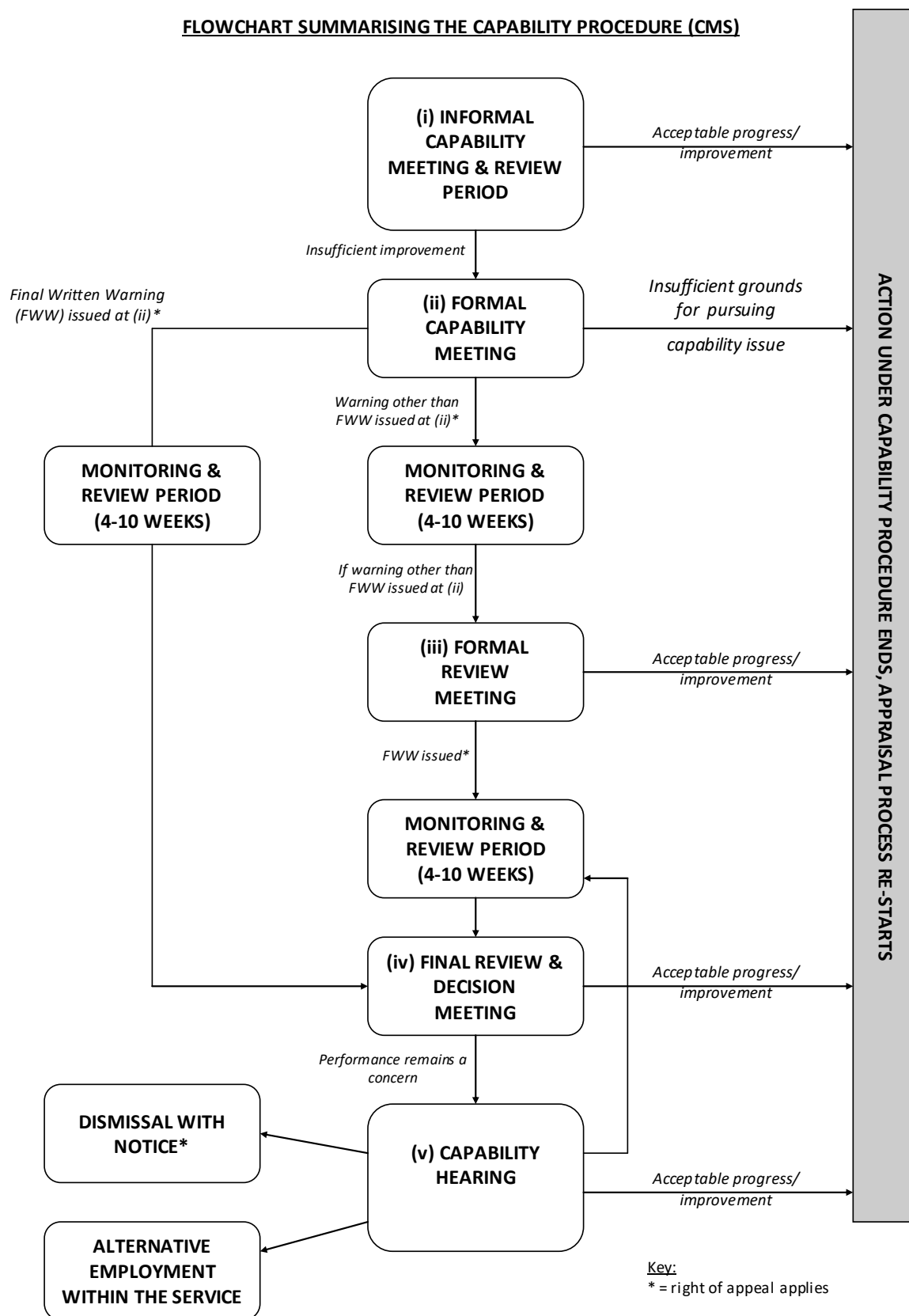
15. RIGHT OF APPEAL

- 15.1 If a teacher wishes to appeal against any action taken by the senior manager/ head of service under this policy (e.g. a warning, final written warning or dismissal), they should submit a written appeal within 5 working days of receipt of the written outcome, outlining the grounds for appeal.
- 15.2 Appeals against any action taken under this procedure will be heard by an appropriate senior manager (i.e. director or executive director), who will be advised by a member of the HR Service. The senior manager will not have had any previous involvement in the case under consideration. Advice may also be sought from a Legal Services representative.
- 15.3 The formal Capability Policy will continue during the course of an appeal.
- 15.4 The appeal will be heard without unreasonable delay. The same arrangements for notification (i.e. with 7 working days) and right to be accompanied by a companion will apply as with other meetings held under this policy.
- 15.5 Notes of any appeal hearing will be taken and a copy provided to the teacher.

15.6 The teacher will be informed in writing of the outcome of the appeal hearing as soon as possible, and no later than within 5 working days of the hearing.

APPENDIX 1

FLOWCHART SUMMARISING THE CAPABILITY PROCEDURE (CMS)



Dear

INFORMAL CAPABILITY MEETING

You will be aware that we have discussed concerns that I have about your performance that I have attempted to resolve through the appraisal process. Unfortunately my attempts to resolve these concerns have so far not resulted in the level of improvement that I expected and so regrettably, I now need to refer these through the informal stage of the Capability Policy.

I am therefore writing to invite you to an informal capability meeting. The meeting will take place on ***(give at least 5 working days' notice)*** in my office. The meeting will be held under the Capability Policy for Teachers in Centrally Managed Services. A copy of this policy is enclosed.

The purpose of the meeting is to:

- clearly outline the nature of the concerns;
- provide you with the opportunity to comment and discuss the concerns, including any extenuating circumstances that have led to the concerns being raised;
- agree what support will be provided to help address those specific concerns (e.g. coaching, mentoring, structured observations);
- clarify how, and by when your progress will be monitored and reviewed;
- explain the implications and process if no or insufficient improvement is made, this may include reference to the formal stages of the Capability Policy;
- indicate a meaningful timeframe during which the improvement should be demonstrated.

Whilst there is no right to representation at this stage, you may wish to consult your trade union/professional association representative.

Finally, as your performance is now a cause for concern I must inform you, in accordance with Section 14 of the Appraisal Policy, that the appraisal process will no longer apply and your performance will now be managed under the Capability Policy.

Please confirm your attendance at this meeting.

Yours sincerely

MODEL CAPABILITY POLICY FOR TEACHERS IN CENTRALLY MANAGED SERVICES- ACTION PLAN

PROBLEM AREA	CURRENT PERFORMANCE	EXPECTATIONS	HOW TO ACHIEVE	HOW/WHO MONITORS
<i>Define the problem area.</i>	<i>Define the problem in greater detail - how does the problem present itself?</i>	<i>Set out what you would like to see in place. This should be in clear, measurable and achievable terms.</i>	<i>Indicate how you see the teacher reaching your expectations. Make arrangements for support clear.</i>	<i>Who will monitor progress and give feedback?</i>

MODEL CAPABILITY POLICY FOR CENTRALLY MANAGED TEACHERS

A. CAPABILITY HEARING PROCEDURE

1. The senior manager or other appropriate person (the presenter of the report) will present a report to the head of service and will be entitled to call witnesses as necessary.
2. The Teacher and/or their representative will be entitled to question the presenter of the report and any witnesses called.
3. The Teacher and/or their representative will present their response to the presenter's report, presenting any relevant documents to the head of service and calling witnesses as necessary.
4. The presenter of the report will be entitled to question the Teacher and any witnesses who have been called.
5. The presenter of the report and thereafter the teacher or their representative will be entitled to make a closing statement to the Hearing.
6. At any stage during the hearing the head of service will be entitled to question any person who has made a statement or given evidence at the hearing.
7. At the conclusion of the meeting, both parties will withdraw and the head of service will reach a decision in private. Advice given by a Human Resources and Legal Services representative (if present) will also be considered.
8. The options available to the head of service during a Capability Hearing are as follows:
 - a) to discontinue the formal Capability Policy;
 - b) to extend the final written warning and to set a further period of monitoring and review;
 - c) to consider any options for alternative employment within the Service;
 - d) to dismiss the teacher with due notice.
9. The teacher will be offered the opportunity to receive the outcome of the hearing verbally if sufficient time is available on the day of the Hearing. If the teacher wishes to receive the outcome verbally, both parties will return to the hearing to hear the outcome.
10. The teacher will be provided with the outcome of the meeting in writing within 5 working days of the hearing. The written notification will include the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and the right of appeal.

B. APPEALS HEARING PROCEDURE

- B1 Appeals will be dealt with by way of a re-hearing and therefore the procedure to be followed at an Appeals Hearing will be the same as that outlined above, with the head of service substituted with the appropriate director.
- B2 For appeals against warnings issued under the Capability Policy, the outcomes available to the director are to:
- i). discontinue the formal Capability Policy
 - ii). reject the appeal and confirm the warning issued
 - iii). partially uphold the appeal and substitute the warning for a lesser warning
 - iv). fully uphold the appeal and rescind the warning
- B3 Following appeals against decisions to dismiss under the Capability Policy, the director may decide to:
- i). fully uphold the appeal and discontinue the formal Capability Policy
 - ii). reject the appeal and confirm the dismissal decision
 - iii). partially uphold the appeal and substitute the dismissal for a lesser warning