

Best Practice in Undertaking Teacher Capability Procedures

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EXECUTIVE SUMMARY

Introduction

This report presents the findings of a research project commissioned by the DfES which aimed to ascertain practical measures which could be taken in moving towards best practice in the operation of teacher capability procedures.

Building on earlier studies conducted by the DfES as well as other relevant material, the research investigated the issues which trigger the operation of the capability procedures, or which fail to do so, and whether procedures are proving to be workable and effective. The sources of available advice and support for schools operating the procedures were also explored as well as the extent to which factors such as:

- headteachers' attitudes
- individual LEA policy
- sickness absence
- trade union involvement

have an impact on the way in which procedures are used.

Methodology

The aim of the project was to provide both quantitative and qualitative data on the operation of teacher capability procedures and hence a variety of research methods was adopted, as follows:

- a review of the relevant literature
- a postal questionnaire to all LEAs in England to ascertain the number of teachers and headteachers involved in capability procedures during 1999/2000
- interviews with senior officials of six major teaching unions
- eight interviews with LEA Advisers and Personnel Managers
- 520 telephone interviews with head teachers from 13 LEAs selected to provide an appropriate geographical spread, type of LEA and mix of urban and rural schools. Within each LEA, schools were selected randomly.
- 53 teacher case studies in 45 schools from nine of the 13 LEAs, involving, in all cases, a face-to-face interview with the headteacher plus around 100 interviews with relevant LEA officials, governors, trade union representatives and teacher colleagues. Within each LEA schools were selected so as to provide a spread of:
 - size and type of school
 - issues giving rise to the operation of procedure
 - informal and formal action
 - outcomes
- six headteacher case studies from the nine LEAs, involving interviews with LEA personnel officers
- scrutiny of capability procedures from seven of the case study LEAs as well as those for voluntary-aided schools
- regular collective and individual consultation with members of an Advisory Group

Research Findings

(a) Quantitative findings

A number of quantitative findings resulted from the postal questionnaire to LEAs and the telephone interviews with headteachers.

(i) The usage of capability procedures is low:

- extrapolation of the results of the telephone interviews suggests 0.67% of teachers were subject to capability procedures during 1999/2000, although a total of 1.2% had given concern regarding their capability.
- 65% of headteachers had never had experience of dealing with a capability issue
- 74% of LEAs had no headteacher capability cases and 12% had no teacher capability cases.

(ii) 46% of capability issues were dealt with outside any procedure and an additional 40% at the informal stage of the capability procedure.

(iii) In 65% of cases, the issue giving cause for concern related to teaching, 8% of concerns were about the managerial role, 16% about absence and 21% related to inappropriate/unprofessional behaviour (multiple responses were permitted)

(iv) Monitoring had alerted the head to the problem in 30.5% of cases, 12% of cases came to light through OFSTED inspection and 18.5% of cases via parent/pupil complaint.

(v) On average, cases dealt with outside procedures lasted 18 months (including those which subsequently moved to the informal stage of the capability procedure), the informal stage lasted just over six months and the formal stage just over five months.

(vi) When confronted with capability issues, 50% of teachers were subsequently off sick and 80% of these were stress-related illnesses. In 60% of cases the sickness delayed the operation of the procedure and in 20% of cases it caused the capability procedure to be halted permanently.

(vii) Very few teachers completed the procedure in the sense of being dismissed on grounds of capability or ill-health (4.8%). A significant number of those dealt with outside procedures improved (21.5%), but the rate of improvement was lower (12.7%) for individuals who moved onto procedures. However, the vast majority resigned (41.3% of those dealt with outside procedures and 39.7% of those dealt with within procedures).

Table: Outcomes of capability issues dealt with within and outside procedures

Outcome	Dealt with outside procedures (%)	Dealt with within procedures (%)
Resigned	41.3	
Improved	21.7	39.7
Ongoing	15.2	12.7
Other school	10.9	9.5
Ill-health retirement	8.7	6.3
Step down	6.5	4.8
Dismissed	N/A	3.2
Sickness (ongoing)	2.2	4.8
Outside profession	2.2	7.9
Early retirement	2.2	3.2
Agency/supply	2.2	3.2
Switched to	-	4.8
disciplinary	-	1.6
Contract not renewed	-	3.2
Compromise	2.2	6.3
agreement		4.8
Unknown		

(viii) 50% of heads thought that the fast-track procedure might be appropriate, although their responses were usually qualified and in some cases betrayed a lack of understanding of its meaning.

(b) Qualitative Findings

Determination of capability

There were divergent views about what constituted a capable teacher and some concern that differential standards might be operating. Problems generally came to light via monitoring of classroom teaching or associated duties such as marking/setting of homework, and by scrutiny of exam results; however, OFSTED inspections also revealed under-performance and concerns sometimes emanated from parents. Identifying capability issues in relation to headteachers is more problematic and crucially dependent both on the level of LEA access into the school and the extent to which the governing body is proactive.

Not all concerns centred around the quality of teaching and efficiency of carrying out professional duties; some teachers had poor attendance records which heads were uncertain about tackling via capability procedures. Other heads had teachers with bizarre personalities bordering on mental ill health, and were uncertain whether to classify the resulting behaviour as misconduct or incapability. Although some teachers who were under performing had relatively short periods of service, it was found that a much larger

proportion were teachers whose performance had gradually deteriorated, particularly those in their 50s who were simply burnt out and unable, or unwilling, to adapt to the plethora of new initiatives and administrative tasks. Another worrying finding was that some teachers who proved to be unsatisfactory had come to the school with a good reference, whilst on the other hand, those with a less than glowing reference could be appointed because of a shortage of suitably qualified candidates.

Using capability procedures

A very clear message from all key players was that capability issues needed to be tackled at an early stage. Nevertheless, there was a reluctance on the part of heads to confront issues for a number of reasons:

- they were new to the school and had other priorities
- anxiety about the reaction of parents or staff and concern about morale
- lack of confidence – the “Is it me?” syndrome
- worry about union involvement
- role conflict – supporting staff at the same time as challenging and potentially “destroying” them
- general consensus that invoking procedures was inappropriate for ‘burnt out’ teachers who had been capable in the past

When heads did take action, the vast majority expended considerable time and energy on supportive measures, assisted by LEA advisers. The move into using procedures was not generally triggered by a specific event, but by a gradual realisation that the supporting measures were not being effective. In contrast, once a problem with a headteacher was identified, matters tended to move very quickly into capability procedures.

There was no suggestion that capability procedures were inappropriate or unnecessary, but several negative views about the July 2000 guidelines, such as :

- too many stages in the procedure
- ability to appeal against warnings meant schools could run out of suitable governors
- concern about timescales
- disapproval of using disciplinary-style warnings

LEAs had adopted capability procedures which varied considerably although all were based on the 1997 guidelines. A serious defect in their *modus operandi* was that although heads had spent considerable time and effort on informal support outside procedures, they were then required to go through another informal stage, this time as the first phase of the capability procedure. Almost without exception heads found the procedures far too long and extremely stressful; many union representatives thought they were used as a tool to remove teachers from schools rather than to secure improvement. The LEA input was seen by heads to be essential and extremely beneficial – on the whole they felt they needed more support and would prefer some outside agency to take over their role in operating procedures. The extent to which LEAs and LEA advisers play a supporting role can be geography-dependent. However, in the main the LEA and union representatives were seen to work harmoniously for the good of the school and the individual, although some heads expressed negative views of the union input.

Views on the fast-track procedure were extremely diverse and disapproval was sometimes based on the mistaken idea that the entire procedure lasted only four weeks. However, a common feeling was that provided sufficient support and opportunity to improve was given, there was merit in shortening the later stages of the procedure.

Ill-health and procedures

It was found that heads were uncertain whether poor attendance was a capability issue and whether it could be addressed via capability procedures. Several teachers whose performance gave rise to concern also had poor attendance records. Sickness absence was also a typical response to being confronted with issues of performance and the absence frequently delayed the operation of capability procedures or halted it permanently, in that the individual went off on long-term sickness absence and ultimately applied for ill-health retirement. Decisions about ill-health retirement were felt to take too long and the delay caused difficulties for schools in re-appointing to posts. Although many heads felt that the illness was genuine, there were also murmurs of “swinging the lead” in relation to stress-related absence. There was some evidence of LEAs holding back on capability issues where ill-health was involved, particularly if there was the possibility of the illness constituting a disability under the Disability Discrimination Act 1995.

Occupational Health came in for substantial criticism and very little praise. It was felt that :

- they tended to act as a “second GP” to the teacher concerned
- they accepted what they were told by teachers without reference back to the headteacher
- they were often unaware of the circumstances of the case
- they were unaware how schools operated
- they provided unsatisfactory brief reports which did not express a clear view
- response times were unsatisfactory
- the quality of their advice and validity of their judgements about teachers’ fitness for work was questionable

The role of governors

In the majority of cases, only the chair of governors was informed when a teacher’s performance was being tackled by the head, so as to avoid ‘tainting’ governors should involvement be needed at a later stage. Heads found them supportive, but governors themselves appeared to be uneasy about their role and lacking confidence in their ability to operate capability procedures. Although a view was expressed that governors had an important role in maintaining a check on heads, some LEAs acknowledged that there could be an argument for governors relinquishing their current role in the operation of procedures.

Outcomes

As a generalisation, capability procedures are not succeeding either in raising the performance of individuals to a satisfactory standard, nor in causing teachers to be dismissed on grounds of capability. Whilst one in five teachers improved when being dealt with outside procedures, the chances of improvement drop significantly once there is a move into procedures. Some who have management responsibilities step down from these posts. The most likely outcome is that the individual resigns at some point, and frequently as the move towards procedures is signalled. Whilst the ultimate destination of teachers leaving the school is not always known, it is clear that some remain in the system and a number take up supply teaching. The availability of retirement on efficiency grounds or compromise agreement (and the level of the sum offered) is LEA-dependent.

Conclusions

1. The impact of the Secretary of State’s 1997 initiative has made all teachers “performance aware” to a degree that was previously unknown. The informal actions taken before invoking procedures resolve many problems and have caused a number of people to resign but few teachers perceived as being unsatisfactory are being dismissed as a result of decisive and speedy management action.

The number of teachers presenting a capability problem is very low: only 0.67% of teachers were on capability procedures in 1999/2000.

2. There is a clear reluctance to becoming involved in procedure. Much time and effort is expended on supporting teachers by informal action in order to assist them to improve and around 20% of them appear to do so satisfactorily. Only when supportive action is seen to be ineffective is there recourse to procedures, which is often seen as a failure of management.

Identifying teachers who are not performing satisfactorily is not a judgement that is likely to be challenged by the union, nor does it have an adverse effect on staff morale. In principle capability procedures are widely accepted as being appropriate to deal with a situation of sustained under-performance. Effective schools with well-organised management arrangements rarely get to procedure, as problems are spotted early and handled in an open, positive manner without prevarication.

3. Heads would welcome support, training and advice in relation to operating capability procedures and see the LEA role as absolutely crucial. Many heads would have liked an outside agency to deal with the matter. However attractive this may seem, it is clearly the case that any improvement can only be achieved within the working situation and improvement can only take place if the person who is under-performing can accept the need to change and make a genuine effort to do things differently. Identifying the nature of under performance and convincing the teacher of the need to change are inescapably a part of the job of school internal management and governance.

4. There is an almost unanimous opinion among heads operating capability procedures that they took far too long and were extremely stressful for all concerned. An average of 18 months was spent outside procedures, with procedures themselves lasting a further 12 months. The fundamental problem is the lengthy period of informal action outside the procedures as well as an informal stage within them. There is considerable criticism of the July 2000 guidelines, for example, in relation to the use of disciplinary-style warnings and the ability to appeal against them.

5. Ill-health is clearly a major problem in relation to capability procedures for two principal reasons. First, some teachers have poor attendance records and heads are uncertain how to deal with this. Secondly, sickness absence is a frequent response to being confronted with capability issues. The majority of such absences are stress-related and the role of Occupational Health in dealing with them was seen as less than helpful.

6. If a teacher's disappointing performance is to improve, the best chance is outside the formality of procedure. Heads who deal with capability issues need the support and advice that LEAs can provide and the confidence to move more rapidly towards formal procedures if improvement is not forthcoming. This might make the process less stressful for all concerned but it is unlikely to reduce significantly the incidence of sickness absence associated with under-performance. However, there is a strong feeling that the use of capability procedures is inappropriate in the case of teachers in their '50s who had performed satisfactorily in the past.

7. The role of governors is problematic.

Recommendations

1. Schools and LEAs should review their procedures to reduce the scope for issues taking too long, particularly in the informal stages. Consideration should also be given to removing the more punitive style of language (appropriate to dealing with misconduct under disciplinary procedures), whilst continuing to give clear warnings of the risk to employment where concerns about performance are not remedied. Individuals would normally be given the opportunity to take out a grievance against such a warning rather than to appeal against it. The idea of a separate fast track should be removed to be replaced by encouraging flexibility in the length of the later stages of procedure. We do not support the suggestion, from some quarters, that LEAs should be taken out of the procedural sequence.

2. Training for heads and senior managers should include first an understanding of the working and professional relationship between heads and teachers, with the current reduced autonomy and increased

accountability of teachers; secondly an understanding of the nature of procedural mechanisms and how to use them positively for the benefit of the school and teachers; and thirdly to understand the nature of capability issues that teachers encounter, at different stages of their working lives, and be able to help individual teachers to confront problems, giving them the confidence to take on necessary changes and supporting them through their development.

3. Heads need to share with other heads experience of dealing with competence issues, especially as capability procedures are felt to be something to avoid at all costs, with the experience being exhausting. Exactly how this should be done cannot be specified, but it might be handled by an occasional newsletter or meeting convened by the LEA.

4. Occupational health provision should be reviewed to improve communication with schools and to clarify how matters of sickness absence are to be monitored. It would also be helpful if decisions about retirement on health grounds could be made more quickly.

5. Greater use of different types of employment should be considered, including easier moves from one school to another, possibly split between two; more scope for teachers to work part-time or to share jobs; more imaginative and thorough arrangements for managing the input and job satisfaction of supply teachers.

6. Some modest financial provision for easing out teachers towards the end of their careers could be considered.

CHAPTER ONE

INTRODUCTION

In September 2000, a research team from Manchester School of Management, UMIST was commissioned by the DfES to carry out a twelve month project to ascertain practical measures which could be taken in moving towards 'best practice' in the operation of capability procedures. Scrutiny of the operation of capability procedures in England was limited to the academic year 1999-2000. Building on earlier studies conducted by the DfES, as well as other relevant material, the research investigated the issues which trigger the operation of the capability procedures (or fail to do so) and whether procedures are proving to be workable and effective. The Project Team also explored the sources of available advice and support for schools operating the procedures and the extent to which factors such as: headteachers' attitudes; individual LEA policy; sickness absence; and the role of trade unions, have an impact on the way in which procedures are used.

The members of the research team were:

Mrs Jill Earnshaw, Director

Dr Stephen Hardy, Associate Director

Ms Eve Ritchie, Research Associate

Ms Lorrie Marchington, Research Associate

Professor Derek Torrington, Research Advisor

Mr Mike Arnold, Educational Consultant

In addition, the project team was assisted by an Advisory Group comprising teaching professionals, union officials and LEA officers (see Appendix 1).

1.1 Research Objectives

The research has:

- tested existing DfES data on the level of capability procedures usage;
- identified how and when the capability procedures are initiated;
- evaluated the action taken under the capability procedures;
- identified the levels of support (advisory or other) available in instigating/executing the capability procedures;
- considered the role of the governing body in the capability procedures;
- investigated the link between staff sickness and the capability procedures;
- examined other factors, such as school/LEA culture, newly appointed headteachers – which impact upon the effectiveness of the capability procedures;
- highlighted barriers to executing or instigating the capability procedures.

As a result it has been possible to identify a number of issues influencing the effectiveness of capability procedures and to suggest ways of improving their use.

1.2 Background – the capability procedures

The Labour government came to power in 1997 committed to raising standards and in response to HMCI's 1996 annual report that there were 15,000 incompetent teachers (nearly 4%, based on the percentage of lessons judged to be unsatisfactory during formal school inspections) and 3,000 incompetent Heads, the government decided to act.

Consequently, in 1997, Stephen Byers wrote to the governing bodies of maintained schools asking them to incorporate the outline procedures which had been produced by The National Employers' Organisation for School Teachers ('NEOST') as a result of a working group into their school's capability procedure. The working group included teacher unions, church authorities and governor associations as well as NEOST under the chairmanship of ACAS. The outline identified the key stages in the process, but exact procedural arrangements were to be determined at a local level by the education authorities. It is worth remarking that this document referred to 'removing unsatisfactory teachers'.

Despite the government advice to incorporate the outline procedure there appeared to be a continuing concern that schools were not acting expeditiously in resolving the problem of teachers who were not performing satisfactorily. As Estelle Morris stated:

“ Too many schools still have over-elaborate procedures which contain too many obstacles to the removal of incompetent teachers” and that, “early identification of problems through performance review will help to avoid the need for formal capability procedures... The model procedure gives teachers ample opportunity to prove their competence or to vindicate themselves if they have been mistreated”.

In consequence, further guidelines ('the July 2000 guidelines') were issued to schools by the Secretary of State. The authority to take this action derived from the School Standards and Framework Act 1998, which gave power to issue guidance which governing bodies should take account of in framing their capability procedures. Although Voluntary Aided schools were entitled to follow their own procedures, these were nevertheless required to be in line with the outline procedure.

1.3 Previous research on the procedures

NEOST monitored the introduction of capability procedures in the summer, winter and spring terms of 1998/1999. They sent out a questionnaire to LEAs asking for an estimate of the number of informal capability procedures undertaken in that period and the number of formal capability procedures both normal and fast-track. They also asked if the procedures led to (a) improvement, (b) termination of employment at the school including dismissal, resignation and early retirement, or other solutions or (c) cases

continuing. They had a 75% response rate from LEAs and by grossing the figures up, estimated that in this period 3,105 capability procedures had been triggered (approximately 1% of teachers). Of these (in terms of gross figures) 1,867 (60.1%) were informal procedures, 191 (6.2%) led to teacher improvements, 603 (19.4%) led to terminations of employment and 444 (14.3%) were on-going. In terms of the fast-track procedures, eight of the terminations were on the fast-track procedures and six of those on-going were on the fast-track. NEOST also conducted a random survey of 50 schools. Minutes of the governor's meeting in which the capability procedure was introduced were requested. Most but not all schools had incorporated the model outline into their procedures, only a few included fast-track procedures and some were perceived to have too many stages of appeal.

The DfES also conducted a small-scale telephone interview in relation to ill-health and capability procedures. The overall proportion of teachers absent through ill-health on the day of the survey was estimated to be 4% out of a total of 4,423 teachers. About a quarter of these teachers had a stress-related illness. Of the pool of 4,423, 1.5% of primary teachers and 0.5% of secondary teachers were found to be on capability procedures. It was also found that 50% of teachers on capability procedures took 20 plus days of sick leave during the procedures and that the average length of capability procedures was five months. However, both these findings were based on extremely small sample sizes. In terms of the outcome of the procedures, the DfES found that no teachers were dismissed, eight teachers (30%) retired on grounds of ill-health, 11 teachers (41%) had some other form of resignation/termination, including premature retirement and severance, five teachers (19%) were continuing employment and three (11%) had some other outcome.

1.4 Performance Review

Performance review was given statutory force in September 2000. According to Performance Management in Schools (2000) . "Performance management is a way of helping schools improve by supporting and improving teachers work" and the main benefits of performance review according to the framework are that teachers will have a more sharply focussed picture of what their pupils can achieve. It states that teachers should also have the right to expect that their performance will be regularly assessed and they should have a proper opportunity for professional discussion about their work and professional development. Performance management involves planning, monitoring and review. Once a job description has been agreed the planning stage involves a discussion of the teacher's priorities and the needs of the children and it is necessary to agree specific objectives for the coming year. Objectives should cover pupil progress and ways of developing and improving teachers' professional practice. Examples of objectives are "By next year, to increase the percentage to [45%-50%] of the class as a whole that will be able to do virtually all of what the Literacy Framework states that they should be taught over the year (currently 40%)". "To reduce the number of exclusions by 30% in the course of the year", "to gain further skills to deliver the Literacy and Numeracy strategies, especially methods of differentiation for own class". Classroom observation and short informal discussions are suggested as appropriate methods of monitoring. The

performance review is the opportunity for the teacher to reflect on his / her performance in a structured way, to recognise achievements and discuss areas for improvement and professional development.

The outcomes of the review will be used to inform pay decisions, and the framework gives the example of awarding double performance increments for outstanding performance up to the threshold and awarding discretionary performance pay points above the threshold. Information from reviews will also provide evidence for assessment at the performance threshold. In terms of managing weak performance the framework states that, “good management, with clear expectations and appropriate support will go a long way towards identifying and handling any weaknesses in performance”. The framework also makes clear that where information from the review gives rise to concern about the capability of a teacher, “it might lead to a decision to investigate and record performance more intensively.” If a decision is made to enter into a formal capability procedure then that procedure supersedes the performance management arrangements. The governing body also has a duty to review the head’s performance with support from a trained external adviser. The governing body decides on the exact timing of the head’s performance review cycle and appoints two or three governors to carry out the performance review. The external adviser’s main role will be to provide advice on the setting of performance objectives for the head and assessing the extent to which the Head has achieved them.

Performance management should be a way for heads to monitor a teacher’s performance and send out early warning signs if a teacher is getting into difficulties. It will also be a way for governors to monitor a head’s performance and will undoubtedly become a trigger for putting a teacher or head on to capability procedures.

1.5 Structure of the Report

In Chapter 2, a review of the relevant literature is undertaken, in particular the research of Wragg et al which has also explored the issue of under-performing teachers. We highlight the problems of defining a capable teacher as well as those of dealing with capability issues, and the incidence of stress in the teaching profession. Ill-health amongst teachers is reported as being a matter of some concern as is the number of teachers leaving the profession.

Next, we set out the methodology and describe the three basic stages of the research: consisting of a postal survey of LEAs in England, a telephone survey of over 500 schools in 13 LEAs and around 50 case studies of teachers and headteachers in nine of the 13 LEAs. The aim of the first two stages of the research was to obtain quantitative data on the usage of capability procedures and to up-date the previous research carried out by NEOST and the DfES. The results of the data analysis are set out in Chapter 4 and provide information not only on the usage of procedures but also on the length of time taken, the concerns which led to their being operated; and the outcomes (where known at the time of the interview).

Chapter 5 constitutes the in-depth phase of the project. It consists of detailed case studies of capability issues seen not only through the eyes of the headteacher (or the LEA where the capability of a headteacher was in issue) but in many cases incorporating also the views of key players such as trade union representatives, governors, teaching colleagues and LEA personnel. The case studies provide detailed evidence about how capability procedures operate, the stresses and strains they cause for all concerned, the input of Occupational Health and the role of the LEA.

In the following chapter, an attempt is made to draw out significant themes and issues from the case studies. We focus in particular on how heads define capability and how they become aware of capability issues in their own school as well as measures which they take to deal with them outside of procedures. The impact of ill-health both as an aspect of capability itself and as a supervening event during procedures is also explored along with the views of heads about the usefulness or otherwise of the input of Occupational Health. A further important aspect of Chapter 6 is a scrutiny of LEA capability procedures themselves, particularly in relation to the 1997 outline procedure and the July 2000 guidelines. After considering the role of governors, the unions and the LEA in the operation of procedures, the chapter concludes with an assessment of the various outcomes of procedures for the individuals concerned.

The closing chapter brings together what are considered to be the most significant findings of the study and makes recommendations as to best practice.

CHAPTER TWO

LITERATURE SURVEY

2.1 The Context of Teaching

In the late 1980s there was a wholesale restructuring of the national education system following the 1988 Education Reform Act which introduced, amongst other things, the National Curriculum, Local Management of Schools, and Grant Maintained Status. Since that time, the nature and demands of teaching have changed, resulting in an intensification of teachers' work (Apple, 1986). Troman (2001) argues that intensification leads to less time for relaxation and reskilling, causes persistent work overload and reduces the quality of service. There has also been more emphasis on measuring teachers' capabilities since OFSTED's inception in 1992. The Chief Inspector of Schools in his 1996 Annual Report suggested there might be 15,000 incompetent teachers, which is nearly 4% of the teaching force, based on the percentage of lessons judged to be unsatisfactory during formal school inspections. The 'heavy duty' accountability systems fuel the intensification of teachers' work and are a major source of stress (Jeffrey and Woods 1998).

There is growing evidence to suggest that emotions are a central aspect of teaching (Nias, 1996; Hargreaves, 1998). Hargreaves (1998) claims that, "good teaching is charged with positive emotions". Troman (2001) argues, "there is little appreciation of the emotional labour engaged in by teachers...but which also makes them vulnerable when the demands of their work make it hard for them to do their 'emotion work' properly". This makes it all the more worrying that a recent study of job satisfaction in the UK revealed that teachers had a much lower level of job satisfaction when compared to their counterparts in other public sector jobs (Gardner and Oswald, 1999). The study found that whilst teachers are not the 'unhappiest workers', they are 'low by public sector standards compared especially to nurses.' The study was based on nearly 7,000 randomly selected Britons, who have been tracked and interviewed in each year of the 1990's. Even more alarming is the fact that a telephone counselling service for teachers received an unexpectedly high number of callers who were suicidal, depressed or alcoholic, according to Charter (2000) and Shaw (2000). More than 12,000 (3% of teachers in England and Wales) have called Teacherline since it began in September 1999. Twenty-seven percent of calls were about stress, anxiety and depression, 14% reported conflict with managers, 9% were about workload and 9% had suffered loss of confidence. Seven per cent of callers (about 850) were said to be "close to breakdown" because of the pressures of work. The charity has previously found that teachers are four times more likely to suffer stress than other professions. Mr Nash, the Chief Executive of the Teachers' Benevolent Fund which helps run the service, said that workload and continual change were leading to "loss of confidence and performance anxiety" for many teachers. The annual cost of stress to the Education Service in 1998 in England and Wales has been estimated at £230 million (Brown and Ralph, 1998).

It could be argued that the stress which teachers endure is leading to sickness. The DfES provisional statistics for 2000 state that, on average, a teacher took sick leave for 10 days

during the year- one day more than in 1999. This is more than other workers across Britain who, according to the Confederation of British Industry, took on average 7.8 days leave in 2000, a fall from the previous year of 8.5 days (BBC News 12/5/00). Teachers therefore take significantly more time off, bearing in mind that they are required to be at work for only 39 weeks. Doug McAvoy, General Secretary of the NUT, thought that workload and the growing demands on teachers were to blame for stress-related illness (BBC News 25/5/01). Estelle Morris made the point that, “the health of the nation’s teachers has a direct effect on the quality of education our children receive” (BBC News 12/5/00). Life insurance companies’ actuaries claim that teachers are a high risk for sickness insurance as they are prone to stress-related illness and their burnout rate is high (Fisher, 1996). However, according to Bowers and McIver (2000) the median time lost by full-time teachers is 6.4 working days per year. More than 40% of lost teacher time is accounted for by long-term (21 days or more) sickness absence and such absences can distort the picture of overall teacher absence at LEA and school level, since a few long-term absences will affect average figures for all teachers. They also found that when comparing teachers to other similar groups, teachers lose less time through illness than comparable Social Services staff, other local Government employees, nurses and midwives, central Government employees and the ‘average employee’ in the UK. However teachers lose more time due to sickness absences than NHS staff with similar training levels, eg. physiotherapists and teachers in the independent sector.

Workplace stress has also had legal implications. As described by Earnshaw and Morrison (2001), the landmark case was Walker v. Northumberland C.C. (1995) where it was held that the employer’s duty of care could extend to psychiatric damage. The employee must show that the psychiatric damage was caused by work rather than personal reasons and more significantly, that it was foreseeable. Last year Jan Howell, a primary school teacher received a record £254,362 compensation for stress (Times 5/12/00). She is reported to have said that she went to court on behalf of ‘other teachers in dire straits’. After a prolonged period of sick leave, she provided evidence showing that stress was damaging her health. She also commented that, “if you have stressed teachers, you have teachers who are not performing at their best, and if they are not performing at their best then how can the education they provide be the best?” Subsequently a Special Task Force found severe management failings at the school and the Head and Deputy were removed. In another case a teacher won £300,000 in damages after being forced to take early retirement through stress (BBC News 11/5/00).

The DfES (1998) statistics show that there has been a fall in ill-health retirements in the 1989/90-1997/98 period (mainly because the rules regarding eligibility were changed following the compilation of the 1996-97 data). The study by Bowers and McIver (2000) shows that between 1995 and 1999 average figures for teachers taking ill-health retirement fell from 446 to 137 per month. ‘Psychiatric disorder’ was the most common reason for ill-health retirement accounting for 47% of retirements. More than half the retired teachers thought their work had contributed to their condition and 60% said it had made it worse. Further, workload and paperwork were the most frequently mentioned contributory factors to teachers’ illnesses; 10% of ill-health retirees said they had been bullied by managers or colleagues. However, Woods et al. (1997) point out that the

number of teachers taking early retirement in England and Wales, has for various reasons risen by 68% over the last decade, and it jumped by 50% in 1988, the year of the Education Reform Act. When the years 1989 and 1998 are compared, 3,800 more teachers took premature retirement, an increase of 43%.

Teacher morale is reported to be at a low ebb (Smithers, 2001), especially since the regulations on early retirement have changed. Many teachers in their mid and late careers are feeling “trapped in teaching” (Woods et al., 1997). A snapshot of the state of health of members of the NAHT (Heads and Deputies) in Warwickshire in May 2000 found that 40% had visited the doctor with stress-related problems in the past year, with 30% taking medication. Just over a quarter were looking for less stressful work, including some who had already resigned. The number of vacant headships also rose dramatically in the first six months of 2000 according to Dean (2000). An analysis of adverts placed in the Times Educational Supplement revealed an increase of almost 40 per cent on the same period last year. Howson (2001), reported by Baker (2001) shows that 2,500 head teachers left their jobs in 2000, which is the largest number since 1997 when changes to early retirement rules led to a previous peak. Perhaps even more significantly, according to Dean (2001), 26,700 people completed training as teachers in 1998, but only 19,120 were still in teaching the following year. Smithers and Robinson (2001) reported by Baker (2001) have studied the question of whether enough teachers are being trained to replace those leaving the profession. Although between 1997 and 2001 the government hit its targets for the recruitment of primary teachers, it has been down a few thousand each year for secondary teachers. (In 97/98 the government was down by 3,250 on its target, by 4,721 in 98/99, by 2,758 in 99/00 and 2,107 in 00/01.) Schools with particular problems in recruiting are those on “special measures” and those in areas of high housing costs.

According to Smithers (2001) a survey by the Guardian based on vacancies reported by local education authorities in England show that nearly 3,500 jobs remain unfilled for the start of the Autumn term. According to Hayes (2001) the report produced by the think tank Demos states that teaching is now an “..unsustainable profession” and the current recruitment crisis will only be reversed if working conditions improve. The report called on ministers to give teachers more say in future reforms and suggested that everyone working in the classroom should have an assistant. It recommended that OFSTED inspectors who are objects of fear and dislike for many teachers should be required to complete 65 days in the classroom each year while their visits should be explicitly geared to helping schools improve, not just criticising them. HMCI has stated that the shortage was the worst he had seen for 40 years, with 40% of teachers quitting after three years in the classroom (reported by Smithers 2001). The Demos report also states that, “The current crisis in recruitment and retention is long-term, not cyclical”. However, the DfES argue that hiring teachers is more difficult when the economy is strong.

With figures such as these as a backdrop, the Government began a seven million pounds drive to recruit teachers in October 2000 after the introduction of training “salaries” failed to avert an impending staff shortage in secondary schools (Owen, 2000). The House of Commons Education Select Committee is now urging OFSTED to report

“specifically” on the impact of the shortage of teachers in its next annual report (Garner, 2001). The apparent crisis in the recruitment and retention of teachers suggests that teaching is an increasingly unattractive career. One consequence of the recruitment crisis is that heads are having to appoint people who they would not normally have appointed. A survey by the TES and SHA, based on responses from 827 secondary schools at the end of the Summer term 2001, suggests that staff shortages are damaging the drive to raise standards (TES 31/08/01). Heads are unhappy with 1,327 of the 7,127 appointments they made. If this is typical, it would mean that 6,000 out of the 30,000 appointments in England and Wales were unsatisfactory (20%). Many schools have had to appoint people who were unqualified, teaching a subject not their own or overseas recruits unfamiliar with the curriculum. Stop-gap measures include heads recruiting people who would not have been shortlisted five years ago. Smithers and Robinson (2000) also reported similar findings, with heads often having to resort to pro-active measures to fill vacancies. The DfES reported that there were now 12,000 more teachers than in 1998, but the Government was not “complacent”. In addition, a likely consequence of the shortage is not only increased class size, but also increased reliance on supply teachers. In turn, these factors have an effect on the quality of teaching, particularly if schools are put in the situation of having to depend on different supply teachers in the same academic year. Her Majesty’s Inspectorate found that while the majority of lessons taught by supply teachers were satisfactory, there were long-term problems in planning, record-keeping and maintenance of equipment and the school environment (Troman, 2001).

According to an independent survey commissioned by the Government (Times 23/10/00), pupils’ results are more likely to improve by employing well-paid, experienced teachers than by reducing class sizes or spending more on schools’ facilities. Most of the research examined was American and so, as Reynolds noted (Times 23/10/00), “It is impossible to be certain that what works in one country will transfer to another”. However, retention of experienced teachers is important, and a sample survey by the Teachers Benevolent Fund of 480,000 teachers conducted in March 2000 does not bode well. Almost half of those interviewed said they were likely to quit the profession within the next five years (O’Connell, 2000). However, intentions are not always borne out in reality.

Job-sharing may be a way of alleviating both teacher shortage and teacher stress. The Association of Teachers and Lecturers (ATL) believe that job-sharing is an important way to help to retain existing staff and improve flexibility in the workplace (ATL, 2000). It argues that for teachers who are not able to work full time, job-sharing can provide an opportunity to work fewer hours while maintaining their skills, career development, status and job satisfaction. It can also have a significant impact on teacher supply because it enables women and men who are out of teaching due to family responsibilities to return to the profession, and encourages women to return to teaching sooner after maternity leave. It also helps teachers retain the advantages and responsibilities of promoted posts. ATL also argue that job-sharing may become more attractive to experienced teachers nearing the end of their career, who wish to reduce the pressures and commitments of full-time work. However, teachers should bear in mind the impact

that this may have on their pensions, as job-sharing for pensions purposes is regarded as part-time employment and is not automatically pensionable. For job sharing work to be pensionable, teachers must elect to have pension contributions deducted from their salary. However the average salary which forms part of the calculation for pension benefits is not affected by being a job-sharer as it is calculated as for part-time staff on the average salary that a full-time teacher would receive.

2.2 Defining Competence

Competency in the classroom has become the focus of much attention over recent times, yet as Wragg et al. (2000) argue, being competent or incompetent in the classroom is not a clear cut distinction. Teaching is a multi-dimensional set of activities and incompetent teachers may be capable in one aspect but incapable in another. For example, they could be competent to teach French to 16 year olds but not to 14 year olds, or they may know their subject matter but be unable to create an orderly environment. The more all-encompassing the notion of competence, including interpersonal skills or values, the more difficult its definition, measurement and identification. Wragg et al also point out that it is clear that in the course of the millions of exchanges in which teachers may engage during quite a short part of their career, they can find little time for reflection on their classroom processes. This is relevant to the research on teachers alleged to be incompetent because teachers within procedures are usually expected to change their behaviour in quite a short time. However, changing styles that have been shaped by thousands of hours of practice is not easy, even when being observed and tutored. Even very skilful teachers found it difficult to adapt their teaching methods during the 1980s and 1990s to the changes in the curriculum. Also once a class has been 'lost' in terms of discipline, it is very difficult to get it under control.

Wragg et al. noted that during the 1990s, three out of every five teachers were aged over 40, leading to reduced promotion prospects and consequently falling morale. However, it did mean that there was considerable professional experience available to deal with the introduction of the national curriculum. On the down side, years of experience of favoured teaching strategies resulted in its being difficult for older teachers to make alterations to their teaching styles when necessary.

Fidler and Atton (1999) point out that one unsatisfactory lesson does not identify an incompetent teacher. Incompetent teachers must surely be those who fail in a number of important areas. According to Bridges (1992), "incompetence is a concept with no precise meaning". Potter and Smellie (1995) cite the case of an employment tribunal which upheld the dismissal of a teacher from an independent school because his pupils did not get the high grades usually achieved at that school, even though they were adequate by average standards. The employment tribunal found in favour of the school on the grounds that: "The employer is entitled to rely on its own standards; it does not have to rely on any hypothetically reasonable standard".

It has long been agreed that teachers should be able to pass on their knowledge in a well-organised, orderly classroom by means of carefully planned lessons. What is less clear is

what a teacher has to do in these areas to be considered incompetent. There is a difference between criteria (the areas in which teachers are expected to be competent) and standards (what they have to do to be considered as competent). As Bridges (1992) commented, “there are no clear-cut standards or cut-off points which enable an administrator to say with certitude that a teacher is incompetent”.

The Teacher Training Agency (TTA) has tried to go some way to solving this. In 1997 it set out four main areas in which new teachers must be competent:

- A Knowledge and Understanding
- B Planning, Teaching and Class Management
- C Monitoring, Assessment, Recording and Accountability
- D Other professional requirements

In 1998 the TTA set out the National Standards for Qualified Teacher Status (QTS), Subject Leaders, Special Education Needs Co-ordinators (SENCOs) and Headteachers. For QTS the booklet specifies in more detail the areas set out by the TTA in 1997. For example under ‘knowledge and understanding’ primary teachers when assessed must “iv. Understand the progression ... to KS1, the progression from KS1 to KS2, and from KS2 to KS3.” Under ‘planning, teaching and class management’, teachers must, “when assessed, demonstrate that they ensure effective teaching of whole classes, and of groups and individuals within the whole class setting, so that teaching objectives are met” and “monitor and intervene when teaching to ensure sound learning and discipline”. They must also, “set high expectations for pupils’ behaviour, establishing and maintaining a good standard of discipline through well-focussed teaching and through positive and productive relationships”. The ‘National Standards for Subject Leaders’ explains their purpose, the key outcomes, professional knowledge and understanding, skills and attributes and the key areas of subject leadership. The ‘National Standards for Special Education Needs Co-ordinators (SENCOs) and ‘National Standards for Headteachers’ uses similar headings with details appropriate to their jobs. For example, under skills and attributes, heads should be able to, “use appropriate leadership styles in different situations to...initiate and manage change and improvement in pursuit of strategic objectives”. These national standards may go some way to explaining what a competent teacher and headteacher is expected to be able to do to be considered competent but it does not explain how ‘poor’ a teacher has to be at the tasks to be considered incompetent. In other words, it does not explain the cut-off line referred to by Bridges (1992) between competence and incompetence.

The difficulties in defining incompetence have been mirrored recently in the difficulties in introducing performance-related pay (PRP) to teachers. Armstrong (2000) argued that “you can pay for performance only if you can measure it, and it is often difficult to apply appropriate measures that can be used fairly and consistently.” PRP can fail because the assessment process is flawed. In the final version of the payment scheme, judgements on eligibility were based on competency assessments and one-fifth of the assessment was related to pupil progress, a feature which the NUT resisted. As Richardson (1999) commented in his report to the NUT, teaching is to a considerable degree a collective

activity and successful education rests significantly on the contribution of a number of teachers.

2.3 Procedures and The ACAS Code of Practice

Procedures have been used throughout employment for many years, although they took on greater significance and change of purpose with the development of employment law since the 1970s.

"Procedures are the administrative mechanism to turn intention into outcome. They implement policy and channel power by specifying the exact sequence of things that people have to do to achieve the required results..." (Torrington and Earnshaw, 1988, pp. 181/2).

The main benefits of procedures are:

- they reduce the need for some decisions in the future by providing a means of dealing with an issue that will be suitable every time that issue recurs;
- they produce consistency for management action, limiting the scope for bias, prejudice, impetuosity or managerial capriciousness at the same time as providing managers with the security of a systematic approach to getting things done;
- they provide transparency so that the framework for management action and employee reaction is apparent both to the parties and to external observers, such as trade unions and employment tribunals.
- the ACAS Code of Practice (2000) states that procedures enable organisations "to influence the conduct of workers and deal with problems of poor performance" thus assisting organisations to operate effectively. Rules set standards of performance at work and procedures ensure that the standards are adhered to.

The main weaknesses of procedures are:

- reluctance by managers to resort to procedure for fear of costly, adversarial legal proceedings, where control of the situation is given over to lawyers;
- procedures being over-elaborate, especially with too many appeal stages, so that proceedings are protracted, causing major problems for both managers and individual employees;
- the feeling by some managers that procedures now represent the only way to deal with problems, rather than the more informal methods of rebuke, advice or "the quiet word". (Earnshaw, et al. 1998).

This final point is given great weight by ACAS in their self-help guide to producing disciplinary and grievance procedures (ACAS, 1997) which urges clear separation between the full range of strategies available by informal means and the much more limited focus of formal procedural steps.

The main forms of procedure used in employee relations to control the behaviour of the two parties to the employment contract are for collective bargaining, grievance, discipline and redundancy. In cases of unfair dismissal one of the key determinants of an issue will be procedural fairness, the extent to which the procedure was scrupulously followed. An employer frequently loses a tribunal case because of not meeting all procedural requirements, for example:

"Because 'capability' includes dismissals for health reasons as well as for incompetence, a variety of factual situations arose in these cases. Nevertheless ... many were found to be unfair because there had been insufficient investigation of the facts or medical background." (Earnshaw, op. cit. p.14)

Where a dismissal is found to be unfair, the employer may be ordered to reinstate the employee and/or may be liable to pay compensation. In coming to a decision about the fairness of the dismissal, the tribunal or arbitrator will consider whether the employer acted reasonably in all the circumstances, having regard to the size and the administrative resources of the undertaking. With all procedures there is a risk that they inhibit change and can become a straitjacket instead of a framework for action. When they are too rigid, people start to 'cut through the red tape' or 'short circuit the system' so that the benefits of procedure are lost. It is ironic that the drive to introduce change, as shown in the Secretary of State, Stephen Byers', letter of 17 November 1997, can be blunted if the procedural mechanism that is introduced is not compatible with the nature of the change:

"An aspect (of procedure) is the need to deal with matters promptly in order to avoid the frustration that can come from delay and the risk of managers being seen to dither and lack the confidence to make a decision." (Torrington, 2000, p.1031)

The ACAS Code of Practice (2000) recognises the importance of involving workers and their representatives and all levels of management when formulating new procedures. In terms of the outline capability procedures all the relevant stakeholders were involved in discussing the shape of the procedures. It is recommended that rules should be set out in writing and be available for all workers, and that ideally they should have their own copy and have them explained orally. Workers should also be aware of the likely consequences of failing to meet performance standards. One of the essential features of procedures is that they should not be viewed primarily as a way of imposing sanctions but rather as a means of *encouraging and helping improvement*. Appropriate managers and workers' representatives should understand the procedures and where necessary should have training in their use. The Code considers that minor cases of poor performance may best be dealt with by informal advice, counselling and coaching rather than through a disciplinary procedure. Informal warnings may be issued but the problems should be discussed with the aim of helping and encouraging workers to improve. However, informal warnings and / or counselling are not part of a formal disciplinary procedure and workers should be told this.

The Code advises that every help and encouragement should be given to workers to perform to a satisfactory level. Employers also have a duty to set measurable and

realistic standards of performance and to explain the standards to employees. If workers are found to be failing to perform to the required standard, there should be an investigation. If the sub-standard performance is found to be caused by a lack of the required skills the worker should be given coaching and training and a reasonable time to reach the necessary standard. If the performance is sub-standard due to a lack of effort or negligence by the worker then disciplinary action will normally be appropriate. A worker should not normally be dismissed due to a failure to perform to the necessary standard unless an opportunity to improve and warnings have been given. However, if a worker commits a single error because of negligence and the potential or actual consequences could be or are "extremely serious", warnings may not be appropriate. The capability procedure should indicate that summary dismissal action may be taken in such circumstances. The Code also states that employers may need to have special arrangements for dealing with poor performance of workers on short-term contracts or workers in their probationary period.

If a worker is absent due to medically certificated illness the issue becomes one of capability due to ill-health and employers should take a sympathetic and considerate approach. In deciding what action to take, employers will need to take into account: the likelihood of an improvement in health and subsequent attendance (based on medical advice), the availability of suitable alternative work, the effect of past and future absences on the organisation, how similar situations have been handled in the past and whether the illness is a result of a disability as defined by the Disability Discrimination Act 1995. Disability is explained in the Act as being a 'physical or mental impairment which has a substantial and long-term adverse effect on...[a person's]...ability to carry out normal day to day activities'. Under section 6, employers may be required to carry out certain adjustments to their arrangements or premises in order to avoid discriminating unlawfully. Some examples are given in section 6(3) of the Act and the accompanying Code of Practice, including transferring someone who becomes disabled to an existing vacancy elsewhere in the organisation altering working hours or, for example, allowing flexi-time or even part-time working.

2.4 Identifying and Dealing with Incompetence

Fiddler and Atton (1999) identify the causes of poor performance as rooted in either the management (ie. that they have not made clear their expectations), the job (ie. that it is too onerous to be done satisfactorily) or the individual. They state that attempts to deal with poor performance should look at those areas in that order. If the problem is considered to lie with the individual, they emphasise the importance of collecting evidence of incompetence from a variety of sources to try to minimise bias. According to them the most frequent ways of identifying incompetence are:

1. OFSTED inspections
2. Complaints from parents or others
3. Poor exam results or other performance criteria
4. Perceived problems
5. Staff appraisal

It is also noted by Fiddler and Atton (1999) and Wragg et al (2000) that a new headteacher or senior manager often takes action on poor performance which had been neglected previously.

Fiddler and Atton (1999) argue that much poor performance results from weak management at some time or other. They stress the importance of dealing with poor performance as soon as it arises and identify six management practices for dealing with poor performance:

1. the assessment of performance based on evidence not hearsay
2. an approach combining support with a determination to secure acceptable improvement
3. the seeking of innovative solutions, rather than an unbending stubbornness which only seeks improved performance in an unchanged job
4. giving consideration to the dignity of the poor performer, and honourable solutions rather than punitive ones
5. learning lessons about the prevention of future poor performance rather than accepting poor performance as inevitable
6. ensuring the interests of children are paramount

Their view is that if poor performance is identified as soon as it occurs, there appears to be more chance of helping teachers overcome their weaknesses. The longer it is left unacknowledged, the less likely it is that improvement will be possible. Waintroob (1995) found that teachers who failed to improve generally did not accept that they had problems.

Fiddler and Atton (1999) also contend that unions should have no interest in protecting incompetent teachers as, “ the credibility of the teacher organisations and their case for improved pay and working conditions are enhanced when teaching is of high quality. They have nothing to gain from poor teaching standards.” They assert that the role of the teacher’s union is not to defend incompetent teachers to the bitter end but to ensure that proper procedures are followed, giving their members the opportunity to overcome problems and, if they cannot continue in teaching, preserve their dignity and negotiate satisfactory terms.

In the case of Hetherington v. Darlington Borough Council (2000), described by Field (2001), the importance of following proper procedure such as assessing poor performance on the basis of evidence is made clear. The Deputy Head, Geoff Hetherington, was found unanimously to have been unfairly dismissed. The employment tribunal heard the former Deputy describe how the arrival in 1995 of new headteacher, Mrs Gill Wray, led to a period of constant criticism, excessive monitoring and a tirade of unsubstantiated allegations of under-performance which brought to an unexpected end a successful 25-year career. The LEA and NAHT backed Mrs Wray but failed to substantiate any of Mrs Wray’s claims.

2.5 Previous Findings: Failing Teachers, Failing Schools?

2.5.1 Wragg et al. (2000)

Wragg et al (2000) sent out questionnaires to a one in eight random sample of all primary heads and a one in five random sample of all secondary heads in England. Responses were obtained from 1,966 (65%) of the sample. Many headteachers said that they had not had to deal with a case of incompetence in the last ten years, but 654 heads described one case in detail and 30 heads described two cases, giving a sample of 684 cases. One quarter of these teachers improved. First indications of a problem came from complaints from other teachers, parents, pupils and headteachers' informal monitoring. Low expectations of pupils, poor pupil progress, inadequate planning and preparation, classroom indiscipline and inability to respond to change were the most common problems. Teachers who later improved, acknowledged a problem more willingly. Most common strategies were in-house support and advice, target setting, observing teacher's lessons, giving the opportunity to observe good practice and sending on courses. Forty-six percent of cases took from one to three years; 20% took longer. A majority of heads believed this to be too long and would have preferred six months to two terms. Most schools followed a pre-determined procedure, but one in six did not. The three most common outcomes of the procedures were resignation (50%), improvement (c.25%) and early retirement (20%) (the early retirement option is now much more difficult to obtain). Of the teachers who reached an acceptable level, 13% became good or very good and 42% became 'acceptable but with some problems remaining'. With hindsight many heads believed that earlier action would have helped, but although they welcomed government legislation, they believed that the fast track dismissals might be too rapid. Heads worried about employment law and would have welcomed more external advice. They were also concerned about the stress the procedures placed on themselves, the teacher, the other staff, pupils, parents and governors. A strength of Wragg et al.'s research is that it gained details of many cases which heads had dealt with, but they do range over a number of years, and a majority of them would probably have been before the 1997 outline procedures came into force.

Wragg et al. also scrutinised seventy questionnaires returned by primary and secondary teachers alleged to be incompetent, forty-four cases of which were completed and twenty-six were on-going. Over a third of the teachers said that no formal system of monitoring of performance existed in their school and over a quarter said that they did not have job descriptions at the time of the allegation. The four most common areas in which teachers had been alleged to be incompetent were: classroom discipline, planning and preparation, pupil progress and expectations of pupils. Over three-quarters rejected the allegation of incompetence; their own explanations included conspiracy, bullying and victimisation, scapegoating, racial discrimination, incompetence or vengeance by the head, clashes of philosophy, pupils being unwilling or unable to learn or behave well, and unjustified complaints from parents. In nearly half the cases the teacher was informed of the matter by the head or line manager during 'informal' dialogue and they did not realise the seriousness of their position until it was too late. In a third of the cases, teachers believed that no pre-determined procedure had been followed by the head. Many teachers retired or resigned during the informal stage.

All the teachers felt that they were receptive to advice offered but some became less so as events proceeded. A number felt that there was collusion between the head and the union representative. Many teachers called for an independent assessor to provide an objective judgement of their performance. Only four out of the forty-four completed cases (9.09%) had reached an acceptable level of competence and of the forty-four teachers whose cases had concluded, twenty-nine had found employment elsewhere, twenty-six of which were in teaching although it was sometimes part-time or occasional work. Several teachers said that in their new post their work was highly thought of and many wished they had challenged the initial allegation more forcefully. Most teachers thought they should have demanded and received better support from their LEA, union and colleagues; they also thought that better legal advice was now available. The confidentiality aspect of the procedures left them feeling isolated and vulnerable, unable to share their misery or gain support and advice. The teachers on the whole felt misjudged and mistreated, and in particular that personal circumstances such as their medical problems or those of their partners which had affected their work, had not been taken into consideration. The fact that Wragg managed to interview teachers alleged to be incompetent provides an interesting angle but as noted earlier, their cases are likely to have spanned a number of years.

A further aspect of Wragg et al's research was to survey fifty-seven professional colleagues who were involved in working alongside an under-performing colleague. Some expressed frustration that an incompetent colleague had been allowed to leave the school via early retirement, redundancy or resignation with their reputations intact and, in some cases, continue teaching elsewhere. Criticisms were also expressed by many of the respondents about the length of time it had taken for the issue to be resolved. They were concerned about the impact of an under-performing teacher on the children's education. Most respondents believed that a period of between one and three terms was an appropriate timescale, though some primary teachers supported both shorter and longer timescales. It was clear that one under-performing teacher could have a huge impact on a whole school. Thirty respondents had been involved in providing support and advice, monitoring performance and in the proceedings themselves. The responsibilities had been time-consuming and in some cases took an emotional toll on them. Three-quarters believed that the events had had an effect on other staff in the school such as : additional workload caused by the under-performing teacher's absence from school; coping with deteriorating pupil behaviour; worries about pupils' learning; repercussions for the reputation of a department or whole school; deterioration in staff relationships with 'camps' emerging and distress at seeing a colleague in such a situation. Most respondents expressed intolerance of their under-performing colleague, with only two of the sample offering significant sympathy.

Twenty-one teacher union officers from six different associations were also interviewed during the study. From these interviews it emerged that those aged 45 and over with many years of teaching experience seemed more likely to be the subject of incompetency allegations. Where teachers had reached an acceptable level of competence, several common factors emerged- the teacher acknowledged there was a problem, the teacher

was receptive to support and advice, the head genuinely wanted the teacher to improve, quality advice and support was available and the process was dealt with sensitively. Where teachers failed to improve, the above elements were not in place. However, other factors were also identified - some teachers were just not up to the job, external factors like divorce or health problems were too big an obstacle to overcome, some teachers were not able to understand what was required of them and the capability procedure itself was too stressful, causing ill health. Other points raised by union officers were that some heads did not follow the procedures and support for the teacher was not always as comprehensive as it should be. In some cases the union officers themselves provided their members with practical advice and, in direct contradiction of union policy, observed lessons. The majority of officers made personal judgements about the competence of the members and justified this by saying that it was in order to be able to provide the best advice possible. They were also prepared to liaise with a headteacher to broker the best deal as they saw it. The majority of officers thought the four week dismissal period was unworkable and unreasonable and they thought that an employment tribunal would rule in favour of their member against a headteacher using a fast-track process.

Views were also sought from twenty officers from the personnel departments of eleven LEAs. It emerged that there were differences in the amount of time allowed for improvement periods in the informal and formal stages of procedures and the amount of detailed advice for headteachers. Changes in LEAs since the Local Management of Schools was introduced meant that officers were less able to take the initiative in dealing with cases of poor performance. There were also variations in the amount of support which an LEA provided to help teachers improve their practice. They reported a slight increase in the number of cases. They believed that the introduction of, and changes to, the national curriculum and an increase in administrative tasks, higher expectations of teachers, a closer level of monitoring and fewer opportunities to move incompetent teachers had contributed to the slight rise in the number of cases. LEA officers thought that two terms was a reasonable period for teachers to improve and that only in extreme cases would four weeks be acceptable; even then it would indicate previous management failure.

Over three-quarters of teachers alleged to be incompetent left their post. Most of them took early retirement if they were in their fifties (an option which was virtually eliminated in March 1997), retiring through ill-health, or leaving their post or the profession. About 3% of teachers were actually dismissed from their post and 3% were made redundant. Persuasion to retire or leave was a frequently followed policy of headteachers and union officers. An 'exit with dignity' was the phrase often used by different groups to describe what they sought when there was sympathy for the teacher concerned. Significantly, only a third of headteachers said that they had had training in identifying and dealing with professional incompetence; not surprisingly, the majority felt such training to be desirable.

The study concluded that some of the teachers studied were indeed failing to reach the standards expected of them. Many of the teachers themselves agreed with the judgements of those who thought they were falling short of what was expected, although

a minority felt they were being failed through inaccurate judgements, lack of support and even open hostility. There were teachers who did badly in one context but were successful in another or who felt that their personal circumstances were not appreciated. There were also heads who felt that nothing they were doing was working, and that the teacher was determined to resist any attempt to change their practices for the better and instead blamed children, circumstances and external factors. The main recommendations by Wragg et al. were that problems should be identified early rather than at a point when it was too late to improve. In their opinion, the informal stage needed to be handled carefully and teachers needed to be given support to deal with unusually difficult classes or negative personal relationships and to manage their teaching more effectively. An external mentor or counsellor for heads and teachers was also seen as helping to provide objectivity in an emotionally charged situation.

2.5.2 The Findings of Troman (2001)

Troman's study describes the inspection of a primary school which was judged to be failing in 1996 and was put into special measures. Its relevance to the present study is that an OFSTED inspection is often the trigger for capability procedures to be put into operation for those teachers found to be performing unsatisfactorily. Prior to the inspection the school was characterised by strongly positive emotions, centred on caring and sharing. It was described as a child-centred and multi-cultural school that had excellent community relations. The school had also had a very successful LEA pre-inspection. Not surprisingly, the teachers experienced a great emotional shock when they realised they were failing. The personal nature of competence is made clear by Wragg et al. (2000):

"to attack someone's professional competence is to attack that person as a whole, not just one element",

This is why there is such an emotional response to an accusation of lack of capability in terms of not reaching the required standards. Shame was the most prominent feeling among the teachers. For Lewis (1971), shame comes from, "the unconsciously expressed anxieties about inadequacies of the self". Troman argues that the teachers' experience of inadequacy and psychological insecurity were preceded by self-doubt. The teachers questioned their accumulated experience and knowledge of schools and teaching. One teacher stated that before the inspection he used to "feel quite a good teacher" and the experience of failure resulted in an "erosion of personal skills". Another said, "We were lacking in confidence; a lack of confidence in our abilities. Always checking things, and re-checking."

The teachers also showed symptoms of stress; the head during the final term of special measures said that the teachers were "exhausted and couldn't keep working at that pace; they were on a stress-ridden downward path; and stress levels were high and morale was low". The feelings experienced by the staff, such as hopelessness; despair; emotional and physical exhaustion; tearfulness and crying; feelings of inadequacy; low self-esteem; self doubt; loss of confidence and anxiety are all symptoms of depression (Wolpert, 1999).

While the causes of depression involve biological, psychological and social factors, it “always occurs in a social context” (ibid.). Troman argues that it seems no coincidence that of the eight teachers to leave the school after its failure and during special measures, at least four of these were professionally diagnosed as suffering from clinical depression.

In recognising that poor performance may have more than one cause, OFSTED has offered the following guidance:

“Those whose teaching has been judged to be unsatisfactory are not necessarily poor teachers who are incapable of improving. It may be that they have suffered from weak management of the school, so their teaching problems have not been identified and relevant in-service training has not been provided. This group of teachers can and should be helped to improve their teaching....Other teachers cannot, or do not wish to, change their ways of working. In such cases, the school should not shy away from removing staff who cannot fulfil their responsibilities as teachers.”

One teacher felt that OFSTED’s priority was the removal of unsatisfactory staff. “Figures show, don’t they, that in most schools that get out of special measures, first the Head goes, and quite often the Deputy goes, and they do have a turnover of staff.” The emphasis is on teachers leaving rather than improving. Referring to one of her colleagues, she commented that,

“She knew it would eventually come to competency procedures. The awful thing was that there was a point where you couldn’t tell if she couldn’t cope with it because she couldn’t adapt or if she couldn’t cope with it because she was very stressed”.

As Troman states, “this indicates the complexity of the situation in which a stressed teacher is attempting to respond to change”. He also notes that the teachers leaving the school were mainly older, more experienced and therefore more expensive. Staff reductions are a quick way to reduce budget deficits. This strategy of financial recovery for the failing school is advocated by OFSTED (1999).

This primary school is not alone in its experiences. Stoll and Myers (1998) argue more generally that the policies of blaming and shaming, “have contributed to low teacher morale and feelings of impotence”. Also the policy of blaming and shaming rests on the view that schools can, “act independently of local socio-economic contexts” (Rea and Weiner, 1998) and that school failure can be explained solely by ineffective teaching and leadership. This is argued despite estimates by researchers in government circles that only 8-12% of the difference in pupils’ overall attainment is attributable to school effects (Reynolds et al., 1996). This is also the case despite the admission in a national policy document that,

“there is certainly a link between socio-economic deprivation and the likelihood that a school will be found failing.....7 per cent of schools with disadvantaged

pupils have been found to be failing, compared to the national ‘failure rate’ of 1.5 - 2 per cent” (DfEE and OFSTED, 1995).

Many of the teachers at the school studied by Troman also argue that the school, save for the improved SATs scores, was no better after leaving special measures. Indeed in some respects, it could be considered worse. Half-way through special measures a group of middle class parents complained about the school’s increasing concentration on raising ‘standards’ in the children’s academic work at the expense of other aspects of their education. They pointed out that they had chosen the school because of its multicultural ethos and curriculum, yet there was now reduced time spent on celebration, and learning about customs and festivals in a wide range of cultures. Fink (1999) concludes that, “contextual factors like demographic shifts, government policies, inept local leadership, enrolment variations, inadequate succession planning for school leaders, among other factors, have more to do with school failure than the perceived inadequacies of teachers or heads.”

Troman’s research makes clear the negative impact of a special measures judgement in terms of the effects on all the teachers, not just those who are regarded as having unsatisfactory teaching. The feelings which the teachers experienced also mirror what a teacher whose competency is questioned and who is put onto capability procedures might feel- shock, shame, inadequacy, stigma and stress. All of these feelings make it difficult for the teacher to set about improving and indeed make it likely that he or she will go off with stress or depression. Troman also points out that teachers may fight against changing, because to protect one’s self esteem, it is easier to make excuses and account in a creditable way for failure, thereby denying that there is a problem. Finally, Troman makes clear that socio-economic factors must be taken into account when making judgements about schools and teachers.

2.6 Our Research

This study adds to the current state of knowledge by giving clear data on the academic year 1999-2000. It provides statistical data on usage of formal capability procedures by LEAs, triggers, length of procedures, usage of fast track and outcomes. It also provides in-depth case studies concerning forty-five teachers and six headteachers whose capability was questioned. The case studies illuminate further the definitions of capability used by heads, issues which trigger the procedures, and whether advice from the LEA, unions and occupational health is useful. It also provides an insight into the role of governors, the problems of illness, the effectiveness of the procedures, why individuals did or did not improve and views on the four week fast- track procedure. Finally it makes recommendations on best practice with regards to teacher capability procedures.

CHAPTER THREE

METHODOLOGY

3.1 General Approach

As outlined in the introductory chapter, the broad aim of the project was to provide both quantitative and qualitative data on the operation of teacher capability procedures. Although there was some existing evidence on the overall number of teachers subject to procedures during 1998/99 as well as the outcomes for individual teachers, these were based on extremely small sample numbers and there was consequently considerable doubt about their reliability.

More specifically, our brief was to provide reliable quantitative data on the numbers of teachers subject to formal capability procedures during the academic year 1999-2000 in addition to information about the length of the procedure, triggers to its operation, the incidence and length of sickness absence during the procedure and the outcome for the individual concerned. However, qualitative data was also sought about how easy or otherwise it was for those whose responsibility it was to operate the procedures, any perceived barriers to implementing the procedures and the effect on other staff of doing so. A sample of 500 schools was included, in line with DfES aims and objectives.

3.2 Research Methods

A number of research methods were used in the project. In order to determine overall numbers of teachers subject to procedures during 1999-2000, all Local Education Authorities (LEAs) in England were approached using a very brief survey questionnaire. However, it was felt that this would not be the most appropriate way of obtaining from schools the additional quantitative data required, but that instead we should conduct a short telephone questionnaire with a random sample of schools in a number of LEAs. This would have the added advantage of identifying appropriate schools in which to carry out case studies in order to elicit more detailed qualitative data.

In order to inform and guide the research team, it was decided to set up an Advisory Group of individuals with relevant expertise and experience and this was done at a very early stage of the project. Details of the members of the Group are set out in Appendix 1. The NAHT member of the Advisory Group was also employed on a consultancy basis to ensure that the research team was fully conversant with the relevant issues surrounding the project.

3.3 The Survey of LEAs

Before mailing the LEAs, a meeting of the Advisory Group was held to explain to them the aims and objectives of the project, but also to seek their views on who would be the appropriate person to contact within each LEA and to gain their reaction to the wording of the proposed letter and questionnaire. In the light of their comments and those of the

project's Steering Group, an amended letter was drafted to the Chief Education Officer of all LEAs (see Appendix 2). Contact was made at this point with the President of Chief Education Officers, who agreed to do what she could to support the project.

At the beginning of November 2000, each LEA was sent a letter, a one-page document describing the project (see Appendix 3), a reply slip and a return envelope. The reply slip was kept deliberately brief in the hope of maximising responses: it simply asked for the number of teachers (and separately, headteachers) who had been on formal capability procedures during 1999-2000 and contact details for the person to whom we should send any subsequent correspondence. Although we were aware that the outline capability procedure envisaged an informal stage as well as a formal stage, we were advised by some members of our Advisory Group that to ask about informal as well as formal procedures might be confusing. Moreover, it was pointed out that what was important was to capture recorded use of the capability procedure, whether at the informal or the formal stage, as opposed to informal action *outside* of the procedure.

The LEAs were asked to respond by the end of November. Somewhat disappointingly, by that point only around 50 reply slips had been received and this low response rate not only meant that limited overall data was provided, but also that it was extremely difficult to move to the second stage of the research, namely identifying appropriate LEAs within which to carry out the telephone survey of schools. We therefore sent a second letter, but this time addressed to the Personnel Director of the LEA and followed up the letter with telephone reminders.

3.4 Interviews with Key Players

In gathering qualitative data about the operation of capability procedures, it was considered important to elicit the views of key players such as trade union officials and LEA Personnel Managers as well as Advisors/Inspectors. Semi-structured interview schedules were therefore drawn up and piloted on two Branch officials who were members of the Advisory Group. The interviews led us to believe that the union almost always had an involvement in formal (and informal) capability procedures, and although a survey of the main unions at HQ level was not part of the initial research plan, it was felt that they could be a rich source of data. Approaches were therefore made to the Headquarters of the main unions and during December, interviews took place with senior officials of the national Association of Headteachers (NAHT), the National Union of Teachers (NUT), the National Association of Schoolmasters Union of Women Teachers (NASUWT), the Secondary Heads Association (SHA), the Association of Teachers and Lecturers (ATL) and the Professional Association of Teachers (PAT). In addition, eight LEA Advisers and Personnel Managers were interviewed during December and January, some of whom made a direct approach to us as a result of the letter to the LEA and others who were contacted by us because we had decided that we wished to target their LEA for stage two of the project.

3.5 The Telephone Survey

As the LEA returns came in, it gradually became possible to identify a number of Authorities who had experienced the use of procedures and who it was felt would provide an appropriate geographical spread as well as a mix of urban and rural schools. Each LEA was contacted individually in order to secure their agreement to being 'selected' for the second phase. Given that it is not appropriate to cold-call schools since that is unlikely to secure co-operation, a letter was sent to schools indicating that they might be telephoned (see Appendix 4) and this, along with a copy of the 'flyer' about the project was mailed via the LEA to all schools within the thirteen chosen LEAs.

The telephone survey itself was piloted to make sure that, as promised, it would take no longer than ten minutes to complete (see Appendix 5). The interviews themselves commenced in January 2001 and continued until June. Given the fact that the LEAs varied in size and number of schools it was felt to be inappropriate to conduct the same number of interviews (totalling over 500) in each. However, neither was it considered necessary to replicate exactly the proportion of telephone surveys carried out to the number of teachers within the LEA. Ultimately, it was decided to make a rough classification of the chosen LEAs as 'large', 'medium'; and 'small' and to conduct 70, 50 and 25 surveys respectively.

Within each LEA, the schools were selected randomly and virtually all the interviews were carried out with the headteacher of the school concerned. Sometimes this was achieved during the initial telephone call and on other occasions the researchers were asked to ring back at a later stage. As indicated previously, the aim of the telephone survey was not simply to elicit quantitative data but also to enable the final, qualitative stage of the research to be carried out. For this reason, where a school was felt to have potential as a suitable case study, the headteacher was asked about possible involvement in a more in-depth face-to-face interview.

3.6 The Case Studies

The case studies were carried out in nine of the LEAs involved in the second stage of the project. Once again, selection of appropriate LEAs was based on considerations of size, geographical area and urban/rural spread. Case studies within a given LEA were chosen so as to provide a spread of size and type of school, the issue giving rise to the operation of the procedure, whether the matter was dealt with at the informal or formal stage – or completely outside the procedure, and the outcome for the member of staff involved. Although the responses to the telephone survey were, on the whole, sufficient to provide the required number of schools, the LEAs themselves sometimes identified cases which they felt would be interesting to investigate and which had not necessarily featured in the telephone survey. Ultimately, of the 45 teacher case study schools, 30 were selected from the telephone survey and 15 by the LEA concerned. Since use of procedures in respect of headteacher capability were included in the remit of the project, such cases were of necessity dependent for their identification on the assistance of the LEA.

For each teacher case study, semi-structured interviews were conducted with the headteacher and, where possible, with other teachers in the school who might have been affected by the operation of the capability procedure. In the majority of cases we were also able to interview relevant LEA officials, governors and trade union/employer representatives (as appropriate), not only to obtain a wider perspective, but also to investigate the extent to which such individuals may have influenced the way in which the procedure was operated (see Appendix 8 for a summary of case study interviews). Where the case study involved a headteacher (six in total), the interview was carried out with LEA personnel officers. As in the previous stages of the research, the case study questions drawn up were scrutinised by members of both the Advisory Group and the Steering Group and amended accordingly to take into account their comments (see Appendix 6 for all case study interview schedules).

3.7 Scrutiny of Procedures

Because it was felt to be useful to explore possible variation between LEA approaches to handling capability issues and to determine how government guidelines had been interpreted, copies of procedures were collected from all but two of the case study LEAs, as well as from three LEAs which took part in the telephone questionnaire but not the case studies. Voluntary-aided schools, which have the option of following their own procedures, were included in the sample and therefore copies of their procedures were also obtained.

CHAPTER FOUR

LEA AND SCHOOL RESPONSES TO CAPABILITY: SOME QUANTITATIVE FINDINGS

As noted in Chapter 3, the primary aims of the quantitative aspects of the project were to ascertain LEA levels of involvement in capability procedures by way of a survey, and to undertake 500 telephone interviews in sampled schools in LEAs experiencing both high and low incidence of capability procedure usage. In this chapter we present the empirical findings and comment on their implications.

4.1 LEA Survey

Following on from the 1998-99 NEOST survey previously discussed in Chapter 1, an LEA survey was undertaken in order to update this data, commencing in September 2000. Our survey achieved a high response rate of 61%, with ninety-one out of a possible one hundred and fifty LEAs responding. By the normal criteria of social science research, this enables us to generalise with confidence that it fully represents the totality of LEAs and teachers in the country. The respondent LEAs in our survey came from all parts of England and represented different varieties of authority, including Unitary, Metropolitan Boroughs, Inner and Outer London as well as County authorities with large rural populations.

From the LEA survey 654 teacher and headteacher capability procedures were recorded in 1999-00, an average of 7.2 per LEA. The average number of teachers and headteachers subject to procedures was remarkably similar, at 0.30% and 0.35% respectively. This data contrasts with the existing NEOST findings of some 3,015 capability cases being triggered in the preceding year, representing around 1% of teachers. However, it should be noted that the survey requested information on 'teachers subject to formal capability procedures'. Whilst this was done specifically to differentiate informal action outside of procedures as such, it became clear that some LEAs may have interpreted the request as being to provide information about teachers on the formal stage of capability procedures as opposed to the informal stage. It may very well be therefore that the numbers reported are an under-estimate of the numbers of teachers on capability procedures in 1999-2000. Of the 654 reported cases, some 93% involved teachers (610 of the sample) and the remaining 7% involved headteachers (44 of the sample). Since there are currently approaching 400,000 full-time equivalent teachers in England usage of capability procedures would appear low.

Table 1 : LEAs and headteacher capability

No. of Cases	<i>0</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>10</i>
% of Respondent LEAs	74.7%	16.5%	3.3%	3.3%	1.1%	1.1%

Most LEAs reported no headteacher capability cases (74.7% of the sample responding) and 16.5% had experience of only one case. In contrast, 12% of the sample reported no usage of formal procedures for teachers, whilst the remaining 88% recorded usage ranging from 1 to over 50 cases (see Table 2, below).

Table 2 : LEAS and teacher capability

No. of teacher cases	0	1	2	3	4	5	6	7	8	9	10	11-20	21-62
No. of LEAs	11	10	11	13	9	6	6	2	3	0	4	10	5
% of LEAs	12%	11%	12%	14%	10%	7%	7%	2%	3%	0%	4%	11%	5%

The survey thus showed that the majority of LEAs have low numbers of teachers on capability procedures. To obtain more detailed quantitative data, we then undertook random telephone interviews with schools within LEAs experiencing varying levels of usage of capability procedures.

4.2 Schools Telephone Survey

As already discussed in Chapter 1, the DfES conducted a small-scale telephone survey in 1998 in relation to illness and capability; consequently we sought to test this existing data and update the findings. In our survey, 520 telephone interviews were undertaken from December 2000 to June 2001, covering thirteen LEAs. The selected LEAs covered a variety of authorities: three represented City; two Metropolitan; one London; three County; and four Unitary. The regional variations were as follows: two in the West Midlands; four from the North West; two in London (one in each of the Outer and Inner areas); one from the East of England; two from the South East; one from the South West; and one in Yorkshire/Humberside. The LEAs were roughly classified as 'large', 'medium' and 'small'; around 70 interviews were then carried out in large LEAs, 50 in medium-sized LEAs and 25 in small LEAs. In the interview sample, 404 of the 520 schools were primary, 89 were secondary and 27 were special schools. In statistical terms the primary school bias reflects the educational norm given the proportionately higher number of primary schools in England. Differentiating the sample by school type, 371 were Maintained/Foundation schools and 149 were Voluntary Aided schools (106 were Church of England, 40 were Roman Catholic, 2 were Jewish and 1 was Methodist).

The critical issues addressed in the telephone interviews were the incidence of concerns over teacher capability, whether these were dealt with outside or within capability procedures, the length of time taken at the various stages, the incidence of ill-health and the ultimate outcome for the teacher concerned.

Respondents were first asked whether they had dealt with any capability issues during the academic year 1999-2000. Of the 520 schools targeted, 87 (17%) responded that issues had arisen : in the vast majority (76 schools), there had been only one teacher whose performance gave rise to concern – however, nine schools had had two cases, one had

had six and a further school had a staggering eight cases. Interestingly, 46% of these capability issues were reported to have been dealt with outside any procedure and 40% at the informal stage of the procedure. In other words, very few cases get to the formal stage of procedure before they are resolved. It is also significant that 65% of the heads had *never* had any experience of capability cases.

The heads' responses can also be extrapolated to produce an estimate of the percentage of teachers on capability procedures during 1999/2000. The number of teachers causing concern in the 520 schools was 108, which suggests that in the total number of schools in England (22,905) there would be 4757 such teachers. However, only 54% of these were being dealt with within procedures (i.e. 2568 teachers) and as an overall percentage of the number of teachers in England (383,919)¹ the figure is 0.67%. Given the concern expressed earlier about the possible under-estimate in the LEA responses, we would suggest that even though this second figure is based on smaller numbers, it is likely to give a more accurate indication of the use of capability procedures, but it is still well below 1%.

We then asked the heads what had been the issue which had caused them concern in a particular teacher, and how this had come to their attention. As Table 3 (below) indicates, whilst the majority of concerns centred round sub-standard teaching performance, a significant number of heads regarded absence levels as a problem. In addition, headteachers also mentioned matters which fell outside teaching duties themselves which can best be classed as 'inappropriate/unprofessional behaviour'. These behavioural issues highlight the difficulty described more fully in chapter 5 whereby heads were uncertain whether to use a disciplinary approach rather than treating the matter as capability.

Table 3 : Heads' concerns*

Teaching	Managerial role	Absence	Inappropriate/ Unprofessional behaviour	Unknown/not clear
65%	8%	16%	21%	19%

* expressed as a percentage of the total number of 'problem' teachers; multiple responses were permitted

When asked about how they had been alerted to problems over a particular member of staff, a substantial number gave no clear response, the perception being that this was somehow just 'known about'. However it was also clear that monitoring and observation had picked up a large percentage of problems related to teaching, and that parent/pupil complaints often drew matters to the head's attention (see Table 4).

¹ Figures for both teachers and schools were as at January 2000 (supplied by the DfES)

Table 4 : Means of alerting head's attention to capability issues*

Monitoring/ observation	OFSTED	Parent/pupil complaint	Others/unknown
30.5%	12%	18.5%	60%

* expressed as a percentage of the total number of 'problem' teachers; multiple responses were permitted

Cases dealt with outside procedures lasted on average around 18 months, but this included those which were concluded at this stage in addition to those which moved to the informal stage of the capability procedure. From the interviews it was rarely possible to identify a specific event which triggered a move into dealing with the matter via procedures. In general, it seemed that heads simply realised that the supportive measures which they had put into place were not effective in turning the situation around. Although difficult to quantify, it did also seem that not all heads viewed the capability procedures in the same way. Some put all their effort into dealing with the problem outside procedures and only when that had failed, did they move into procedures – hence their frustration at having to go into another supportive phase in the informal procedures. Others moved more quickly into procedures and regarded these, particularly at the informal stage, as a way of attempting to improve a teacher's performance.

One out of every two teachers confronted with issues related to their capability were subsequently absent through sickness and in the vast majority of cases the absence was due to a stress-related illness. More often than not the absence altered the head's response to the situation, although as Table 5 (below) shows, the procedures were more likely to be delayed than halted permanently.

Table 5 : Effect of supervening sickness absence (which occurred in 50% of cases)

% Stress-related	% where sickness altered proceedings	Where sickness altered proceedings		
		% delayed	% halted	% ongoing
80	71	60	20	20

The informal stage of the capability procedure lasted just over six months on average, whereas the formal stage was slightly shorter, at just over five months. Very few teachers completed the procedure in the sense of being dismissed on capability grounds or on ill-health grounds. Whilst a significant number improved, particularly during the period outside procedures, around 40% resigned and although it was difficult to pinpoint exactly when resignations occurred, it did appear that the majority took place either when a move into procedures was signalled or when the procedure moved from the informal to the formal stage.

The outcomes, both outside procedures and within procedures are summarised in Table 6.

Table 6 : Outcomes

Outcome	Dealt with outside procedures (%)	Dealt with within procedures (%)
Resigned	41.3	39.7
Improved	21.7	12.7
Ongoing	15.2	9.5
Other school	10.9	6.3
Ill-health retirement	8.7	4.8
Step down	6.5	3.2
Dismissed	N/A	4.8
Sickness (ongoing)	2.2	7.9
Outside profession	2.2	3.2
Early retirement	2.2	3.2
Agency/supply	2.2	4.8
Switched to disciplinary	-	1.6
Contract not renewed	-	3.2
Compromise agreement	-	6.3
Unknown	2.2	4.8

Some caution should be exercised when looking at these figures because some of them are based on very small numbers and because in some cases (e.g. 'resigned and went to another school'), more than one response was given. It is, however, clear that the likelihood of teachers *improving* is significantly reduced once the case moves from the pre-procedure stage into procedures.

The telephone interview also explored the views of heads about the four-week 'fast track' procedure. Their detailed comments are collated in chapter 8 but, as table 7 indicates, 50% felt the procedure might be appropriate and a further group (13%) were unsure. However, it is worth pointing out that most of those who felt fast-track to be appropriate gave it only a qualified approval, and many were uncertain as to how it fitted into the overall procedure.

Table 7 : 'Fast Track'

Could you envisage a situation in which the four-week capability procedure might be appropriate?		
Yes	No	Don't know/maybe
261	192	67
50%	37%	13%

By way of a 'round-up' to the interview, heads were asked whether they had any general comments on capability procedures. As in the case of the 'fast track' question, their

responses are incorporated into Chapter 8. It is worth pointing out once more that only 35% of respondents had any experience of operating capability procedures. Many of the heads were very supportive of the procedures, and more than one mentioned that the very existence of the procedures was useful. However, there was also considerable criticism, and the most frequently mentioned responses (in descending order) were:

- Too difficult, complicated, involved too much effort
- Too long
- Anticipated problems with the unions
- Created stress for managers
- Particular difficulties in small schools
- They were not clear-cut
- Problems with teacher training institutions passing those who should not be passed
- It was now difficult to fill vacancies
- There were no benchmarks nor comparison
- Teachers generally went off sick once procedures were invoked
- More training was needed on the subject

CHAPTER FIVE

THE TEACHER AND HEADTEACHER CASE STUDIES

5.1 Introduction

A total of 59 case studies (including six headteacher cases) were carried out in 51 schools across 9 LEAs. Of the schools, 21 were secondary (including secondary modern, grammar, foundation and specialist schools) and 30 were in the primary sector (including junior and infant) Church of England, Roman Catholic and were special schools were also visited.

This chapter summarises the case studies. What follows are vignettes of the case studies together with a brief note of the key issues. The full case studies appear as Appendix 9. The case studies appear in order of LEA, and brief notes about the LEA precede them. The Headteacher cases are incorporated into the LEA divisions: these are: 1K Eliza, 1L Terry, 1M Nicholas, 3G Anna, 4L Gerald, 7D Joan.

5.2 Case Study Vignettes

LEA 1: thirteen case studies including three headteacher cases

This is a large county in the south of England. It has considerable diversity across urban, new town, and rural locations. The OFSTED report in 2001 was generally good, although the authority was seen as slightly under-performing. OFSTED gave high praise to its personnel service and its wide range of performance data which enabled it to effectively monitor, challenge, and intervene in schools causing concern. The authority has particular problems in relation to recruitment and retention of teachers. During the 1999-2000 academic year, the authority had ten formal cases involving teachers, 44 informal cases, and three formal and ten informal cases involving headteachers. In total, seven personnel officers and one adviser were interviewed. During the research thirteen case studies were examined; ten teacher cases, and three headteacher cases of which five were selected by the LEA (including the headteacher cases) and eight selected from the telephone interviews.

1A ‘Caroline’

Caroline had seventeen years’ experience, and had been appointed as head of faculty by a previous head. When the new Head was appointed he was immediately aware of issues with her management role as well as her relationships with staff. Caroline had some health and personal problems and lived alone. He re-structured so that she no longer had a school wide management role, and there was a phased protection for her salary. Support was given to her over a two-year period before the case went into procedures. Both the informal and formal stages of procedures were triggered, but Caroline was in denial. Caroline then made a mistake in not submitting students’ coursework to the exam board in time. She was given a formal oral warning for this and it gave her a shock.

Eventually, Caroline improved, but the Head now feels that she is slipping back and wishes that he had used disciplinary procedures so that the case had got to dismissal. Caroline is now applying for other jobs, as her hope is to become a deputy. According to the union rep, there may have been a personality clash between Caroline and the Head, although he also alluded to psychiatric issues which make it difficult for the teacher to respond.

1B 'Sue'

Sue came into teaching late, and had three years' experience, with a year in each school. As soon as she arrived at this school, there were complaints about her. There were problems in her management of behaviour, quality of lessons, and relationships with colleagues. Support was given outside procedures over a ten-month period when OFSTED confirmed problems. Procedures were instigated, and targets set within a half term time scale. Sue improved her relationships with colleagues and asked for support, thereby meeting her targets and coming out of procedures. There have been no further complaints about her and staff morale was boosted because management had tackled the problem.

1C 'Andy'

Andy had been with the school for eight years, and had taught elsewhere before this. He always had weak classroom management skills with older pupils and was identified by OFSTED in 1994 and again in 1999. The Head maintained that support had been given between OFSTED visits, but clearly there had been little improvement and OFSTED had considerable criticism of Andy's head of department. Following this criticism, an outside consultant was bought in to help Andy, but as he was in denial, he did not act upon the advice. Informal procedures were started, but Andy immediately went off sick with 'debility' and eventually resigned with a compromise agreement which meant that he was paid for the period of absence (from January to August) and left with an agreed reference. The Head was unhappy with the compromise agreement. It is not known what Andy is now doing.

1D 'Debbie'

Debbie was deputy head with a full teaching load: it seems her appointment to the deputy head role was strategic, in order to avoid a redundancy situation in the school. The Head's concerns centred on Debbie's teaching, but her behaviour was bizarre in that she would work through the night, go to the supermarket, and straight back to school which meant that she often fell asleep at school. However, Debbie had a series of major bereavement problems over a short space of time, and was regarded as a caring person. On the second day of OFSTED, she had a nervous breakdown, but the doctor said that she was fit for work again in less than three months. Debbie reverted to her late-night habits, which the Head stopped, and Debbie agreed to step down from the deputy role in order to reduce her stress. Meantime, the Head put in support and targets for her outside of procedures, to help with her teaching. As the case was about to progress into procedures, Debbie was persuaded to resign with a financial package and she is teaching part time elsewhere.

1E 'Trevor'

This case was dealt with outside of procedures. Trevor had always been in teaching and was appointed, very late in his career (in his fifties), as deputy to a school in difficulties. The Head had been unhappy with the appointment from the start, but had felt pressured to appoint. There were concerns over Trevor's teaching and his management role. The Head raised issues with Trevor, but to no effect, and after a year indicated that he wanted to start capability procedures. Trevor denied that there were problems, and the Head saw him as obstructive and undermining. However, the meeting did not take place as initially Trevor did not consult his union rep, and then he was seconded for one term to a fresh start school as acting deputy. His time there was not extended, and he was due to return to the commencement of procedures. However, he did not return, as he asked for further secondment of one term to a school outside the LEA. This request was refused, and so Trevor resigned. Trevor is thought to be still in the teaching profession and persists in applying for headships within the LEA. Staff reported morale going up after Trevor left.

1F 'Sonia'

Sonia came from Yugoslavia on the Licensed Teachers Scheme. The school had problems appointing staff and appointed Sonia, despite reservations. Sonia had been qualified for nine years and the Head thinks that she is very academic, but there are language problems and interpersonal problems because she misses body language. To some extent, the Head had hidden Sonia's weaknesses by assigning year 3 to her and making excuses for her. Then OFSTED criticised one of her lessons, and the Head used a range of techniques to try to encourage Sonia to improve. However, the Head is reluctant to go into procedures, because of the severe staffing shortage, which may mean that she ends up with someone of a worse calibre.

1G 'Fiona'

Fiona was a mature student with nearly nine years' experience. According to the Head, Fiona had been one of the better teachers but the job had changed and she was unable to adapt. However, there had been problems in the past and in 1999 OFSTED failed all of Fiona's lessons. In addition, Fiona had suffered short periods of stress related ill health which had made the Head step back from action. Post-OFSTED the Head moved to informal procedures, but there was a problem for Fiona in sustaining improvement, possibly because she wouldn't take advice. After six months, Fiona resigned and is now, reportedly successfully, working as a supply teacher. The union rep commented that Fiona had personal problems

1H 'Evelyn'

Evelyn had been a teacher for approximately twenty-five years and deputy for thirteen years. There were problems relating to her deputy and teaching posts. The Head had been in post since 1991 and had attempted to deal with the problems continuously with no effect. In 1997 OFSTED visited and criticised the Head for lack of delegation. This led the Head to begin to work more formally with Evelyn, but outside of procedures. There was still no progress, and the Head wrote to Evelyn to suggest that personnel should become involved. Evelyn immediately resigned but found a teaching post in another school without references being taken up.

1I ‘Helen’

Helen had fourteen years’ teaching experience within the LEA. She was the only applicant for this post, and she was offered a temporary contract because of concerns about her suitability. The concerns were quickly ratified in that there were competency issues; she insisted on doing things her own way; and she antagonised colleagues and parents. It became known that Helen had been on competency procedures in her previous school, but no references had been taken up in this case, because the Head was very ill and wanted to get the appointment settled. The Head found it hard to end the temporary contract because vacancies arose during the year, and the Head had to prove that other candidates applying were more suitable than Helen. Helen resigned when it was made clear to her that the capability issues were not going away. Helen went on to work in a private school which did not ask for references.

1J ‘Nigel’

Nigel had been a teacher for fifteen years, mostly in this school, when the Head and advisers became concerned about the quality of his teaching and his management role. Targets were set and support given outside procedures, but Nigel seemed to deteriorate. The case then went through the informal and formal stages of procedures in just one term. Towards the end of the formal procedures, Nigel was off with stress, and at the same time, there were allegations of inappropriate handling of a pupil; however, no action was taken after an investigation. Nigel took time out at this stage, and he resigned close to the point when the case would have gone to dismissal with a compromise agreement and an agreed reference. He went on to teach part time at another school, but this didn’t work out for him, although it is thought that he is still in teaching. Nigel and the head had been long term friends, which made the case particularly difficult for them both.

1K ‘Eliza’ Headteacher case

Eliza was a mature entrant who had three years’ experience as a deputy before being appointed as Head at this primary school. She had been in post for three years when HMIs visited and placed the school in special measures because of leadership and management failings. Eliza was offered a deal at this early stage, but she was in denial and would not accept it. Considerable support was put in, but Eliza denied that she was incompetent. The case lasted four months in the informal stage and six months in the formal stage when the case was referred to the governors with a recommendation for dismissal. Eliza was dismissed with notice; she appealed but the initial decision was upheld. A reference was given, indicating that she would be fine in a classroom situation. It is believed that Eliza worked for another authority as a consultant before taking up work as a supply teacher.

1L ‘Terry’ Headteacher case

Terry had been deputy at the primary school for almost a decade when he was encouraged by the governors to apply for the headship. Two years after he took up post as Head, OFSTED put the school into special measures because of management and leadership issues. Terry immediately went off sick with stress and a compromise

agreement was reached without going into procedures. It is believed that Terry is now teaching outside the authority.

1M 'Nicholas' Headteacher case

Nicholas was approaching sixty and had been a headteacher for well over twenty years. An OFSTED visit highlighted poor leadership and management. Support was given to both the head and the deputy who were extremely antagonistic towards each other. Mediation failed, and the LEA went for a review, as a second OFSTED was close. About this time a new Chair of Governors was appointed, and this was critical in getting the process moving and the informal stage of procedures was triggered. By the first review meeting, Nicholas had not attempted to meet his targets. It became embarrassing, and Nicholas was persuaded to take early retirement with some severance money until he could access his pension. Since this time, the school had a succession of heads, but it is hoped that a new head will be appointed in April 2001.

LEA 2: eight case studies

This is a large county with an extremely complex pattern of school organisation and a very large proportion of formerly grant-maintained schools. OFSTED criticised the LEA for not having a sufficiently flexible response which was needed to cope with the pattern of school organisation as well as an uneven quality of services to schools. The authority dealt with 62 teacher cases and three head teacher cases in the formal stages of procedures during the 1999-2000 academic year. Interviews took place with the Head of Personnel and with a senior personnel manager, as well as five interviews with officers in relation to the cases. Eight case studies were selected, four from the telephone surveys, and four from the LEA; all were teacher cases. The LEA outsourced its personnel services during the period of the research.

2A 'Graham'

Graham had been in teaching for 34 years, and had been at this school for six years. He was very involved in extra-curricular activities, but was a poor disciplinarian and there were capability issues. He had been given informal support for about three years. OFSTED highlighted the issue and the Head went through the informal and formal stages of procedures. These lasted approximately six months, but Graham denied that there were problems and refused help. Graham tried to raise a petition amongst the parents and used threats of suicide within the earshot of the children. Because of his extra-curricular activities, there was support from those parents whose children had not been in his class. In the end he resigned with the intention of taking early retirement with an actuarially reduced pension, but it is believed that he is now teaching on supply while seeking a permanent post. He reportedly 'lived for teaching'. It was thought that if he had not been so involved in extra-curricular activities, his teaching might have improved.

2B ‘John’

John had a young family and had completed his NQT year in a school which was in special measures. He was then appointed to this primary school, but as soon as he arrived it was clear that he wasn't putting in the necessary work. He was given considerable support over a nine-month period after which the Head commenced the informal stage of procedures. Only a week after this, John resigned. He said that he did not want to make the effort to do the things that he was being asked. The last reference which the Head wrote for him was for a post as a security guard.

2C ‘Eric’

This was a competency case, but was dealt with outside procedures. Eric was in his late fifties, with 30 years with the authority, twenty in this school. He had been an excellent teacher but he was now struggling with the role as Head of Department, and subsequently his teaching role. The Head felt strongly that use of capability procedures was inappropriate in this case, and the LEA agreed. A deal was brokered, so that Eric could take early retirement on efficiency grounds. He is now happily employed as a technician in another school with his pension protected.

2D ‘June’

June was a mature entrant to the teaching profession with five years' experience in this small infant school. The school was in a time warp and, despite a very good reputation, was performing very badly. There were issues around June's behaviour as well as her competence as a teacher. On the appointment of a new head, June was eventually taken into the informal stage of procedures. However, she resigned after alleged incidents involving the Head and she felt that she had been victimised. It is probable that mental ill health issues were involved.

2E ‘Sheila’

Sheila was in her fifties and had worked as a teacher for over twenty years. Problems relating to her performance and substantial ill health absence had been known about for a long time, but were not dealt with. The small primary school had become a base for a powerful clique which brought down successive managers. Eventually the school went into special measures, and a new head was appointed for two terms to turn the school around. Intensive LEA support was put in while the governors' powers were suspended. After the new head was seconded to the school, Sheila's attendance improved enormously, but there were still issues in relation to her performance. The Head started capability procedures with Sheila, but she immediately went off sick - it was thought that her doctor was a family friend. The ill health halted procedures, and Sheila resigned before the case went into formal procedures. Sheila is now working in a school in which her partner is deputy; no references were taken up for her.

2F ‘Steve’

Steve was a mature entrant to the profession who had been in teaching for eight years and with this school for seven years. There were drink problems, disciplinary, and capability issues throughout his time with the school. The Head monitored informally for roughly four years before he started capability procedures. The Head had been unclear whether

the case should have been dealt with under disciplinary procedures. The case went through the informal stage to formal. There was some ill health (possibly alcohol related) and the governors met and dismissed him using the fast track procedures. However, the union appealed, and the appeal was upheld because of, allegedly misguided advice from a second LEA Personnel Officer who claimed that the governors could not use fast track. The personnel officer felt that the case had missed a stage of the procedures, and was concerned that it might go to tribunal because of this. In any case, Steve immediately went off sick and has since been dismissed on capability grounds (ill health) although Occupational Health have clouded this because of the 'problem with alcohol'. It is not known if retirement on ill health grounds will be granted.

2G 'Lucy'

Lucy was a mature entrant who had spent one year in each of four separate schools since entering the profession. There was a question mark over her reference, but she was the only candidate for the maths post in the secondary modern school. She quickly went into procedures with six weeks in the informal stage and three blocks of six weeks in the formal stage. There was a brief period of unrelated ill health, and the Head wrote to her to let her know that procedures would resume as soon as she came back, so that the ill health did not alter the course of procedures in any way. Initially, Lucy was in denial, but towards the end of the procedures, she realised how serious the situation was, and managed to turn the situation round. She is still teaching in the school. The Head expected that other heads would have dealt with the problem rather than giving dubious references.

2H 'Alice'

Alice was a supply teacher who performed reasonably well, but as soon as she was offered a one-year contract her capability deteriorated and it became more of an absence problem. When she came into school, she was frequently late, and usually left early. Her excuses for non-attendance were varied, unbelievable, and nearly always without a medical certificate. Alice had clearly become mentally ill, and/or was abusing alcohol/drugs. Alice did not attend meetings to discuss how she could be helped, and did not reply to a letter stating that her pay would have to be terminated. A disciplinary hearing was called on the basis that she was grossly negligent in failing to attend to her duties, but Alice did not attend; she attended a subsequent one and was dismissed. She is now applying for other teaching jobs. The case took one term, but the Head felt that fast track would have been more appropriate

LEA 3: seven case studies, including one headteacher case

This is a large County Council located which contains some of the most affluent towns in the country, but also areas of significant deprivation. During the 1999-2000 academic year the authority dealt with 36 capability cases, five of which were in the formal stages of procedures (three teachers and two headteachers). Interviews took place with five officers (Head of Personnel, two personnel officers, Head of the Advisory Service and the Schools Liaison Officer) as well as with a county councillor. Case studies took place in seven schools, dealing with six teacher cases and one headteacher case. We identified

three of the cases from the telephone interviews and the LEA identified the rest, including the headteacher case.

3A ‘Ruth’

Ruth was an experienced teacher with 20 years experience in the same school, but whose performance caused some concern. Problems dated back 10-15 years. However, performance became a secondary issue compared with her increasing sickness absence record. The head met with Ruth and said that she needed to improve her attendance, and at the same time, she was referred to Occupational Health. After this, her attendance was bad for one year, better for one year, and then bad again during 1999-2000. Informal proceedings started but Ruth was ill for a significant amount of time before the review date. The Head then wanted to move into the formal stage, but the union representative pleaded a stay until after Ruth had seen Occupational Health again. The case is ongoing, with Ruth applying for ill health retirement. The Head and staff in the school felt frustrated over the length of time this has all taken, and there was some concern about whether the DDA impacted on the case.

3B ‘Joe’

Joe had been a teacher for 25 years but when the current Head took up his post he had concerns about aspects of performance and the extent to which his responsibility allowances were justified. Apparently, Joe had been given management points instead of two women because he was the male breadwinner. Joe was very reluctant to take on new challenges and eventually he took time off on stress and then said that he didn’t want additional responsibility. The Head was unsure whether to use disciplinary or capability procedures. It was agreed to involve Occupational Health and if it was a health issue, then capability would be used, if it was a management issue, then disciplinary would be used. Eventually, Joe agreed to give up the majority of his management points. The case was dealt with outside procedures, but spanned 18 months of meetings and negotiations involving both the LEA and Joe’s union representative.

3C ‘Lorraine’

Lorraine had been in teaching for over 20 years, twelve of which had been in this special school. The case involved considerable ill health absence as well as capability issues. The case lasted approximately one year when, in the formal stage, Lorraine accepted an offer from the LEA for her to take early retirement. Key players disagreed about the outcome, and about the Head in this case; some felt that he was devious, and others that he had turned the school around since his appointment.

3D ‘Sam’

This case spanned a decade and involved both capability and disciplinary procedures at various stages, as well as ill health absence for a variety of ailments and persistent home problems. When Sam was relaxed, his teaching could be good, and main problems related to his volatility and interaction with the pupils. There was some evidence of ill health and possibly of a drink problem. In the end, the case became disciplinary and Sam resigned. The Head gave him a reference for work as a postal worker. Both the Head and Sam found the procedures very stressful, and the Head felt that it was too much to

ask a busy head to take on and felt strongly that there should not be compromise agreements, particularly those including agreed references. The Head had concerns that “threshold” might prove a barrier to use of capability procedures, as heads had been told to be generous, and they would be reluctant to initiate capability procedures on those who went through.

3E ‘Louise’

Louise had 27 years’ experience in the same school, and a history of poor attendance which had not been tackled. A new head was appointed. Louise’s attendance improved, whereas her relationships with other staff were worsening. The Head and Deputy met with Louise to discuss this, after which she went off sick citing anxiety and depression. Her visit to Occupational Health revealed that she had numerous complaints about her post in the school and so several meetings took place in order to address these and a phased return was agreed. During Louise’s first full week back full time, she walked out. Between April and September 2000 Louise was off sick, although negotiations still took place, mostly relating to further reductions in an already reduced timetable. She was due back in September, but on the day of her return, the Head was contacted by her union representative who said that she was going to her GP once again. Since that date, the Head has had no further contact with Louise. He intended to recommend dismissal for non-attendance, when Occupational Health told him that she was possibly disabled, and therefore the school would have to make further adjustments for her. LEA personnel referred the case to Occupational Health for a view as to whether the case came under the Disability Discrimination Act, but the Occupational Health Unit was unable to give a categorical answer. (However, the school had already made ‘more than reasonable adjustments’.) It now appears that Louise has applied for ill health retirement and this was granted.

3F ‘Dominic’

This case was resolved outside of procedures. Dominic was a long-standing, excellent teacher, but there were problems in relation to his role as Head of Year as well as ill-health absence. The case simmered for some years until the new Head tackled the issue informally. The Deputy supported Dominic, although he usually disregarded her advice. A negotiated solution was found at the point at which the case was going to enter formal procedures. The end result was that Dominic agreed to step down from his management post with his pension rights unaffected. It was seen as a win-win solution for all concerned.

3G ‘Anna’ Headteacher case

Anna was Head of a primary school in a leafy rural area; she had 11 years experience as head, six in this school. The LEA was aware of problems pre-OFSTED when the deputy head raised issues regarding leadership and management and resigned. Subsequently, these concerns were confirmed by an OFSTED inspection. Anna had been given support, but denied her weaknesses, became very stressed and took some time off. Anna went through the informal and formal stages of capability procedures, and assented to ‘mutual agreement’ termination prior to dismissal. The case lasted ten months from the time of the OFSTED visit to Anna’s resignation. In the LEA’s view, the situation went on far too

long as it left the school in jeopardy. Anna is now a supply teacher in a neighbouring LEA.

LEA 4: ten case studies, including one headteacher case.

This is a large LEA in a midlands city. The authority area is mainly characterised by multiple deprivation, and high levels of unemployment. The OFSTED report in 1998 praised the authority generally, and the work of the advisory and personnel services in particular.

The authority reported ten formal teacher cases during the 1999-2000 academic year. Interviews took place with two officers; one senior adviser and the Head of Education Personnel. Nine case studies were examined, including one headteacher case. The LEA selected the headteacher case and the rest were identified by through the telephone interviews.

4A 'Doris'

Doris had been in teaching for over twenty years and had three management points. Her relationships in the school were fraught, her results were poor, and she had a long history of ill health. OFSTED visited and failed both her department and her teaching after which the Head negotiated a new role for Doris as a one-woman department and gave support on her teaching role, initially outside procedures. Since the staff did not want Doris in their classes, she observed in other schools. Doris then went off sick and this turned into stress-related ill health. Doris returned to school but wanted to see her files and asked for financial compensation because she had missed out on promotional opportunities while she was off. Doris began a phased return back to school, and when she was back full time, the Head triggered the informal stage of procedures. The informal stage lasted seven weeks, and the formal stage comprised two thirteen-week blocks. Doris failed to meet her targets and was dismissed. She appealed against the dismissal, and on the morning of the appeal, she resigned, and the LEA advised the governors to accept this. Doris left the school with an agreed reference. It is thought that she will take the case to an employment tribunal.

4B 'Derek'

Derek had been a teacher for over 25 years and taught English, but there was no classroom control. A new, troubleshooting, head was appointed to the school when the school was in special measures. The Head felt that Derek was very bright, but was a poor teacher who was incapable of change and so, after consulting an external adviser, he started capability procedures. The procedures wore Derek down, and during a 'walk in the park' it was agreed that Derek should resign without working out his notice, but with pay off. Derek subsequently found work in another school outside the LEA and without a reference.

4C 'Jane'

Jane had at least 25 years of teaching experience, and had come to the school on supply. When the post was advertised, she was appointed and had been at the school for a total of three years. It was felt that her performance declined once she was given a permanent

job. A programme of support and monitoring was established. Jane involved her union at an early stage and refused to acknowledge problems. Jane could perform well when she wanted to, and was fine when OFSTED visited. However, there were problems in relation to her coursework which was over-marked, and she started taking time off. Jane also managed to stir up a lot of bad feeling against the department. There was a further incident in which she had taken pupils on a school trip, but failed to provide adequate supervision. This incident went to a formal hearing of the disciplinary committee of governors, but they gave her an oral warning. Following this there was concern over possible embezzlement of money, at which stage Jane pursued the fact with her union that she was being victimised. Jane was then off school for a hysterectomy, and came back on a phased return. The Head had informal talks with the union rep who agreed that Jane was 'off the wall' and refused to represent her. The Head asked the governors to investigate and referred Jane to Occupational Health. Jane then resigned and is now working as a mentor for pupils as part of 'Excellence in Cities' and is on the supply register. Jane started to take her case to tribunal, but subsequently withdrew the claim.

4D 'Ken' and 'Tom'

This was a complicated case which was resolved outside of the procedures. The case involved Ken, the deputy head, and Tom, a teacher. Ken had been in teaching roughly 20 years and had been deputy for eleven. OFSTED identified problems with his teaching soon after his appointment, and the Head relieved him of his teaching responsibilities. However, some years later, there was a perception that Ken did very little in his deputy role, and the head wanted to re-assign teaching to him. At this stage, relationships soured and Ken went off sick with stress, never to return. Competency issues were first raised during negotiations relating to Ken's absence. Ken was off sick for one year, and was dismissed by the governors on ill health grounds. Ken took the case to tribunal and was paid off by the LEA on a technicality and he got early retirement on ill health grounds. Tom had joined the school in 1992 and was in his mid-forties. There were always doubts about his ability, but these were not openly addressed and Ken, who had a monitoring role, sheltered Tom. The Head was about to start capability procedures against Tom, when he went off sick, citing stress. Again, relationships were strained and after six months off sick, the LEA found Tom another post, although he didn't perform well in this school and is now believed to be working on supply whilst applying for ill health retirement. Both Ken and Tom accused the Head of bullying and harassment and threatened a grievance against him, but this was eventually dropped. The Head was a forceful character, but, when he thought that Ken's performance was less than adequate, he tried to manipulate the situation, rather than addressing the performance issues face-to-face. He accused Ken and Tom of being part of a crowd of teachers who were attempting to get early retirement by any means possible. Ken and Tom spread rumours that the Head was sexually and physically abusing the children in the school, although the children and their parents denied this and the Head was not suspended at any time. It is possible that the cases could have been resolved with greater clarity had the Head openly addressed issues with Ken and Tom as they arose.

4E 'Neil'

Neil had over 25 years' experience as a teacher. He was an old fashioned teacher who refused to change with the times and follow the national curriculum. He was in school for the minimum amount of time and refused to attend certain meetings. When the new Head wanted to address these issues, Neil openly defied her and was supported by the staff, many of whom had been at the school for a long time. There was a disciplinary issue over inappropriate handling of a child, but the Head didn't take it to a disciplinary meeting. Shortly after this, Neil went off with stress. The Head hadn't wanted to use the disciplinary procedures because Neil had been in teaching for so long. Eventually, colleagues' support for Neil waned. She was about to start capability procedures when Neil handed in his resignation. While working out his notice, OFSTED visited, but didn't criticise Neil's teaching. He is now working as a supply teacher. The Head thought he would do well on supply, as in his view, Neil would be able to take a class without planning or following the national curriculum. The Head thought that Neil could have been a good teacher in the past, but that he had not changed his approach, particularly in relation to discipline.

4F 'Karl'

Karl was new into the profession, but there were capability problems and he was given intensive support and monitoring. As a result of the monitoring, the Head became aware that Karl was frequently on the computer with the door closed. He looked at the computer and discovered that it was being used to download child pornography from the Internet. Karl was dismissed for gross misconduct and was given a three-year probation order by the courts. The LEA placed him on a register and list 99.

4G 'Karen'

Karen had eight years' experience in teaching, four in her current school. The Head put in support for her teaching, but there were issues around her relationships with colleagues. Each time the Head intensified his support, Karen was off sick. OFSTED then came in and found Karen's lessons unsatisfactory. Karen went off sick again, this time with stress and depression. The Head would now like to move into procedures, but feels he will have to wait until Karen returns. In the previous twelve months Karen had been off for 75% of the time, and this has become an ill health capability issue. The LEA is now moving on this, but has taken the view that Karen's and the Heads' relationship has broken down and so Karen is being offered other opportunities. Meantime, Karen's work is being covered, but the Head cannot re-appoint until the situation is resolved. The Head believes that Karen's references were not entirely truthful.

4H 'Elspeth'

Elspeth was aged 49 and had at least 20 years in the profession, but she had a long history of depression and anxiety which affected her management and class teaching. She was referred to Occupational Health who said that she was fit for work. However, there were still problems with her performance. The Head met with her and told Elspeth that she would have to start informal capability procedures. Elspeth went off sick and after nine months she resigned. The union agreed that this was the best outcome. She has now

successfully applied for ill-health retirement, but also talked about pursuing a claim for personal injury against the school. The case was dealt with outside of procedures.

4L 'Gerald' Headteacher case

Gerald was the Head of a school in a middle class area. The Advisory Service was aware of problems when OFSTED came in and verified this. Gerald went through the informal and formal stages of capability procedures and resigned the day before the governors were due to meet to recommend dismissal.

LEA 5: four cases in two schools

This is a metropolitan authority in the north west of England. It serves a severely deprived area in which there are pockets of comparative affluence. OFSTED inspected in 2000 and praised both the personnel and advisory services (the latter came in for particular praise) as well as the work of the LEA. The LEA dealt with six formal teacher cases but no formal headteacher cases during the 1999-2000 academic year. There were no interviews with LEA officers and the two schools were selected from the telephone survey.

5A 'Lisa'

Lisa had been teaching for 14 years and there had been question marks over her performance in the past, but she had improved. Lisa was then having problems with a particularly challenging class at a time when she had personal problems. Support was put in but Lisa went off sick. On her return additional support and training were given and a supply teacher was brought in to cover so that Lisa had a phased return to the class. Lisa improved with the support from within the school.

5B 'Martin, Russell and Natasha'

The school was in special measures, and a new head was tackling long-established problems.

Martin had 25 years' service and was a head of department. There were issues around his absence, quality of teaching, and lack of up-to-date knowledge. He was on informal procedures for two years and on formal procedures for six months. He was absent with stress for six months, and when he returned, there were more periods of absence. Martin believed that he was fine and became aggressive when the Head tackled these issues. Eventually he was dismissed on performance grounds; Martin appealed but this was not upheld. He subsequently got an ill health pension and a seven-year enhancement. The head felt that Martin was fine, and that Martin had managed to pull the wool over the doctor's eyes.

Russell was also a long serving member of staff with 25 years' experience at this one school. Problems related to his teaching, but Russell denied this. He also made a serious mistake as exams officer and received a written warning about this. In addition he became aggressive when the Head raised problems. The advisory service was involved and offered intensive support with the result that his performance improved from poor to satisfactory. The case took just over one term.

Natasha had a few years of experience: she had expectations of the pupils which were too low, a rather superior attitude, and there was a lack of discipline in her classes. She was given support and improved in just over a term; however, she moved to a private school in a leafy suburb, which was more suited to her philosophies and style.

LEA 6: one case study

This is a metropolitan authority located in the north west of England. It has some affluent areas, but others with high levels of deprivation. The last OFSTED inspection (2000) found that the LEA performed at a consistently high level although there was some criticism of its deployment of staff in supporting school improvement. During the 1999-2000 academic year it had six teachers on formal capability procedures, but no heads. No interviews took place with LEA officers.

6A 'Margaret'

Margaret was a deputy head who had been at the school for 18 years and had approximately 30 years' teaching experience. Problems initially related to her management capability and the head tried to deal with these problems over many years, but without success. When her teaching became problematic, the Head eventually tackled the problems with procedures. Margaret went off sick for a period, making monitoring difficult, and then the case was delayed because the union rep was unable to make meetings. The case went through informal procedures to formal. OFSTED visited and criticised Margaret's deputy role and her teaching. Margaret was then off sick with stress for six months and is currently still off. The Head is frustrated by the amount of time that this is now taking because the school and the staff who are covering are in limbo. The Head felt that Margaret was neither motivated nor interested in the job and was not prepared to make changes. The Head himself is subject to capability procedures and the Union alleges that Margaret's problems were a result of the Head's incompetence.

LEA 7: seven schools with ten case studies, including one headteacher case

This is an extremely large, mainly rural County Council with a large number of small and/or denominational schools. OFSTED praised the LEA for its successful and effective intervention, its challenge to poorly performing schools, and support for weak schools. The authority has no schools in special measures and very few with serious weakness. The LEA had a total of eight headteacher cases and 32 teacher capability cases during the 1999-2000 academic year; two of the headteacher cases and no teacher cases were in formal procedures. Interviews took place with three LEA officers: the Head of Personnel, a senior personnel officer, and the Head of the Advisory service. Seven case studies (including one headteacher case) were examined, all of which were selected by the LEA.

The way that this LEA handled the capability cases was excellent in both ethos and practicalities. In each case the schools received an enormous amount of genuine support, time, money, and personnel and there was considerable praise for the LEA from the heads. The LEA had not yet suffered from the teacher shortage, but there was a shortage

of heads. It was suggested that with small schools, a system of employing one head for a cluster of schools might be an effective solution.

7A ‘Roger’

Roger was appointed as deputy in a small primary school at the same time as the current deputy was appointed head. He had good references and nine years’ teaching experience. After one year in post OFSTED put the school into the serious weakness category. Roger’s teaching and his deputy role were criticised and this was the trigger for initiating capability procedures. The informal stage lasted one term before going into the formal stage. Roger received intensive support, and he tried very hard to improve, but stress took its toll, and he had pneumonia over Christmas. However, as a result of his hard work, he improved and his teaching came up to standard, although he could not sustain this while carrying out the deputy role. It was agreed that he should step down. Roger felt very guilty and embarrassed and found a job elsewhere. Despite praise for the LEA, the union discovered that Roger was unaware that he had gone through the informal stage of procedures. There were hints of a personality clash between the Head and Roger, and the governors were very unhappy that Roger was criticised, although the evidence does indicate that he was ‘just satisfactory’ as a teacher. Roger’s appointment was partly a result of pressure from governors to appoint a male to the all-female staff. The case lasted approximately one year.

7B ‘Rob, Holly, Geoff, and Jenny’

Rob was a longstanding teacher who was regarded as a maverick by his colleagues. The culture of the school allowed Rob to go his own way, although there existed a large file on him pertaining to potential disciplinary proceedings. Rob’s problems mostly related to the way in which he spoke to the children, as well as lack of planning and marking. The Head gave Rob a warning and he then joined a union. The head then returned to the disciplinary procedures, as he felt that Rob ‘would not’ rather than ‘could not’ make the required improvements. When the case got to the final written warning stage, Rob went off sick citing stress. After twelve months he was granted premature retirement.

Holly was a recently qualified teacher and there were issues around her planning, preparation, and linguistic ability. Support was given and targets set, but she failed to meet them and she resigned before the formal procedures. It is not known what she is now doing.

Geoff was another long-standing member of staff with a management role. The problems mainly related to his manner with colleagues, especially female colleagues as he was seen as over-bearing and bullying. Geoff’s perception was that the Head was bullying him. When the Head started to address these issues informally Geoff went off sick and eventually resigned; subsequently he was granted ill health retirement.

Jenny was struggling with her job. Although her teaching was borderline, it was not failing, but she was under stress and was taking long periods of time off sick. She had personal problems, and was very worried by performance management and the prospect of systematic monitoring. She was diagnosed with cancer and she resigned and made a successful application for premature retirement on ill health grounds.

7C 'Barry'

Barry had been a mature entrant, who had been in teaching for over 20 years. He was deputy head, with a full time teaching commitment. OFSTED visited the school in 1995 and were critical of Barry. Nonetheless, he was seconded as headteacher to another school for just over a year. He was not appointed to the post when it became vacant and returned to his original school as deputy. There was concern on the part of the Head and advisers that Barry would not pass the next OFSTED, but Barry was off sick for the OFSTED visit. Barry was given support and relieved of his management post so that he could concentrate on his teaching. The Head was about to start formal procedures when Barry was off sick for over six months with depression. He returned to the competency issue, but resigned shortly afterwards. Barry applied for ill health retirement, but his application was refused. He is now supply teaching, but is still applying for headteacher posts, as he refuses to recognise his failings. The Head felt that Barry had been capable at one time, but had been unable to change with the profession.

7D 'Joan' Headteacher case

Joan was the newly appointed Head in tiny primary school with only two staff. A chance visit by a behavioural support teacher alerted the authority to the fact that Joan was weak. Support was put in, and targets set. The informal and formal stages of the procedures took only three months, during which time Joan denied that she was failing. She resigned at the final stage of procedures, prior to her dismissal. She then threatened to take the case to employment tribunal, but withdrew shortly before the date of the hearing. She is still looking for headships outside the authority.

7E 'Kim'

Kim was acting head in the school before the new Head arrived. There were problems with her teacher and deputy role which the Head addressed with support from advisers, but Kim denied lack of capability. She was absent during OFSTED but came back after it. The Head told Kim that he would monitor together with the advisory service and that she would have to produce evidence of planning. Kim went off sick for twelve months with fallen arches on her feet. After an operation, she repeatedly applied for ill health retirement, but the Pensions Agency refused this, because it was not definite that she would be unable to teacher for the twelve years leading up to her retirement age, despite the fact that it was backed by the authority. When Kim had been absent for 18 months, it was decided to dismiss her on ill health grounds. Kim was unable to change her teaching to meet present demands, but it was thought that she may be have made a good headteacher if she had no teaching responsibilities.

7F 'Amanda'

Amanda had about twenty years' experience as a teacher, but it was thought that she was never a brilliant teacher, and she failed to respond positively to changes in the national curriculum and to the new staff in the school. Amanda also had a history of ill health, and was described by the Head as 'burnt out'. The Head invoked procedures and Amanda was given support. However, she was absent for long periods with glandular fever, so

that the monitoring was frequently interrupted and review dates extended. The Head was increasingly concerned that the procedures were aggravating Amanda's health, and it was agreed that she step down from some of her management roles and to go part time. Amanda failed to improve despite years of support and when the situation was about to enter formal procedures, she resigned.

7G 'Vince'

Vince had taught for approximately sixteen years. There had been long-standing concerns over his behaviour, and his teaching performance became an issue when OFSTED visited the school. Vince was described as very odd, and there were parental complaints about his manner and effect on children's minds. He was off sick for a period, and the new Head invoked the capability procedures on his phased return to school. Vince was supported and his management responsibilities were suspended so that he could concentrate on his teaching. When monitored, his classes were satisfactory, but his behaviour was becoming more and more bizarre, and he refused to carry out some literacy and numeracy strategies. Vince was due to return to school on a full time basis at the start of the new school year, but on his return, the Head suspended Vince on ill health grounds. Vince was referred to two psychiatrists, the second of which advised that he was unfit for work: he has since taken ill health retirement. It was thought that there was a related alcohol problem. Vince received a generous severance package.

LEA 8: two schools and three case studies.

This small inner London authority is home to the extremely affluent, as well as the extremely poor, including many who are highly mobile, and ethnically diverse. OFSTED commented that the LEA has, largely successfully, met major challenges over this decade, but it is still struggling, however, there was praise for its provision of data to schools; the work of the school improvement team, and personnel.

One interview took place with the Head of Personnel. The authority reported no cases in formal procedures during the 1999-2000 academic year, although in both of the cases which were selected from the telephone survey, the cases had been dealt with at the informal stage of procedures, as opposed to outside of procedures. Two schools and three cases were examined; both of which were selected from the telephone interviews.

Both heads reported a high degree of satisfaction with personnel and advisory support from the LEA. A large number of schools are voluntary aided and personnel reported dissatisfaction with both the Catholic and Church of England procedures, preferring to use their own

8A 'Sarah and Vicky'

Sarah and Vicky were both relatively new to the teaching profession, with one year and two years' experience respectively. In both cases, the teachers were absent through ill health, and in Sarah's case personal problems. The Head suspected both were not genuinely ill. In Sarah's case the informal stage of procedures was started, and, despite being in denial, she began to improve, but then resigned to take up a temporary teaching

job nearer to home. Vicky acknowledged her problems, and felt that she could not improve. She is now working as a nanny.

8B 'Rachel'

The Head had known that Rachel had been a problem for over two years before dealing with the problem. Rachel was Head of Maths and had 25 years' experience, four of which were in this school. There were issues around her management and her teaching. Rachel did not acknowledge the problems. The Head started capability procedures, but then Rachel was offered a promoted job. She left the school, but after a short time re-applied to the school for a teaching post.

LEA 9: two schools and three case studies.

This London borough has a marked culturally and ethnically diverse population. It suffers from severe deprivation, but also encompasses pleasant areas of relative affluence. OFSTED inspected in 1999 and found the LEA was effective, and there was praise for both the advisory service and personnel.

The authority dealt with two formal teacher capability cases during the 1999-2000 academic year and two teachers were in the informal stages of procedures. Interviews took place with the Head of Personnel and two advisers (the latter in relation to two of the case studies). Both case study schools were selected from the telephone interviews. Both schools accommodated high numbers of culturally and ethnically diverse pupils, and experienced a very high turnover of pupils.

The HR manager expressed concern about the number of cases in which authorities had been taken to tribunal with resultant large payments to the employee. There was considerable concern where stress and potential disability were involved. The major problem in this LEA (also referred to by the heads in the telephone survey) was a 'maverick' union representative who, unusually, represented NUT, NASUWT, and ATL.

9A 'Meena'

Meena was a mature entrant to the profession. Her weakness had been known about for most of her nine years' teaching, and there had developed a cycle of support, improvement, and slippage. OFSTED then identified Meena as a failing teacher and the Head decided to act. The case went into the informal stage of procedures, but was dogged by a union representative throughout, and this greatly extended the length of procedures, with them starting again at one stage. The case was finally resolved when the case was about to move to the formal stage and the LEA involved a more senior union representative, in order to circumnavigate the local representative. Meena resigned when a compromise agreement was reached. The length of procedures (one year seven months in procedures) had adversely affected Meena's health.

9B 'Sangita'

Sangita's case is still unresolved. She has taught for twenty-two years during which time her teaching had not been criticised, indeed, she was promoted by a previous head, although the current head thinks that she has always been a poor teacher. The school

went into serious weakness in 1998 and Sangita was one of the teachers criticised. The new Head worked initially outside procedures. The alleged incompetence came as a shock to Sangita and she has persistently denied the allegation. The case went into the formal stage as quickly as possible. However, there are major problems with the trade union representative (also involved in 9A Meena) who is 'bullying, threatening, and doing everything possible to side-track the case'. The LEA will provide legal support to the school in order to progress the case.

9C 'Vanisha'

Vanisha's competence was brought into question by parental complaints and 'bellowing' from the classroom. In addition, she had persistent absences for ill health. The case went into the informal stage of the procedures, when Vanisha was referred for a second time to Occupational Health. It was reported back that Vanisha had cancer. She resigned her post but is believed to be working part-time in another school.

5.3 Summary of the Case Studies

The teacher cases

The teacher cases were triggered by the heads' monitoring in approximately half of the cases, although OFSTED was often a secondary factor. OFSTED was the main trigger in several of the cases, and in two cases it was the LEA who pushed the heads to act.

Eighteen of the heads were relatively new to this post, and this was mentioned as a significant factor in many of the cases including 1A Caroline, 3B Joe, and 9B Sangita. Female heads managed 31 of the cases, and male heads managed 22 of the cases.

The majority of cases were triggered by concerns in relation to teaching ability (30 cases), with 13 cases involving both teaching and management issues, and a further five involving management issues alone. Absence and/or ill health were cited as the main concerns in six cases, but were additionally often intricately linked within all of the other categories. Further details on the extent to which personality/ill health impinges on capability are discussed below.

Most of the cases were dealt with outside procedures, or progressed only to the informal stage of procedures. It was clear from the case studies that many heads needed considerable pushing/encouragement to take a case into procedures (1D Debbie, 4E Neil amongst others), and in two cases there were simultaneously capability issues involving the head (1J Nigel, 6A Margaret). The telephone questionnaire revealed the extent to which heads are conscious of the barriers, psychological and actual, to taking cases, and the case studies show graphically that it is done very much a last resort, with heads acting outside of procedures for many years. In comparison, the time spent at the informal stage of procedures was significantly less, and the time spent in the formal stage was less again. Once in procedures, ill health was the most frequent reason for the protracted nature of procedures. Some of the most serious cases of ill health delaying procedures could be seen in the following case studies: 4G Karen, 6A Margaret, and 7F Amanda. In

a small number of cases, delays were caused by difficulties in getting union representatives to meetings.

Many heads had experience of only one case, and a similar proportion had experience of two or three cases, although three heads had experience of dealing with over ten cases and one head had experience of twenty cases. The head in this case (4B Derek) was nearing retirement, but was a well-regarded head who had been used by the LEA on several occasions to go in and sort out schools with major problems.

The perceived barriers to taking cases, as expressed by heads in the telephone survey (see 4.2), were demonstrated in the case studies to be very real. Several heads said that they found the procedures stressful, suffered from self-doubt, and many thought that additional support should be given to the head to deal with cases. Two felt that it was unfair that the onus to prove incapability was on management, and several expressed the view that an external body should be brought in to deal with cases. They gave many reasons for this:

1. Heads' workloads are already onerous, and a capability procedure was seen to constitute an enormous additional burden. Meena's head commented that at its peak it took up two days a week of her time and any spare staff time was used in supporting or monitoring Meena rather than in other activities. It was felt that the opportunity cost to the school was too great.
2. Teachers and heads are, on the whole, caring people. They find it hard to adopt what they perceive to be a hard-edged managerial role in taking out a capability procedure. This was found to be particularly the case in smaller, usually primary, schools, where staff work as teams in a collegiate way. The role shift of the head, or in 2G Lucy's case, of the head of department, from colleague to manager felt uncomfortable. It was also seen as particularly hard where a teacher had been in post for many years and in some cases, the teachers had been acting up or seconded to headships (e.g. 7C Barry, 9B Sangita, 7E Kim).
3. Where there are problematic interpersonal relationships involved, a dispassionate view was seen as particularly useful. It is worth noting that personality clashes seemed to arise as a result of the head mooting capability issues, rather than the other way round and there was little evidence of bullying heads in the cases analysed. The heads, who were aware that this might be the perception of the situation, sometimes alluded to possible personality clashes and they needed re-assurance that they were not personally at fault. In fact, from the case studies, the majority of the heads seemed to go to extraordinary lengths to support the teacher concerned. Whatever came first, heads maintain that it would be easier for an outsider to take an objective view and depersonalise the process. To a larger or smaller extent, depending on the LEA, the LEA personnel or advisory services usually fill this outside role. However, as was pointed out to us, these services are bought in. Inevitably, this means that they may be biased in favour of the head's view. Similarly, the union representatives often only hear one side of the story. Governors are sometimes deeply involved, perhaps because they are in the pocket of the head, or because they themselves are part of the school's problems, as with 2E Sheila, when governors were going into schools and shouting down the teachers. As the governor in this case said,

“The children deserve the best, but teachers deserve better treatment too. Governors are a non-professional body which meant that professionals were being dealt with by people with their own agenda, and they were capable of destroying careers. When governors start gunning for a teacher, it doesn’t build up trust from the rest of the staff”.

4. Heads do not have the specialist personnel knowledge nor expertise in order to cope with capability procedures and the majority felt that it was appropriate for specialists to be brought in. It was seen from our telephone survey that 65% of heads had no experience of capability issues, and those with experience would be likely to deal with only one case. Therefore any expertise gained through taking a case is unlikely to be used again and yet experience is critical to best practice. In some cases, even the LEA does not field the same officers to deal with capability cases. This would have been particularly useful in LEA 9 in combating fiercely adversarial union strategies.

The best practice was found where heads went straight into the procedures as soon as the problem was identified (4H Elspeth, 2G Lucy, 4B Derek, 5A Lisa). In these cases, the heads used the procedures as the mechanism to solve the problem and to trigger support for the teacher. They felt that it was far kinder to the teacher to act quickly rather than letting the case drag along outside procedures for some considerable time. The one message that comes clearly from almost all heads is the importance of acting early and the majority regretted not acting earlier. Whether the teacher had been in post for many years, or for a short time, the aim of the procedures are to get the person to admit that there are shortcomings in performance, and to address these as quickly as possible. As the case studies reveal, it is in no-one’s interest for this to drag on, and the teacher is meantime, compounding the problems.

It was clearly the case in some of the schools (9B Sangita, 2D June, 3C Lorraine), that there had been a lack of effective management over time. This had resulted in a school culture developing in which teachers were not accountable, and in one or two cases, small cliques of malcontents had emerged, making it difficult for new management to challenge. In Sheila’s case this had resulted in a previous head being brought down by the difficulties; in 7C Kim’s case, the Head of Department was off ill with stress as a result, thereby slowing the procedure; and Vince’s previous head suffered a nervous breakdown.

Several heads mentioned that previous heads should have dealt with cases, rather than allowing, or encouraging, the weak teacher to leave without addressing the problem. (Examples include 1B Sue, 1L Helen, 2B John, and 2G Lucy). In Lucy’s case she had four years’ experience with a year in four different schools. In this case and others, the head had been alerted to the problem, and acted swiftly to use capability procedures as the device with which to place clarity in the situation, and to trigger support. Triggering procedures should help the teacher to recognise that there was a problem, although in this case, Lucy was still in denial. When there was no improvement, the case went to the

formal stage, during which, Lucy recognised the severity of the situation and was able to turn it around. The head did not feel that there was any stigma attached to using the procedures, in fact she commented “A lot of heads think that using capability procedures gives the school a bad reputation, and this may put them off. I think that it should enhance the reputation of the school”. The case was dealt with within a 24-week time scale, and Lucy improved with no further complaints about her.

A number of heads mentioned that they now instituted more rigorous selection techniques, although this is not an answer in the current teacher shortage. The teacher shortage was mentioned by many heads, with some LEAs (particularly those in the south) suffering disproportionately. Examples of teacher shortages impacting on procedures can be seen in 1C Andy, 1F Sonia, 1L Helen, and 2G Lucy.

A significant number of the teachers had been in post for many years, with the majority having over 12 years’ experience, and almost half having over twenty years’ experience. In comparison, a relatively small number were new to the profession with less than three years experience. Many of the teachers may not have been monitored in the past. It is therefore not known how many were previously good teachers, but unable to cope with the speed of change, and how many were never very good, but were able to avoid scrutiny, perhaps being hidden by a headteacher. In some cases, it was clear to us that the teachers had been capable in the past, but age and the changes in education, meant that they could no longer cope. Examples include 4E Neil, 7C Barry, 1G Fiona, and 2C Eric. In the latter case, a speedy solution was found and Eric left happily with a package on efficiency grounds. Heads often mentioned the fact that use of capability procedures was not appropriate in such cases and that alternative exit strategies were needed.

Although we had not asked about whether the teachers were mature applicants, it came to our attention that several of the teachers were indeed in this category. This was an issue raised by one of our Advisory Group who had experienced particular problems with mature entrants. Several of the headteachers also criticised the teacher training colleges for passing students whom they deemed should not have qualified as teachers.

Over a half of the teachers were in denial. A few of these managed to turn around the situation (for example 1A Caroline, 1B Sue, and 2D Lucy), but the majority refused to take on board criticism, and/or were unable to make changes.

In one or two of the cases, the teacher retaliated with allegations against the head, for example in 4A Doris, 4C Jane, and 4D Ken and Tom. In the latter case, the head was accused of sexually and physically assaulted the children in his care. There was no case to answer, but it was not surprising that he complained bitterly that heads were left in vulnerable position, with insufficient support.

A significant proportion of heads found the unions to be helpful, although several found them to be unhelpful. In almost a quarter of cases the unions were not involved. Several heads mentioned that they had contacted their own unions for advice, and found them exceedingly useful as a support. In one case, 8B Rachel, SHA provided an external

consultant for the head. Many heads commented that the unions and LEAs worked closely together to effect a speedy, beneficial outcome.

Issues surrounding references came up relatively frequently. It was clear that a number of heads either did not take up references, presumably because of the teacher shortage, or did not read between the lines, when the head has been circumspect in providing them, possibly as part of a compromise agreement. There was also mention of heads providing good references in order to get rid of a problematic teacher.

As mentioned earlier, in many of the cases ill health was a feature, either before, or after capability issues had been raised. Additionally, alcohol and personal problems featured in a small number of cases. Ill health *before procedures were broached* was featured in almost half of the cases, and featured after procedures had been broached in over two-thirds of the cases. Stress and/or depression was a factor in roughly half of the cases. Of the cases in which ill health was a feature before capability issues were broached, it was thought that a couple may not have been genuine. When stress or depression were involved, a few more heads doubted its validity.

However, a large number of cases involved teachers with 'personality' problems, who were variously described to us as 'bizarre' or 'odd' in some way. When added together these comprised over one-third of the teacher cases. It seemed that there were a number of teachers who inhabited the grey zone between mental good health and mental instability/ill health, and with time the teachers had slipped from merely being labelled eccentrics, to beyond the line of acceptability. One problem in relation to this, is how to deal with behavioural traits. This also arose in those cases in which the individuals simply refused to co-operate with management and implement 'new' teaching strategies. As well as the teachers about whom the main concern was their manner, were those teachers who could teach well when they wanted to. Heads wondered whether capability procedures were appropriate in these cases, and expressed concern that in these cases, the capability procedures would end and they would be back where they started from with no improvement.

In terms of outcomes in the 53 teachers cases, there were six dismissals; three cases of step-down; six teachers who improved, and four cases continuing. There were thirty resignations. Of the six teachers who were dismissed, three were on health grounds; one was on capability grounds and two were dismissed using the disciplinary procedures, one for gross misconduct, and one for neglect of her professional duties i.e. she was never there. One case was heading for dismissal for non-attendance when the procedures were stopped because of concerns that the teacher may come under the Disability Discrimination Act and another was at the final warning stage, when the teacher went off sick for over twelve months and then took early retirement. There were three cases in which step down resolved the problems and it featured in a further two of the cases which ended in resignation. Seven teachers improved, and this included a further two step-downs. One of the teachers is now slipping back. There were four ongoing cases of which one is awaiting legal back up to combat the union; one is awaiting possible ill health retirement, and one has been off sick for over six months. There was one

additional disciplinary issue: the teacher had been off sick for over twelve months when the case reached the final stage of procedures and he is now seeking early retirement. The case became disciplinary because the head deemed that he “wouldn’t” rather than “couldn’t” improve performance. In a further three cases there had been disciplinary issues at some stage and in nine cases the head involved questioned whether the case should have been dealt with under disciplinary or capability procedures.

A total of 30 of the teachers resigned. Of these fifteen are known to be still in teaching, some on supply. A further four have taken employment outside of the teaching profession, and seven of these succeeded in getting early retirement, or ill health retirement. Three of the resignations took place before the case went into procedures, one before dismissal, and one before the case entered the formal stage.

The Headteacher Cases

There were six headteacher case studies, with the cases selected for us by LEAs 1, 3, and 4. The headteacher cases are: 1K Eliza, 1L Terry, 1M Nicholas, 3G Anna, 4L Gerald, 7D Joan. Of the case studies, all six were primary school heads, and they were made up of three women and three men. Three of the heads were relatively new to post, the remainder having, eight, eleven, and over twenty years’ experience. In only one case was it felt that the head had been good in the past (Nicholas with twenty years’ experience). Four of the cases were triggered by OFSTED; one was triggered by the complaint of a behavioural support teacher; and one by the LEA, working in advance of an OFSTED visit. Three of these schools were placed in Special Measures or Serious Weakness because of failings in the leadership and management, and two invoked damning OFSTED reports, but avoided categorisation.

There was a problem of denial with five of the heads. We know from our interviews with LEA officers, that, where possible, head teacher cases are dealt with extremely quickly outside of procedures. Naturally, the LEAs would not direct our attention to such cases, but to cases where procedures were used, and this, mainly involved those heads in denial. Only in one case (1L Terry) did the Head agree to ‘fall on his sword’ very quickly outside of procedures. In the remainder of the cases there was denial leading to more protracted work within procedures. In 1M Nicholas’ case, by the first review it was clear that there was not going to be progress and a compromise agreement was reached in the informal stage. The remaining four cases went through the informal and formal stages with two lasting 3 months, one 6 months and one twelve months. In these four cases, one was dismissed and three resigned at the point of dismissal: two of these involved compromise agreements.

None of the heads took time off ill before procedures, but two took time off with stress after procedures were invoked, and it was noted that Eliza also was extremely stressed by the process.

Two of the heads are now teaching outside the authority, one became a consultant at another authority and then began supply teaching, one is self-employed outside

education, one is looking for headships outside the authority, and one retired. Each case involved compromise agreements which the LEA paid for. It was clear that the LEAs spared little expense in putting in high levels of support for the heads, although one of the union representatives commented that he felt that LEAs did not offer sufficient support. Headteacher cases are discussed more generally in Chapter 8.

The role of governors is complex in relation to teacher cases, but even more so in head teacher cases. In Joan's case, she was appointed by the governors, in Terry's case, he had been encouraged to apply for headships by the governors; both against the better judgement of the LEA. In all of the cases it was the LEA which ran the procedures and guided the governors through and in some cases, this was problematic. In Eliza's case, the LEA wanted to use fast track, but held back because of the inexperience of the governors; in Nicholas' case 'the governing body didn't understand its role' and the LEA had to convince governors about the severity of the situation. It was only after a new Chair of Governors was appointed that the capability procedure could begin. In Joan's case, the governors of this minute village school were totally unprepared for their responsibility, and all resigned after the case. Nicholas provides us with the only case in which the governors' role as a check and balance is mentioned. In this case the governor alleges that the LEA held back from taking action against Nicholas because of his previous post with the NAHT, but it is worth noting that the LEA does not acknowledge this version of events. The governor in Eliza's case tells of how hard the experience was, and laments the fact that all of her learning has not been shared in order to 'produce something positive from a very negative event'. In all of the cases, the union representatives were seen as helpful to the process.

CHAPTER SIX

SCRUTINY OF CAPABILITY PROCEDURES

In an ideal world, formal workplace procedures, whether dealing with disciplinary matters or issues of capability, aim to correct behaviour or performance and assist individuals to improve so that they cease to be a problem for their employer. In reality, many organisations tackle issues informally before resorting to formal procedures, particularly where standards of performance are concerned and as outlined in Chapter 2, this is now explicitly recognised by the ACAS Code of Practice.

The third phase of this project was to scrutinise the procedures drawn up by a number of the LEAs and to compare them not only with each other, but also with what was contemplated by the government guidelines.

6.1 The Outline Capability Procedure and the July 2000 Guidelines

As was indicated in Chapter 1, in 1997 Stephen Byers wrote to the governing bodies of maintained schools asking them to incorporate the outline capability procedure produced by NEOST into their school's procedures. Capability was defined as, "a situation in which a teacher fails consistently to perform his or her duties to a professionally acceptable standard." The procedure did not apply to capability due to ill-health, nor to misconduct, which was defined as, "an act or omission by a teacher which is considered to be unacceptable professional behaviour".

The outline applied to headteachers and deputies as well as to teachers. It recognised that it was important for professional performance problems to be identified and the nature of the problem investigated. It also recommended that information should be gathered in a structured and systematic way. This would appear to equate with what was consistently referred to in the case studies as 'the informal stage of the procedure', although that term was not used and there was no timescale attached to it. If it was decided that formal action should be taken then it stated that there should be a recorded interview where targets and/or performance standards were set, together with appropriate support and a structured timescale. This action would constitute the "date of entry into the formal procedure". The next step would be to assess the outcome. If the teacher failed to satisfy the requirements then it should be considered whether a different balance of duties or an alternative teaching post could be offered. (This was not considered to be appropriate for headteachers.) Further formal action would then be in accordance with local procedures.

The outline recommended that the timetable adopted should be in accordance with the seriousness of the situation. It suggested that the period given for improvement should be no more than two terms after the date of entry into the formal procedure. However, in extreme cases where the education of pupils was jeopardised then the period of improvement should be no more than four weeks, the so-called fast track procedure. It was recommended that the ACAS Code of Practice, *Disciplinary and Grievance Procedures* should be followed on points of detail such as hearings, timescales for each stage of procedure, rights of representation and appeals. It also made clear that concerns

about teacher performance and the nature of the complaint should be discussed with the teacher, who should be allowed to state his or her case before any decision was made.

The July 2000 guidelines were considerably more prescriptive than the outline procedure issued in 1997. Key points were that:

- capability procedures should be no more elaborate than the 1997 outline procedures,
- the recommended timings were upper limits which could be shortened,
- the short procedure of up to four weeks would be appropriate in particularly serious cases such as where a teacher's classroom control was so poor that no order could be established to enable teaching to take place or where all the children under a teacher's care failed to progress in that teacher's lessons,
- if long term sickness absence appears to have been triggered by the beginning of formal capability procedures, the case should be referred immediately to the employer's Occupational Health service to assess the person's health and fitness for continued employment.

The guidelines also provided information on how to conduct the informal and formal stage of the procedures. In the informal stage, once there had been an investigation of the matter, it was then to be decided whether the matter should be dropped, counselling arranged or a formal interview held. Counselling and coaching should be conducted discreetly. The teacher should be told what was required and how their performance would be reviewed but again no indication was given as to how long this informal stage should last. The formal procedure should commence if there was no improvement.

The guidelines then went on to provide much more detailed advice compared with the outline. For example, at the formal interview which should start the formal procedure the head would have four options - drop the matter, counselling (if not already undertaken), oral or written warning, final written warning. The decision on the level of warning would depend on the seriousness of the problem. If performance was unsatisfactory, a written warning would normally be the next step and would start a period of assessment lasting up to two terms. In cases of particularly serious concern the Head could move straight to a final written warning which would invoke an assessment period of no longer than four weeks. The teacher would be at liberty to appeal against the warning to governors although this was not to interrupt the progress of the procedure unless it were to lead to the matter being reconsidered. It was suggested that the remainder of the formal interview should be used to identify shortcomings, give clear guidance on the improved standard of performance required and explain the support that would be available and how performance would be monitored. A letter should then be sent to the teacher.

Timescales were given as follows: weeks 1-20, regular observation and monitoring with guidance and if necessary training to support the teacher. If a more serious problem surfaced the head could go directly to the final written warning during this stage. During week 20 there should be an evaluation meeting to assess performance. If the level of

performance had improved and there was confidence that it could be sustained then the capability procedure could be brought to an end. If performance continued to be unsatisfactory then a final written warning should be issued. The teacher could appeal against the warning to governors but once again this should not delay the procedure unless it resulted in the matter being reconsidered. During weeks 20-24 there should be regular monitoring with guidance and training if necessary. In week 24 there should be a final evaluation meeting. If performance was still unsatisfactory the teacher should be referred to the governing body Staff Dismissal Committee to hear the case. Any appeal against dismissal was to be heard by a Staff Appeal Committee comprising governors who had not been a party to the decision to dismiss. However, according to the guidelines, previous involvement does not necessarily mean that a governor is tainted. Appeals should be restricted to considering the reasonableness of the decision, any relevant new evidence and any procedural irregularities. In terms of the reasonableness of the decision, the test for overturning a formal warning is that no other head or manager, acting with proper regard to his or her responsibilities, could have taken this decision.

If the teacher was unable to attend meetings because of illness then the matter could proceed in the teachers's absence if delay would compromise the maximum time limit for the procedure. Disagreements or grievances about the interpretation of the procedure should not delay the overall timetable determined as appropriate.

6.2 Voluntary Aided Schools

Voluntary Aided schools follow their own procedures, albeit that these are required to be in line with the outline procedure. They are also subject to the July 2000 guidelines. The Church of England capability procedures have four stages within the formal procedure. It advises that all stages would normally follow in sequence, except in exceptional cases where it may be necessary to omit some of the stages. First there is an informal oral warning where the issues should be discussed, targets should be agreed and a date set with a time limit of up to six weeks to discuss the level of performance against the targets. If the head is still concerned about the standard of work, the Chair of Governors should be informed and a formal oral warning should be given (stage one). Targets should be agreed and a date set with a time limit of up to six weeks to discuss the level of performance against targets. The teacher may comment in writing on this warning (or any of the later written warnings) and the letter should be placed with the other documentation for consideration at a later stage.

Stage two is a review meeting and if the head is still concerned about the level of performance then a formal written warning is given together with targets and a time limit of up to six weeks. Stage three is a further review meeting and possible final written warning. Here the head may give a final written warning requiring the achievement of the agreed targets within a time limit of up to six weeks or four weeks in extreme cases where the education of pupils is in jeopardy. There is then a review of progress and possible referral to the governing body committee. Stage four is the hearing by the governors' capability committee. The purpose of the meeting is to decide whether the

matter should be referred back to the head for further action, together with any specific recommendations, or that the employee be dismissed. The governors must decide whether the case against the employee is proved and if so decide the appropriate sanction. The employee can appeal against the decision.

The Catholic Education Service also provides a model capability procedure for its Voluntary Aided schools to follow. It has more stages of appeal. The informal stage consists of a first interview where an oral warning can be given and the teacher has up to six working weeks to achieve improvement. A teacher may raise an objection in writing which will form part of the documentation at later stages. At the second interview the head should make clear whether (s)he is satisfied with the standard of performance or not. If not, then the formal stage is entered into and the head should call a formal capability interview and inform the teacher that they have the right to be accompanied. The formal stage should not last more than two terms, but in extreme cases, where the education of the children is likely to be seriously jeopardised, the period given for improvement should be no longer than four weeks. At the third interview consideration should be given as to whether the teacher can be given a different balance of duties or an alternative teaching post. The length of review should be set which would normally be no more than one term. The teacher has a right of appeal to the governing body. At the fourth interview, if performance has not reached an acceptable standard there should be further review, normally no more than a term's duration. Again the teacher has the right of appeal to the governing body.

At the fifth interview the head should decide whether satisfactory performance has been achieved and the procedure can be discontinued, or some improvement has been made but there is not sufficient confidence that action can be discontinued in which case a further period of review may be necessary, or that there is still a lack of capability and it should be referred to the governing body. At the meeting of the governing body the committee should decide whether no further action be taken, the matter be referred back to the head for further actions, or a recommendation that the teacher be offered an alternative post in the school at a lower seniority and/or salary grade or the teacher be dismissed. The procedures state that offering an alternative post is not normally appropriate for a head but should be considered. The teacher can appeal against the decision. As the teacher is entitled to three appeals during the full course of the procedures, it is recognised that there may not be enough governors and so the first two appeal committees could have just two governors.

6.3 LEA Procedures

A scrutiny of the LEA capability procedures revealed a number of interesting features. As one would expect, all provided for a progressive sequence of meetings and actions which could ultimately lead to dismissal. However, they appeared to vary quite significantly in a number of ways. Informal action was variously referred to as 'Good Management Practice', 'Arrangements for helping employees improve their competence', 'Informal counselling', 'Informal Meeting(s) with the Member of Staff' and 'Measures to assist teachers facing professional difficulties', aimed, it would seem, at

separating these sorts of measures from subsequent formal action. Indeed, some documents made it clear that this sort of 'informal' discussion was not within the scope of 'the procedures' whereas in other cases 'The Procedure' was then divided into an informal and a formal stage. Notwithstanding this supportive tone, a number of procedures suggested that teachers consult their trade union representative at this point and in some cases a right to be accompanied at informal meetings was provided. One procedure appeared to contemplate that the 'informal' stage would commence with written notification to the individual concerned, and, as pointed out in section 6.2, the first stage of both the Catholic and the Church of England procedures could give rise to an 'informal oral warning' which is subsequently confirmed in writing – although this action occurs at the first stage of the procedure, where support and counselling have not been effective. In no case did any LEA documentation contemplate two kinds of informal action, one outside the procedure and the other within it.

There was also variation in what happened at the point of entry into 'the procedure'. As discussed in section 6.1, the 1997 outline procedure contemplated that formal action should be initiated by a documented meeting at which targets and/or performance standards would be set and a second meeting would then follow, to determine the outcome. Only at that point would further formal action be in accordance with local procedures, 'including oral and written warnings and final written warnings prior to dismissal'. It should also be noted that although the outline procedure suggested that the period given for improvement would normally be no more than two terms after the date of entry into the formal procedure, the 'fast track' period was to be four weeks *after the date of a formal warning*. This would seem to make sense, because it would give a teacher time for improvement between the point of entry into the procedure and the 'outcome' meeting, and then, if at the outcome meeting it was clear that the teacher was unable to take on board what was being required, a fairly short period of time could be offered (of no less than four weeks) before dismissal was contemplated.

Whilst some LEAs did follow the outline procedure in relation to the first meeting, others issued a formal warning at that point. One procedure was notable in that not only did it specify that a formal written warning constituted the date of entry into the formal procedure, but also made clear in the written warning that 'failure to attain the standard may lead to dismissal'. Although the July 2000 guidelines also contemplate the issuing of a warning, including a final warning, at this initial stage, most of the LEA procedures made available to the researchers had pre-dated the guidelines.

When observing the procedures as a whole, it seemed to be the case that some were written much more in the 'traditional' manner for dealing with sub-standard performance in that, following the initial formal meeting there would be a further meeting at which the teacher whose performance was still falling below the required standard would be 'warned' that if, by the time of the next meeting there had not been sufficient improvement, dismissal could follow. As one procedure put it 'a letter of written warning stating that future employment is at risk should there be a continued failure to meet the performance standards as described in the [action] plan'. Other LEAs seemed to have construed this notification of employment being at risk more as a 'disciplinary' style

`final written warning' and then worked backwards – so that a `written warning' would have been issued at the prior meeting and an `oral warning' at the meeting before that. In relation to the `fast track', only one LEA related this to a period of no more than four weeks after the date of a formal warning; the others appeared to contemplate the four-week period commencing with the time of the first meeting of the formal procedure.

There was, at least, unanimity in the `no more than two terms' timescale for the formal procedure, but different LEAs split up this period in different ways, and with differing review periods in between the formal meetings. One procedure even required the head to `seek the advice of an appropriately qualified and experienced professional who should investigate the situation, conduct a performance review and produce an Independent Professional Report' at the final written warning stage. Another LEA incorporated the possibility of suspending the teacher during the procedure. Not surprisingly, perhaps, the procedures were written in a variety of styles and levels of complexity, and whilst, as we shall see, heads usually found them easy to follow, they were not all easy to comprehend.

The way in which the procedures were operated in practice is highlighted in the case studies and summarised in section 8.2.

CHAPTER SEVEN

THE LEA AND UNION PERSPECTIVE

7.1 Introduction

Eight LEA Advisers and Personnel Managers were interviewed in December and January (2000-2001). Some of them made a direct approach to us as a result of the letter to the LEA and others were contacted by us because we had decided that we wished to target their LEA for stage two of the project. Eventually interviews took place with officers in seven of the nine LEAs which were used for case study work. There are four main teacher unions (NUT, NASUWT, ATL and PAT) and two headteacher unions (SHA and NAHT). As part of the project, interviews took place with officials responsible for capability procedures at the headquarters of these unions and approximately twenty telephone interviews were carried out with union representatives in relation to the case studies.

7.2. The LEA Perspective

It was clear from our interviews, and from the OFSTED reports, that the LEAs with which we worked were able to provide us with excellent examples of best practice. All were keen to share their practice, as well as to learn from others. OFSTED reports were available for eight of the nine LEAs, with the ninth available in September 2001. Interviews took place with officers in seven of the nine LEAs which were used for case study work.

7.2.1 Personnel and Advisory Services

In each of the seven LEAs in which we interviewed officers, almost all of the schools bought in personnel services from the LEA (90% being the lowest proportion bought in, with the majority being nearer 100%). The majority of schools also bought in the advisory service (over and above the statutory provision). In one authority (2), the personnel function was out-sourced during this academic year and in (8), the secondary schools bought in advisory services from the private sector. Training was usually offered as part of the bought in services, with capability procedures included in this, often delivered jointly by the two services.

In most of the authorities the two services worked closely together, and this was mentioned as a pre-requisite for success in identifying competency issues as well as in dealing with capability procedures. One authority mentioned that “some of the older advisers tend not to share information as readily, and this has occasionally led to problems”.

The majority of the authorities had established a “schools causing concern” group led by personnel and advisory services, but at which most of the LEA services were represented. Such groups met regularly to draw up lists of schools causing concern using hard and soft

data and to plan the strategy of support. The group then co-ordinated differentiated support, with maximum support going to schools with the biggest problems. It was the majority view that even the smallest indicator should be aired, as this might be a warning sign of something greater.

The role of the advisory service was to monitor, support and challenge schools. In most of the LEAs, advisers visited most schools once per term (naturally schools causing concern are visited considerably more often). One visit per term was seen as inadequate and it was stressed that preventative measures would only be possible with extra resources. "It is not possible in only one visit to accurately assess performance". Early identification of problems was seen as being very important: "information on the ground is crucial and early intervention is essential". Most of the authorities claimed to have good information on their schools, but acknowledged that this was limited by the amount of access which heads allowed them, and that they might not pick up problems at the very earliest stage. It was generally felt that information on secondary schools was less good as advisers did not always get into classrooms. However, one authority felt that the degree of collusion in secondary schools was less than that in primaries, leading to identification of teacher incompetence more quickly. Many of the officers mentioned that the role of the adviser was fundamental to the procedures withstanding external scrutiny, and in supporting heads who need an external judgement. A number of the LEAs commented that the advisory service had replaced its pastoral role with that of a monitoring role and they reported that headteachers missed the pastoral role. All services reported being under considerable pressure and one adviser in LEA 9 left the post because of this to take up a headship. One LEA reported that it had been criticised by OFSTED for not challenging the most successful schools, whilst being advised, and financed, to make only one visit per year to such schools.

One authority mentioned that although resources were tight, there were currently three people going into schools each year to gather information: the threshold assessor; the performance management consultant; and the LEA adviser, as well as periodic OFSTED inspectors. Since these are different individuals, and the information is not co-ordinated, this was seen as a waste of scarce resources.

Personnel were used to set timescales, and advise on the technicalities of the procedures. However, the day-to-day support for heads in running capability procedures was sometimes provided by the advisory service. In fact, in LEA 4 the adviser had written an "idiot's guide" to procedures and was responsible for training on capability procedures.

It was clear that most of the LEAs were generous in their support for schools in difficulty, in terms of both the financial and human resources deployed. One authority said that its councillors gave them the remit to support its schools, whatever the resource implications. Another confessed that its strategy for dealing with headteacher cases (with a pay-off) was dependent on the political will to put up the money. Most were highly pro-active, subject to the legal framework in which they operated, in identifying problems and challenging schools. One exception to this was LEA 9 which had only one senior personnel officer. In this authority, both case study schools bought in consultants to

support them in dealing with capability procedures and there was heavy reliance on the (overstretched) advisory service.

Several LEAs mentioned an inherent role conflict, in that schools' self management (LMS) meant that the LEA had to wait for an approach from the head or governors, and since schools bought in their services, they might not want to buy in intensive support, even when it was clearly needed. "The best schools buy in the advisory service; heads who won't admit failings are often those who don't buy in". Because the schools bought in the LEA services, the LEAs often felt that they had to take the head's part in conflict.

"We can't tell heads what to do, and because we want heads to buy our service, we can't upset them too much". One officer of the LEA summed up the views of many of the LEAs: "The LEA is put in an impossible situation, with little power and resources, yet with everybody looking to it to pick up the pieces and pay up when schools are in difficulty. Without the LEA the small schools would go under and governors would resign at the first signs of serious trouble: we can act quickly before they get into a worse mess. Private companies that take over LEA functions do not have a vested interest in the quality of education; they are in it for monetary reasons and are not politically accountable."

7.2.2 LEA view of capability procedures

Most of the authorities initially disliked the 1997 outline procedures but all had worked with the teacher associations to make them workable, straightforward, and acceptable to all sides. It was agreed that they helped to depersonalise the issue, provide a framework for action, and gave transparency and fairness for both sides. They were generally seen to be easy and effective by both personnel and advisers, except where ill-health was involved.

In relation to the July 2000 guidelines we received a large number of comments, almost all of them critical of the guidelines. One LEA adviser (LEA 4) had very specific views:

"We are not happy with these as they are statutory guidelines, but also say that we should follow ACAS. They allow for three warnings and the right of appeal and this makes it more complicated. With the new guidelines, you can appeal after each warning and you would run out of governors before the dismissal stage. ACAS say that you can use the disciplinary or capability procedures, but I have never come across a capability procedure using disciplinary warnings. This will be a major barrier for heads, and there will be more likelihood of cases going to tribunal. The timescales don't add up, and you need clear timescales e.g. for appeals. There needs to be a much tighter fit to get it all into two terms." She added that "where a grievance comes first, this must be resolved before the capability is instigated. In the procedures, number 13 on page 8 of the July 2000 guidance notes say that the teacher may raise a grievance during the

capability procedures and that the capability procedure has to be suspended until after the grievance has been dealt with. In addition, there is a problem that grievances always go to governors, and when it is tied into capability, there is taint. Ill health says that short absences shouldn't delay the procedures, but in practice they do, and it is hard to see how they wouldn't do so."

A personnel director from another LEA told us that they had carried out a benchmarking exercise on the 2000 guidelines and that the explanations to make them look streamlined had been removed, but that they are actually longer. He felt that there is a lack of realism in the 2000 guidelines and they do not recognise the pedantry of the unions. However, he said that one good point was the use of referral to OHU. He added: "It is a lean, mean procedure that has stripped the explanations away and it is not speeding up the process as trade unions would raise many points of order about them. They do not sit happily with the ACAS Code of Practice". Another personnel officer from a different LEA supported the guidelines in that they provided time frames and gave the option to fast track. Personnel officers in LEA 1 stated that they did not regard ACAS involvement as good because of their lack of experience of schools. This LEA also had concerns about the use of formal warnings and governor involvement prior to dismissal which it felt would make it more difficult for the LEA to act quickly because of the time and difficulty in organising meetings with governors. The usage of formal warnings was also seen as making the procedures more cumbersome. Their view was that the old procedures operated successfully and the LEA did well with it, whereas the new one was too prescriptive and lacked flexibility. LEA 7 felt that it had the answer:

"We feel that procedures are easy, but we dislike the July 2000 guidelines. All the unions have agreed on our procedures and they work well. Our capability procedure was set up 10 years ago and is unusual, as it is entirely supportive and not disciplinary in nature. At review there is no appeal against it and we don't give any warnings because these are, by nature, disciplinary, and ours is supportive. We believe that best practice would be for all authorities to adopt our procedures. Appeals are like wading through treacle and very difficult for a small school when they would have a maximum of ten governors. This makes appeals at every stage a non-starter. Our scheme is all about support and enhancing performance, it is not about sacking. We stuck with our capability procedure because it is less bureaucratic and the Government allows authorities to use their own, where they are simpler than the 1997 model."

A summary of the main objections is given below:

- more complicated, or make the procedure appear more complicated than it is
- too many stages
- length of informal stage is not specified
- use of written warnings makes it more disciplinary than supportive
- inflexible

- the issue of grievances is problematic. If a capability has started, this must be resolved before a grievance is instigated. Where a grievance comes first, this must be resolved before the capability is instigated. There is a problem that grievances always go to governors, and when it is tied into capability, there is taint and prejudice
- ill health says that short absences should not delay the procedures, but in practice they do, and it is hard to see how they would not do so
- there is need for an external agency to cross check that serious mistakes are not made in operating the procedures

All of the authorities were keen to put forward ideas for improvements to procedures, and although many put forward the same suggestions, some of the LEAs' ideas were in conflict. The majority felt:

- a need for clear generic guidance.
- a need for term-based time limits
- a better definition of capability
- the role of occupational health role needs to be included.
- ill-health and capability cannot be separated out and that this was not recognised in the procedures.

There was some disagreement about whether the procedures should be nationally or locally agreed: one felt that they should be negotiated nationally, and simplified so that they fitted on one page of A4, others that they should be more detailed and should not include a model structure universally applied because of the need for local practices and conditions

One authority mentioned that "managers in schools need serious training for the job and this needs funding. (Not just on the job training) Extra money is needed to monitor and support capability procedures, particularly those for headteachers where a pay off is the usual route. In authorities like ours, the role of the teacher associations should be defined more clearly. There is a conflict in the roles of the LEA and the governing body; in most cases we act on behalf of the governing body without taking over powers. Where you have overwhelming evidence, you need an easy mechanism whereby the LEA can make a decision and act quickly on it. If the government are serious about quality information on schools, then more funding is needed for this. One visit per term by advisers, is generally not sufficient." Another LEA added that "the best exit route is using the actuarially reduced pension. The stress of tribunal cases on heads is terrible, even when they win. In other businesses, there is the option of paying people off and it is usually cheaper than going to tribunal."

7.2.3 LEA view of operation of procedures

Capability procedures were seen as being more difficult to handle than disciplinary procedures, because they struck at the core of the individual. One of the authorities ran disciplinary proceedings alongside capability, and most authorities reverted to ill health capability in cases of long term absence. The issue of equity was mentioned by two LEAs, one of which emphasised the importance of quality guidance from highly skilled

caseworkers in order to achieve consistency. In church schools, governors could choose the LEA or diocesan procedures. All of the authorities reported good relationship with the Diocese and most tended to allow the LEA to run the procedures as long as they were kept informed. Some authorities were critical of the Diocese procedures for being confusing and too lengthy. (See section 6.2)

Most authorities stressed that their procedures were not initially about dismissal, but about triggering intensive support in order to solve the problem. One authority (7) had a procedure which was “entirely low key and supportive”. At review there was no appeal, and there were no warnings because these were seen as disciplinary in nature. This authority felt strongly that their procedure was the best in the country and that it should be universally adopted. It was clear that the authority put in substantial resources to support rapid deployment of capability procedures. However, it should not be assumed that the LEA backed away from moving towards dismissal in cases where the support was not affecting results, as can be seen from the cases of 7E Kim and 7D Joan.

It was generally acknowledged that the culture in the past was that heads did not tackle capability, but used strategies to hide incompetence. The culture among staff was also seen to have changed, with the level of tolerance having gone down for incompetent colleagues. It was generally thought that performance management would considerably help with capability issues. One authority mentioned that sometimes the impact of giving someone a copy of the procedures often led to a resignation. This was a strategy frequently mentioned by heads in the telephone survey, and even from a member of the steering group. The loudest message coming from all LEAs was that heads did not start procedures early enough, often having spent a long time working outside procedures. They would then want fast action, and resented having to revert to the first stage of the procedures. (See sections 8.2.2 and 8.2.3) In cases where there was improvement, the LEAs felt that these were usually because there had been early intervention. “Early action is the key to success when the procedure is used to support and conciliate”. All LEAs stressed the importance of heads contacting them for advice as soon as there was concern. Also stressed was the importance of heads making the procedures and their final implications crystal clear to the teacher, as often the teacher is unaware that they are in procedures, and what the eventual consequences might be. “Heads assume that they have told the teacher, but they wrap it up too well”. One authority asked for a chronology of events before and up to the capability including complaints and examples of issues with supporting evidence. When all three were available, they advised that the capability could start.

Most authorities said that they preferred advisers on site to support the headteacher, but acknowledged that resources and geographical distances often precluded this. Personnel usually felt that the timescales for procedures were about right (approximately one year), but recognised that heads felt frustrated with this because of the time which they had spent outside of procedures.

Where a school was causing concern, and the head was not taking advice, a number of LEAs triggered a review. “It focuses on developments within the school and would

include observations, interviews with the senior management team, including the head, with governors, and co-ordinators. An action plan is then put together based on the results. Where a review is not implemented, there is a case conference with all key players”.

The best authorities were aware of the amount of time taken to replace a teacher or head, and timescales were calculated by working forward from the final appeal. Where the head and advisers felt that the teacher would not improve, the formal stage was often quickly moved to with review after six weeks and then four weeks. All LEAs concurred that the majority of cases were dealt with at the informal stage; indeed one authority (3) said that they had failed a school if a case went to the formal stage.

There were an increasing number of situations where the member of staff stepped down. This was seen to work particularly well for deputies who had been good teachers, and who should not have transferred to management. There was opportunity for staff to increase their pension payments, so that pensions were not affected.

A number of authorities operated compromise agreements, and those which did not gave pay in lieu of notice. Compromise agreements for teachers were not great, for example in one authority, it was notice plus half a term's pay as a lump (gross) sum. Those authorities which offered compromise agreements stressed that they did not want to be seen to reward incompetence, but that they were working to solve problems for schools in the most cost effective manner. Several areas reported that the unions had a template for compromise agreements, which usually included an agreed reference. One authority did not offer pay-offs unless there was a tribunal threat of sex discrimination or similar. There was wide variability as to whether the school or the LEA paid for compromise agreements.

Where authorities were dealing with long-standing members of staff (which the LEAs felt constituted the majority of cases) and who were known to have been competent in the past, there was a feeling that the capability procedures were inappropriate. Despite this, only two authorities mentioned use of early retirement on efficiency grounds. In one authority, this worked where the teachers were over 50, the governors made the decision and the LEA paid up to 66 weeks pay, but without early access to their pension.

One authority (4) commented that the number of cases going to tribunal was increasing, with the majority of these being discrimination cases. “People use discrimination when you take out a capability procedures against them”. Another authority (9) was particularly cautious about the prospect of potentially costly tribunal cases and the personnel officer cited recent cases involving stress, as well as one in which proclivity to stress might itself be a disability. Another authority (3) was very cautious about the impact of the Disability Discrimination Act (DDA) on the way in which it handled cases. Only one authority (1) stated that ill health and the DDA were not issues in relation to using capability procedures, and dealt with the two separately. “Where someone is off long term, they usually leave on ill health capability. With regard to the DDA, all reasonable adaptations are made to accommodate staff, but those accommodations were

usually temporary”. Presumably at issue here is the definition of what might be regarded as “reasonable”. (See section 8.3.3)

7.3 The Union Perspective

7.3.1 The union role and views on the LEA

Teaching is a highly unionised profession, and when capability procedures are triggered, teachers will nearly always contact their union representative, especially when matters reach the formal stages. Heads and LEA personnel will in fact usually advise teachers whose capability is questioned to contact the union, and heads will often contact their own union representative for advice on conducting the procedures. The role of the union representative is to make sure that schools follow the capability procedures correctly, but they also follow the instructions of the member and represent their interests. In addition they try to ensure that the member understands that the process should be a supportive one, that the targets set are specific, measurable, achievable, and given timescales, and that a programme of support is in place. The majority of union representatives stated that they do not go into the classroom to judge the member as their role is one of support. Only one ‘maverick’ union representative (who rather unusually worked for the NUT, NASUWT and ATL) said that he wanted to watch the teacher teach. In his view, advisers were not impartial as they worked with the heads, and he felt there should be peer review and an external body who looked at the teaching. He also stated that he tried to make sure schools had done everything possible before formal procedures began, such as recognising their duty of care by decreasing work load, offering a job share and offering stress management. However, according to one NUT union representative, heads are not keen on job shares and the unions have had to threaten tribunals to get more job-shares.

There was a general perception amongst all union interviewees that the number of capability cases has risen throughout the ‘90s and that changes in primary teaching, in particular, had led to an increased number of cases. One NUT representative stated that:

“The job has changed so much. Teachers find that they no longer have the skills needed, particularly in primary schools where there has been enormous changes to the curriculum and the teaching styles needed.”

Another reason for the increase was that heads in recent years have been more pro-active in getting into classrooms and monitoring what is happening. There was some debate as to whether HMCI’s comment in the 1996 OFSTED report concerning 15,000 failing teachers was an accurate assessment. Some felt that it was, and that this figure of 4% was similar to that in other professions. One union official from the NUT stated that there was no evidence of huge numbers of teachers under-performing. “In all professions, there are some who under-perform; it is no worse in teaching.” She thought that unless pay was raised substantially, it would remain an unattractive profession. A union official at SHA thought there were marginally more cases of heads being called to account because of schools being in special measures or serious weaknesses.

Unions work closely with LEAs, and the majority of representatives expressed a high degree of satisfaction with the LEA's role in ensuring that the procedures are operated correctly, offering neutral advice, and brokering deals. One NUT employee said, "There is a harmonious relationship between the union, management and the LEA. We look to the LEA and they look to us." She also felt that which procedures were used made very little difference, and that the central issue was to identify poor performance and to give the teacher or head the chance to improve. However, a union representative from the same union, as well as one from NASUWT, felt that the ease of using procedures depended very much on the LEA model used. An ATL official noted that in Australia, the procedures are administered by an outside body and that they would welcome a similar system here, "...because some management is very unsupportive and the decline in LEA support has been very unhelpful. Such a system would take out personality issues."

On the contribution of personnel, there was considerable praise. The union views were markedly similar to those of LEA personnel in that they are keen for procedures to be used where teachers or heads are failing, and keen to allow staff to leave with dignity. One NUT representative commented that "Personnel are nearly always involved. They are very competent and have relevant expertise. They are regarded as essential to steer the process and advise the head on procedures. Additionally, they are an important resource for solving problems and negotiating the exit strategy for the teacher concerned." He also stated that, "When the Adviser and Head are in agreement that in their professional judgement the teacher is failing, and they have the evidence, then it is in everyone's interest to get the teacher to resign." There were diverse opinions with regards to advisers. An official from PAT expressed concern that "Too many are not well-experienced classroom teachers with recent experience". The NAHT regretted that the service was now more inspection than advice, adding that the profession greatly missed the advisory role. There was a view from an NAHT official that the advisers tell teachers what the problems are, but not how to resolve them. However, an NUT union official believed that LEA advisers could be useful, especially where there was an interpersonal issue, because it was helpful to have someone who was dispassionate. A view was also expressed by an ATL official that there was currently a lack of funding for LEA involvement and that this produced great problems. With regards to OFSTED, an official from NASUWT made a cautionary statement. He said that the statistical analyses and profiles on school intake were the best in the world and that one could probably inspect schools by looking at them, but he said that "The inspectors are subjective, there is no consistency and where do they come from?"

7.3.2 Union view of capability procedures

At the negotiation of the outline capability procedures, the unions agreed that there was a need for the capability procedure and there had not been much disagreement on what the issues were. Union representatives in general were happy with the timescales (two terms maximum for the formal stages). However, in our interviews one union official from NASUWT suggested the following: informal stage, then an oral warning to begin the

formal stage, two terms with a pause at the end of each term when a written warning would be issued if necessary and then four weeks leading to dismissal. This representative believed that some authorities were giving warnings every six weeks and he felt you could not assess people over that timescale (he was perhaps referring to the Church of England procedures). All of the union representatives expressed concern about the four week fast track. Most were not convinced that it would stand up at a tribunal. One union employee from SHA thought that there was a panic, "There must be 15,000 incompetent teachers and many must be so incompetent that they must be sacked immediately."

Many of the union officials and representatives criticised the *July 2000 Capability Procedures for Teachers*. NASUWT, in particular, was not happy with the July 2000 guidelines for a number of reasons. They felt that the subjective judgement of whether improvement could be sustained by a teacher could be used by malicious managers to dismiss a teacher. They were also unhappy at the use of seven day notice periods for meetings out of term time as a teacher might not be at home to receive the notice. They wanted the term 'line manager' to be substituted by 'headteacher' as in their view, procedures relating to the capability of a teacher should be operated by the head. The guidance also includes advice that the review periods could be shortened if "it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed or where there is a lack of co-operation with reasonable measures to achieve improvement". NASUWT would have preferred refusal to co-operate to be dealt with under the disciplinary procedure. Also, although a teacher has demonstrated a lack of capability, it does not necessarily mean that their performance could not benefit from careful monitoring and support. NASUWT further thought that the use of the four week fast-track procedure where all the children under a teacher's care fail to progress was open to subjective judgement. One NAHT representative stated that because each warning has an appeal stage, there is a danger that there might not be enough governors who were untainted to hear the separate appeals. However, a union official from the NUT felt that the July 2000 procedures were not different, although they were perceived to be more draconian, but she did say that all the supportive wording had been dropped and that there was no need to do this. Another official from SHA stated "The July guidance is good stuff- drawn from experience" and had no problems with the proposal that the headteacher should evaluate whether the teacher can sustain improvement, something which the teachers' union NASUWT objected to.

7.3.3 The union view of the operation of procedures

One NUT representative pointed out that schools vary enormously in terms of age range, social class, size, resources and culture and capability must be seen within the context of the school. Union representatives emphasized the interpersonal problems which resulted from triggering capability procedures. One NUT representative noted that where procedures are triggered, the atmosphere in the school and/or department changes, particularly where it is seen as unfair. On a more mechanical level, a problem which he also recognised was slippage in the process, as it was not always easy to co-ordinate meetings involving Heads and Chairs of Governors.

Many union representatives believed that the success of capability procedures in producing an improvement is dependent on:

- *the head being clear that it should be a genuine rehabilitation process, but at the same time making it clear to the teacher that it is a serious problem without being threatening:* “It is about restoring confidence in ability and being genuinely supportive” said one NUT representative and “Some heads don’t do it properly”. An NASUWT representative said that “Some schools say they have supported the teacher when they have only observed. They should allow the teacher to observe in the school and in other schools, or offer inset”. An official from PAT thought “The best cases were those where the management was pro-active, provided a mentor who was respected, supply teachers were brought in to cover, and where collegiate working was used”. PAT also mentioned that they operated a system of identifying people working in the same subject/age range within the locality and who were willing to help. An ATL official noted that it is difficult to teach when you have management on your shoulder believing that you cannot do it. Once confidence is gone, your capacity to do the job is under threat. One NASUWT representative suggested that you had to go to the cause of the symptoms; heads have sometimes already decided that the person is no longer suitable, set impossible targets and then only given them four weeks to improve. Another NUT representative believed that procedures were too frequently used as a ‘stick’ and that there was often inappropriate bullying and harassment. He also noted that some members were unaware that they had been on the informal stage, let alone that the procedure is designed to offer support and help; they viewed them as departure procedures. Two NUT representatives pointed out that sometimes there were personality clashes, whilst an official from NASUWT went further and commented that, “The worry with capability is that it is because they have a run in with the Head or their face doesn’t fit- these factors design to drive people out- it is not the norm but it will happen”. Another point made was that feedback can be less than constructive with no mention of positive points. However, the view that there was “often” pressure management was a minority one. The majority of the interviewees thought that there were few cases of bullying by heads, and reported that most heads were supportive. An NUT representative commented that “We pull together” and another NUT representative stated: “Schools use capability procedures in a supportive way”.
- *heads tackling issues early :* “The best time to solve the problem is in the early stages” as an NASUWT official stated. Another union employee from NUT made the point that the majority of cases are resolved at the informal stage which is why the DfES will never find high figures. Managers do not like initiating formal procedures and therefore if they do, the teachers must be a far way down the track of failure. It was felt that heads often leave teachers who are having difficulties far too long and then it becomes a major issue. Union representatives recommended training for heads to get them to tackle problems as soon as they were identified and with the subtlety required to take the teacher with them. However, there was recognition of the intense time pressure which all heads were under, and that this may be the cause

of poor delivery of capability procedures, rather than a wilful neglect to carry out best practice. Another view expressed by officials from NUT and PAT was that heads did not act quickly because they were intimidated by procedures, felt that they were too complicated, and were worried about the inter-personal issues.

- *the member being prepared to make changes: even fundamental changes such as stepping down when they recognise they cannot cope:* When members do not recognise that there is a problem or they think that it is a conspiracy, it was felt that the union representative does not make progress. It was thought particularly difficult if part of the problem is a poor relationship with management. The union can help move the situation on if they say privately, 'your best course of action is to address...or your best way out is ...'

The point was made by an NUT official that young teachers tend to have a problem in one area of work, for example marking or lesson plans and they go into the informal procedure more often, but it is easier to address. With older staff it is more difficult if it is about style. Another union official from SHA commented that there must be a different standard for a young teacher compared with an older teacher - a teacher with one year's experience will not have experienced all the potential difficulties. He thought that an older teacher can control a class better, but that older teachers can suffer from fatigue or get 'fed up'. Many interviewees mentioned the number of teachers in their '50s who had problems with workload and the number of new initiatives. There was considerable concern around this issue, as well as the absence of suitable exit strategies. An NASUWT representative commented that "On the whole we deal with people in their late to mid careers, in their late '40s and early '50s. They have taught for 30 years and then they are told that they are incompetent: most just can't take it. Instead of getting them out they should have support so that they can continue." There was a suggestion by an NASUWT representative of having a 'jaded teachers' scheme. Two NUT union representatives thought that the threshold is now acting as a trigger because it has highlighted cases which should have been dealt with a long time ago. However, it was believed that a draconian approach would not work; as a union representative from NUT commented, "You have to work with the workforce which you have". For example if there is just one area which needs improvement, like IT, then teachers should be supported in this area.

Ill health was seen as being intricately linked to capability and the unions also recognised the vicious circle, in that often the teachers are under stress and the capability procedures add more stress, and so the performance becomes worse and they become ill. None of the representatives believed that going off sick was the answer. A union employee from NASUWT Headquarters stated that,

"The government thinks that teachers delay the capability procedures by going off sick. They think that we advise them to go off; we don't, because that only leads the problem to becoming entrenched. Most are genuinely ill. It makes it worse if they go off sick; it is harder to come back, and harder to address the issues. It is not in anybody's interests."

He also made the point that some teachers are genuinely made ill by the procedures, if part of the reason for poor performance is that they are 'on the edge'. One NUT representative noted that when capability procedures are triggered it begins a downward spiral with increased observations, greater pressure and lowered confidence: "Capability procedures undermine confidence and then it all becomes protracted and messy with relationships breaking down". However, the point was made by another NUT representative was that sometimes a teacher can leave and start a job somewhere else and be satisfactory. Yet another NUT representative thought that it is often better for teachers to resign straight away, before there is too much written evidence as, with the teacher shortage, they would get jobs elsewhere.

CHAPTER EIGHT

THEMES AND ISSUES

In Chapter 4, 5, 6 and 7 we presented the findings from the quantitative and qualitative stages of the research. We now attempt to extract from the findings what we see as the key themes addressing capability issues in teaching professionals.

8.1 Determination of Capability

8.1.1 Definitions

Since the central issue of this project is the operation of capability procedures, it seemed an obvious question to ask heads during the case study interviews about how they would actually define 'capability'. A wide variety of responses was received which illustrated not simply a divergence about what constitutes a capable teacher, but also that different yardsticks are used in measuring capability.

Some heads, in effect, side-stepped the question by simply referring back to the job description, the school development plan, conditions of service or the OFSTED criteria. Others were more specific, particularly in relation to what one might term professional duties such as: the setting and marking of homework; planning; lesson preparation; the carrying out of pastoral duties; attendance at meetings; willingness to follow school procedures and fulfilling management roles and responsibilities. This greater level of detail was also apparent when heads linked capability to lesson delivery, for example, the headteacher in the case of Ruth specified poor structure, organisation, pace and teacher involvement, whereas in the case of Jane the headteacher mentioned inappropriate activities, not adhering to the scheme of work and not pitching learning at the right level.

Whilst these could be regarded as input qualities, there was, if anything, more emphasis on engagement with the children and the learning outcomes. Several heads would measure capability in terms of such things as motivation of the children and creating confidence in them, whether children were enthusiastic and making progress, or simply whether learning outcomes were achieved. In some cases, outcomes and performance were linked more specifically to test results. What one head described as classroom climate tends to be a fairly good measure of how engaged children are in learning activities, and this factor featured in a number of responses which also emphasised the ability to control children and to keep order in the class.

Although some of the measures used by heads may be objectively tested - such as test results, marking of homework or subject knowledge, others tended to be more nebulous, particularly when they related to the personal qualities of the individual. For example, one headteacher felt it was important that the teacher should be "open-minded and prepared to adapt and take on new skills", whilst another felt that capability was to do with "attitude". Several interviewees offered somewhat generalised statements such as "unable to do the job effectively", "not delivering", "not meeting standards" and one simply felt that capability could not be defined and that each case had to be taken as it

came. Interestingly, some heads defined capability in terms of the inability or unwillingness to improve despite support and others linked capability to absenteeism.

There is thus little unanimity in defining capability or lack of it, but there was no evidence from the case studies that heads were uncertain whether or not a teacher was performing adequately. In contrast, some heads who took part in the telephone interviews expressed concern that differential standards might be operating and that there was a grey area between competence and incompetence. Typical comments were, “I have no benchmarking or comparisons to know what is good. In our school it is our fault; we set very high standards”, “What some people think is incapability, other people think of as creative teaching...”, “It is not a black and white decision on who is capable and who isn’t”. A union representative also felt that there would be a different standard for a young teacher compared with an older, more experienced teacher.

It should perhaps be a matter of concern that there is no common approach to the question of capability and the possibility must exist that what might be deemed acceptable in one school would not be tolerated in another. In fact, this point was specifically made by the union representative in Fiona’s case who commented “It depends on the ethos of the organisation and the aspirations of the school. There are 25,000 schools in the UK and there is nothing universal about provision because of the individuality of the teachers and the style and quality of the management.” The head in the case of Rachel made a similar comment and specifically pointed out that capability was a nebulous concept because, “it is not that they have failed to do something mechanical”. We could add a further factor to those of Fiona’s union representative, and that is the nature of the school. The key elements of capability in a small village primary school with five teachers will be different from those required in a large urban comprehensive. Capability will remain a difficult and intangible issue to pin down and procedure is limited in the contribution it can make. It cannot solve problems; it can merely provide a framework which forces those involved to find a solution. The solutions themselves lie in the effective management action that is taken to identify, describe and resolve the problem.

8.1.2 Monitoring

All schools are now expected to carry out monitoring as part of performance management and the case studies reveal that in general this takes place by some combination of classroom observation, scrutiny of children’s work and the teacher’s planning, analysis of exam results and feedback from pupils (and in some cases, parents).

As would be expected, classroom observation in smaller primary schools tends to be less formalised and carried out largely by the head, although in the case of Joe, the Head had introduced a system of triad monitoring in which staff monitored each other and also watched him teach. In addition he, and two other primary heads, had appointed curriculum co-ordinators to take on a monitoring role. In larger primary schools and in secondary schools, some monitoring is devolved to line managers, senior management teams or to Heads of Department in addition to peer review and in one secondary

foundation school (the case of Sue), a Behaviour Management Co-ordinator had been appointed to carry out observation although the Head also made unannounced visits to classrooms. Six case study schools reported that monitoring operated through the performance management system. Although few of the interviewees indicated how often observation was carried out other than that it took place “regularly”, it appeared to vary from half-termly to annually, in some cases building on the review by the LEA adviser. Some heads described outcomes from classroom observation – in one school, for example, there was a formal observation checklist and feedback sheet giving the teacher concerned the opportunity to comment before signing it. According to a member of our Advisory Group, this would not be at all uncommon. The primary school which operated triad monitoring provided a form for staff who monitored each other and subsequently, general issues were reported back at staff meetings, whilst the Head of a larger primary school wrote a report for each member of staff in what he perceived to be a positive and supportive manner. One of the secondary schools was attempting to foster a climate of sharing good practice following monitoring and encouraging discussion of what makes a good lesson; another built feedback into the training plan.

Feedback from pupils varied in its formality. In some cases, the head merely had discussions with the pupils or even drew inferences from “the way the children walk around the school”, in others a more formalised approach was taken using feedback from the School Council or by carrying out student surveys. Parents also featured in the monitoring process and although in some instances this amounted to no more than listening to parents, one school had actually sent a questionnaire to parents and another indicated that complaints from parents had to be fully investigated.

Interestingly, only one secondary school and one primary school reported analysis of sickness records with subsequent referral to Occupational Health, although sickness absence is clearly an important feature of capability issues. One of these schools also used what it described as soft data to pick up problems, such as where a member of staff was perceived to over-use support mechanisms. All-in-all, it appeared that there was no lack of measures being used to monitor the performance of staff and highlight weaknesses, although as will be discussed in the following section, it was not always the case that the Head’s awareness of shortcomings came about by these means.

In the case of headteacher capability, the picture is, of course, very different. In theory, the governors should monitor and evaluate the performance of their head, but in practice, the LEA has a crucial role to play. This will be dealt with in section 8.4.1.

8.1.3 Heads’ awareness of shortcomings

Although heads were not asked specifically during case study interviews about what alerted them to problems in relation to the teacher(s) in question, many cited concerns about teaching and in some cases stated that these had come to light through monitoring. Thirteen of the case study schools were in serious weakness or special measures and therefore monitoring had been particularly intense. However, in some instances, problems in the classroom became apparent simply by the level of noise emanating from

a particular room and/or the behaviour in which the children were indulging. On other occasions, it had been a previous OFSTED which had first alerted heads to the under-performance of particular teachers. Whilst quality of the classroom teaching was obviously a central focus, heads also cited awareness of failure to carry out tasks surrounding the teaching itself, such as marking and setting of homework, or planning and preparation of lessons. Some problems clearly came to light through scrutiny of exam results and pupils' progress, and others as a result of parental complaints or even complaints from the pupils.

Sometimes concerns about a member of staff arose outside classroom and related duties, and centred more on aspects of their behaviour and relationships with other staff. In the case of Helen, for example, the Head felt that she had an unfortunate manner and that she "put people's heckles up": she had also upset the teaching assistant. Louise was perceived to be isolating herself and her relationships with other members of staff were beginning to break down; Dominic behaved bizarrely and was rude to support staff and Geoff was regarded as overbearing and bullying, particularly in relation to female colleagues. These behavioural traits were rarely the entirety of the problem with a particular member of staff, but it was clear that not only did they constitute early warning signs, but that they made later attempts to deal with concerns over aspects of teaching more difficult to handle.

Where the member of staff had management responsibilities, it was the failure to carry out these rather than, or in combination with, concerns about teaching, which lay at the root of the problem. Heads mentioned a variety of matters, from making errors over exams and forgetting to organise certain things, to simply failing or under-performing in the management role.

A particularly notable finding of the interviews with heads was that absence problems featured in almost a quarter of capability issues. In the case of Ruth and Louise the sickness absence itself was regarded as the problem, whereas in several other cases both absenteeism and teaching performance were involved. It is difficult to know to what extent sickness absence may have resulted from an inability to cope with the demands of the job, but it was certainly the case that some of the absences were stress-related and suspicions about drink problems and the genuineness of excuses for absence were also raised during interviews. Two heads noted that although staff were present, they appeared to be withdrawing, in the sense that they arrived very shortly before the school day started and left immediately after it ended.

These findings largely mirror and flesh out the results of the telephone interviews, although sickness absence as a cause for concern was reported in only 16% of cases. So far, the discussion has centred on heads becoming aware from problems during their own headship within the school, but it was obvious from the case studies that sometimes heads were alerted to problems, or made aware of them as soon as they arrived at the school. In the case of the maverick Rob, a large file already existed on him, whilst in other schools heads were put in the picture by an outgoing or previous head.

8.1.4 Types of incapable teacher (and headteacher)

Whilst it is difficult to categorise neatly the teaching professionals with whom the case study heads had issues, it would seem that many of them had been in teaching for substantial periods of time. One union view was that young teachers might go into procedures more often but the problem was easier to address because it related to a specific area of work such as lesson planning. With older teachers it was more likely to be a question of style or simply fatigue, which were less easily tackled; suggestion was made for a 'jaded teachers scheme. From the heads' comments the problem was more likely to have been longstanding and indeed, known about, rather than there being a sudden dip in performance of an otherwise entirely satisfactory teacher. As one teacher commented "Trevor had been the same for so long that some of us had got used to it". However, it did seem to be the case that individuals who had been borderline may have suffered a gradual deterioration, particularly where the problem was compounded with sickness absence. There was also significant concern from both heads and union representatives about capable teachers, particularly those in their '50s, becoming burnt out and unable, or unwilling, to adapt to the plethora of new initiatives and administrative tasks. As one head put it "The question is, what has changed, the teacher or the pressure of work which the government has put them under so that they are unable to keep up with changes?" The following views of two of the case study heads are typical: "I don't know how Derek became a teacher.... He wasn't capable of change: he didn't want to change" "Andy found change difficult and resisted it at the end by denial". Mention was also made about the impact of life changes on teachers such as marital breakdown, which could affect their performance overnight.

A rather worrying finding, for which there appeared to be no obvious explanation, was that a significant number of the case study teachers were late entrants to the profession: another was that in a similar number of cases, the lack of capability of the teacher in question came as a surprise to the Head because each had come to the school with a good reference. A further issue, which will be discussed at more length subsequently (see section 8.2.4) is that a head in one school had felt obliged to take a teacher who had been given a less than glowing reference because there were no other applicants for the job. Several heads also expressed concerns over those passed by the teacher training institutions and felt that they had a lot to answer for: "I felt that the school was pushed to refuse or pass the person after their probationary year – an option to extend the probationary period would have been much more useful", "One teacher was of a very low intellectual calibre and yet she had a degree".

In the case of teachers with management responsibility such as deputy heads, or headteachers themselves, the capability issue was as likely to be related to the managerial aspects of the role as the teaching aspects. Terry, for example, was perceived as lacking the necessary leadership skills, Gerald was incapable of dealing with staff and confronting issues, and Eliza failed to monitor standards of teaching. The implication is that some of these teachers had been promoted unwisely, and in the case of Joan, whose capability as a headteacher was being questioned almost immediately after being

appointed, the authority felt that it had been misled by her having been given excellent references.

As one would expect, most of the case study stories described attributes, or lack of them, which related to teaching duties or managerial qualities. However, as the cases of Vince and Amanda illustrate, there were also instances where the heads felt that in reality it was the individual's personality which was at issue rather than any aspect of their teaching as such. The Head of Alice's school believed that she was mentally disturbed and "certainly, emotionally incapable of coping with day-to-day situations", whilst a teacher in Vince's school remarked that from his point of view, this was not an issue about under-performance but about Vince's behaviour. As will be highlighted in section 8.2.6, where behavioural issues intrude, it then becomes difficult for heads to decide whether the case should be regarded as capability, disciplinary or simply mental ill-health.

8.2 Using Capability Procedures

8.2.1 Recognition of problems but reluctance to use procedures

When heads were asked during the case study interviews what they would have done differently with hindsight, the majority stated that they wished they had acted more quickly and it was evident that many heads felt a reluctance to tackle the problem. Union representatives also recognised that tackling issues early was the best way to solve the problem and recommended training for heads which would enable them to do this "with the subtlety required to take the teacher with them". Similarly, LEAs regarded early identification of problems as being very important, but acknowledged that their own information could be limited by the lack of resources to enable them to provide adviser visits more than once per term and by the amount of access heads allowed them. A commonly-expressed view was that the role of adviser was fundamental, not only in highlighting problems but also in supporting heads. It was also clear that LEAs could be frustrated in their efforts to assist schools in that schools' self-management meant that the LEA had to wait for an approach by the school or governors and schools could choose not to buy in their services – "The best schools buy in the advisory service; heads who won't admit failings are often those who won't buy in".

The reasons for inaction on the part of heads are not difficult to fathom, and although they were not asked the question specifically, some did explain their hesitance. One head stated bluntly that "capability is never an easy issue to tackle" and in several cases the heads were new to the school and were feeling their way or had other priorities in terms of the high workload. In most instances where the problem was inherited, the heads commented that they wondered why the previous head had not taken action. It was also apparent that there was sometimes concern about how parents or staff would react if capability issues were confronted, and whether this would have a detrimental effect on staff morale. In fact, as the comments from some of the teachers makes clear, whilst there could be sympathy for the member of staff concerned, there could also be a positive reaction when issues were tackled because there had been a feeling that it was "time to get a grip" on the situation. Where, for example, a member of staff was being paid for a

management responsibility but failing to carry it out, or where the problem related to absenteeism as well as performance, other staff were likely to have become resentful over time and relieved when the situation was resolved.

Although in the event parents and staff may have been supportive, it was evident that at the time, heads lacked confidence to tackle issues at an early stage, particularly in small primary schools where relationships tend to be closer than in larger schools. More than one head commented that they had asked themselves the question “Is it me?” or thought that perhaps the problem was simply one of a personality clash. One head commented that it was difficult because normally colleagues should be treated with “professional respect and trust”, whilst another had hesitated to take action without being able to discuss the situation with someone who had had similar experience. The Head in the case of Rachel candidly admitted to having spent two and a half years “getting psyched up” to tackle the case.

Some of the heads involved in the telephone interviews suggested alternative ways of dealing with the problem so that they would not need to resort to the use of procedures:

“There are better ways to deal with issues, You can have a conversation with the person and say ‘should you wish to remain in teaching, I will have to undertake a capability procedure and then they leave. It has happened twice and I have never had to proceed.”

“I know how difficult it can be – I have maybe avoided it and arranged a judicious retirement”.

“Managing this is difficult; there is a tendency to give them easier classes, sweep things under the carpet and hope things get better”.

“Teachers with problems tend to jump before they are pushed. I have pushed a few... probably two have gone with mutual agreements i.e. a dodgy deal with one term’s salary”.

Another point made by some of the heads who had not had problems was that they did not think they would need to invoke capability procedures because they felt they would not make such a bad mistake at interview. In this context it was suggested that training for governors and senior staff on recruitment and selection would help.

When heads did take action on capability cases, the vast majority appeared to expend considerable time and energy on supportive measures before moving into the procedures themselves and only did so as a last resort, or when they were triggered into doing so by e.g. an impending OFSTED visit. It was clear that they were reluctant to use the procedures without hard evidence and until they were satisfied that they had provided sufficient support and chance to improve; as one head remarked “It is difficult to know how long to let it run”.

8.2.2 Addressing performance outside procedures

As indicated above, it was notable from the case studies that informal action outside the procedures often spanned long periods of time, in some cases, several years. The average length of time during which informal action was taken as reported in the telephone interviews, was around 18 months. During these periods the member of staff who was causing concern was generally monitored and observed by either the Head, the Deputy Head or a Head of Department. Review meetings setting targets over such matters as planning, marking, classroom and behaviour strategies, and advice from a variety of sources including LEA Link Advisers and trade union representatives featured in a number of cases. It was evident that the support provided was often quite intensive in terms of the amount of time involved: in the case of Kim, for example, a literacy consultant was brought in to give demonstration lessons following which the consultant planned the lesson and Kim delivered it. Next, they jointly planned a lesson, and finally Kim planned and delivered the lesson : the procedure was then repeated with a numeracy consultant. Other actions included giving the member of staff the chance to visit other schools or to observe delivery of the literacy hour by another member of staff, offering greater non-contact time and relieving the member of staff of curricular responsibilities.

Although the telephone survey found that around 20% of teachers improved overall (see section 8.8), there were no instances among the case studies where the use of such informal support, monitoring and assistance succeeded in raising the level of performance of the member of staff to a satisfactory standard. No doubt a substantial contributory factor to the failure to improve is the fact that many of the teachers denied that there was a problem; as Barry apparently remarked, somewhat tellingly “I have been teaching for twenty years, I know how to teach”. Whilst one may criticise such a response, it is hardly surprising. As some of the members of the Advisory Group pointed out, many experienced teachers would have done the job for a substantial period of time without anyone ever entering their classroom to give a second opinion about the quality of their teaching. They have not been used to being monitored or challenged, and it is therefore understandable that they would take the view that there was nothing wrong with the way in which they taught. Significantly, at least one head remarked that if problems were tackled early, they would never turn into capability cases.

The telephone interviews suggested that rarely was there a specific trigger for a move towards using capability procedures – rather it was the case that heads simply came to realise that their supportive measures were not being effective. However, it did seem to be the case that some heads moved more quickly onto procedures whilst continuing to aim for improvement. When the move towards capability procedures was signalled, several teachers simply resigned. Whilst this was confirmed by the case studies, these also revealed that others, whose under-performance had been complicated by ill-health issues took ill-health retirement and one was retired on efficiency grounds. Since ill-health played such a significant role in the matter of teacher capability, it will be discussed separately in section 8.3.

Because only six headteacher capability cases were looked at in detail, it is hard to make generalisations about the use of informal measures outside of procedures but the impression gained is that once a problem with a headteacher is identified, matters tend to move very quickly because the governors and/or the LEA cannot risk overall harm being done to the school by using a softly, softly approach. In many LEAs the most common approach is for cases to be referred to the Director of Education (or their delegate) and a compromise agreement is negotiated. Where this approach does not work, capability procedures are quickly triggered.

8.2.3 Addressing performance through capability procedures

A substantial number of the case study teachers did eventually move onto the informal stage of the capability procedures and this stage appeared to last for varying lengths of time ranging from six weeks to two years. From the telephone interviews it would seem that overall 54% of teachers were dealt with via procedures and that the average length of time for the informal stage was six months. It is also worth emphasising that this informal stage occurred in *every* case even though heads might by that time have expended considerable time and effort on supportive action outside the procedures. In none of the case studies did the member of staff move from informal action outside the procedures directly to the formal stage of the capability procedure. Although outcomes will be discussed more fully in section 8.8, it should be pointed out that only three teachers improved to a satisfactory level in the informal stage; the majority resigned or took sickness absence (some of these subsequently retired on ill-health grounds). Of the smaller number who moved onto the formal stage, only two improved to a satisfactory level, and the formal stage appeared to last up to six months.

Almost without exception, heads found operating capability procedures extremely stressful and were usually conscious that it was also stressful for the person concerned. They described the process variously as “painful and unpleasant”, “a necessary evil”, “emotionally draining” “complicated” and “difficult”. One head found the confidential nature of the proceedings stressful whilst others appeared to be plagued with self-doubt, asking themselves “Is it me? Have I got it wrong?”. Concern was expressed in one case about how combative the union would be – in another the head worried about whether the procedures were being followed correctly, aware of the possibility of an employment tribunal claim if things went wrong.

It was also clear that in many cases heads were deeply conscious that they were dealing with people’s futures and livelihoods; as the Head in Amanda’s case commented “I had sleepless nights about the situation wondering if I had given her enough support because at the end of the day it was her livelihood and it didn’t sit easily”. Others pointed out on the role conflict in having to, on the one hand be supportive, but then to give evidence against a teacher – “By nature teachers are trained to trust, increase aspirations and life chances: capability procedures are the antithesis of this...”. Nevertheless, some recognised the inevitability of the stress involved and their obligations to pupils as well as to the member of staff concerned: one spoke of being an advocate for the children,

another felt impelled to act because “the kids were being failed” and some mentioned striking a balance between the rights of the children and the rights of the teacher.

A further source of stress for the heads was the effect on staff morale especially in small schools. In fact, the perception that morale would be detrimentally affected was an additional reason for being reluctant to initiate proceedings in some cases. Although it was evident that at the end of the day staff were relieved once the problem had been resolved, this had not always been so whilst the procedures were in operation – as one secondary head put it “It leaves a whole department in limbo and people have to walk through eggshells throughout”. In a further case, the effect on morale was the reason for the head’s desire to avoid capability procedures if at all possible. In fact, whilst heads sometimes reported having been glad that they had tackled the particular problem, there was also distaste for going down the same route again. This point of view was forcibly expressed by the Head in the case of Meena in the following terms “It was a nightmare; I was very, very stressed by the whole thing and I swore that I would never do it again, or that I would do it by the back door”.

Whilst there was an acceptance by some heads that operating capability procedures was bound to be stressful, several heads felt that they would have been greatly assisted by having some sort of external agency to assist them. For some, the important factor was someone to act as a counsellor, someone to talk to and reduce their feelings of isolation. Others felt that the crucial aspect was to have an independent voice, particularly where there might be suggestions of a personality clash: as the Head in Elspeth’s case put it “Best practice may be to pass it on to someone else, outside of the school. This way it wouldn’t just be my judgement and it would take any personal element out of it”. Such suggestions of outside involvement in, for example, the investigatory aspect would no doubt also be appealing simply because they would cut down the time heads had to spend on cases of capability, a factor mentioned in a number of the case studies. Heads referred to having to collect huge files of evidence and to the difficulty of finding the time to devote to the case when there was so much else to do. In fact, there was some acknowledgement on the part of the LEAs that there might be a case for heads and governors relinquishing part of their roles in running capability procedures, particularly in cases where disputes arose, or where governors were put under intense pressure. “Where you have overwhelming evidence, you need an easy mechanism whereby the decisions can be made and acted quickly on. The role ought to be given to the LEA or to someone else, in the same way as we now have Child Protection Lead Officers.” It was also seen as important that managers in schools need additional training: “In general terms, managers in schools need serious training for the job and this needs funding (not just on the job training). Extra money is needed to monitor and support capability procedures, particularly those for headteachers where a pay off is the usual route. If the government is serious about quality information on schools, then more funding is needed for this.”

Not all comments about procedures were negative however; many of the heads involved in the telephone survey were supportive of the procedures although it should be remembered that the majority of them had no actual experience of using them. Typical

comments were “The format is clear and well-researched by experience and practice”, “I have confidence in the LEA capability procedure; it is a calm, sensible, reasoned approach”. “Capability procedures improve schools and it did work – the school has improved”. More than one mentioned that the very existence of the procedures was useful: “You don’t have to play the hand to get an effect from the procedures, you can use their presence to head off using them”. Once heads overcame their understandable reluctance to use capability procedures, the vast majority found them easy to follow, although some felt that the burden of proof lay very much on them as opposed to the member of staff. However, whilst bearing in mind that there had to be sufficient time given for sustained improvement, heads overwhelmingly condemned the length of time that the procedures took and clearly felt that such a long-drawn out process was neither in the interests of the member of staff concerned nor in those of the school or the pupils. As already indicated, many heads had expended a considerable amount of time and energy dealing with performance issues on an informal basis, and to then find that entry into procedures was to involve several more months of target-setting and review filled them with distaste. For example, the Head in the case of Lisa was of the opinion that “It is really what happens before the procedures which is important – putting lots of support in. I think once you are on capability then it should be fairly quick”. Another head expressed his view even more forcibly ‘before getting to the formal stage, you need an informal stage with no timescale, during which other people are not dragged in. Specific evidence can be gathered during the informal stage. If improvement is not made the formal stage would last half a term, then dismissal. In effect, the Head appeared to be suggesting only one ‘informal stage rather than the two (one outside the procedures and one inside) which appear to exist currently. One of our LEA interviewees also believed that “If heads have done all of the informal work outside the procedures, then there is nothing wrong with entering the procedures at a higher stage”.

As might be expected, LEAs and union representatives also had views, sometimes strongly expressed. Whilst the LEAs had initially had concerns about the outline procedures, they were now generally seen to be easy and effective, although it was felt that ill-health and capability could not be separated out and that improvements could be made (see section 7.2.2). The fiercest criticism was reserved for the July 2000 guidelines; in particular it was felt that there were too many stages in the procedure and that the ability to appeal against warnings, which could be given at each stage, meant that schools would ‘run out of governors’ before reaching dismissal. There was also disapproval of using disciplinary-style warnings – “I have never come across a capability procedure using disciplinary warnings. This will be a major barrier for heads, and there will be more likelihood of cases going to tribunals,” and concern about the timescales. A particular problem mentioned by the LEA interviewees related to the procedure to be followed where a grievance was raised depending on whether this occurred before or after capability procedures were instigated.

Overall, many union representatives thought that procedures were not effective in securing improvement, but instead were used as a tool to remove a teacher from the school. Some had concerns about how heads operated the procedures in that they often failed to restore the teacher’s confidence so that the process was one of genuine

rehabilitation. Others questioned how genuinely supportive the procedure was and felt that procedures were too often used as a stick, involving bullying and harassment. Mention was also made of personality clashes and procedures being used where an individual had had a “run in” with the head.

8.2.4 Effect of teacher shortage

A worrying finding of the case studies which was noted in section 8.1.4 was that on occasions heads appointed teachers with less than glowing references, or even without references because of the lack of other applicants for the job. The growing teacher shortage was also mentioned several times when heads were asked to reflect on whether they would, with hindsight, have done anything differently in relation to a teacher in respect of whom there had been an issue of lack of capability. Two heads in particular (in the cases of Lucy and Andy) expressed the view that they should not have appointed the individual in the first place but “(s)he was the only candidate at the interview”. One of these heads added that he had recently appointed a person who was the only candidate but turned out not to have the necessary skills. He conceded that he could have appointed the individual on a trial basis but “the person could get six other job offers, one of which would be permanent”. Three other heads (in the cases of Trevor, Sonia and Rachel) had also felt under pressure to appoint because of the teacher shortage. Heads taking part in the telephone survey and even one of the teachers interviewed expressed concern over the shortage of teachers and believed that schools would accept people who should not be appointed. There was also a problem over headteacher shortage in the case of Joan which led to her appointment.

There can, of course be two diametrically opposed consequences of such developments on the operation of capability procedures. On the one hand, the appointment of unsuitable teachers may lead to an increase in capability procedures being operated, whilst on the other hand, the shortage of suitably qualified replacements may make heads reluctant to take steps to question the ability of existing staff who may then resign or ultimately face dismissal. The comment of one head seemed to point to the latter scenario; “we are reluctant to get rid because there is no-one to replace them”.

8.2.5 Use of the fast track procedure

Although 50% of heads involved in the telephone survey said they could envisage a situation in which the four-week procedure might be appropriate, overall the views of headteachers about the four-week fast track procedure were extremely diverse and in some cases betrayed a lack of knowledge as to how, precisely, they fitted in to the overall scheme of capability procedures. A few actually admitted they knew little about it, whereas others appeared by their comments to believe that it contemplated a teacher being dismissed from start to finish in four weeks – “how could you turn a situation around in four weeks?”, “four weeks is very short, and if something is so terrible, what can the person do in four weeks?” and so on. A number of heads felt it had its attractions, but expressed reservations, principally because they felt it could open them up to allegations of not providing the person with sufficient support, or that they might be

likely to make mistakes, or that there might not be sufficient evidence. Another common view was that although the procedures were too long, four weeks was too short. One head said “Fine, if you can get away with it”, whilst others regarded it as a good idea but felt that the union, or even the LEA, would object to its use: “The LEA is very, very wary. They know that the union would fight it”.

In addition to the mixed views expressed above, there were also expressions of unqualified support – “the faster, the better” and some of total disapproval – “it’s not viable, it’s unrealistic”. Several heads gave it their support providing it was used when people had been given plenty of opportunity to improve, but it was clear that they were not going to be able to do so. There appeared to be a feeling that if someone was not sufficiently capable after being given proper support, then the sooner they were out of the school the better it was for all concerned. As one head commented, “I think there should be two or three months to redeem themselves and if that doesn’t work, then it has to be quick- four weeks. It is better to be done quickly than dragging on”. In effect, these heads were in agreement with what the 1997 outline procedure contemplated, namely shortening the final stage of the formal procedure in appropriate cases.

8.2.6 Uncertainty re capability or disciplinary

Although most heads found capability procedures easy to operate once they were invoked, it was apparent that they were sometimes unsure whether the problem was a case of ‘can’t’ or ‘won’t’ and where the capability route had been followed, sometimes wondered whether in retrospect the issue should have been dealt with as a disciplinary matter. Caroline, for example was a Head of Faculty who was not carrying out management responsibilities and, for no understandable reason, failed to meet targets set for her until it seemed she might be dismissed. Similarly, Joe failed to complete tasks for which he was given responsibility allowances and the situation was only resolved when he was threatened with capability procedures. In the case of Steve there had been both capability and disciplinary issues during his time at the school : when, in his role as Head of Department he failed to produce a handbook, the Head wanted to deal with the case using disciplinary proceedings but was advised against it. The Head was similarly advised in the first instance in the case of Sam in which there were behavioural issues. Having commenced capability procedures, it was then decided to switch to the disciplinary route after Sam verbally threatened a sixth former.

However, in another case where there was an uncertainty as to whether the situation was one of ‘can’t’ or ‘won’t’, the Head leant away from the disciplinary route because the teacher in question (Neil) had been in teaching so long and simply thought the present system was wrong. Moreover, in a number of cases where the teacher in question was being dealt with under disciplinary procedures in relation to behavioural matters, issues of mental ill-health subsequently supervened.

8.3 Ill-health and Procedures

8.3.1 Ill-health as a capability issue

Although as one might have predicted, sickness absence was frequently a response to the operation of capability procedures, both the telephone interviews and the case studies confirmed that there were also a substantial number of cases where sickness absence was part of the problem itself and in the cases of Ruth, Lorraine, and Louise, in particular, absenteeism was the predominant concern. It is worth noting that Louise's Head defined capability as "fitness to teach" and the Head in the case of Joe stated pithily "if it's stress, it's capability", which in his view included being able to be in the classroom. Similarly, the issue of ill-health was frequently aired during the telephone interviews with some heads reporting that capability was inextricably linked with ill-health, "Both of my experiences were ill and one had a nervous breakdown."

Some teachers whose absence caused problems appeared to suffer from a variety of minor ailments, but the largest category of absenteeism was undoubtedly stress-related, such as anxiety or depression, and often going back over a number of years. Significantly, both Barry and Kim were absent during their OFSTED inspection and in the case of Debbie, this event had apparently triggered a nervous breakdown. Others, such as Sarah, Steve and Debbie herself, were reported as having personal problems: we also became aware of a number of individuals who appeared to inhabit a somewhat grey zone between mental ill-health and good health (e.g. June, Alice, Sam, Vince)

The implication of these findings is that a number of the case study teachers may have been struggling to cope for some time, either with their professional duties or by the stresses and strains of teaching combined with more personal problems, and that this manifested itself in increased sickness absence. Whilst we would not suggest that the minor ailments reported were anything other than genuine, it is not seriously disputed nowadays that stress can be the cause of a whole variety of medical conditions. It may also be the case that a teacher finding life difficult in the classroom would be less likely to struggle into work when feeling unwell than someone more on top of the job.

A worrying finding arising out of the telephone interviews was that in certain LEAs, particularly LEA 9, heads reported that the LEA would back off where ill-health was involved, presumably because of fear of tribunal cases ensuing or because of problems with the unions : "In our LEA, you are not expected to pursue a capability case where there is ill-health", "The LEA says we cannot yet dismiss because of ill-health although it has been over a year" and "Illness is very strongly defended by the unions".

8.3.2 Supervening ill-health

Around three-quarters of the case studies in total featured ill-health absence either prior to the implementation of capability procedures, or after procedures had been initiated, or both. The telephone interviews found more specifically that 50% of teachers faced with capability issues subsequently took sickness absence and in 80% of these cases the

sickness was stress-related. None of the case study teachers whose absence was seen to be a problem in itself and only two of those who had periods of absence once capability issues were raised (Caroline and Lucy) remained in post at the determination of the case. Furthermore, whilst Lucy's teaching is now seen to be satisfactory, the Head in Caroline's case feels she is slipping back. Outcomes of capability cases will be considered in more detail in section 8.8, but it is worth noting at this point that in the vast majority of cases, the teacher concerned either resigned at some point and/or took ill-health retirement.

Sickness absence occurred at varying stages when heads attempted to deal with issues of capability. In one case (Fiona), the stress-related absence made the Head step back a little before even raising concerns – although he did subsequently proceed to the informal stage of the capability procedure. More frequently, the absence manifested itself once concerns were raised, for example, in the cases of Louise, Doris, Lisa and Jenny, or at the point at which the Head decided to invoke the procedures (e.g. Geoff, Elspeth, Ken, and Tom). More often than not, this meant that the procedures in effect, stopped, because the individual did not return to the school. For the heads involved, it was clearly a matter of some concern that where the ultimate outcome was ill-health retirement, a considerable period of time could elapse before a decision was made, which meant that both they, and the school, were left in a kind of limbo. As the Head in Margaret's case remarked "I am frustrated by the outcome as I would like to see the situation resolved... The teacher who is taking the Deputy's management role is also frustrated because she feels that her hands are tied as she doesn't know whether Margaret will return". There are also financial implications, for example, Andy went off sick with debility at the end of January 2000 and was paid until the end of August (a compromise agreement was signed on 30 June) which put a strain on the school's budget as they were also paying for supply cover. In some cases, the outcome of the absence was not known at the time the case study was conducted and, as in the case of Andy, the Head was having to put in measures to deal with cover : Karen, for example, had been absent since June 2000 and Louise since September 2000.

Not every case was brought to a halt by absence, although inevitably the procedure was interrupted and generally made more protracted. Estimates from the telephone interviews were that in 71% of cases, the sickness absence had some effect on the proceedings; of these, the proceedings were halted in 20% of cases and delayed in 60% of cases. During the informal stage of the capability procedure, Lorraine had agreed with the Head and her union representative to weekly briefings, but as the Head commented "... it proved difficult to progress through the procedures because Lorraine was not in school long enough to work through the targets, nor for effective monitoring to take place". Amanda had bouts of glandular fever which meant monitoring would stop for up to 12 weeks and then start again. Both Lisa and Doris had phased returns to work so that, in the case of Doris, for example, there was a gap of twelve months before the informal stage of the procedure could begin. Heads interviewed by telephone expressed similar frustration over the effect of sickness : "This is what tends to happen, you broach the subject and they go claiming stress and saying that the head is victimising them" and "It is

unfortunate that a teacher can be off sick for 12 months and then come back and go off again...”

Only a few of the heads interviewed doubted the genuine nature of the illness; typical comments were “In retrospect I think Debbie was basically ill”, “there was genuine stress on Andy”, “None of the ill-health retirement teachers got away with it. They were temperamentally not suited and it is how you act out your anxiety – people could react against their colleagues or the kids or they could react against themselves”, “She is genuinely ill.... There are financial concerns because of the absence but she shouldn’t return if she is not fit to work”. Occasionally, heads specifically linked their remarks on illness to the ability to cope, such as “I think she was mentally disturbed and certainly emotionally incapable of coping with day-to-day situations”, or “I believe that she was ill in one sense; she was very paranoid and she couldn’t organise or focus”. Only a handful of heads expressed the view that the individual concerned was ‘swinging the lead’ or should not get ill-health retirement, although in the case of Sam, the Head stated that “I am not happy with procedures which are unresolved in that the teacher takes premature, or ill-health retirement, or resigns. The problem is solved, but the correct judgement should be that they are incapable”.

Union interviewees confirmed the heads’ view that in most cases the illness was genuine and refuted allegations that they advised their members to go off sick when capability procedures were instigated. Others highlighted the downward spiral which could ensue when teachers who were already under stress were put into procedures thereby increasing the pressure on them because of increased monitoring and observation.

All-in-all, the picture painted where ill-health and capability issues intertwine, is a somewhat messy one. Procedures, which are in most cases considered too long, become even more protracted and where a teacher whose capability is in question has suffered from stress-related illnesses in the past, it seems almost inevitable that confronting them with concerns about their teaching will bring about more sickness absence. It is probably worth noting that in only six cases was a procedure followed through to dismissal; in three cases the dismissal was on grounds of ill-health and in three cases related to performance – although in one of these, the teacher subsequently got an ill-health pension.

8.3.3 The Disability Discrimination Act (DDA) 1995

Although the DDA was mentioned specifically in only two of the case studies, it is clear that it has the potential to become a real problem when stress-related absence becomes a feature of a teacher’s difficulties. The Act covers mental impairments which are “clinically well-recognised”, and whilst this would exclude mere stress, case-law has established that various anxiety disorders and depressive illnesses can amount to a disability provided that they have a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities (see section 1(1) of the Act). There is no definition of “normal day-to-day activities”, but an impairment is only to be treated as affecting the person’s ability to carry out normal day-to-day activities if it affects at least

one of a list of attributes – one of which is “memory or the ability to concentrate, learn or understand”. The upshot of these provisions is that whether or not a person is to be regarded as disabled has to be decided on an individual basis, usually with expert medical opinion.

In consequence, it is not difficult to understand why LEAs would be wary of moving into procedures, as alleged by the Head in the case of Louise, once it was suggested by Occupational Health that she could be disabled. As the LEA personnel interviewee remarked in that case “We directed what Louise was saying to the Occupational Health Unit but they were not able to say categorically whether it fell within the definition” A particular problem for heads in such cases is that under the Act, a person is discriminated against if reasonable adjustments are not made where the “arrangement’s made by the employer put the disabled person at a substantial disadvantage in comparison to non-disabled persons” (unless such failure is justified). Allowing a person with a depressive illness a phased return to school would clearly fall within a reasonable adjustment, but no doubt at some point there will also be questions raised about adjustments to the timetable either in terms of the number or type of classes to be taught. Several authorities mentioned problems with this, as they felt that it was difficult to make reasonable adjustments to the job of teaching for someone with mental problems. One authority cited the case of “a very odd woman” who had multiple sclerosis, with whom they started capability procedures but felt that the DDA prevented them from moving on the case: “It was an impossible case to manage in a reasonable time frame”.

Only one authority stressed that ill-health and the DDA were not an issue. “If someone was ill, they were referred to Occupational Health, and where they were off long term, the capability (health) route would be used. With regard to DDA, all reasonable adaptations were used, and these were usually temporary.”

8.3.4 The role of Occupational Health

Whilst there were one or two positive comments about Occupational Health, on the whole headteachers had a less than rosy view of their usefulness. The impression gained from the interviews was that heads feel as if Occupational Health are, in effect acting as a second GP to the member of staff concerned – “I was very annoyed that whereas *I* had referred Louise to them, they then subsequently acted like *her* GP and would not report back to me.” There appears to be a view that Occupational Health are there to support the employee and that, in effect, teachers can go to them and say whatever they like, and that this will be accepted without any reference back to the head. Heads were very critical of this approach because they felt that Occupational Health were often unaware of the circumstances of the case or how schools operated, and had no other frame of reference besides what they were being told by the person concerned. As one head put it “Some teachers are very plausible and convincing and know how to say the right things to Occupational Health”.

The other aspect of heads’ unhappiness with the role of Occupational Health was the quality of their reports and the validity of their judgements about teachers’ fitness for

work. Reports were referred to as minimalist and brief, and unhelpful in that they did not express a clear view – or that when a view was expressed, it was wrong. A number of heads did not believe that Occupational Health were capable of stating whether or not a teacher was fit to go back to work; one felt that “Occupational Health can only make a judgement over whether a teacher wants to return to work, sometimes they can’t tell until they are back whether they are capable of returning”. Whilst one can appreciate the frustration felt by heads who receive scanty, ambivalent or, in the event, incorrect messages from Occupational Health, it is worth remembering that most of the teachers referred to Occupational Health in these case studies were suffering from stress-related illnesses. Such illnesses are notoriously difficult to diagnose correctly or treat appropriately, and it is almost impossible to give a prognosis with any degree of accuracy. It may very well be the case, therefore, that had individuals from Occupational Health themselves been interviewed, they too would have painted a picture of uncertainty and problems in dealing with such cases.

A particularly negative view of Occupational Health was reported by two heads in LEA 7 (see Barry and Rob etc) where it would appear that when an individual is referred to the Unit, they simply contact that person’s GP and report back without actually conducting any kind of face-to-face meeting. We are unaware of how typical a procedure this is within LEA 7, or indeed, elsewhere in the country, but it certainly seems likely to provoke critical comment should that be the case.

Very occasionally, heads reported that Occupational Health had been useful, but this seemed to be where it was possible for them to exclude medical issues from the problem which the head was facing. In the case of Joe, for example, who was complaining that the Head’s insistence on his carrying out his management responsibilities was causing him stress, Occupational Health’s exclusion of there being a medical condition was regarded as crucial. Similarly, the Head in the case of Ken had found Occupational Health useful because they had effectively said that Ken was a fraud.

The role of the Occupational Health unit was also highly criticised by almost all of the LEAs. It was felt that they did not take a managerial stance, but only listened to the individual. Particular problems related to their timescales and the fact that their systems did not tie in with those of schools (usually six week reviews); response times; and quality of advice. The LEAs stated that they wanted a prognosis from Occupational Health; confirmation that the ill-health was genuine; whether ill-health was the cause of lack of capability; how long the person might be off; what was the cause; what they could do and what would be a reasonable amount of time before going to capability procedures for ill-health. It was seen as vital that Occupational Health units had good information and a comprehensive understanding of what schools and teachers do, as well as of the school budget, and, in the primary sector, the need to be aware of the importance of continuity.

8.4 Headteacher Capability Issues

8.4.1 The LEA perspective

Most of the authorities reported that headteacher capability cases were relatively rare. This may be because the majority of heads do not merit capability procedures; alternatively, there may be other explanations:

- difficulties in identifying headteacher incompetence
- because of the problems implementing the procedure
- because of the current shortage of good applicants for many headteacher posts, which may be a deterrent to taking cases.

The responses to the LEA survey revealed that the average number of headteacher cases per LEA was 0.48 i.e. 0.35%, slightly higher than the figure for teachers per LEA which was 0.30% (6.7 per LEA).

It was generally felt that it was more difficult to identify headteacher capability, and that it was easier for a head to hide in a large primary or secondary. Additionally, in those schools with excellent results, it might take some time to identify a weak head, who could hide behind an effective management team.. “In one case, we had a head with an old-fashioned, shut-in attitude. He had been a head for over twenty years and it was hard to convince the governing body that there were problems. He kept long-established loyal staff on side, and got rid of others. The LEA had no powers, so had to be vigilant and wait to act”.

Many of the authorities reported that their main problems were around headteacher capability, and it was regarded as the most difficult issue with which to deal. One of the main problems reported in dealing with headteacher cases was the role of the governors: the LEAs saw their role as trying to ensure that correct action was taken, despite the absence of legal powers to do so. “The governing body of small primaries or inner city schools are not up to dealing with their responsibilities. They can have inappropriate views and act inappropriately”. “Involvement of governors is very unpredictable, and many will not approve of formal procedures”. “Some need persuasion to act, and others are keen to sack very good heads”. Authorities also cited cases where governors were in the pocket of the head and where the head had effectively appointed the governors. Governing bodies of primary schools were seen as more problematic than those in secondary schools because the governors were seen as lacking the skills, ability, and time to take on their responsibilities, and it was seen as hard to ask the chair of governors to dismiss someone. The LEAs were particularly concerned in cases where the head had effectively excluded them from contact, particularly where these were residential special schools. “A worst case scenario was one involving a residential special school in which the head had effectively appointed all of the governors (often personal friends) and got rid of the ones he didn’t like. The LEA was not welcomed in and hardly got into the school for well over a year. The LEA has to be very vigilant. It has an important role in ensuring that governors, especially the chair, are all aware of their roles.” As one LEA officer put it: “You ask unpaid volunteers to run the capability procedures: this is not a system you would sensibly come up with”. A further issue reported by LEAs was in

cases where they insisted on appointing a head against the recommendations of the LEA, as in the cases of Joan and Roger. Roger's case was particularly interesting, in that the governors insisted on the appointment of a male to the school. The issue of inadvised male appointments to posts in the primary sector was mentioned by two LEAs.

Most agreed that it was hard to turn a head around. "We can't think of a head who has improved; in general, there is no recovery. Some heads might dip in performance in a minor way, and we try everything to support them, partly because it is not easy to find quality headteachers. The job of the primary head is particularly difficult these days. We provide induction, monitoring, and 'ladybird' guides, but when we have done all that we can we refer the case for departure". Although heads could step down, it was unusual for them to do so within the same authority.

Most authorities were able to second acting heads or senior managers for short periods, and one authority had a register of those who could be called upon giving the amount of time they were willing to give and the geographical area which they would consider.

One LEA (2) reported that it had suspended powers in a handful of cases; in the past they had not done this, but it was now actively considered as an option. LEA (8) had also used suspension on two occasions, another LEA had used it once (7), and one had considered its use (3). In all cases, suspension had been triggered where there was agreement of the governing body.

Most of the LEAs reported that headteacher cases were usually dealt with outside procedures. In most cases the Director of Education, or their delegate, would meet with the head to effect a compromise agreement and an immediate departure. It was felt that fast action was essential in order to prevent the school sliding downhill quickly. "Where there is gracious acceptance of the problem, we can act quickly". One authority said that it would use dismissal on the grounds of gross dereliction of duties where the school had been placed in special measures. In fact, of the six headteacher cases which we looked at, only one was dealt with outside of procedures. However, this may be because the LEAs directed us to cases which used the procedures; and in five of the cases, the headteachers were in denial and were initially determined to fight the case.

8.4.2 The union perspective

It was generally agreed that heads hardly ever go through the full procedures, and that the majority go with a severance package. A union official from SHA commented that a head who is dismissed under capability procedures would never be employed (as a head) again which is the reason why the union negotiates a severance agreement. Indeed in our case study LEA 3, heads occasionally were offered a deal and left within a matter of days. The SHA official also said that, "It is almost like the football manager approach- if the team is losing, sack the head. The head is an easy target". There was a fair degree of sympathy for heads, as one NUT representative said, "I feel sorry for heads who are thrust into positions of responsibility when they are not up to being a manager. They would be OK if they were trained".

A union official and a representative from NAHT listed four situations in which heads often appeared to fail:

- a) They have had a successful headship for roughly five years, they transfer schools and in a year they are having difficulties. The reasons are complex- the governors could have recruited a head to do a particular job, for example, the staff are coasting and so the governors decide to get a dynamic head. The head finds resistance from staff and the head's relationships could break down.
- b) They have been in the school for a long time and then they just cannot keep up with the initiatives.
- c) They have just been appointed to their first headship and within a few terms they are struggling.
- d) Heads who were appointed before 1988 and the Education Reform Act sometimes get into problems because the job has changed considerably since the Act, making heads managers of organisations and in charge of budgets.

For the small number of heads who continued through the procedures (one union official from NAHT thought that only around 5-10% of heads got a chance to go through full procedures), target-setting can be more difficult as targets need to be measurable and a two terms maximum timescale is a problem with heads because some things only happen once a year, such as exam results. Where heads improve, it was felt that it was always those caught at an early stage, or who are going through a bad patch and just needed support. An official from NAHT thought that "The longer cases are left, the more difficult it becomes, and there are only a very small number of heads who improve". Naturally, the unions were concerned that heads did not always receive the right level of support and it is clearly in the interests of all concerned to train and support heads in order that they can continue.

It was considered that heads fail to improve because of lack of expertise, lack of understanding, and denial that there is a problem, and that in general, heads under procedures do not recover. One union official from SHA commented that if there has been no blot on their copy book then heads might go into a portfolio of jobs, eg being assessors/advisers/consultants in educational fields or for commercial suppliers and giving talks at conferences and courses. Some had also gained posts in OFSTED inspections. The official thought this was appropriate, for example, if a head was good on curriculum but less strong at financial management then to employ him or her to lecture on curriculum would be fine. However another official from NAHT headquarters stated that, "Members are bitter that ex-heads become inspectors- a few of these have been revealed in the press which has made complaints. Their credibility, if known, is very low." He and another NAHT representative were also concerned over who is replacing the heads who leave under capability procedures as application lists and shortlists are shorter at all levels especially deputy and head.

8.5 The Role of Governors

In all but one or two isolated case studies, heads had informed a member of the governing body, usually the Chair, about the case, but what was very clear was that heads also tried to keep the majority of the governors uninvolved so as to avoid tainting them should they be needed at a later stage of the proceedings. In general, it appeared that those who were informed were supportive of the Head and sometimes had active involvement. In the case of Trevor, for example, the governor interviewed was conscious that he had been a party to the decision to appoint him and therefore had a vested interest in him.

From the governors' side, it was hard to avoid the feeling that they were somewhat uneasy about their role. Several mentioned that they had had no training in capability procedures or felt that they were not easy to operate. In the case of Doris, the procedures had been followed through to dismissal and the Head thought that the governors were "nervous and frightened". He also commented on their lack of background to deal with such issues and was critical of the lack of LEA contact and support to the Chair of Governors. A similar view of the appropriateness of the level of LEA support was also expressed by the governor who was interviewed : in his opinion "You can't expect individual schools to run a capability unless the LEA has the proper expertise". Similarly, in the case of Alice, the Head was aware of the stress felt by the governors in making the decision to dismiss and commented that "they are ordinary people". Even when as in the case of Sheila, the LEA had suspended delegated powers (because Sheila had "improper relationships with some of the governors, who wouldn't do anything"), the governor interviewed expressed uncertainty as to their ability to operate a procedure because they felt they would fail on a procedural detail.

As indicated earlier, there was some acknowledgement on the part of LEAs that there could be an argument for governors relinquishing their roles in running capability procedures although a member of the Advisory Group believed strongly that governors had an important role in maintaining an external check on heads. It was also agreed that governors needed substantial training on their employment responsibilities, but this was often a problem for large, sparsely populated areas. Governors felt particularly intimidated by trade union representatives, even where they were generally cooperative and not particularly confrontational. There were many examples of governors struggling with their roles, and it was also seen as especially difficult to ask governors to dismiss someone.

All in all, it would seem that the involvement of governors in the operation of capability procedures is far from ideal, at least in the opinion of the governors themselves, and that there are particular concerns in small schools where parent governors may have children in the school and may have pre-conceived views about the teacher whose capability is in question. It is also undoubtedly the case that some governors are excellent, but that this depends on whether, by chance, the individual has a background derived from their own employment, from which they have gained a familiarity with procedural issues. The role of the governing body as part of the system of checks and balances was evident in only one case : that of Nicholas. In this case the governors alleged that the LEA had dragged

its feet in dealing with a failing head because of his former position in NAHT. It should be noted, however, that the LEA did not acknowledge this version of the facts.

8.6 Views on the LEA Input

Given the head's opinions about outside assistance, it was not surprising to find that the majority expressed very positive views about the input of LEA personnel. They were variously described as "essential", "there on the phone", "they oiled the wheels with the union" and "excellent" and the Head in the case of Roger expressed the view that "You couldn't fault the support that the LEA put in : they were wonderful and I couldn't have done it without all of their input". In contrast, views about the Advisers were rather muted and variable although in fairness, the negative comments tended to relate to the problem of having a number of changes in the particular adviser assigned to the school rather than the qualities of a given adviser (see also section 7.2.1).

Mention was also made of the high degree of support needed to take a case and that more training on capability procedures was required. Most heads looked to the LEA for this and in several cases there was praise for the training offered. Several LEAs came in for considerable praise: "We get very good support from the LEA" "I can't stress enough how valuable the support of the LEA is with model guidelines, training, etc", "It wouldn't worry me (taking a capability procedure) because I would get support" and "The LEA have a superb personnel department, it is second to none. We have support; they say that we shouldn't do anything, even at the very informal stage, until we have checked it out with them. They are a class, experienced team and they are always there at the end of the phone". But other authorities also came in for considerable praise : "I did the training with LEA personnel they are very good, supportive, excellent and very personal", "You need a lot of support from the LEA – don't get rid of them!"

On the other hand, heads felt in some instances that there were problems as a result of harmonious relationships between the unions and the LEAs: "The LEA hands were tied because of agreements with the unions – this leaves heads exposed and unsupported". One was of the view that personnel and the unions were working together to make the procedure lengthy, and that whilst the close relationship benefited the teacher, it did not benefit the children. He also thought that personnel were "frightened to death" of tribunals and would not "take the unions on".

Although the vast majority of heads praised their LEAs and felt that they would struggle without them, there was further criticism of them from individual heads: "The Diocese Board were happy to fast track, but the LEA said 'no'", "The LEA says that we have to give in to them if they are off sick. There needs to be clarity on this...", "Authorities are too scared that they will be taken to court". There was also an awareness that services were very stretched, with resulting complaints with regard to speed and the fact that telephone conversations often took place rather than face-to-face meetings

8.7 Views on the Union Input

Over two-thirds of heads questioned in the case studies found the union officials who represented the teachers to be helpful and all thought their own union representatives, who provided advice on how to operate the procedures to be useful. In the case of Nigel for example, the two representatives involved encouraged open dialogue and the Head thought that they advised Nigel to accept a compromise agreement. Karen's head commented that his own association was helpful in being a mediator with the teacher's association and 'Lucy's head praised the school union representative: "she was very positive and recognised that Lucy needed support and so she threw in ideas and strategies. It was useful for us to use the internal representative, because she knew the school." Sheila's head stated, "The union felt that we had been fair and he did his job well: he was not aggressive and did his best for Sheila." In another case the union representative was "very professional with good intellectual ability and in the case of Martin the representative was thought to be useful in calming the member down. Positive views were also expressed by the telephone interviewees although the real or perceived threat of union involvement was frequently mentioned as a deterrent. Some heads did, however, disapprove of the union stance: "They should advise their members to go – they are not doing the teaching profession any good – they fight crazy battles", "I was appalled when the union supported her claim".

Occasionally a rogue union representative caused real problems, for example in Sangita's case. He bullied and threatened and did everything possible to sidetrack the process. The LEA deferred taking the case into formal procedures in order to get someone more senior to combat the union representative's manoeuvres. Similarly Meena's case (involving the same LEA) would have been resolved more quickly, thereby reducing the stress for both Meena and the Head, had the union representative acted in a more professional manner. The telephone interview responses from this LEA (9) were very forceful, and several of the heads named a particular union official (the official involved in Meena's and Sangita's cases) who was allegedly making life very difficult. "We have all had dealings with X; he is very difficult and the heads are very nervous about the procedures because of X'.

Adversarial relationships were also reported by heads and LEA officials in LEA 4 and these were reflected in similarly pronounced views about the unions: "I am not happy with the unions; they are very blinkered and in my experience not really interested in pupil progress' – this head had wanted teachers to visit each others lessons to learn from good practice, but on checking with the union had apparently been told not to do it. The headteacher in the case of Doris, who was a teacher in this LEA, had felt that the union representative drew out the procedure unnecessarily (as did the head in Margaret's case – LEA 6).

Some heads did make generalised negative comments about the union representatives, for example that they "knew all the techniques and that you needed employment lawyers with you to be able to deal with them", or that they recommended members to go off sick if they were facing capability procedures. Andy's head stated, "I have found them all

confrontational. They have had complete acceptance of the truth as expressed by their member.” However, other heads who had believed the union representatives would cause problems, then found them to be helpful. In ‘Gerald’s case, for example, the Head commented that “the unions are a barrier to getting a case into capability procedures. The representatives can be very bullying and intimidating. The unions here are quite strong and put up a fight. However, in this case, they were helpful.” Overall the headteachers found the union representatives assisted with the process.

8.8 Outcomes

8.8.1 A problem solved?

In one sense, it could be argued that in almost all the case studies, the problem had been solved, because in only four instances was there an unresolved outcome - Sonia, remained borderline although the Head was not intending to use the procedures, Margaret is still off sick with stress, Sangita’s case appears to be stuck in the procedures allegedly because of the union representative’s delaying tactics and the LEA is currently trying to find another school for Karen (who is also absent with stress and depression) because it is felt that her relationship with the Head has broken down. In all the other cases, the individual in question was either no longer at the school or, less often, a satisfactory position had been reached with the teacher remaining in a post within the school.

When these outcomes are unpicked, however, the success-rate appears to be more questionable. It is certainly true that six teachers managed to improve to the point where they were felt to be satisfactory, although as stated earlier Caroline was reported to be “slipping back”. It is also worth noting that contrary to expectations, three of these were teachers with considerable years of experience who might have been predicted to be resistant to change. However, there is a significant disparity here with the results of the telephone interviews, which showed that of those teachers dealt with outside procedures, 21.7% improved, and of those on procedures, 12.7% improved. Given that the telephone interviewees were selected randomly, we would suggest that these figures are likely to be more indicative. A further three of the case studies where a teacher with responsibility posts had stepped down could also be regarded as successes, in part because the teacher could protect their pension by making increased payments. However, the vast majority of teachers left the school at some point (the telephone interviews recorded around 40% resigning overall) and therefore one needs to enquire more closely at the eventual outcome before concluding whether the problem has been solved or simply moved somewhere else.

Those teachers who resigned and took ill-health retirement – or who were dismissed on ill-health grounds but subsequently applied successfully for ill-health retirement, are clearly no longer an issue for schools, although without interviewing the individuals themselves it is impossible to know whether this was a solution to the problem for them. The real issue is the eventual outcome for the very substantial number (40%) of teachers who resigned at some point when their capability began to be questioned. Sometimes the head was aware that the person was applying for jobs outside the teaching profession or

had actually taken up such a post – for example Sam (postal worker), John (security guard) and Vicky (nannying, following another teaching post). In a number of cases it was known that the person was teaching elsewhere, although in the case of Vanisha and Debbie, this was apparently on a part-time basis. Others were working as supply teachers. Some of the teachers who found alternative jobs had apparently done so without the head being asked to supply a reference and according to the Head in Derek's case : "It is not unusual for teachers to be taken on without references. I ignore requests where I would have to give a poor one". Other heads reported having given neutral or factual references and in a couple of cases, an agreed reference had been part of a compromise agreement. Sometimes, the eventual outcome was not known at the time of the interview with the head, including two cases where there had been ill-health dismissals without ill-health retirement being granted (Kim and Steve) and one in which ultimately there had been a dismissal using the disciplinary route (Alice). In total, six of the case study teachers were dismissed; apart from Alice, Kim and Steve, one other (Ken) was dismissed on grounds of ill-health, two on capability grounds (Martin and Doris) and a further one on the grounds of conduct (Karl). However, Martin later applied successfully for ill-health retirement and Doris was subsequently allowed to resign.

The immediate reaction to hearing that teachers regarded as incapable were, or could be, still in the system, is that this will simply create a problem for another school and is therefore a matter of concern. However, this may not necessarily be true. Those teachers who move to part-time work or supply work may find that whereas they cannot cope with permanent full-time work, they are perfectly capable of dealing with a less stressful burden. Even those who simply transfer elsewhere may perform better in a different environment; in the case of Helen, for example, the Head was conscious that she did not fit in to the school and she moved to a private school after her resignation. Others may have felt that relationships had broken down when problems were addressed but that they could make a fresh start elsewhere, and save face in doing so. It is difficult to generalise about the outcome for headteachers against whom action is taken, but of the six cases investigated, one head took early retirement, one left on a compromise agreement and is now teaching outside the Authority, one resigned and is looking for other headships, one resigned just prior to dismissal and is currently self-employed outside teaching, and two are in supply teaching outside the LEA (one of whom was dismissed and the other left by mutual agreement).

8.8.2 Appropriateness of outcome

One of the questions we asked our interviewees was whether or not they felt that the particular outcome had been appropriate. It was not easy to generalise about this matter, especially when viewed from the point of view of the head or the trade union representative involved. So far as the other members of staff and the governors were concerned there appeared to be an overwhelming sense of relief that the problem had been resolved, and several heads reported that morale had gone up in the school following the person's departure. However, the relief was sometimes mingled with sadness, especially when, for example, in the case of Nigel, the teacher had been personally liked. There could also be mixed reactions on the part of parents. As would

be expected, when a teacher had managed to improve, heads were pleased and procedures were felt to be effective: in the case of Sue, the Head was particularly positive, reporting that “It worked out brilliantly and since it has finished there has not been a single complaint about her. The outcome boosted staff morale...”

Without detracting from what were regarded as success stories, it should perhaps be remembered that in the case of Caroline, the improvement had not been sustained in the long term and the Head wished that it had gone to dismissal; it might therefore be worth conducting further investigation at a later date in schools where targets had been met.

Of course, as we have noted earlier, very few teachers had remained in post and where the member of staff had resigned, the views of heads were more divergent. Some felt that if teachers were unable to improve it was better for all concerned that they should leave – particularly if they also had health or personal problems, or if, in the words of one head, they were “too far gone”. Protecting the teacher’s self-esteem was also mentioned and as the Head in Eric’s case remarked “taking retirement on efficiency grounds meant that he could leave with dignity and honour”. Protecting teachers’ dignity and the lack of appropriate exit strategies was also raised by telephone interviewees, particular for teachers with considerable experience who had performed well in the past and a feeling that applying capability procedures was not the way to deal with them. This was a view shared by LEAs. On the other hand, several were worried about teachers whose capability was an issue still being in the system, reinforcing the earlier point made about resolving the problem for the school “but not for education”. Concern was raised about moves of such teachers into supply teaching and one head in particular was “not happy with procedures which are unresolved in that the teacher takes premature, or ill-health retirement, or resigns. The problem is solved, but the correct judgement should be that they are incapable” and others felt that dismissal would have been more appropriate. What was surprising, given the scepticism about stress was that in only a few cases did there appear to be any suggestion of ‘swinging the lead’.

The LEAs and teacher associations worked co-operatively in most cases in order to bring about the best solution for the member, the school, and colleagues. There was mutual respect, and several of the authorities said that they preferred to work with the union, and liked their involvement at the earliest possible stage. In only two (urban) LEAs were there antagonistic relations, and in one of these, all of the problems seemed to relate to one particular union representative who represented the ATL, NUT, and NASUWT. “We always prefer to deal with the union, because they work on a logical basis” and “in the few cases that go through to dismissal, it is because the person has not taken the trade union advice”. (See section 8.6.)

Given the significant part which the LEA personnel evidently played in the operation of procedures, it was predictable that they would have believed the outcome to be appropriate. It is worth noting that LEAs varied considerably in the extent to which they made use of (or paid for) compromise agreements or early retirement on efficiency grounds. Only two of our LEAs mentioned the use of early retirement on such grounds

and those that did not operate compromise agreements gave pay in lieu of notice. One authority offered pay-offs only if threatened with tribunal proceedings.

It was generally agreed by the trade union representatives that the usual outcome was resignation, with or without a compromise agreement, and that when there is a move to the formal stages, at the end, the chances of improvement are not high. There was concern about the current absence of suitable exit strategies for burnt-out teachers, an NUT representative said that "There are a lot of teachers who were previously good, but are now exhausted, and the safety valve of premature retirement has gone...it is appalling to use capability procedures on these people". It was not surprising to find that the trade union representatives involved were more likely to have thought the outcome inappropriate, or at least to have expressed a point of view from the teacher whose capability was challenged. One thought that the teacher had been let down by her colleagues another felt that the teacher should have been given more time and in the case of Graham who had gone into supply teaching, the union representative's opinion was that "The outcome is not nice for Graham as he now has insecurity in his job and pension rights and doesn't belong". Mention was also made of personality clashes with the head, for example one NUT representative said, "the Deputy Head was not lacking in capability but there was a personality clash between him and the Head". There was even a feeling that had the head himself been more competent, the teacher's attendance would have improved (Lorraine). Another NUT representative while commenting on a case said, "I am not clear or convinced that there was a capability issue in the case...there was no real desire on the part of the Head to work through the capability procedures". This is not to suggest however, that all the trade union comments were negative - on the contrary, the majority thought the outcome to be entirely appropriate. As one NUT representative said, "Sometimes it is better for the member to move on and make changes that way".

CHAPTER NINE

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. The impact of the 1997 initiative.

Based upon our evidence, one could say that the Secretary of State's 1997 initiative has failed, as so few teachers and head teachers are *dismissed* for lack of capability. There were dismissals for conduct and a number of terminations on health grounds, but cases of potential dismissal on grounds of capability were almost always pre-empted by resignation or diverted to termination on health grounds.

Taking a broader view the 1997 initiative has clearly had an impact, mainly by making all teachers "performance aware" to a degree that was previously unknown. The informal actions taken before invoking procedures resolve many problems and have caused a number of people to resign, but teachers perceived as being unsatisfactory are not being dismissed as a result of decisive and speedy management action.

This research also shows that the vast majority of teachers are not regarded by their headteacher as presenting a capability query. Two thirds of the 520 heads to whom we spoke had no experience of dealing with a capability issue and only around 1.2% of teachers were seen to warrant any kind of action in respect of their performance during 1999/2000. Furthermore, 46% of the cases had been dealt with outside any procedure and 40% had not gone further than the informal stages of capability procedures. Whether one takes the figures of 0.30% of teachers on procedures generated by the survey of LEAs or the figure of 0.67% estimated from the telephone survey, the use of capability procedures is very low.

All of this suggests that either (a) there are very few capability issues at all, or (b) that not enough of them are being tackled, or (c) that the leadership and overall management within the school is such that teacher (in)capability does not become an issue. Our judgement is that all of these explanations are partially true, but that (c) can lead to (b) as many heads regarded the emergence of a capability issue as a failure by them as heads. There must also be a risk that growing concern about teacher shortages will reduce the number of issues being tackled.

2. The experience of procedures.

There is a clear reluctance to becoming involved in procedure. Much time and effort is expended on supporting teachers by informal action in order to assist them to improve and around 20% of them appear to do so satisfactorily. Only when supportive action is seen to be ineffective is there recourse to procedures and several of the heads we spoke to regarded this step as a failure of management. Others went further, believing that if appropriate recruitment procedures were used, problems would not arise in the first place.

For the individual teacher the formal invocation of procedure is seen as so drastic and humiliating that sickness absence due to stress is a typical response.

Interviewees were not critical of the existence of capability procedures, implying that they are regarded as necessary and some heads felt that they had been beneficial for the school. Since there is evidence that some teachers whose capability had been questioned resign when procedures were about to be invoked, it could also be argued that having procedures leads to a satisfactory outcome, as the teacher leaves without being publicly stigmatised and is able to move on while the school solves a problem without too much expense. Moreover, although heads have very different ideas about what constitutes capability in a teacher, it was only rarely that trade union representatives suggested that a teacher against whom action had been taken was not, in fact, under-performing. Nor did colleagues appear to feel that criticism of the person in question had been unwarranted. Therefore the judgement that a teacher is not performing satisfactorily is not likely to have an adverse effect on staff morale. Heads can usually be confident of the support of the staff and acceptance by the union. In principle capability procedures are widely accepted as being appropriate to deal with a situation of sustained under-performance. Effective schools with well-organised management arrangements rarely get to procedure, as problems are spotted early and handled in an open, positive manner without prevarication.

The clear message from all sides was that prompt action should be taken when an individual's performance was causing concern, and that the longer problems were left, the more likely they were to become intractable. However, the research showed that for a number of reasons heads were reluctant to tackle the issue and sometimes resorted to less orthodox means of resolving the problem. First, heads worry about destroying their relationship with colleagues, about union involvement and about the potential for legal challenge if a dismissal is subsequently challenged at tribunal. The irony is that union representatives are unlikely to disagree with the capability judgement, even though they may seek a different way of resolving the problem. It is also ironic that the correct identification of a teacher not performing satisfactorily is more likely to attract the support than the condemnation of other teacher colleagues.

Heads also experience a role conflict; on the one hand they must be seen to be supporting the teacher concerned, yet on the other hand they are having a drastic effect on their lives and their livelihood. This is especially true in the case of primary heads. Another very important factor is that a number of our case study teachers were individuals in their fifties who had been thought to be effective teachers in the past but had been unable, or unwilling, to cope with the necessary demands of change which required them to adapt their teaching approach and methods. There was a general consensus that invoking capability procedures was not an appropriate way to deal with such people. Heads could also prevaricate when they were uncertain as to how to deal with teachers with poor attendance records or when they were unsure as to whether certain kinds of behaviour should attract disciplinary sanctions or should be treated as a capability issue.

There is an even greater reluctance to risk an employment tribunal case by dismissing someone on grounds of capability. This is not confined to education, as managers in all areas of employment will frequently go to great lengths to avoid a tribunal, but the fear of tribunals we found in both schools and LEAs seemed extreme. There appears to be a well-established culture that teachers will not be dismissed on grounds of capability and few seem willing to challenge this.

A very clear message from the case studies was that heads would welcome support, training and advice in relation to operating capability procedures and that the LEA role is an absolutely crucial one. We also found that many heads would have liked an outside agency to deal with the matter, and this is understandable because unless they have a good deputy to whom they can delegate the operation of the procedure they may simply be overcome by the exhaustion factor. Having the involvement of someone independent would also overcome heads' disquiet about the personal element and could provide reassurance that the problem was not simply a personality clash. However attractive this may seem, it is clearly the case that any improvement can only be achieved within the working situation and improvement can only take place if the person who is under-performing can accept the need to change and make a genuine effort to do things differently. Identifying the nature of under-performance and convincing the teacher of the need to change are inescapably a part of the job of school internal management and governance. Once those difficult steps have been taken there could be a case for an outside agency to help with alternative exit strategies, such as moving to another school, leaving the profession or re-training.

Although there are many reasons why heads have hesitated to move on capability issues, the feeling of our Advisory Group was that they may now do so more promptly. As members of the Group pointed out "there is nowhere to hide with OFSTED" and a school can easily move into the category of having serious weaknesses if problems are not confronted. If heads have the weight of OFSTED and the governors behind them, they could then say that they were bringing the capability procedures more in sorrow than in anger. It was also felt that heads would be reassured if they knew that others were tackling capability issues, which may be an argument for better communication between heads (particularly within a specific LEA) about matters such as these. Heads themselves thought that the introduction of performance management would make it easier to address performance issues at an early stage.

The prediction that things will be different in future must be set against the near unanimous opinion of heads that operating capability procedures took far too long and was extremely stressful for all concerned. On average, around 18 months was spent outside procedures, and the procedures themselves lasted 12 months (6 months for the informal stage and 6 months for the formal stage). It should not be forgotten that, far from expressing the view that having once used capability procedures they would be less wary of them in future, heads were more likely to feel an abhorrence of having to undergo a similar experience again. The fundamental problem, we would suggest, is that there is invariably a lengthy period of informal action *outside* the procedures as well as an informal stage *within* them. This does not make sense, as from a practical point of

view heads will find themselves, in effect, repeating most of what has already been done, and neither does it appear to conform to what was envisaged by the 1997 outline procedure. The outline procedure contemplates investigating and identifying performance problems and giving appropriate support. Unless the matter is dropped, a decision is then to be made as to whether to give informal counselling or move to a formal interview where action is required under the capability procedure. That action would normally include establishing targets with structured support and timescales, and notification of the action would constitute the “date of entry into the formal procedure”.

Such a scheme is in accordance with those generally adopted elsewhere in employment, whether for issues of performance or conduct, and in the ACAS Code of Practice. Informal action of whatever kind is normally considered to be outside of any procedure and there is no question of following such informal action by a second informal stage which constitutes the first phase of a formal procedure. In order, therefore to ensure that informal action outside procedures in addition to a second informal stage within the capability procedure is not required in dealing with capability issues, one of two things would have to happen. Either LEAs must re-write their procedures so that what heads in fact do informally counts as informal action; alternatively, heads should refer to the procedures and/or take advice from the LEA at an early stage so that any action they do take is in accordance with that prescribed in the procedure. We would also suggest that allowing for trade union representation/accompaniment when dealing with matters *informally* (as provided for in some LEA procedures) is unhelpful and likely to increase stress levels for both the head and the teacher involved.

Without having interviewed teachers who were alleged to be under-performing, one can only speculate about their perception of the capability procedures. However, it is perhaps worth commenting that some procedures appear to have taken on rather more aspects of the ACAS Code of Practice on Disciplinary and Grievance Procedures than is appropriate. Disciplinary procedures nowadays invariably follow the model in the ACAS Code of Practice, i.e. progressive levels of warnings, moving from oral to written warning and from final written warning to dismissal if misconduct is repeated. Whilst managers hope that these warnings will lead to a change in behaviour, they are also a sanction in themselves, i.e. they have a punitive aspect and can normally be appealed against. In contrast, where performance issues are concerned, the generally-accepted view is that warnings are inappropriate in the sense of disciplinary style warnings. What is crucial is that the person should be made aware of their shortcomings, told how to address them, be given a timescale for achieving any targets and warned or advised that if they do not achieve such targets, their employment may be at risk. Whilst some of the LEA procedures did take this kind of tone, others did not and were of a much more punitive nature. Disapproval of using disciplinary-style warnings, and the ability to appeal against them, was also a feature of criticism of the July 2000 guidelines. Additional concerns were raised about the number of stages in the procedure, the timescales and the degree of subjective judgement in relation to the sustainability of improvements.

The protracted nature of the proceedings clearly involves substantial financial costs in employing supply teachers to cover the inevitable absences and some use of consultancy advice, as well as a great deal of time and problems with staff morale. Teachers generally are likely to agree that teacher X is a problem, but will be uncomfortable with a situation of the problem of X being known but not yet resolved. It was also clear from our research, that most cases involve a teacher who is going to have to go eventually, for one reason or another, and remedial measures will simply prolong the agony. The most significant factor in whether or not there is a likelihood of improvement appears to be whether or not the teacher accepts that there is a case to answer and that necessary change is possible as well as desirable. As one head put it “.. teachers take a while to believe it and internalise it. Until they accept a need for improvement they can’t move forward, you have to bring the person with you”. It is also crucial that heads approach the issue positively, with a genuine desire to redeem individuals, rather than seeing it as a means of removing an unsatisfactory teacher from the school. It was evident that the longer an individual has been led to believe that all is well – because of an unwillingness to confront issues – the more likely that person is to be “in denial” when his or her performance is finally questioned. The argument for dealing with problems as and when they arise, and before people become resistant to change is therefore understandable. It would also seem sensible for heads to make a decision about whether there is likely to be an improvement and if not, to move much sooner to the formal stage of procedures. In that way at least some of those who will not accept criticism may be shocked into thinking about it. However, although there would appear to be merit in shortening the procedure in some cases, the four-week fast track procedure as currently conceived seems unlikely to be of any assistance. For the future, the denial culture may be less of a problem because there will be fewer and fewer teachers who have not experienced monitoring and whose teaching career began in the ‘60s and ‘70s when there was a much freer and less structured style of teaching.

We have already alluded to the fact that heads welcomed support and assistance when operating capability procedures and were particularly reliant on advice from their LEA. However, it is clear that the extent to which LEAs and LEA advisers play a supporting role can be geography-dependent and that schools with capability problems face a lottery as to the amount and quality of LEA advice they receive. The LEAs which took part in our study were self-selected, so it could be argued that they would be likely to be the better ones. Whether this be so or not, there was much evidence of good practice amongst our case study LEAs and substantial input via advisers into assisting teachers who were not performing adequately. There was also evidence of LEAs, union representatives and heads working harmoniously to find the best solution for the individual as well as the school. Given the limited role which governors appear to be able to play, we would argue that any suggestion of reducing LEA input in this area would not only make heads even more reluctant to use procedures, but would also increase the potential for employment tribunal claims where procedures were incorrectly followed. If governor input is to continue, then at the very least we would advocate their being offered training in the operation of procedures so that they feel more comfortable in carrying out their duties. In fact, a number of LEAs reported difficulties in the recruitment and retention of governors, and particular problems in relation to their training. As one LEA officer put

it, the governors who already have the appropriate skills and knowledge are the ones who attend training, whereas those who need the training, do not. In general, it would seem that the issue of school management by the governing body and its relationship to the LEA is problematic.

3. Ill-health, sickness absence and well-being

As was indicated in Chapter 2, ill-health, especially stress-related ill-health, is clearly a major problem for the teaching profession. In relation to the operation of capability procedures it becomes even more problematic, involving several issues. First, there appears to be uncertainty in the minds of some heads as to whether ill-health is a capability issue and, if so, whether it can be addressed via capability procedures. Secondly, if, as frequently happens, a particular member of staff has a poor absence record as well as performance concerns, there is similar doubt about which procedure to use (as there is also between capability and disciplinary procedures) and this can result in delay and prevarication in dealing with individuals who are causing concern. In this context, it could be argued that there is no reason in principle why heads should not regard unsatisfactory attendance as a capability issue, at least where the absences are unrelated and do not suggest an underlying medical condition. From a *management* point of view, both poor performance and poor attendance are situations in which a teacher is judged as not being capable of doing the job satisfactorily.

A large proportion of teachers whose capability comes under scrutiny take sickness absence subsequent to capability procedures being invoked and a number take sickness absence before. The majority of these absences are stress-related. There were suggestions that some of these were perhaps not genuine, but it could be argued that stress-related absence is not surprising given the protracted length of time a teacher spends under scrutiny. It creates an extremely intractable situation which appears to be hindered rather than helped by Occupational Health. Whilst to some extent the difficulties are unavoidable, there are grounds for arguing that, at the very least, there should be a better system for assessing teachers' fitness for work – one which involves a dialogue between the school and the person putting forward a medical opinion, so that any prognosis can be made within the appropriate context. Not surprisingly, we found a considerable degree of nervousness about how teachers who suffered a stress-related illness during the operation of procedures should be handled, particularly if potential liability under the Disability Discrimination Act became an issue.

For the teachers and headteachers whose capability was challenged, this is no doubt a very sad business. In the case of teachers with relatively little experience there were hints from heads in the case studies that teacher training colleges were at fault for passing people who were not up to the job. At the other extreme there were examples of teachers promoted above their competence or becoming unable to cope with the increased demands of new initiatives after long years of service, in some cases compounded by personal problems. One of the difficulties of finding an appropriate outcome for teachers held to be incompetent is that, unlike the situation in employment elsewhere, and contrary to what the outline procedures themselves contemplated, there is rarely a

“different balance of duties or alternative teaching post” to which members of staff can be assigned unless they can step down from a particular responsibility post. There is also a general feeling that attacking the capability of a teacher goes to the core of the person’s whole identity and that therefore there should be some means of “exiting with dignity”. However, the option to take early retirement *with an immediate pension* has now been limited, so unless the LEA is willing and/or able to make use of redundancy or retirement on efficiency grounds, the only way out in reality is by resignation, dismissal or occasionally via a compromise agreement. Our Advisory Group pointed out that the availability of less unpleasant exit routes varies considerably from one LEA to another because of the way budgets are managed and who is in power; one example in particular which was cited to us was the way in which arrangements are made to retire heads. Another unpredictable outcome is ill-health retirement, which creates uncertainty not only for the individual concerned but also for the school, since it cannot move forward until a decision by Capita Teachers’ Pensions (which can take several months) is made.

Around 40% of teachers whose capability was challenged resigned from the school, either before or during the operation of procedures. One of the concerns aired during this report was that where an “incapable” teacher left his or her post but remained in the teaching profession, the problem might simply be moved rather than solved. However, it was also pointed out that a different school, or a less stressful mode of teaching, such as supply teaching but not necessarily five days a week, might in fact enable a teacher to perform perfectly adequately. Given the government’s current focus on the importance of the work/life balance and more flexible forms of working, we would also suggest that more serious consideration is given to part-time teaching and job-sharing in the teaching profession. Those heads and/or LEAs who might need persuasion in this direction would do well to remember that insistence on a job being done on a full-time basis without objective justification can constitute indirect sex discrimination and that the government has signalled its intention to give women returners the right to request part-time work and for that request to be taken seriously.

4. The current context of the teaching profession.

Throughout the time we were carrying out our investigation there was much talk about performance management initiatives, with many heads believing it would make tackling capability issues easier. There was also increasing reference to the current teacher shortage and its effect on issues of capability. Those institutions involved in teacher training will feel understandably reluctant to fail large numbers of aspiring teachers in the present climate, and schools will be similarly reluctant to get rid of those staff they have, regardless of their quality. In addition, as the case studies revealed, teachers and head teachers who appear borderline will be recruited to posts if there are no other suitably qualified candidates, which could potentially lead to future capability issues. Offering graduates a financial sweetener may attract them to train as teachers, but in itself it will not change into an attractive long-term prospect a profession which has come to be associated with low morale and high levels of stress. In addition, the financial lure may possibly attract those who do not have the vocational commitment and/or appropriate skills to ensure success in the profession.

Our research clearly demonstrates that if a teacher's disappointing performance is to improve, the best chance is outside the formality of procedure. To improve, a teacher needs to believe first that the change is needed and secondly that it can be achieved. It is also clear that heads who deal with capability issues need the support and advice that LEAs can provide and the confidence to move more rapidly towards formal procedures where improvement is not forthcoming. No-one doubts the need for procedures to deal with under-performance but there is an urgent need to ensure that they operate effectively – by informal action which is not part of the procedure followed by formal action within the procedure. Such improvements might make the process less stressful for all concerned but realistically they are unlikely to reduce by a significant extent the incidence of sickness absence associated with under-performance. We would therefore suggest a reform of the way in which Occupational Health currently operates and wherever possible, faster decisions about ill-health retirements so that schools can move forward in the interests of the children. Finally, we would stress the perceived need to be able to deal sympathetically with individuals who have given many years of service to the profession but can no longer stand the stresses and strains of teaching in the twenty-first century.

B. Recommendations

1. Review of procedures

We recommend that schools and LEAs review their procedures with two main objectives:

- a. To reduce the scope for issues taking too long, particularly in the informal stages. Current practice appears to be harmful to all parties and there is a good case for shortening the later stages of procedure (as envisaged by the four-week fast track procedure) where there appears to be no likelihood of a teacher's improvement. Two terms should normally be the maximum for the whole process to last, including all informal stages, assuming an early acceptance by the teacher that change can and will be made.
- b. To consider removing the more punitive style of language which is appropriate to cases of misconduct under disciplinary procedures, whilst continuing to give clear warnings that if concerns about performance are not remedied, a teacher's (or headteacher's) employment is at risk. Individuals would normally be given the opportunity to take out a grievance against such a 'warning' rather than appeal against it.

2. Training for heads and senior managers

Whether they like it or not, managing the competence (and to some extent the health and well-being) of teachers, is now a key feature of the role of heads and senior managers. We suggest training should include:

- a. Understanding of the working and professional relationship between heads and teachers, with the current reduced autonomy and increased accountability of teachers.
- b. Understanding the nature of procedural mechanisms and using them positively for the benefit of the school and teachers.
- c. Understanding the nature of capability issues that teachers encounter, at different stages of their working lives, and being able to help individual teachers to confront problems, giving them the confidence to take on necessary changes and supporting them through their development.
- d. Accepting that the prime responsibility of heads and teachers is the educational development of their pupils. Whilst heads will wish to be sympathetic to staff with personal problems outside school, these must not jeopardise the school's main purpose.
- e. Working out development strategies for teachers. There may be some tendency to hold back from tackling issues of incapability because of the perceived teacher shortage, but we suggest that this makes it more important to confront these issues and to enable improvements to be made. If 2c above is done well, everyone benefits: the school has better teaching and the teacher finds renewed self-confidence and improved career prospects.

3. Inter-head communication

Heads need to share experience of dealing with competence issues, especially as capability procedures are felt to be something to avoid at all costs, with the experience being exhausting. We cannot suggest exactly how this should be done, but it might be handled by an occasional newsletter or meeting convened by the LEA.

4. Health

There can be little doubt that the protracted nature of capability processes causes some people to be ill, as well as a suspicion that some sickness absence is bogus. Heads appear to need guidance as to whether poor attendance may be addressed as a capability issue. There also appears to be some dissatisfaction with Occupational Health Departments. Speeding up procedures and confronting issues more squarely (1b and 2c above) should ease these difficulties, but occupational health provision could also be reviewed to improve communication with schools and to clarify how matters of sickness absence are to be monitored. It would also be helpful if decisions about retirement on health grounds could be made more quickly to avoid schools being left in limbo for protracted periods of time.

5. Alternative forms of contract

Independent research by a firm of management consultants in the summer of 2001 concluded that the total workload of teachers over twelve months was not greater than in comparable professions, but that the level of stress in teaching was considerable. Many of

our respondents (especially union officials) argued that teacher X could be failing in one school, but could thrive in a different situation. It was also suggested that some would do better with a reduced workload through working part-time or job sharing. We suggest the following could be considered:

- a. Facilitation through the LEAs of moves from one school to another, possibly a teacher working – almost peripatetically – a full-time contract between two or more schools.
- b. More scope for teachers to work part-time, despite the clear reservations about part-time working held by many heads, especially in small schools.
- c. More scope for job-sharing. These arrangements are more difficult to manage, because of the need to set up a partnership with a high degree of mutual understanding and trust, as well as ensuring that nothing “falls in the gap”, but it can be a way of acquiring the skills and commitment of highly effective people.
- d. Imaginative and thorough arrangements for managing the input and job satisfaction of supply teachers.
- e. There is an argument for some financial assistance in the case of teachers moving out of the profession in their early fifties, as there is a strong feeling among all our respondents that teachers should be able to “exit with dignity”. The current situation is one of substantial costs and some form of modest severance payment could therefore save time, anguish and money.

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Appendix 1

Advisory Group Members

Mr Mike Arnold	Regional Officer NAHT
Ms Kim Beat	Primary Head
Mr Cliff Crewe	Secondary Deputy Head
Mrs Carol Cummings	Primary Head
Dr Jesse Elms	Secondary Head
Mr Iain Hall	Secondary Head
Mr Andy Kent	Regional Officer NUT
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Ms Joan McKenna	Adviser/Inspector
Mrs Alison Penny	Schools Liaison Manager
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Appendix 2

7th November 2000

Dear

A research team from UMIST has recently been commissioned by the DfEE to undertake a project focusing on the operation of teacher capability procedures in all maintained schools. Although NEOST carried out a survey in 1998/1999 on the usage of capability procedures, these figures now need updating, and NEOST has been fully consulted on the proposed research.

Whilst the initial stage of the project focuses on quantitative data, we will also be seeking to collect qualitative data which will result in the development of models of best practice and have a significant influence on national thinking. Further details of the project are given in the enclosed flyer. Following the investigation by our research team, a report will be submitted to the DfEE in September 2001. Part of our remit is to disseminate our findings widely, and we would be happy to offer you an appropriate summary.

The purpose of this letter is to ask you to contribute to this important and timely research. At this stage, we are seeking to identify a spread of Local Education Authorities which have experience of the use of capability procedures. We hope that you can help us in this matter by providing us with the information detailed on the attached document and returning it in the envelope provided, or by e-mailing this information to: Eve.Ritchie@umist.ac.uk All the information will be collated in such a way that the responses from individual LEAs will remain confidential, as numbers will be presented in an aggregate form.

Whilst it is very important that all LEAs respond to update the NEOST survey, your responses will also be used so that we can identify areas in which to carry out a brief telephone survey of schools. A small number of case studies will be selected from these for more in-depth investigation.

We would be grateful if you could let us have the information by 5th December 2000 so that we can proceed with the project. The DfEE have set a tight timescale, so an early response would be extremely helpful.

I hope that you are able to help with this research. Please do not hesitate to contact me if you would like further information on any aspect of the research.

Thanking you in advance for your co-operation.

Yours sincerely,

Mrs Jill Earnshaw

Appendix 3



BEST PRACTICE IN UNDERTAKING TEACHER CAPABILITY PROCEDURES

A one-year project funded by DfEE in the Manchester School of Management, UMIST

The project aims to analyse the operation of teacher capability procedures during the academic year 1999-2000. The research focuses on investigation of best practice in undertaking teacher capability procedures including examination of barriers to their effective operation. In order to gather quantitative data, LEAs will be contacted to assess their use of capability procedures. This will be followed by a brief telephone survey of schools from which relevant case studies will be selected.

A report will be submitted to DfEE by September 2001, when the findings of the project will be disseminated widely.

In 1997, the Minister for Education wrote to Chairs of Maintained School Governing Bodies inviting them to incorporate new outline capability procedures for teachers. Since that time, there has been some monitoring of the procedures, but there is an urgent need for a comprehensive survey of practice, as well as a need to identify best practice. The research project will focus on the following:

- the number of teachers on the various stages of the capability procedures during 1999-2000
- an investigation of the process
- barriers to use of procedures
- trigger points for instigating the procedures including the role of inspection, appointment of a new head etc
- outcomes of use of procedures
- the role of advice and support

- the role of governors
- the relationship between capability procedures and sickness absence
- managing capability procedures for head-teachers
- where “four week or less procedures” is used
- use of procedures for non-teachers

RESEARCH TEAM

The project team consists of:

[Mrs Jill Earnshaw \(Project Director\)](#)

Jill Earnshaw BSc, PGCE, LLB, Barrister, MSc, is a Senior Lecturer in Employment Law at UMIST and Dean of Management Studies. She is also a part-time Chairman of Employment Tribunals.

[Dr. Stephen Hardy \(Associate Director\)](#)

Stephen Hardy JP, LLB, PhD is a Lecturer in Law at UMIST, specialising in European Employment and Business Law. He is also a member of UMIST’s European Work & Employment Research Centre.

[Professor Derek Torrington \(General Director\)](#)

Derek Torrington JP, Phil, CCIPD, CIMgt, FRSA is Emeritus Professor Human Resource Management at UMIST and Chair of Manchester Federal School of Business and Management, Companion of the Institute of Management and the Institute of Personnel and Development.

[The researchers are: Eve Ritchie and Lorrie Marchington.](#) Please refer any queries about the project to the researchers as shown below:

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UMIST AND THE MANCHESTER SCHOOL OF MANAGEMENT

UMIST is one of the leading research universities in the country, specialising in management, engineering, science and technology. By today's standards, it is a relatively small institution which focuses to a great extent on research, postgraduate education and consultancy. The Manchester School of Management is the largest department in UMIST, and is one of the leading management schools in Britain. It has an international reputation for its research and teaching, and was one of only two universities to gain the top (5*A) research rating at the most recent government assessment. It also has a number of research centres, including the European Work and Employment Research Centre in which this project is located. Overall, the School has about 1,000 students, of which approximately 30% are postgraduates.



The Manchester School of Management is a member of the **Manchester Federal School of Business and Management** with the Manchester Business School, the Manchester School of Accounting and Finance and PREST (Policy Research in Engineering, Science and Technology).

Appendix 4

20/3/01

Dear Headteacher,

We are writing to let you know about the research detailed in the paragraph below and to let you know that you **may** be approached by one of the research team from UMIST in order to conduct a 10 minute telephone interview with you.

UMIST has recently been commissioned by the DfEE to undertake a project focusing on the operation of teacher capability procedures in all maintained schools. The project involves the collection of both quantitative and qualitative data and will result in the development of models of best practice and have a significant influence on national thinking. Further details of the project are given in the enclosed flyer. Following the investigation by the research team, a report will be submitted to the DfEE in September 2001 and part of our remit is to disseminate our findings widely.

As part of the project, researchers will be telephoning a random sample of schools in the Authority in order to carry out a ten minute interview with headteachers. All data collected will be anonymous and confidential and your LEA and the teacher unions are supporting this research. You may be approached by either Eve Ritchie or Lorrie Marchington. The questions which they would like to ask you cover the issues of usage of formal capability procedures, duration of the procedures, outcome for the teacher and ill health during the operation of the procedures. There will also be similar questions for those who have resolved teacher capability matters without recourse to the formal stage of procedures.

We hope you are able to help with this important and timely research. If you would like to know any further information about the project please telephone or e-mail Eve.Ritchie@umist.ac.uk or Lorrie.Marchington@umist.ac.uk Telephone 0161 2008785

Yours faithfully,

Mrs Jill Earnshaw

Appendix 5

Telephone Questionnaire for use with schools:

Ask if they have received information about the project from LEA. / Introduction to the Project. **Stress independence of UMIST from DfEE. Stress that this gives contributors a chance to influence national thinking. Data collected will be confidential and anonymous. LEAs and Unions have approved the Project. Length of telephone interview – no more than ten minutes. Time to call back? Will email the questionnaire in advance if this would be helpful.**

GENERAL QUESTIONS:

LEA:School:

Contact Name and title:

Name of Headteacher (if different from above)

Tel No: or Fax: or Email:

QUESTIONNAIRE:

THOSE HAVING EXPERIENCE OF THE PROCEDURES

We are interested to find out whether you have any recent experiences of capability issues. We are particularly interested in the academic year 1999-2000.

1. Did you have any capability issues during the 1999-2000 academic year? Yes/No

2. a) If yes, how many did you have during the academic year 1999-2000?

b) Did you use informal or formal procedures or no procedures at all?

Ask questions for situations outside the procedures, informal or formal use of the procedures as appropriate.

3. If no, have you any experience of dealing with capability issues? Yes/No

How were these dealt with?

Go to questions 26 and 27.

Questions relating to situations outside the procedures:

4. What triggered your concern with the individual?

5. How long did the situation last?

6. Was the teacher off through ill health? Yes/No

7. If yes, what type of ill health?

8. Did the ill health alter your response to the situation?

9. What was the outcome for the teacher?

Go to questions 26 - 28.

Questions relating to the use of the procedures in informal stage:

10. What were the triggers for instigating the informal stage of the procedures?

11. Were the informal stages of the procedures easy to operate? Yes/No

12. If they were not easy to operate, is there any reason for this?
 13. How long did the informal stage last?
 14. Was the teacher off through ill health? Yes/No.
 15. What type of ill health?
 16. Did the ill health alter the course of the informal stage?
 17. What was the outcome for the teacher?
- Either carry on with questions for formal procedures or go to questions 26-28.

Questions relating to the use of the procedures in the formal stage:

18. What were the triggers for instigating the formal stage of the procedures?
19. Were the formal stages of the procedures easy to operate? Yes/No
20. If they were not easy to operate, is there any reason for this?
21. How long did the formal stage last?
22. Was the teacher off through ill health? Yes/No.
23. What type of ill health?
24. Did the ill health alter the course of the formal stage?
25. What was the outcome for the teacher?

Further questions:

26. Could you envisage a situation in which the four-week capability procedure would be appropriate?
Yes/No
27. Any further comments on the issue of capability procedures?
28. Would you be willing to participate in a more in-depth interview as part of a case study for the project.
Yes/No

Thank you for your help

Date and time of initial contact:

Date and time of subsequent contact:

RETURN SLIP

Name:.....

Local Education Authority:.....

Number of teachers subject to formal capability
procedures DURING ACADEMIC YEAR 1999/2000:.....

Number of head teachers subject to formal capability
procedures DURING ACADEMIC YEAR 1999/2000:.....

Contact details of person to whom we should
refer in future (if not yourself): tel, fax, e-mail:.....

.....

Appendix 6

CASE STUDY QUESTIONS REGARDING A CAPABILITY CASE HANDLED BY THE HEADTEACHER

LEA:

Name of school:

Type of school (Infants/Primary/Secondary/Special):

Name of headteacher:

Number of teachers at the school:

Number of pupils at the school:

Name of union rep involved:

Name of LEA Personnel involved:

Name of LEA Adviser involved:

Name of Governor involved and tel no:

HEADTEACHER

Background

1. Could you tell me how long you have been in your present post as head?
2. Is this your first headship? How many years of headship in total?
3. How many capability issues have you dealt with?
4. How many cases did you deal with during 1999-2000?
5. How do you monitor the capability of your teaching staff?
6. How would you define an incapable teacher/deputy?

The case

7. How many years of teaching experience did the member of staff have?
8. How long had the teacher/deputy been in post?
9. What was the role of the teacher/deputy?
10. Was the problem in respect of classroom teaching, another role in the school or both?
11. What alerted you to the problem with the teacher/deputy- was it a specific event or had the person been in difficulties over a number of years?
12. What happened?
13. Did you set the teacher/deputy targets? Yes/No
If yes, could you give some examples of the targets which you set.
14. Did other members of staff provide support for the teacher/deputy in trying to improve?
15. Was anyone else involved? (LEA personnel, adviser)
If yes,
 - b) Did they make a useful contribution?
16. Did you seek advice or assistance from any other sources in dealing with this matter?
 - a) Yes/No
If yes,
 - b) What were these?
 - c) Were they helpful?
17. Was the governing body informed?
 - a) Yes/No
If yes,
 - b) Did they make a useful contribution?
18. Was the teacher/deputy absent through ill health as a result of his/her capability being questioned?

a) Yes/No

If yes,

b) What type of ill health?

c) Did the ill health alter your response to the situation?

d) Was Occupational health involved? Yes/No If yes, when were they invited to be involved? Do you think they were helpful to the case? Do you think that Occupational health can tell whether a teacher is capable of going back to work or not?

Procedures

19. Did you use the informal or formal stage of the procedures or give support outside the procedures?

If procedures were used,

a) What triggered your use of the procedures?

b) Are there barriers in getting the case into the informal stage of the procedures?

c) Did you use LEA procedure or the school's own model? (Obtain a copy of the procedures).

d) Did you find the procedures easy to operate? If not, why not?

e) Do you think the procedures were effective? If not, why not?

20. If the formal procedures were used, were there problems moving the case from the informal to the formal stage?

General

21. How long did the issue/case last? A) Before procedures, b) in informal procedures, c) in formal procedures

22. What is your perception of the length of the procedures?

23. What was the role of the union? Were they helpful or did they make matters more difficult?

24. What was the outcome for the teacher/deputy?

If it was a compromise agreement,

a) Who was involved in the agreement?

b) Was there a pay-off? Who paid?

c) Was a reference part of the agreement?

25. Do you think the outcome was appropriate?

26. What was the effect of the case on the morale of the other teachers?

27. What were the reactions to the outcome by governors and parents?

28. Why do you think the teacher/deputy improved / didn't improve?

29. In retrospect is there anything you would have done differently?

30. Is there anything that others should have done differently?

31. A) Was it stressful for yourself and the person concerned?

b) Can you think of any ways in which anxiety and stress can be reduced in operating capability procedures for yourself and for the teacher/deputy?

32. Is there any way in which the procedures could be improved?

33. What is your view of the 4 week fast track procedure?

LEA

34. Do you buy in personnel services from the LEA? Yes/No

If no, do you buy in from elsewhere?

If yes,

a) Who is your link person at the LEA?

b) Do they provide a useful service?

c) How do you rate support from your LEA adviser?

35. Would you like to make any final comments about the case or the capability procedures in general?

APPENDIX 7:

LEA RESPONSES TO REQUEST FOR INFORMATION ON NUMBERS OF FORMAL CAPABILITY CASES DURING THE 1999-2000 ACADEMIC YEAR.

LEA:	NO. OF TEACHERS ON CP 1999-2000	NO OF HEADS ON CP 1999- 2000	FTE Teachers	FTE Heads	% Teachers on formal capability	% Heads on formal capability	Notes
1	8	0	2433	111	0.33	0	
2	11	1	1146	68	0.96	1.47	
3	2	0	827	101	0.24	0	
							These numbers only indicate those cases where the Employee Relations Unit have been involved at some stage during the procedures. Schools may have dealt with cases without needing the advice of personnel.
4	10	0	8373	405	0.12	0	
5	0	1	893	41	0	2.44	
6	6	0	2210	211	0.27	0	
7	0	0	1039	38		0	
8	2	1	687	39	0.29	2.56	
9	1	0	3971	243	0.03	0	
10	2	0	1840	72	0.11	0	
11	3	0	1408	68	0.21	0	
12	3	1	2123	95	0.14	1.05	
13	2	0	1283	84	0.16	0	
14	1	0	1602	104	0.06	0	
15	4	0	3200	238	0.13	0	

						5 teachers were subject to informal procedures which fell short of the formal stage.
16	1	0	1182	52	0.08	0
17	3	2	4857	336	0.06	0.60
18	7	0	3127	276	0.22	0
19	3	0	2318	108	0.13	0
20	4	0	1662	95	0.24	0
21	4	1	4826	408	0.08	0.25
22	10	0	5174	361	0.19	0

LEA:	NO. OF TEACHERS ON CP 1999-2000	NO OF HEADS ON CP 1999- 2000	FTE Teachers	FTE Heads	% Teachers on formal capability	% Heads on formal capability	Notes
							These low figures do not reflect inactivity on the part of heads or the LEA in dealing with employees whose competence is in question. However, your request was for information only on FORMAL proceedings. This LEA, like many others, has an informal proce
23	2	0	2286	130	0.09	0	
24	0	0	2413	104	0	0	
25	6	0	1924	78	0.31	0	
26	5	0	2266	82	0.22	0	
27	44	10	9108	569	0.48	1.76	
28	15	4	3846	296	0.39	1.35	
29	2	0	1687	83	0.12	0.00	
30	11	1	1302	67	0.84	1.49	
31	3	0	1496	64	0.20	0	
32	3	0	779	44	0.39	0	
33	4		1330	66	0.30	0	
34	1	0	723	36	0.14	0	
35	3	0	1696	136	0.18	0	

							The figures greatly understate the work carried out on teacher/head capability. We had a significant number of staff leave or change their circumstances when their performance was in
	36	2	0	1084	100	0.18	0 question.
	37	0	0	914	67	0	0
	38	5	0	1055	58	0.47	0
	39	2	0	578	30	0.35	0
							This information is based on those capability issues with which LEA personnel staff have been involved. There may be cases where schools do not buy in personnel services from the LEA, and we are therefore unaware of
	40	62	3	9469	580	0.65	0.52 these cases unless they result in dism
	41	4	0	895	46	0.45	0
	42	3	1	931	43	0.32	2.33
	43	10	1	5187	287	0.19	0.35
	44	4	0	1677	83	0.24	0
	45	11	0	4383	352	0.25	0 65 informal procedures
	46	21	0	3695	191	0.57	0
LEA:	NO. OF TEACHERS ON CP 1999-2000	NO OF HEADS ON CP 1999- 2000	FTE Teachers	FTE Heads	% Teachers on formal capability	% Heads on formal capability	Notes
	47	0	0	1419	77		0
	48	20	1	2062	108	0.97	0.93
	49	3	0	1485	97	0.20	0
	50	8	1	1826	97	0.44	1.03
	51	5	0	2139	78	0.23	0
	52	3	0	1079	83	0.28	0
	53	1	0	1453	79	0.07	0

	54	0	2	4011	375	0.53	0.53	
	55	12	1	1827	122	0.66	0.82	
	56	48	3	5250	372	0.91	0.81	
	57	10	3	4681	331	0.19	0.91	
	58	6	1	1936	116	0.31	0.86	
	59	1	0	1368	70	0.07	0	
	60	2	0	1858	98	0.11	0	
	61	2	0	879	39	0.23	0	
	62	1	0	2008	68	0.05	0	
	63	1	0	1396	66	0.07	0	
	64	0	0	2061	127	0	0	
	65	0	1	233	21	0	4.76	
								3 teachers required additional support under the informal stages 1 Head
	66	0	0	1465	73	0		0 required support in the informal stages.
	67	6	0	1579	103	0.38		0 Approximate figures.
								Approx 25 started: no dismissals.
								High % of resignations as a result of process. LEA had poor Ofsted report, as a consequence has interim mgt, 0 with restructuring in process.
	68	25	0	2318	122	1.08		
	69	3	0	2225	114	0.13	0	
	70	7	0	3367	175	0.21	0	
	71	0	0	1801	166	0	0	
	72	4	0	906	42	0.44	0	
	73	12	1	1427	81	0.84	1.23	
	74	3	0	1196	55	0.25	0	
LEA:	NO. OF TEACHERS ON CP 1999-2000		NO OF HEADS ON CP 1999-2000	FTE Teachers Heads		% Teachers on formal capability	% Heads on formal capability	Notes
	75	4	1	1801	111	0.22		Capability remains one of the most complex areas of personnel support to

						schools
						These are the figures known to the
76	2	0	1942	117	0.10	0 LEA
77	11	2	1658	105	0.66	1.90
78	1	0	1340	57	0.07	0
						This is a very slim LEA. We expect school management to address cp at school level. Personnel is abought-in service and not always involved at early stages. Not all schools buy in from us, or do not buy in at all. We are only involved on a mandatory b
79	6	0	1290	81	0.47	0
80	1	0	1675	97	0.06	0
81	8	0	963	57	0.83	0
82	5	0	1784	88	0.28	0
83	3	0	1647	92	0.18	0
						A no. of cases were resolved at
84	5	0	2206	148	0.23	0 informal stage
85	4	0	1462	87	0.27	0
86	16	0	3421	237	0.47	0
87	6	0	1147	78	0.52	0
88	22	0	4803	289	0.46	0
						We're not aware of any teacher in formal procedures from last year, or this year. Most schools are still at the
89	0	0	990	48	0	0 informal stage.
90	18	0	2380	133	0.76	0
91	5	0	1110	71	0.45	0

TOTALS:	610	44	203779	12397	0.30	0.35
AVERAGE NUMBER OF TEACHER CAPABILITY CASES PER LEA:					6.70	
AVERAGE NUMBER OF HEADTEACHER CASES PER LEA:					0.48	
% OF TEACHERS ON FORMAL CAPABILITY PROCEDURES:					0.30	
% OF HEADTEACHERS ON FORMAL CAPABILITY PROCEDURES:					0.35	

NB two LEAs responded that they were unable to help with providing figures.

Appendix 8 : Case Study Interview Summary

*All names are fictional

INTERVIEWS AS PART OF CASE STUDIES:							
	Name*	Teacher	Personnel	Adviser	TU	Governor	
1A	Caroline		yes		yes	Chair	
1B	Sue		yes		yes		
1C	Andy	HoD	yes		yes		
1D	Debbie		yes		yes	Chair	
1E	Trevor	yes	yes		yes	yes	
1F	Sonia	yes					
1G	Fiona	yes		yes			
1H	Evelyn	yes	yes			Chair	
1I	Helen	yes		yes			
1J	Nigel	yes	yes	yes	yes		
1K (head)	Eliza			yes	yes	yes	
1L (head)	Terry		yes		yes		
1M (head)	Nicholas		yes				
2A	Graham	Senior Management			yes		
2B	John	yes		NQT Overseer			
2C	Eric						
2D	June		yes		yes		
2E	Sheila		yes		yes	yes	
2F	Steve		yes		yes		
2G	Lucy	HoD	yes				
2H	Alice		yes				

3A	Ruth	HoD					
3B	Joe		yes			Chair	
3C	Lorraine		yes		yes	yes	
3D	Sam	yes	yes		yes	Chair	
3E	Louise						
3F	Dominic		yes		yes		
3G (head)	Anna			yes			
4A	Doris		yes		yes	yes	
4B	Derek						
4C	Jane		Management Consultant				
4D	Ken&Tom	yes	yes		yes	Chair	
4E	Neil	yes					
4F	Karl						
4G	Karen						
4H	Elspeth		yes		yes		
4I (head)	Gerald						
5A	Lisa						
5B	Martin, Russell and Natasha		yes				
6A	Margaret		yes		yes		
		Teacher	Personnel	Adviser	TU	Governor	
7A	Roger	yes	yes	yes	yes	yes	
7B	Rob, Holly, Geoff and Jenny						
7C	Barry	yes	yes			Chair	
7D (head)	Joan	yes	yes	yes	yes	Chair	

7E	Kim		yes		yes	Chair	
7F	Amanda	yes	yes			Chair	
7G	Vince	yes	yes		yes		
8A	Sarah and Vicky			School Development Officer			
8B	Rachel				Consultant from SHA		
9A	Meena		yes	yes	yes		
9B	Sangita			yes	yes	Chair	
	Vanisha						
	F34, M 25						

Appendix 9

THE CASE STUDIES

The sections under the head's comments are all direct quotes from the head. The sections under comments from other key players are all direct quotes from them.

LEA 1

1A 'Caroline'

1. School and Headteacher Profile

The school is a Secondary School (11-16 year olds); there are 47 teachers (including part-time) and 750 pupils. The Head has been in post for four and a half years and it is his first headship.

2. Monitoring

He monitors the capability of his staff through the Senior Management Team (SMT). Each senior manager is linked to one or two of the faculties. They have regular meetings with the heads of department and focus on teaching and teacher performance. This is one of the first ways that areas of concern are picked up. The degree of parental/student complaints might also alert the Head to problems. In discussions on individual teachers the Head focuses on the management of the class and the ability to get results. The Head defined capability by going back to the job description, the school development plan and curriculum area plans. He would then decide if it was misconduct or capability situation.

3. The Case

Caroline had 17 years' teaching experience and had been in post for five years. Her role was Head of Faculty, managing two or three subjects. She was appointed by the previous Head to 'drag the department up' and she was placed on a relatively high pay point in recognition of the difficulty of the task and presumably for her greater management potential. It was clear, as soon as the Head arrived at the school, that she wasn't doing that or earning respect. The Head re-structured the senior management and got rid of her whole school management role. She accepted it and there was phased protection of her salary. She never said - this hurts me, although she probably felt disappointed.

The Head felt that Caroline had no camaraderie amongst the staff. She was turning on her department and had no inter-personal skills were not there. She also had a health problem and concern over her parents and lived alone. The problem principally related to management responsibilities. There had been problems with exam results and a failure to improve them: there was also administrative inefficiency and she made an error over exam results. There were informal comments from other members of staff that things had not been carried out; for example, if she was away she was not setting work. The senior link person on the staff was involved when setting targets. He provided support, met the teacher regularly and challenged her.

The informal and formal stages of the procedures were used. The Head found the teacher difficult to talk to. She put up barriers and didn't want to acknowledge the situation and the Head felt he could not get at what was going on. There were no delaying tactics but there was a denial. The Head found it difficult to get to a conversation in which there was honesty - he thought possibly because of the adversarial context of the procedures. Even when it was acknowledged that there was an issue, there was the problem of setting targets and putting in support and the Head felt he had already put a lot of time into gathering evidence. At the informal, first formal and second formal stage more targets were set and more support was given. A lot of the Deputy Head's time was taken up with this, but if he didn't do it the school would be challenged for not carrying out the support.

Caroline had a period of ill health (not stress related). The informal stage lasted three months and the formal stage lasted six months. When entering the informal stage, the school union rep was involved. Then the full time regional officer was involved and supported the member and challenged the evidence with the teacher's version. At the end of the first formal stage the rep off the record didn't think the teacher would make the targets. The Head and the union rep were recommending her to go. She refused because of the insecurity and she didn't think it would go to a dismissal. In the end the union rep was quite co-operative and prepared to try and end it all to everyone's mutual advantage. In the formal meetings he argued her case but outside of that he explained the Head's case to her.

The outcome for the teacher was that if the targets had not been met it would have gone to a dismissal. The targets were clearly sufficiently met. The Head didn't understand why the previous targets weren't met. He assumed she finally realised that if she didn't improve she would lose her job. The Head now wonders if he should have used the disciplinary procedure. Since then there has been a feeling of slippage back but not to the extent that procedures should be re-invoked. They are at the stage where she is performing reasonably but the Head is not seeing a continued improvement to good performance. The Head wishes she had got to the point of dismissal. Although there was clear improvement, some of the underlying problems are still there.

The Head's Comments

(a) On the case:

Caroline wants to be a Deputy and her heart is not in the job although her head knows what to do. She wants to be out of the school and I need her to be out of the school even though there was a successful outcome. She is applying for jobs now that the procedures have lifted her from ineffective to adequately effective but I want effectiveness, not barely making it. She is applying for Deputy jobs but hasn't got one yet although she says that she is getting good feedback. I wouldn't appoint her; I write references that you read between the lines of. She has a copy of the reference and thinks I am supporting her. The reference is descriptive rather than containing value judgements. A lot of the qualities she has suggests she should be very effective but when I suggest that the problem might be ill health or something outside the job or her relationship with colleagues or concern for her parents' ill health she puts up a barrier.

Teachers in her Faculty found her difficult and the procedures made life more difficult; they did perceive a real improvement but I think that it is not as good as it should be. It might have raised morale but morale might go down if it doesn't stick. The staff don't know formally from me that she has been on procedures but they may have guessed.

I feel an enormous amount of time and management time of the school went into the situation and don't think it was in the best interests of the school. In retrospect I would have seen if we could have moved through the procedures more quickly. I thought the Deputy did a good job but it seemed to me that it was as if he was being punished for someone else's inadequacies. I think it would have been less time consuming if it had been a class teacher and I had had the Head of Department to call on for their expertise. If you have to prove that schemes of work are inadequate and it is not your area of work it is more difficult. I did get a Head of Department from outside to give their opinion but it was time consuming. I thought the situation was stressful for both parties. I think that performance management will clarify such situations.

The onus is on the employer to prove everything, for example, that this was not done but it was not that serious, or that was not done and it is serious - then providing support. Anywhere else the person would be sacked. There is an enormously long procedure before you get anywhere. Anywhere else you wouldn't provide support in the same way, but businesses can put money aside for the fine.

(b) On procedures:

The LEA procedures were used. I found them easy to understand but very time - consuming to operate. They are all weighted on the side of the member of staff.

(c) On the role of:

(i) the LEA

I thought Personnel were very good but cautious - they made sure it was done by the book with everything signed in triplicate so that if it went to an Industrial Tribunal it would be all right, but I think that this drags it out. It would also be useful if there could be someone, when entering a procedure, to support the school in gathering evidence. Personnel were useful on the phone and at the meetings but there are 750 pupils in school all the time and there is a time pressure and you need a few days to crack it. It would be useful if you could say to someone 'here are the issues, you collect the evidence', for example, phoning the exam boards.

(ii) Occupational Health

They were not involved.

(iii) the governing body

The Chair of Governors has had my version of events and supports me. The governors are concerned about this Faculty and about the results but have no overt knowledge of the procedures.

(iv) the union

I found the union representative flexible and a help.

(d) On the four-week fast track:

How could you turn the situation around in four weeks? For example exam results are administered generally once a year- if there are number of administrative tasks done by the person, there might not be a comparative administrative task within the four weeks. If the behaviour of the pupils was the problem and the school policy was not being implemented, it would take more than four weeks for the person to turn it around.

5. Comments of Other Key Players

(a) Personnel

In April 1999 an informal meeting was arranged at which to raise concerns. It arose out of two years of informal monitoring by the Head which was very thorough and very fair. Informal targets were set especially over schemes of work. We reviewed the targets and judged them not to be met. In June 1999 we went into the formal stage with the recorded interview at which the formal targets were set. At this time, the situation looked grim. She had failed significantly to meet the targets and didn't seem to see the importance of it at all. She had support in the informal stage, through a member of the SMT working with her and monitoring her work and giving feedback. The school did change this member of staff to one that the Caroline herself chose. She was given time off teaching; she was asked to go and observe other staff; she was given feedback and INSET was granted if she wanted to go on courses (I think she chose not to). She had the offer of a mentor and was given the opportunity to visit the same department in another school. She improved. She had from June to December to meet the formal targets. By the time of the December review, I had a call from the Head to say that she had turned the corner and met her targets. He said that there had been a sea change in her approach and we didn't need to go ahead with the formal meeting.

There was a subsidiary issue- she made a mistake in not submitting students' coursework in time to the exam board. She tried to mislead us about it. Her documentation was incomplete. It was a misconduct issue and she was given a formal oral warning under the disciplinary procedures. It all gave her a shock. However, she didn't recognize the severity of the capability procedures and she didn't want to accept it. There was a reluctance to accept that she was not performing at the required level. Ofsted did trigger the Head's concerns. He started to work on the case a while after the Ofsted visit.

The outcome was appropriate. The process was very good and made Caroline change. We try to use capability procedures in a very positive way: we always say that the aim is to improve and not to get rid. We have clear targets, good support and a clear indication of what the consequences might be. Hopefully, this then brings about a change.

(b) Union Rep

There was a personality conflict between Caroline and the Head so she was taken off the SMT. She was disappointed with her new role and there was a degree of demoralisation, there were also personal problems in the background. She was unfairly blamed for the

Department- she was covering up for colleagues- one was having an excessive amount of sick leave. I told Caroline that if her colleagues were letting her down, she should tell the Head and start writing memos. The Head is a systems man and if it is not down in writing, it doesn't happen. There was also a member of her department who was on the SMT who was not complying and I told her that she must make it clear that he must comply. Gradually the department came into line. I think it was a difficult time in Caroline's life and it was probably a very good outcome. To a large degree success or failure is down to the member and there maybe extraneous issues such as psychiatric issues and they are not in a position to respond. I find lack of capability the most difficult issue as it is attacking their self-esteem and it is so much of a value judgement.

(c) Chair of Governors

I was brought in to be reported to. Caroline needed help and targets and there were regular meetings with her and the targets were met.

1B 'Sue'

1. School and Headteacher Profile

The school is a secondary Foundation School, but was previously Grant-Maintained with its own model of the procedures. Now it uses the LEA procedures. There are 101 teachers and 1,740 pupils. The Head had been in post for four years and this was his first post.

2. Monitoring

Before the Head arrived there was no monitoring. They had an old appraisal system but it had fallen into disuse. In autumn 1997 the Head introduced systematic faculty reviews and used OFSTED lesson observation schedules, peer review and observations. The school has a Behaviour Management Co-ordinator who is directed into classroom observations. The Head also does unannounced visits.

3. The Case

Sue was a class teacher, a mature adult who had been in the police. This was her third teaching post and she had been teaching for three and a half years. She came well referenced from a similar school in Norwich which was in special measures. She also performed well at interview so the problems with her were unexpected.

Almost immediately after her appointment there were a series of complaints from pupils that Sue was acting unreasonably and there was a high number of call-outs to her room to support her. (If a teacher is having a problem a senior member of staff can be asked to support.) The Head was dissatisfied and instructed the Head of Department to put a better package of support in and give advice on how she might address the problem. The Head thought that perhaps the children were even more challenging than in her previous school and she needed support for her transition. Over a 9-10 month period there was no significant improvement. The OFSTED inspection team confirmed this when they came

during 1999-2000. The Head also had a number of complaints from parents. He felt he had to act on behalf of the children and because of OFSTED.

Sue didn't have any responsibilities; the problem was the quality of the lessons. They were poorly prepared, expectations were too low, the pace was wrong and she was not adequately managing behaviour. This was compounded by the fact that she had poor relationships with her pupils and with colleagues- she was not working co-operatively with her department. Some of her reactions to colleagues had been bizarre, for example she would say, 'It's none of your business how I am' and 'I prefer to have lunch on my own'. Her colleagues were concerned and spoke to the Head wondering if she had a mental health problem.

At the first meeting the Head presented the issues as he saw them to Sue. They then had a break of several days where the union rep talked to his member, but there was a difficulty with her accepting that there was a problem. The whole thing was cast in support of the teacher rather than looking for reasons for dismissal. When setting targets the Head found it straightforward in relation to behaviour because the school has an observation framework which makes clear what a good class is, and they could collect evidence quite easily. It was more difficult when setting targets for her relationships with colleagues and the union rep used his experience to change the wording slightly for the success criteria in the relationship targets which the Head found helpful.

The matter was brewing for several months before the Head instigated procedures but eventually a short time frame of half a term was agreed to see if there could be some improvement. There was a light touch meeting part way through and at the end of term a meeting with the union rep for a formal review. The Head thought this was a reasonable length of time and an achievable goal.

Sue improved her relationships with colleagues, she talked to them about how she was viewed and then responded more positively. She also had no trouble about asking for support from Behaviour Management Co-ordinators and other staff. The Head of Faculty provided support and the Behaviour Management Co-ordinator provided negotiated support finding out how often he should come and whether she wanted support with detentions. The Head of Department also reviewed lessons. The outcome was that she met the targets and could be taken off procedures.

4. The Head's Comments

(a) On the case:

The first Deputy has personnel issues as one of his major responsibilities so I also discussed it with him. He line manages the Head of Faculty so he had had informal conversations with Sue. I talked to the Deputy to make sure that he wasn't being off-beam and the Deputy confirmed my view. I was surprised at the outcome because of the denial stage and the long period of time that there had been a problem but Sue did make changes and since it has finished there has not been a single complaint about her. It worked out brilliantly. The outcome boosted staff morale- everybody knew the person had been letting the side down and they get frustrated if senior management don't do

anything about it. When she stabilised they had to provide less support for her. I think that Sue is an intelligent woman and had clearly been a capable teacher in previous schools. She had either misread how to operate or there were other circumstances which she didn't reveal. She used the support given and the clear focussed targets, for example lessons start like this and end like this.

I partly wish I had acted earlier because it was so successful but hoped that informal observation and peer support would sort the situation out. In order to try to get the best fit of person for the school I now ask people to teach and for leadership posts I set up in-tray exercises as well as looking at appearance and references but I find that it is not scientific and sometimes I get it wrong. I think that increasingly we are put in the position of seeing staff at interview and then being under pressure to make appointments.

I found it stressful as everything that I did was confidential. I also had self doubt over whether I was making the right decision. I don't operate the procedures very often and there is an anxiety that the procedures are being followed properly- I didn't want to put the governors in an Industrial Tribunal situation. I didn't know how Sue would react and how combative the union rep would be. There was also a time pressure with the paperwork. The Head of Faculty knew about the procedures because of the evidence collection. She didn't discuss it with anyone but Sue talked to everyone in the Faculty. Sue didn't enjoy the experience- there was the period of denial and then anger and then she got herself out of the mess.

There is no way of reducing this stress, if you are 'blasé' about it, you would be doing it wrong because you would be insensitive to the issues. I see myself as the advocate for the children. The experience taught me that I have to get on with it.

(b) On procedures:

I found the procedures clear, I knew what I had to do and the case went well so I can only feel positive. In the grant-maintained procedures there were specified periods of time set out more clearly. The LEA model was waffly about time spans. Personnel imposed a timetable on the model. It might help if the length of time to take was made clearer.

(c) On the role of:

(i) the LEA

I benefited from the fact that Personnel had an established working relationship with the union rep so that there was almost a sense of trust between them. They met separately and had little chats – oiling the wheels so that the union rep entered meetings reassured about the intentions of the school. This made a huge difference. It was important that Personnel were available on the phone and by e-mail. Personnel made themselves available and would arrive early and stayed after meetings and made time for me and the standard of their paperwork was high which helped. The Head thought that the quality of advice was fine but felt it would be nice to keep the same person (they are on their third person). The School Development Adviser is very effective but this is not the case with all of them.

(ii) Occupational Health
They were not involved.

(iii) The governing body
I notified the Chair of Personnel on the Governors' Committee but didn't discuss the situation in detail in case it went to a dismissal.

(iv) Trade Union Representative
The union rep provided assistance over targets.

(d) On the four-week fast track:
They could open you up to allegations that you have not provided adequate support which the teacher needs.

5. Comments of Other Key Players

(a) Personnel

Sue had class difficulties and there were lots of parental complaints, also observations noted problems. She was not engaging the children and was very rude to them, also aloof and not forming relationships. There were differences between personalities and maybe communication problems. I was brought in when staff were at their wits' end and they had few choices other than to go formal. It would have helped if I had been involved earlier. Some of the problem was attitudinal and there was a lack of acceptance by Sue that there was a problem. I would be at the school all day filtering the information and listening. I helped to write the targets and gave emotional support. I always respect dignity and I am polite and make information as truthful as possible but also palatable. I talked behind the scenes with the union rep and acted as a go-between and offered solutions.

(b) Trade Union Representative

The concerns were brought home to Sue and there was an action plan. She was 'cheesed off' and I spent a lot of time talking to her, so that she could believe that she was being seen in these terms. I had a discussion with LEA personnel and we decided that perhaps she shouldn't see some of the criticism but she did and it pulled her up with a shock. She rose to the occasion and met the targets; it is a good example of working with a sympathetic Head.

1C 'Andy'

1. The School and Headteacher Profile

The school is a secondary Foundation School, which has 62 teachers and about 1017 pupils. The Head has been in post for 12 years and this was his first headship.

2. Monitoring

The Head monitors capability through a performance management system. The Head of Department meets the head and senior management team to discuss exam results and teaching strengths and weaknesses. The Head thought that there are certain basic

qualities and skills which a teacher needs and if they are lacking in more than one then they are incapable, for example control of children, motivation of children, lessons which are interesting and which children learn from. Other skills needed by a teacher are sound subject knowledge, ability to create confidence in pupils and most importantly that the teacher is open-minded and prepared to adapt and take on new skills. The minimum expectations of a teacher are that there is order in the class, interest shown by the pupils and progress being made.

3. The Case

Andy was at the school for eight years, before which he had taught in another school. He was a maths teacher and form tutor. When he first came he was always better with younger pupils, since his class organisation was not strong and older pupils would take advantage. In 1994 he was identified as having weaknesses by OFSTED in his planning, teaching and use of resources. Time and effort was invested in him and there were lots of improvements but then came a second OFSTED in October 1999. Andy was observed on three occasions- one lesson was satisfactory, one lesson was unsatisfactory and in one lesson the Inspector was so concerned that he came and saw the Head. The Inspector spoke to the Head of Department, the member of staff and the Head. Andy had set a test which was poorly planned and poorly organised; in addition, the supervision was poor. Andy told one pupil who had finished to draw a picture of himself on the back of his work. The OFSTED Inspector felt insulted apart from anything else and the Head decided to take action.

Apart from concerns about Andy, there was criticism by OFSTED of the management of the staff by the Head of Department who was not monitoring or taking action. Subsequently, the Personnel Committee of the governors decided to employ a recently retired head that was a maths specialist as a consultant to look at the quality of teaching. The consultant gave advice but Andy did not act upon it; he was in denial and he thought everyone else was wrong.

The Head saw Andy on Friday January 28th 2000 and put him on informal procedures, at which point he went off sick and his GP wrote a certificate saying that he was suffering from debility. He was paid until the end of August, which was a strain on the budget, as the school had to pay for a supply teacher at the same time. A compromise agreement was signed on 30th June which cost the school £5,995 - the school essentially paid three months salary from June-August and an extra month because of a breach of the notice period. The LEA represented the school in the compromise agreement and contacted the Head who was unhappy but agreed. The solicitors wrote a reference for Andy. When the Head read it he would not accept it and re-wrote it. He had to agree to supply a reference and an oral reference in agreement with it. The reference was bland, for example, 'Andy had taught at all levels with some success, his attendance and punctuality was good. He was particularly liked by the maths department and had sound relationships with colleagues. He had had a period of ill health and it was a mutual decision that he left.' Andy applied for a few jobs but the Head did not have to supply the reference.

4. The Head's Comments

(a) On the case:

Andy didn't improve because of stubbornness and a lack of consistent monitoring and pressure within the department. The Senior Management Team monitored but not on a day-to-day basis. Andy also found change difficult and resisted it at the end by denial. I would have liked to be able to resolve it more quickly but the illness meant that everything had to stop. I think that it would be helpful to be able to get round that without being unfair.

It will be easier now that performance management is in place because the system will be laid down, although capability is never an easy issue to tackle. Teacher competencies will also provide the basic standards required and they can be picked up through performance management. However, performance management will identify a lot of needs and there will be requests for courses and in-service training so there is a cost implication. If targets are set the onus will be on the school to do things- teachers will say, 'I haven't improved because I haven't been provided with the resources to solve the problem' and I won't have sufficient finance so I will have to prioritise. The threshold was not a problem this year but if they can't move up because of lack of developmental changes then I will be responsible.

Within the school as a whole there was no effect on morale apart from staff having to provide cover for the teacher; the school did get a supply teacher but it was quite difficult. It demoralised the maths department but that summer they got the best results ever, although still not quite as good as some other departments. I had received complaints from parents about Andy but when he was ill there was also a problem in that they wanted to know when he was coming back.

In retrospect I wish that I had not appointed Andy in the first place but he was the only candidate at the interview; there are fields of one - that is the reality of the situation. Recently I appointed a person who was the only candidate but it turns out that he doesn't have the necessary skills- I could have appointed him on a trial basis but the person could get six other job offers, one of which would be permanent. There will be more capability procedures because of the teacher shortage. I hope that we now have a better system for monitoring the work of teachers so that they can't drift down without it being tackled more quickly. The whole drive for better results has made the school more aware of value added and aware of what each teacher produces as it comes out in the statistics. There are target grades for all pupils, which the teacher will know, and there is data to pick up on poor teachers. Ten years ago this wasn't the case; in the past the performance of a teacher was based on the sound coming out of a class.

There was genuine stress on Andy, and I became stressed in dealing with futures and careers. If you go to formal capability procedures you have to make sure that things are done properly as you know you will get opposition and you have to have evidence. In a company you would just concentrate on one thing at a time but a Head also has to run the school so you can't just concentrate on it.

(b) On procedures:

I found the procedures easy to operate, but I want to avoid capability procedures if at all possible as I think it has an impact on morale of staff. However, I am aware that if you don't do it, it can have a demoralising effect. The key is whom you appoint.

(c) On the role of:

(i) LEA

Personnel advised me on the use of the procedures and checked letters. I felt a sense of frustration as I wanted to act more quickly but I realised that Personnel had dealt with such matters before and that it was necessary to avoid mistakes as they could prove to be costly.

(ii) Occupational Health

The Occupational Health doctor helped indirectly to precipitate the resignation. Andy was asked to attend an appointment and this made him start thinking about resigning.

(iii) the governing body

The governors are concerned about the maths department and OFSTED made it a significant area of concern. The governors thought it was a good move forward when Andy left.

(iii) the union

I have found none of my dealings with unions helpful. I have found them all confrontational. They have had complete acceptance of the truth as expressed by their member and they have given 100% support for them when patently there have been faults. The case would have been harder if there had been a union rep involved for the whole case but the association discovered that the teacher wasn't a member and stopped representing him.

(d) On the four week fast track:

I approve of the notion of completing the process more quickly because in the past it would take years, which was no good for anybody. However, on the whole I wouldn't want to go along that route. I would like to think that all the appointments I make are someone I could do something with, but I recognise that there are instances when you appoint the wrong person.

5. Comments of Other Key Players

(a) Maths' Head of Department

The unsatisfactory lesson which Andy taught was caused by the pressure due to OFSTED and the profession has lost a capable teacher. There was no indication before that there had been any dissatisfaction with this teaching. (The Head of Department himself is now subject to capability procedures and his management abilities were criticised by OFSTED.)

(b) LEA Personnel

When OFSTED attempted to give feedback in 1999, Andy wouldn't listen. He was never responsive to feedback and constructive criticism. The Head admitted there was some criticism of the Maths Department which should have been picked up on. The Head wanted to go straight to the formal procedures but Personnel advised against it because he had no evidence at the informal stage. Andy sent Personnel two pages of notes saying that the Inspector had said that he was not failing and that the Inspector was biased. He also said that he had been summoned to the Head's office and that the Inspector 'flew into a rage' and that the Head had shouted as well. Andy said that he was not allowed to say anything. The Head had also said that he could resign or face capability procedures and that he would be 'out in two months'. He also said that the consultant was very negative. He said that he had been teaching for nine years and not had problems before - no parental complaints and that he was a scapegoat for the school. This had made him ill, bitter, stressed and alienated.

The best point of intervention would have been 1994. The consultant's report was not helpful as it only gave general comments which were blunt and not constructive. Schools where capability procedures are being operated are those in which systems are not in place. Many cases which we deal with should have been dealt with earlier and the cases have gone too far.

(c) Trade Union Representative

The school had an awful OFSTED, but the OFSTED inspector was very, very rude to Andy and he crumpled and couldn't go back. It destroyed him; he was very ill.

1D 'Debbie'

1. School and Headteacher Profile

The school is a Catholic primary, it has 10 teachers and 248 pupils. The school is in an Education Action Zone area and it is socially deprived: in the performance tables the school is at the bottom. The Head has been in post for three years, it is her third headship and she has 12 years experience as a head.

2. Monitoring

The Head monitors capability by looking at weekly planning and observing lessons regularly. She defined incapability from a purely classroom based perspective, planning and delivery of a sound curriculum.

3. The Case

Debbie had seven or eight years of classroom experience. She was a Deputy Head who nevertheless had a full-time teaching role. There was a problem on the managerial side which was manageable; the main concern was her teaching. The difficulties had spanned over a number of years and because the Head had at one time been Deputy at the school and Debbie's mentor when she was a teacher; she was familiar with the issues. Debbie had been teaching four years at the time and there had been a redundancy situation and she was put in the position that if she hadn't taken the Deputy job, one person would have been made redundant. Debbie's behaviour was bizarre; for example, she worked in

school until 2am. One night she left at 1.30am, went to Tesco all night shopping, had breakfast at Tesco and then went to school. Because of her overwork she used to fall asleep at school during meetings and her punctuality was horrendous. Parents noticed and this caused problems. There were huge personal problems, she had lost both her parents and her brother had committed suicide in the space of two years. She was dedicated, loved the children and is a wonderful person but she was not doing the basic things - planning, following up and assessing so it was difficult to protect her.

Debbie had a nervous breakdown on the second day of OFSTED in June 1998: it was the straw which broke the camel's back. The doctor stated that she was fit for work in September 1998. The Head questioned that judgement. Debbie was still staying late so the Head issued a directive that there could only be three key-holders and that no one should be in school after 6 p.m. to prevent overwork. Debbie was absent spasmodically. In April 1999 Debbie became a teacher again as she realised that she was not functioning as a Deputy. Debbie thought this would reduce the stress and that she might function more effectively as a class teacher. The Head set targets and provided support and discussed it with the School Development Adviser; they were manageable targets with timescales but the targets were not met so the Head set more targets. Then it became, what the Head termed as 'semi-formal' and the union representative and the LEA were involved. They advised her to resign with a financial package.

There was an HMI inspection in November 1999, and the Head helped her in certain areas. For example, the Head wrote the maths policy which she adapted, and the action plan on condition that she did her planning, but this was never done and there were two years of SATS reports missing - they were at home. HMI advised quite specifically that if the matter was not dealt with it would become a management issue. The Head felt pressured by OFSTED, HMI and the School Development Adviser to deal with it.

The situation was on the verge of going into formal procedures. Debbie was given a verbal warning and one written warning about the necessity of doing planning and delivering the curriculum. The expectations were explained in the written warning according to the pay and conditions document. The outcome was that Debbie resigned on a compromise agreement on 30th April 2000. She is now teaching part-time in another area not covered by the local education office. The Head gave her a reference.

4. The Head's Comments

(a) On the case:

The other teachers had no idea of the situation for example that Debbie was being set targets. Debbie looked stressed and was not well and the staff thought she was being sensible and getting out. When Debbie was working she didn't have an adverse impact on others - she advised other members of staff on planning as the numeracy co-ordinator and did it very well she just didn't do her planning for OFSTED and HMI. However, the staff were concerned about the hours she was working and that she slept in meetings and breaks. It became a bit of a joke, part of the pattern. The parents were sorry to lose a teacher and in the letter to them I worded it that she was resigning for personal reasons.

Because of the area and its problems there is a very high staff turnover so it was not out of the ordinary.

In retrospect I think that Debbie was basically ill - if she picked up a pen to do planning she went to sleep. Her GP and the Occupational Health Unit (OHU) let her down and should have told her to take a year out. She couldn't improve despite the fact that she wanted to. I also think that I wouldn't have accepted the GP stating she was fit for work in September 1998 and feel that I should have pursued it. Having said that the Occupational Health doctor could only make a judgement on what the teacher told him but I think that the school's input should have been asked for. Debbie was in denial and she just told them that if she had non-contact time there would be no problem; the OHU had no background. I also feel that I should have used the procedures faster. The school had serious weaknesses and maybe the LEA could also have provided one-to-one support for her to share the load.

Both Debbie and I found it stressful. I think that in a small school it is more difficult than in a larger school. I couldn't talk to anybody about my personal feelings. I had to try and keep it away from the school. I spoke to my daughter who was quite helpful but she didn't know the situation. I think it would be helpful if counselling were available for heads.

(b) On procedures

I felt it was a big step going into the procedures because I envisaged that it wouldn't stop there, I found it quite a difficult thing to do professionally. The school's model of the procedures was used. I found the procedures easy to operate and would have found them effective had Debbie not had the problems she had in accepting what was happening.

(c) On the role of:

(i) the LEA

I had advice from the LEA and the School Development Adviser. I also think that the LEA should send an adviser out at the first sign of a problem. I did not find using the telephone effective; I think that you should alert the LEA and then look at the problem together, itemise it and discuss what you can do for example give a verbal or written warning. Otherwise you are left floundering and it is more stressful. There is only one Diocese director and one assistant for the whole of the area, so there is not a lot of support from there.

(ii) Occupational Health

Occupational Health were involved, as the school Personnel Adviser arranged this after her breakdown. Occupational Health was not helpful; if I had had more support I would have ignored the Occupational Health doctor. The doctor said that if Debbie had more non-contact time she would be fine but I thought 'I can't teach her class and do the work for her'. There was a question over several cases with this Occupational Health doctor and the LEA was going to look into it. The Occupational Health doctor's comments read as if it was the school's fault and the doctor was not looking

at the health of the person. I removed some of the Deputy's roles and gave her non-contact time.

(iii) the governing body

The governors were informed. I spoke to two governors who were very helpful as they had experience and were aware of the personnel requirements. I told the governors that her decision to resign was because of ill health and personal reasons, only the Chair knew the full story.

(iv) the union

Debbie and I had the same union representative so it was decided that I consult another person. I thought that the union was very helpful. The teachers' rep advised her to resign and was largely supportive over what the school had done.

(d) On the four week fast track:

I think that as long as all the background is known by all the agencies involved, everything is clear and it is thought to be right and proper, then four weeks is in some ways kinder as long as the person has been given a chance to improve. Capability procedures are clear but I would like to see it speeded up at the end to get it over with. In terms of this case, it was unavoidable and was always going to happen and the school is better for having resolved it efficiency wise.

5. Comments of Other Key Players

(a) Personnel

The Head and governors had been working on the issue before involving Personnel. It became an ill-health case. The school had agreed to decrease her duties as a strategy to help with her poor performance. Debbie stepped down to be a manager (+1). This would not have been our advice when she was under procedures and she was unwell, as the school could have been in a vulnerable position if it had gone to a tribunal. The ill health was stress related and it was all to do with the job. She had been off sick during OFSTED, she was there for the first day and then off. She got a lighter workload when she went back to school but she was still not good in the classroom. The OHU cleared her to go back to work. However, the County Medical Officer wrote saying that if the capability procedures went formal, it would be detrimental to her recovery. This was not helpful and the school was unhappy about this letter.

OFSTED had serious concerns about Debbie and the informal capability procedure was continued. The union rep was very supportive to raise her standards in the classroom. It was a very sad case. We met with Debbie and the union rep and discussed how the school saw the situation. We gave her the opportunity to give her view, but she was very clearly still unwell. She was irrational. I spoke off the record with the union rep who felt that it was unfair to discuss a compromise agreement but was happy for us to give her targets and support. I felt that the support which the school had already given was considerable. The school met all her concerns about going back to a backlog of work (most of it had already been dealt with, but it was a barrier for her). The Head had taken on lots of the work and other people had helped. She had one day's non-contact time.

She had lots of support and she had already stepped down from her role as Deputy. A letter was sent to her with the offer of more support and outlining the targets she needed to meet (informal stage because of the letter from the County Medical Officer). The targets were around classroom planning and delivery as well as her role as maths co-ordinator for maths key stage 1 (this was the +1 post). Again she had support for this and non-contact time. Eventually we entered into a compromise agreement on 30th April 2000.

The school governors had been concerned because of the children's education but everyone wanted to be supportive of her. It was all very, very supportive. Her work environment was a mess, and I gather her home environment was a mess, too.

(b) Trade Union Representative

I knew about the case quite early on. I met with Debbie and discussed the situation and represented her at meetings. I think the outcome was reasonable; there was a compromise agreement, I negotiated it and advised on its effects. If teachers are not meeting the targets, it is usually not just purely capability, there is usually another factor like health which is influencing their ability to meet the targets.

(c) Chair of Governors

The procedures were not easy to operate because there was a lot of conflict between the guidelines of the DfEE, LEA and Catholic Church. In the end we combined the LEA and Catholic procedures. I think the outcome was appropriate. In retrospect, I should have got the LEA and the Catholic Director of Education together from the start and ask them how they wanted us to play it. I also should have relieved more of the duties of the Head because although she tried to make it impersonal, it was personal; and it took a big toll on the Head as they had been friendly.

1E 'Trevor'

1. School and Headteacher Profile

The primary and nursery school has 15 teachers with 303 full time pupils and 52 part time in the nursery. The Head had been seconded to the school for one term to sort out a number of problems. He then went back to his own school before coming back to the case study school as head from 1998. He has been a head for over eleven years and this is his first formal capability procedure. In the past he had dealt with issues informally.

2. Monitoring

The school monitors by regular class observation, as well as looking at planning and children's work. An incapable teacher or manager is defined in terms of inappropriate or inadequate outcomes, with no possibility of sustained improvement.

3. The Case

Trevor was appointed as Deputy Head to the school which was in difficulties. There was some discussion over whether the appointment should be made, but because there was

intense pressure to sort out the school, it went ahead. The Head had been reluctant to appoint, but was over-ruled by the LEA representative. Trevor had come from another school in which he had two management points. He got this Deputy appointment very late in his career; he was just over fifty, and he had always been in the teaching profession. The head, having been seconded for one term to this school, returned to his own school for one year and then came back again. On his return, he heard from the Acting Head that there were problems in relation to Trevor's performance. Over the following year, it became apparent that Trevor was not fulfilling his deputy role and that his teaching was just satisfactory. The Head raised issues with Trevor, but to no effect, and at the end of the year met to say that he wanted to start capability procedures. However, the meeting didn't take place because Trevor did not invite his union representative to the meeting until it was too late. There were objections to meeting in the summer holidays, and so the meeting was planned for September. Meantime, Trevor was seconded for one term as Acting Deputy to a fresh start school and it was anticipated that he would be invited to work there for at least a further term. In the event, the fresh start school did not want him for a further term so the Head arranged to see Trevor in January. Trevor procrastinated again with the result that the meeting was brought forward and took place towards the end of the autumn term. Issues were aired, but a further meeting was arranged in order to set targets. The union representative then made contact with the school asking for further one-term secondment to a school in a different LEA. This request was refused and so Trevor resigned. There was no deal, although the LEA suggested this.

4. The Head's Comments

(a) On the case

Trevor should have felt some goodwill toward me, because he thought that I appointed him. Perhaps he was disillusioned because he had not been appointed to a deputy post earlier in his career. He clearly shouldn't have been appointed, as he was a complete disaster. He was in charge of ICT but did nothing. He was staff development manger, but he didn't plan any training. I supported his application for the NPQH (National Professional Qualification for Headship) because OFSTED had said that he ought to apply for headships, and I hoped that it would help with his deputy role. My adviser disagreed, but I wanted to give him a chance. With regard to his teaching, his classroom didn't inspire, but, when observed, he could pull himself up. He wasn't exciting, or challenging, nor did he move children on. By the end of my first year in post, I was raising issues with him and asking him to take on specific things. In September 1999 we had a chat and I told him that I had to have an effective deputy. I re-wrote the job description with specific named tasks for him. When I started to lean on him, he blamed me and started being vindictive and undermining me. He was very unprofessional, for example if I went into class to say something to him, he would make derogatory comments about me to the pupils after I had left. I think he was probably annoyed that he was not appointed as acting head when I went back to my own school. He blamed me and said that he didn't get time off to do his paperwork. I appointed a support teacher for two days per week, so that he could have time off, but he simply went into the classroom with her, and still didn't carry out his deputy roles. Since he never used his deputy office, I

assigned it to the site manager, so Trevor moved his desk into the boiler room. He was very silly.

My school business partner commented on how Trevor's self-image was way out of line. When we moved into capability, he had to confront a view of himself that he didn't recognise. He was incredibly pompous and it was embarrassing when we were interviewing for staff. He had odd responses to people and his personal insight was at odds with reality. When he came to our post, his previous head wrote an excellent reference in order to get rid of him. There was a rider on the letter stating "without responsibility and at own risk". When I wrote references for him, I was very positive and listed all of the good things set out in order of the person specification. However, I left blanks where I had nothing positive to say.

We finally met with Trevor and his union representative when his term's secondment was coming to an end. By this time he seemed even stranger, as though he was in an emotional trauma. He had clearly not briefed his union representative and it proved impossible to set targets so we had to agree another date. I was extremely frustrated by this. I had written to Trevor about a number of issues, but he didn't reply to my letters. While Trevor was seconded to the fresh start school, I appointed someone as assistant head, so that she could deal with some of the jobs which Trevor hadn't taking on board. The union made a lot of this in our meeting, and this meant that we didn't get around to talking about targets. We were then asked if we would second him to another LEA. The governors and management team refused because we felt it didn't deal with the problems, and that we would be in limbo for a further term. Eventually he resigned, and I was dead against money changing hands although the LEA suggested this. I understand that he now has a teaching job elsewhere. He should have done this earlier, as he wasn't failing as a class teacher and the parents liked him.

(b) On procedures:

Trevor used blocking techniques so that meetings kept being put back, and it went on and on. The case involved a lot of work and was lengthy and time-consuming; it is a minefield. I checked with the Croner Legal Guide and the advice that personnel gave me was similar. Trevor had one year with informal talks and no progress, and this is a long time for someone to be undermining. I wonder if it will come back as a constructive dismissal. Personnel will support and pay if it goes wrong. I was forced to take advice but I feel it's namby pamby when someone is obstructive and has not done the job properly. It could have been disciplinary, but it was all at the informal stage. Trevor was very stressed by the whole thing.

(c) On the role of:

(i) the LEA

I felt constrained by the way the case was handled, I felt I couldn't say this, and I couldn't do that – it was a very circumspect way of working. Personnel were overly wary about employment tribunals. County talked about a pay-off but I was appalled, as I didn't think that he was entitled to anything.

(ii) Occupational Health

There was no ill health in this case.

(iii) The role of the governing body

They were informed

(iv) The union

Both of us were members of the NUT but he was supporting the member of staff. I had been warned that he was very strong and that if anything had been borderline he would have pounced on it. Ultimately I think that he oiled the wheels because he could see that he could not defend the indefensible and he rang me to ask if I would accept Trevor's resignation.

(d) On the four-week fast track:

The faster, the better.

5. Comments of Other Key Players:

(a) Teacher

I don't know anything about capability procedures, and I wasn't aware that Trevor had been subject to one. I suppose it was right to use capability procedures in this case, as Trevor was very negative and tried to pull colleagues into negative discussions. It was very uncomfortable being drawn into criticism of the leadership and staff felt that they didn't want to go into the staffroom if he was there. He used to phone us up at home looking for support. I am sure that all the staff felt the same way. After he left, we all shared how much pressure we felt from his behaviour, yet we were all trying to be loyal to everyone. I don't think that Trevor was well mentally. I think that it is very difficult for less senior colleagues to go above the head of someone who is not fulfilling their role and share concerns about lack of leadership and guidance. Performance management may help with this. This situation was allowed to rumble on for too long. Trevor had been the same for so long that some of us had got used to it. It became an anti-leadership and loyalty context and it damaged the school. Someone needed to flag up how awful it was getting. He was seconded elsewhere and never came back and the school is now a much more comfortable place. All of the staff knew that Trevor was under-performing in his deputy role. There was a period of resentment because I had been Acting Deputy before he came into post and I did a lot of the work for him. I was treading on his toes, but he wasn't doing the job. When Trevor left morale improved and the school could move forward. It was best that he left.

(b) LEA Personnel

The Head appointed Trevor, but he was always worried about their personality clashes. After a year, we were able to second Trevor to a fresh start school. The Head welcomed this as he hoped that it would assure him that it was all a personality clash, but Trevor didn't do well at the new school. We didn't start procedures with Trevor because of his secondment and we had trouble getting Trevor's union representative to meetings. In fact, the NUT representative was super, very open and honest. It always works better if we get on with the union rep and can work closely with them.

Once Trevor was seconded, things in the school improved. The Head wanted to be too vigorous, and he would write awful letters, and I had to control him. He can be difficult, and he wants things done yesterday. We were not entirely comfortable with him because we wondered about hidden agendas. This was particularly the case when he appointed someone to the management spine while Trevor was out of the school. Early in the new term we sent Trevor numerous letters to set up meetings but he kept delaying them – this happened about five times in all. Then he asked if the school would agree to a further secondment to another LEA. The Chair of Governors took the decision to refuse as it wouldn't solve the issue and would not be good for the school. We wanted to grasp the nettle and resolve the situation. We agreed that Trevor had to come back to the school, but he then resigned.

I was informed about the case in July 2000. We should have brought the case earlier but the Head had a lot of work to do in the school, and I suppose he was hoping to deal with the problem. Trevor could function as a class teacher, but not as deputy. He was adequate as a class teacher, but he was a strange man. I supported the Head by being at every meeting and helping with target setting; paperwork etc. and I worked to soften a lot of what he said.

The outcome was appropriate. I was horrified that he was being seconded to a fresh start school but they only had one NQT at the school –it was a dire situation and they were grasping at straws. The secondment gave Trevor a chance to prove that he could do it but it didn't take long to see that he wasn't up to it. I'm not sure how we could have done anything differently. I was comfortable with capability procedures as I have dealt with many. Trevor is still applying for headships in the County so he clearly hasn't taken our comments on board. I only met him once and he didn't say a word, his union official did all of the talking.

(c) Trade union representative (NUT)

This was an interesting case because there was a problem with the relationship between the Head and Trevor and both were NUT members. I was involved fairly early on. Concerns about Trevor's capability were raised in the summer term and put on hold when he was seconded to another school for the autumn term. After the secondment, when he heard that he had to go back, we fixed a meeting to identify the concerns and set targets. Before anything was agreed, he got a temporary job and he took the risk. The Head released him from his contractual obligations, and he left at short notice.

I am not sure if it was an appropriate outcome because I think I saw the tip of an iceberg. Trevor was not lacking in capability, but there was a personality clash. They locked antlers and the Head clearly didn't like him. Trevor was articulate and strong, and he voiced his views. By this I mean that he could be an awkward bugger – there are plenty of these in teaching, it attracts them. While Trevor was seconded, the Head appointed an assistant head (a younger woman teacher whom he liked) and gave her some of Trevor's work. This is amazing as three management points in a small primary school are extremely rare. I would have liked to delve deeper into this case.

(d) Governor.

The Head informed me weekly about issues and we were aware of the day-to-day problems between the Head and Trevor. We were very frustrated as the personality clash and relationship between them spilled over into the school. We told the Head that he had to sort it out or the governors would do so as they were both at fault. The Head then started to monitor areas of concern including timekeeping, management style, and to set targets. I was on the appointment panel for Trevor and I knew that he wasn't the perfect match. We were in a dilemma as the school was sinking fast, with neither permanent head nor deputy and the management team below this level were showing signs of cracking. Trevor seemed to be the best of the three applicants at the time. He had a nice personality, but he proved weak as a manager so we put in support from the LEA to help him deliver. Although he was weak, he hoped to be appointed as acting head after just one term. I had a word with him and told him that we wanted him to concentrate on his role as deputy, as he had only just been appointed. I had made the point at interview that he wouldn't be overburdened by asking him to take on the Head's role as well. He worked reasonably well with the acting head but she didn't have strong leadership skills and he drifted and started to go his own way. He seemed to be disillusioned in this, his first year. When the Head came back to this school, Trevor would wind up teachers negatively about his decisions. The Head would work round him, which led to him becoming more and more burdened with work, and isolated. This gave Trevor even more opportunity to moan. The LEA intervened and we re-formulated the management committee so that Trevor had to take on some responsibilities and it meant that there was peer pressure on him. None of these strategies seemed to work and the governors were sick and tired of it. We authorised the Head to sort it out through the capability procedures, but we pointed out that he would be part of that problem. About this time, I became chair of governors at a fresh start school and I talked to Trevor about where he saw his future. We had funded head's training for him in the hope that it would motivate him. He said that he would like a headship at the fresh start school, I told him this wouldn't be appropriate, but we agreed to second him as deputy. We hoped that he could show his skills and show that the Head was wrong. However, within two days at the fresh start school, Trevor was back in character i.e. he wasn't carrying out action plans, there was no mentoring, he gave teaching assistants more work than they should have, and he wasn't keeping to his own teaching plans. He quickly demotivated staff at this school, although, again, the parents and teachers loved him. He was a good teacher, but he was fixed in his ways on what he would and wouldn't do and as deputy he was completely and utterly hopeless. It was clear that the problem was with Trevor and not with the Head. I was actively involved in the case, and I visited the school once a week, asking questions and talking to staff. The Head was a good appointment in some ways, although he had several weaknesses. He doesn't suffer fools gladly, and can be very direct. We are working on this and his performance reviews are in recognition that he needs to become less isolated. However, there were very real problems with Trevor. I appointed him, and you always have a vested interest in someone whom you appoint. He got so much support, and I was frustrated that he wasn't able to deliver. He lacked the skills to be an effective manager. He was at a difficult age, and it seemed to him that to be successful that you had to have a senior position. I told him that he was a good

teacher and that the government was keen to reward people like him. I asked why he wanted to be a head. However, Trevor didn't see it that way. We put him on the Head's course and he read into it, but he just couldn't reach the standards required. I am still sad that we lost him, I hoped that he would be able to pull it back through use of the capability procedures. Teachers in the school had learned to ignore him, and he had no credibility in the staff room. My enthusiasm for him declined when he failed so miserably at the fresh start school. He was paid a lot of money for no action, and the Acting Head at the fresh start school had to do his job as well as her own. We interviewed him for the acting head post, but his interview style was completely and utterly atrocious. You could see why he didn't get jobs. He didn't answer the question. When we asked about a scenario, and what he would do, he delegated to everybody but himself. The entire panel was amazed that he was so bad. In retrospect, the management team should have been pulled in at an earlier stage. Once the LEA had created a new management strategy with a bigger team of four, things were easier. Before this the Head made all of the decisions. The school didn't have any appraisal system. We are now going for IIP and mentors have been brought in so that everything is working more smoothly. Teachers were reluctant to have appraisals initially; it is difficult when you have negative attitudes in a school, and the NUT was hostile. With a good appraisal system, you won't need capability procedures, as issues should be picked up in a proactive way. Capability procedures kick in as a reaction and we want to stop problems developing before that stage.

1F 'Sonia'

1. School and Headteacher Profile

The school is a junior school (Foundation) and has nine teachers and 233 pupils. The Head has been in post since January 1990 and it was her first headship.

2. Monitoring

The Head monitors capability by observing lessons through an appraisal system, but the school is also taking on board the performance management scheme from the government. The Head considers an incapable teacher as someone who is detrimental to the education of the children they are teaching as the children only get one chance.

3. The Case

Sonia was on a Licensed Teachers Scheme and she had come in from Yugoslavia. The Head employed her as an unqualified teacher because of severe staffing problems. The Head involved the LEA into getting her onto the Licensed Teachers Scheme as there was no way of verifying her qualification. Sonia had been fully qualified for nine years. In the Licensing Scheme, someone from the LEA came in and gave advice and they gave her a DfEE number. Sonia is a class teacher and responsible for RE and PSHE. The problem is related to classroom teaching.

The Head knew from the beginning that Sonia had weaknesses but the school was desperately short of staff. The problem now is that the weaknesses change. The Head

generally has someone to keep an eye on her (all the staff are aware of it). The Head used to use the teachers' pay scale as a carrot and stick, as she has the freedom to give half points or whole points and she linked this with target setting. Sonia is very academic and clever which the Head thinks is part of the problem. She is not always able to carry out whole school policies and there is a language problem even though she has an MA in English- she finds it difficult to read and makes spelling mistakes. The Head does not know how much of it is culture but Sonia cannot pick up on body language or other people's views or feelings.

At one point the Head provided her with a 'critical friend' and discussed it with the new Deputy Head and asked her to befriend the teacher; however, she found the same problem. Then the Deputy went into a more monitoring role, looking at her planning and paperwork and her assessments of children. In terms of the reading ages of her children they were not making progress and she had not been administering the tests properly. However, the Head does not have a string of complaints from parents; there are one or two every so often about spelling mistakes and the Head simply explains that she is foreign. Also the parents have got to know her over the years and are accepting. Sonia is always year three so she is hidden - the weakness is minimised. OFSTED observed two lessons- one was unsatisfactory but it was on art appreciation, not a core area.

The Head feels she has tried everything- laying down the law, being friendly, using a 'critical friend'. The Head has found it fraught at times. Sonia's attendance is good but her punctuality isn't, for example she is late doing duties and she goes home without marking which annoys the other teachers.

Sonia has become more of a problem because of all the initiatives which have come in and prescriptive ways of working; you could hide before that. Now there is literacy, numeracy and SATS etc. The Head is not satisfied with the situation but realistically she says the school is fully staffed and she might only find someone worse - 'better the devil you know but she is a weak link'. When the children are moved up, teachers are aware that the reading ages of her children are lower than they should be and her assessments are not accurate. The staff recognise the differences from the children coming in from that class.

The Senior Development Adviser (SDA) saw Sonia in September 2000 at the beginning of that term. The Head thinks she needs to move on for her professional development and she discussed this with the SDA and asked him to try and find her a position. Yesterday the Head said she had an interview with Middlesex University- training teachers but she did not have enough experience at other schools. Sonia is always saying she will apply for other jobs. The Head feels she has wasted her talents and could have gone on to other things. The Head thinks that it is a security thing; the school is her comfort zone.

4. The Head's Comments

(a) On the case:

In retrospect if I had been sure about staffing I wouldn't have appointed her. Subsequently I have found it difficult to appoint staff better than her. At the time of her appointment there were three vacancies and three people applied, and I have come to grief with all of them. I got rid of the weakest one on redundancy, another one took the school to an industrial tribunal over sex discrimination. He suffered a bereavement and wanted to come back part-time; women are allowed to do this after maternity leave, but I didn't want job shares so the school settled out of court and he resigned.

I find it stressful when I think that I am not doing the best for the school. I have tried to think of all sorts of strategies but realistically in all staff rooms I am aware that you don't have all staff responding to what the Head wants and there are always some staff not pulling with the rest. Also Sonia is not totally unsatisfactory, for example OFSTED said she was satisfactory.

(b) On procedures:

I wouldn't go down the capability procedures route as I feel that I haven't got enough to justify it and there is a problem staffing. I feel I might cut off my nose to spite my face. Also houses are expensive in the area and you need your own car as there is no local transport. To try to compensate I am going to look at giving extra in the budget and to pay for a part-time extra to give non-contact time. Local heads are looking at the recruitment and retention problem. I feel that teacher status has gone down and it needs a culture change to encourage more people into teaching.

(c) On the role of :

(i) the LEA

I do not buy into the LEA Personnel services but use Capita. I have not discussed the situation with them. The school has a school development adviser but the problem is that we have had a whole succession of them.

(ii) Occupational Health

They are not involved.

(iii) the role of the governing body

I discussed the situation with the governors for example on pay rise issues- especially with the Chair. The parent governors are a problem as they make derogatory comments about staff.

(iv) the union

They are not involved.

5. Comments of Other Key Players

(a) Teacher

I acted as a critical friend and identified problems with Sonia's class management. I talked to her and made sure that Sonia understood things and acted as a sounding board for her. I feel that Sonia has made progress especially in classroom management but she has quite a way to go and she has to have things spelt out. The other teachers find it unfair that they have been listening to instructions and Sonia hasn't followed them. She

doesn't appear to pull her weight. She gets things wrong and allows her children to make a lot of noise. She doesn't have non-verbal skills and has a language problem, for example she doesn't understand humour. I think Sonia has alienated herself and that people are tolerant and helpful but there is an undercurrent behind her back. On the other hand she doesn't get the credit for getting things right. I believe that everyone has an idea of what makes a good teacher but Sonia is not good- she lacks the confidence and has no 'oomph' or organisational skills. She is very intelligent and well read and knows education theory but doesn't put it into practice. She does have positive areas but she struggles with behaviour, organisation and planning although she is supposed to be an experienced teacher.

I think she might do better in the private sector with a small group of well-motivated children as this might allow her teaching and creativity to come out. She was a good maths teacher, and she is kind, considerate and thoughtful. However, she is also arrogant and always feels she knows better than anyone else does, and will deny that she could ever be wrong.

I think that capability procedures would be very harsh, but would like to see her do a side step out of the classroom. I know Sonia's family circumstances and as a friend, however, she is paid a good salary and she doesn't do a good job. The staff feels they are dragging her behind them and although Sonia is aware of the animosity behind her back, she can't seem to change.

1G 'Fiona'

1. School and Headteacher Profile

The school is a junior school with 12 teachers and 285 pupils. The Head has been in post for six years and it is his first headship.

2. Monitoring

The Head monitors capability through regular observations at least once a term with feedback and he monitors the standard of work and behaviour. Senior managers also take part in monitoring. He feels that a teacher's capability should be questioned where children are being done a disservice, not getting the conditions to learn and not making the expected progress.

3. The Case

Fiona had eight or nine years' experience and had been at the school for four years. She came into teaching age at 44/45. She was a class teacher with responsibility for Science. The problem was with her teaching. There had been difficulties previously and targets had been put in place and were met at the time. However, in November 1999 she was highlighted by OFSTED; she had failed all her lesson observations and although some could have been the stress of OFSTED it was indicative of the problem. Fiona was ill on occasions (stress related) for short periods which made the Head step back a little.

The case lasted six months and the problem was sustaining performance over a period of time. The outcome was that Fiona resigned her post in June 2000 and there was no compromise agreement.

4. The Head's Comments

(a) On the case:

Resolving the case raised staff morale; they were supportive as they knew Fiona couldn't sustain her performance and they had to expend extra energy to support her. Fiona also felt relief; she is now in supply teaching and is capable of doing that- she doesn't have the responsibility of a full time class over a period of time. Things were moving forward too quickly; for example, initiatives nationally and at a school level, and she lost confidence in her. There was a downward spiral from then on. In retrospect I might have gone down that road more quickly, four years ago when she joined, because although she was one of the better members of staff, the change in emphasis to SATS and prescriptive teaching was a problem- 10 years ago she wouldn't have had a problem.

(b) On procedures:

The informal procedures were used and OFSTED was the final trigger. I found the procedures straightforward and think that if you are already doing monitoring it is an extension of that process. I used the LEA procedure. I think the procedures focus you in on priorities and if they are not met you go onto the next stage. I have no criticism of them. I think that capability procedures are a useful tool; it would be nice not to have to use them but you have to go for it, think about the impact on the children and ask yourself, 'do they deserve that teacher, would I like my own child in that class?'

I always finds capability procedures stressful as it causes tensions and it is difficult to get the right balance of support to improve and the pressure to make sure the children get a good deal. I don't think you can make it less stressful, you have to take the bull by the horns, grasp the thistle, and it is painful.

(c) On the role of:

(i) the LEA

I used the Adviser as a sounding post and on a couple of occasions the Advisers observed the teacher and gave feedback and support in the process. I used LEA personnel for advice but they were not directly involved, I found personnel very good.

(ii) Occupational Health

They were not involved.

(iii) the governing body

The Chair of Governors was informed and the governing body knew there was a problem but were not involved with the individual. When Fiona resigned, the Chair was sad it had got to that point but also relieved.

(iv) the union

The union representative was very reasonable. I think that compromise agreements depend on the union, some are reasonable and don't want members who are not competent but others are out to get what they can for their member- it is a drain on resources and emotions and detrimental to the children, and it is difficult to write bland references on people who you don't think should be in teaching.

(d) On the four week fast track:

I think that it could be very useful tool in certain circumstances. My only concern is that the school knows the individual well enough and that they have been given a proper opportunity to improve over time. The other problem would be whether the space could be filled quickly enough. I think that it makes more sense to use the informal procedures and then go onto the four-week fast track. I think the person must be pretty dire to go straight onto the four week procedure and I would only do that if the safety of children were at risk or the teacher was at risk of becoming ill through continuing or at risk of being hit by a parent.

5. Comments of Other Key Players

(a) Teacher

Things had gone too far with the teacher; there are pressures on the majority of people and they felt they had tried everything and it needed to become official. I would talk to her and by listening would give her tips, then as the year went on the Head asked me to help her with planning and lesson observation. I also observed her lessons and gave help on classroom management but Fiona would say she couldn't do that with her class because of x, y or z. I looked at her planning and asked how it would work and how it went. Several people had tried to help her and they also tried to help her as a team.

You tend to blame yourself and say perhaps I should have listened more. I was even writing the plan for her to try, but in the end you have to help yourself and I don't think anything else could have been done. The situation killed staff morale. When OFSTED were in the school the staff thought they were doing everything they could and they were carrying someone else. People were getting down and thinking, why should I work my socks off when this person isn't? I think it is difficult to say if she was putting in her full effort, she made lots of excuses. When she left it had a positive effect on morale. Some things spiral and there is only one way out of it and it is the best for everybody. It was sad it had to come to that but how long do you carry on going with the problem?

(b) LEA School Development Adviser

I supported Fiona with her co-ordination role in the school. During the course of the normal school review, I met with her and talked through her role and the number of areas which she was finding difficult to carry out. Following observations of her in class, I identified her strengths and areas on which she needed to focus and gave practical advice and let her know where she could access further support. I did joint observations with the Head as he wanted to ensure that his judgements were secure. I suggested what he needed to do for monitoring and how he could support her. I also informed personnel but she resigned before personnel met with her. The outcome was not entirely appropriate. Fiona can still take up another post or do supply and yet the quality of her teaching has

not improved. So the supply list will have a teacher who will have difficulties in challenging areas. From the school's point of view, the outcome solved a problem.

The Head wasn't good at monitoring the quality of teaching at first but once he had dealt with a capability procedure, he improved his support strategies. In an ideal world the Head should have identified the issues with Fiona earlier. Also when the Head was first appointed, he was so glad to have teachers that he didn't check references or the support that would be needed for those teachers. The LEA should have ensured that this happened. Early identification is important and is dependent on Heads being confident about their observations.

(c) Trade Union Representative

Fiona was unusual as she didn't want me there at target setting meetings. Fiona decided to relinquish her post because she felt she wasn't going to make the progress. The Head didn't continue monitoring and her teaching improved when the pressure was off. She also had difficulties in her private life which exacerbated the situation. She is now working successfully in a mixture of part-time, supply and short-term temporary work. There is no consistency with respect to capability; one management might think a teacher is effective but in another school it could be considered as insufficient. It depends on the ethos of the organisation and the aspirations of the school. There are 25,000 schools in the UK and there is nothing universal about provision because of the individuality of the teachers and the style and quality of the management.

1H 'Evelyn'

1. School and Headteacher Profile

This small infant school has seven teachers, including the headteacher, and 177 pupils. The Head had been in this post for ten years and had been a headteacher for two years previously. During this time, she has had two capability cases, neither of which was dealt with formally.

2. Monitoring

The Head monitors by listening to what parents say, and selecting sample children from each group in order to monitor their progress. Co-ordinators also monitor and observe lessons. The Head feels that it is difficult to monitor the Deputy role. Incapability is seen as someone who cannot delivery the content of his or her job description.

3. The Case

Evelyn had been in teaching for roughly twenty-five years and had been in post as Deputy for thirteen years. The issue primarily concerned Evelyn's role as Deputy. The Head came to the school in 1991 and from that time attempted to give Evelyn management tasks. She ensured that Evelyn had plenty of non-contact time, so that she could devote her time to the Deputy role. In 1997 OFSTED visited and reported that the head didn't delegate sufficiently. Following discussion with personnel in 1998, the Head started formally minuting their meetings and in May 2000 targets were set with a review

date of 30th June. However, prior to the meeting, the Head wrote to Evelyn suggesting that personnel become involved. At this point Evelyn resigned and subsequently found a teaching post in another school.

4. The Head's Comments

(a) On the case:

My predecessor who wanted a 'yes' person appointed Evelyn. Part of her role was to run the Parent Teacher Association, which wasn't a deputy role. She was appointed to the post prior to LMS, when the job was very different, but she was appointed to a post that she couldn't do. There were no problems with her teaching, unless she had other jobs. When I gave her other jobs, she was tight-lipped with the children. She wasn't a fantastic teacher, but she was satisfactory and she was very good-natured and willing. When OFSTED criticised my lack of delegation, I couldn't tell them that it was useless trying to give Evelyn jobs or I would have failed as a manager. It made me realise that I couldn't go on ignoring it. I spoke to personnel who told me that we could work on it informally. I hadn't realised that we could do this. I had handwritten notes on my attempts to get her to take on the role during 1993-1995 and from April 1998 I have typed notes of our meetings. Eventually she got another job as a teacher without responsibilities. I had sleepless nights over it as she was single and had a mortgage to pay. She would have liked to have some time out and to stand back from it all, but she needed the money. I suggested that she could step down and stay in the school, but she wanted to save face. I gave her a reference related to her teaching. In fact, the job she got didn't even ask for references, as the school was desperate for staff. I don't think that staff morale was affected; although staff could see that she took the salary but didn't do the job. There was no reaction from parents. I don't think that she could improve, because she didn't have the ability. It was an appropriate outcome. In retrospect, I should have moved much sooner. I blamed myself and felt that I wasn't handling the situation correctly. A course, 'educative relationships', on mentoring adults helped me to unpack the situation and I chose this as a problem on which I had to work. I don't think that Evelyn found the procedures stressful although she admitted to stress when I gave her jobs. Between handing in her resignation, and leaving, she was very niggly. Since staff thought that it had been her decision to leave, they were confused by her behaviour. I think that she was having doubts about making the change and going to a new school. She was particularly stressed in the last few weeks before leaving.

(b) On procedures:

We dealt with this entirely outside of the procedures. The Adviser helped to set targets, including one relating to the co-ordinator role. The difficulty was coming up with SMART targets for the deputy role. It was very time-consuming, but it was not hard. If someone was vindictive, then it may have been different. The procedures were effective. If I had known that it didn't have to be dealt with formally, I would have done it earlier. I wanted to involve other people because I thought that she might be going through an early menopause. I didn't want to say this directly to her; I needed protection because if I said the wrong thing, it could be used against me. When the school is small, it is very difficult. You have to see the person everyday, and if it makes them grumpy with the children, then you start to get complaints. Using someone from outside, e.g. an adviser would help to take the sting out of it and it would prevent staff taking sides. I am not the

most popular person in the school, the manager never can be. Both of us were under strain and neither of us had anyone to talk to. I did talk to another Head on occasion; it is essential to have someone to talk to, especially early on.

(c) On the role of:

(i) the LEA

LEA procedures were used. Personnel and advisers were very useful throughout. I buy in the personnel package, and have a Link Adviser. The advisers have a health check of schools and we get visits from them every term. My adviser was an ex-head who was very professional and I trusted her.

(ii) Occupational Health

They were not involved, as Evelyn was not off sick.

(iii) the role of the governing body

The Chair was informed at the end. They didn't feel her leaving was a great loss to the school.

(iv) the union

They were not involved, as the case didn't go into procedures.

(d) On the four-week fast track:

I have mixed feelings on this. When something is prolonged, it doesn't help. Four weeks is very short, and if something is so terrible, what can the person do in four weeks? In the past, the procedures were so long that they were unusable. You need back up early on for the person.

5. Comments of Other Key Players

(a) Teacher

I know a little about capability procedures and I believe that it was right to use them in this case. Without them, there is no outcome. I was aware that Evelyn was under-performing and I helped her with curricular English although this was sensitive, as she was my superior. Morale was affected in the school, because she didn't do the job for which she was paid. In the last term, she was extremely tetchy and this affected others. The outcome was appropriate in this case. I think that the procedures are too long. If you have someone who is not performing, you need to put in support, but it can go on forever. I don't think that going on courses will ever help.

(b) LEA Personnel

I didn't have much involvement with this case. The Head contacted me about concerns with the deputy. The concerns dated back over a number of years, but they hadn't been tackled. OFSTED had criticized management for not delegating, but the Head couldn't delegate because of the deputy's incompetence. As it was coming around to the next OFSTED, she knew that she had to move. My advice to the Head was to talk to the Deputy, although I knew that she had done, albeit informally. We needed to go back to the beginning and to meet to go through all of the concerns and to set up targets and support. We set a date for a meeting and wrote to Evelyn to invite her. I then got the

union rep on the phone to ask if we would cancel the meeting if Evelyn resigned. The Head was upset because Evelyn was a good teacher and these were hard to find. It was agreed that we accept the resignation and we cancelled the meeting. She resigned on 31st December and worked out the term with no management role. She's working as a teacher now but she didn't have a post when she resigned. Perhaps this was the best way, we did talk about her stepping down but she might have lost face. It probably was the best outcome, but I wasn't much involved. We are usually not informed early enough about cases, and they go on too long. This was a strong head, but she should have bitten the bullet much earlier, especially after the first OFSTED report.

(c) Chair of Governors

I am a headteacher and I have had training on capability procedures. The Head kept me informed on the case, but I wasn't on the capability panel. I helped to support the Head and share ideas on targets. The Head was very concerned about the case. I think that the outcome was for the best. You try to keep things confidential, but it is sometimes difficult with parent governors and the staff, and this may undermine the person. The procedures were easy and it's encouraging that they are now easier and more straightforward. However, they can be very long and drawn out. I think that the new proposals (that the decision rests with the head) are very good, and the safety net of appeal to governors is still there.

11 'Helen'

1. School and Headteacher Profile

The school is a Church of England controlled primary school in which there are five teachers (two job-share) and 87 pupils. The Head has been in post for 16 months and it is her first headship.

2. Monitoring

The Head monitors teacher capability through lesson observations. She thinks that problems over capability can show themselves in various ways, for example the children are not progressing or the teacher is not delivering the national curriculum. In this case it was planning and not following school policy.

3. The Case

Helen had been teaching within the LEA for 14 years. She was at the school for one term on a temporary contract. She was a class teacher and responsible for mathematics. The problem was with her planning. The previous Head who appointed her was unwell and there was a late resignation from a member of staff. The post was advertised but there were no takers and then Helen applied. The governors were not completely happy and so made it a temporary contract with the possibility of a permanent appointment. The previous Head died in the summer holidays and the Acting Head then became Head.

The Head had to deal with the aftermath of the previous Head dying and Helen continually came to her about little things about which she could have asked other staff.

The Head commented that she put 'people's heckles up'. She had an unfortunate manner which carried across with some parents. She also did not want help with planning. A literacy consultant who was the LEA adviser talked to her but she had already spent a lot of time with her previously.

Helen didn't fit into a small school and upset the staff teaching assistant. She wanted to do things her way. The Staff Development Adviser said there had been a problem with her following an inspection and this was known when she came from her previous school - in fact Helen herself was open in saying that she had gone before she was pushed. (No reference had been taken by the school). The Head then phoned the Head of her previous school and they had an honest chat- she said that there were a lot of good things in the person's teaching but her attitude was a problem. In the previous school she had had a lot of support from curriculum consultants in doing her planning.

The Head just thought that she would not have to renew Helen's contract. However, this proved not be the case as the Head had two vacancies to fill and because Helen had been with the LEA for 14 years, the Head had to prove that the other applicants were more suitable than Helen. For one of the posts the Head found it easy to prove that Helen was not suitable because it was a mixed infant and junior class and all the Helen's experience was with upper juniors. The second post was an upper junior post and the LEA advised that if the Head brought her contract to an end Helen would be able to go to an employment tribunal. The post was a job share post with four days a week available. The Head offered Helen 80% of the job and a contract until Easter but then no further employment and made it clear that she would be monitoring her very closely and her practice had to be improved. So there was a broad hint that capability was on the horizon. The outcome was that Helen decided not to take the one term offered.

4. The Head's Comments

(a) On the case:

The outcome was a good one for the school. The school didn't need capability procedures or an employment tribunal. Helen is now working at a private school which didn't ask for references. When she left it was a relief to other staff. The previous Head should have taken references. I found it very stressful and I think that Helen must have found it stressful too but she put it down to the fact that her face didn't fit. I would now be wary of temporary contracts and would rather use an agency.

(b) On procedures:

The case was dealt with outside of the procedures.

(c) On the role of:

(i) the LEA

I think that the Adviser could have warned the school about temporary contracts. There is always the feeling that other people knew and why hadn't anything been done?

(ii) Occupational Health

They were not involved.

(iii) the governing body

The governors had been unsure of Helen and so only offered her a temporary contract and were pleased when she left.

(iv) the union

They were not involved.

(d) On the four week fast track:

In terms of the four-week procedure I would wonder whether enough had been done to help someone and whether four weeks is enough time but that term felt like a year.

5. Comments of Other Key Players

(a) Teacher

The difficulty was that she was an 'experienced' teacher so she thought she knew what she was doing but because of the changes teachers have to be prepared to change. If they don't they can be quite weak and I think that this was Helen's problem. She hadn't taken the numeracy and literacy changes on board and as it is a small school you can't carry people. Helen was in charge of maths and the teachers were reliant on her to co-ordinate and to cascade information down from the meetings she went to but she didn't which was a problem.

(b) LEA School Development Adviser

I was supporting the school which Helen came from which was in amalgamation procedures. Helen was on competency procedures in this school in the light of HMI monitoring visits. I was also Link Adviser for the school Helen went to and I alerted the Head about the issues around Helen and told her to get a reference. The Head was ill (and later died), so she was not willing to take advice and she wanted to get the appointment sorted. There was also doubt about the openness of the references which went between the schools. Heads have corrupted the system through suspect references. The LEA do alert the schools to problems but a lot of our knowledge is undocumented and a teacher could consider himself to be inappropriately maligned so we have to be careful.

Helen's competency procedures fell at point of her transfer between schools and were not followed through. My advice to the Acting Head was to be very scrupulous and address problems in an appropriate way using procedures. When she was advertising for a permanent post, I advised her that it should be done with due regard to equal opportunities, an appropriate job specification and person specification and that she should get proper references.

1J 'Nigel'

1. School and Headteacher Profile

This primary school is located in the centre of a large town and has 14 teachers and 230 pupils. The Head is in his first post and has been a Head for four years. This is his only capability procedure.

2. Monitoring

The Head monitors through class observation and monitoring paper work. An incapable teacher is defined as one who is lacking in one of four areas: planning and preparation, delivery, an unreasonable standard of discipline, or neglect of wider professional duties.

3. The Case

Nigel had approximately fourteen or fifteen years in the profession mostly in this school. He was a class teacher and had one management point for art and maths coordination across the school. He was a member of the senior management team. Problems related to his management and class discipline. The Head and the LEA had observed and became aware of the problem. The Head discussed his concerns informally and told Nigel that the children were not making sufficient progress. There followed more informal observation and feedback. Nigel followed up on most of the support which he was offered, although he was resistant to some suggestions but there was no improvement, in fact, he seemed to deteriorate. The Adviser observed a couple more times, and there followed a more formal meeting. Informal targets were set and recorded and the process was on line to move to the "formal informal stage". From this date, the informal and formal stages both took one term. At the formal stage, LEA personnel became involved. Everything was clearly laid out in terms of observation, feedback, and support.

The Deputy Head, together with another member of staff, offered support and the Head monitored and provided feedback. The Adviser was also involved in modeling for the teacher and providing observation and feedback, and the union offered suggestions about support materials which were bought (videotapes). Nigel was off ill towards the end of the process: this was a stress-related illness brought on by the procedures. At about the same time, he was involved in an allegation of physical abuse on a pupil. The parent alleged that Nigel had inappropriately handled the child while trying to discipline him. The police and the child protection team investigated this, but there was no evidence and no action was taken. The two situations running together meant that Nigel needed time out. His ill health did not alter the course of the procedures because the evidence was already collected. Nigel was advised to seek counselling, advice, and support. Nigel resigned close to the point when the case would have gone to dismissal. He went to teach part-time at another school, but this did not work out longer term.

4. The Head's Comments

(a) On the case:

Nigel was a long-term colleague and friend, which made it difficult. The Deputy Head was excellent; she struck exactly the right balance between support, encouragement and honest feedback. In retrospect, I should have shortened the process, but you have to allow the person time to improve. It was a very damaging time for the school. It was supposedly confidential but Nigel felt very aggrieved and he shared this with other staff

members. There was a lot of support for him, as he was a very nice person, gentle, and likeable and most staff were very sad when he left. People found it difficult to separate out their personal support and their professional views. I think that teachers can now see that it was a necessary process, and the school has become much stronger. There was a mixed reaction from parents, some of whom were very critical of him, and some of whom were very supportive. Nigel was well liked by the children. After the event, there was a lot of sadness: we said that Nigel resigned for personal reasons. I am not sure why Nigel couldn't improve, but I think that he always found discipline difficult. Of course, in the past, there was not the same degree of monitoring. We now observe each teacher two or three times each term. It is a different work environment and we are tightly accountable as individuals and as schools. With hindsight, I would have started the process more quickly and I was fairly new as a Head. I am not sure that we could have done it any faster. The LEA helped to find him a job; however, he stayed only one term. It was not a good move for him because there were difficult circumstances in the school. I think that the Head was desperate for staff.

(b) On procedures:

I found the procedures straightforward and effective. A balance has to be struck between the needs of the children to receive effective teaching and the rights of the individual to have every opportunity to improve. In this case, the procedures lasted two terms. I cannot see how stress can be reduced because you are threatening someone's livelihood and criticising their professional competence. The procedures are a necessary evil; they need to be there to be clear, fair, and manageable as possible within the timescales. They are painful and unpleasant, but in the end, it was a responsibility that I had to take.

(c) On the role of:

(i) the LEA

The LEA procedures were used. I buy in personnel as a package. I have had four advisers in my time as a Head, and this makes it difficult for them to have an understanding and knowledge of the school. In the case, the Adviser and Personnel were wonderful. They helped negotiate an agreement with the union. The original compromise agreement meant that he resigned at the end of the spring term and left at the end of the academic year. However, a new adviser came into post, and was concerned that the situation shouldn't continue for a further term. In the end, Nigel resigned and left at Easter, with the LEA paying him for the summer term. A reference was agreed, and this was drawn up in consultation with personnel. I tried to write a fair reference.

(ii) Occupational Health

Occupational Health was not involved in this case.

(iii) the role of the governing body

The Chair was involved throughout. The governing body were informed, but not directly involved. One governor was involved in helping set targets at the informal stage. They were all very supportive of me and they were keen to give Nigel every opportunity to meet the standards.

(iv) the unions (NAHT and NUT)

I talked to my own (NAHT) on several occasions for advice on the process so that I was fair while achieving outcomes and they were very useful. Two (NUT) representatives were involved, a senior at the stage when the case went formal and they were both helpful. They encouraged open dialogue and I think that they advised Nigel to accept a compromise agreement.

(d) On the four-week fast track

Unless children's safety or emotional well being is at risk, this is very extreme and it has no place in terms of the normal process because there is no chance to improve in four weeks.

5. Comments of Other Key Players:

(a) Teacher

I know a small amount about capability procedures. I would hope that where there is a capability issue, the head and senior management team would act to nip the situation in the bud before invoking procedures. It is important to get in early. I know that Nigel was under-performing through the grapevine, but I hadn't realised the extent. The case affected morale in the school because you feel for the person and it makes you question your own ability. We missed the teacher because he was a nice, very warm man. It took a while for the school to get back onto an even keel. Looking back, I am sorry that it happened, but I understood why it happened. Of course, staff don't know the full story; we were told a little to help us understand, but it would have been better if we had more information. In this case we thought that he was getting a raw deal. He talked to one or two of us, and, of course, we only heard his side of the story. Performance management will help, and through observation, the senior management team alerts you to areas for improvement. It was better for Nigel's future that he was not forced to leave but resigned voluntarily so that he could move on.

(b) LEA Personnel

Nigel was a very kind, gentle man. It was his behaviour management and his management which caused concern. The Head and Nigel were friends, and this is why the Head found it so difficult. There are underlying problems with the Head in this school, and this affected the case. We started informally, and set targets, observed, and then went into the formal process. Nigel had been at the informal stage (outside the procedures) for a long period. A misconduct case blew up in October 1999 which made Nigel even more stressed. In November, we met with Nigel again and more targets were set. A generous compromise agreement was reached in March 2000. I went beyond my role and got a lead for another school in the area, but Nigel still had difficulty with behaviour management. I am in touch with Nigel, as he telephones me occasionally to ask about jobs. I think that the outcome in this case was appropriate. I think that capability procedures frighten heads; they find it hard and fear the workload. It is simple as long as you are clear and there has been early detection. Heads need to be sure that they have told the teacher in crystal clear terms what is required of them, and where it might lead. The paperwork is crucial and you need to reiterate the main themes. The teacher needs training before and during the procedures.

This LEA is very pro-active and the advisers and personnel work closely together. We use soft data e.g. chats, emails etc to build up a picture. I did have 125 schools, now I have 75. I am well known among the heads and unions. Most trade union representatives are very good. It is all about being fair. I would know about weak teachers in schools, especially in those schools which use me properly. Most schools see me as a management consultant, and this is good. I like to think that I am an extension of the school management team. Schools can be weak managerially, and/or there are some heads who hate the LEA. The teacher shortage means that people will think twice about taking a case into procedures. With compromise agreements, the LEA will help pay, but not if we think that the head is a maverick. Personnel got the highest possible grade from OFSTED.

(c) The Adviser

The Head of this school had been the Deputy, and I never think that it's a good idea to appoint the Deputy. He was a relatively new Deputy who had been a highly effective teacher. There are a number of concerns about the leadership of the Head, and he may be on capability procedures before too long. The issues with Nigel were around poor teaching, with very little progress being made in the class and in the end, Nigel was not capable of making improvements. The Head wasn't pushing Nigel because of their friendship, and the Chair of Governors wasn't pushing because he didn't want to upset Nigel. The outcome was appropriate in this case.

(d) Trade Union Representative (NUT)

I was involved at an early stage, and it was a fair outcome. The Head was very nice, although there were concerns about his ability; he is a weak head. The Head felt guilty about the case, and was willing to go the extra half-mile to get a satisfactory financial package. Nigel got money in lieu of notice, and the school paid for an extra term on top of this entitlement. The LEA is very parsimonious with a short arm when it comes to paying out. The catchment area for the school is not any easy one. Given the right school Nigel might be satisfactory; he won't be fantastic, but he might be sufficient. He certainly wasn't one of the worst cases I have seen, but nor would I go to the barricades for him.

1K 'Eliza' (HT)

1. School and Headteacher Profile

Eliza was in her fifties and was appointed as Head of this primary school in 1994. Before this, she had been a Deputy for three years in London and had been in teaching since 1984 when she came in as a mature entrant. The school has 215 pupils aged 5-11.

2. Monitoring

The Advisory Service is responsible for monitoring and the quality of their information is usually very good. They examine hard data e.g. examination results, PANDAs, OFSTED, etc and soft data to draw up a list of schools causing concern. Information is pulled

together at meetings of an intervention group which comprises representatives from all service areas. The aim is to identify concerns before OFSTED arrive. The difficulty is that the LEA has no power over school management, and the heads buy in the services. In theory it is the role of the governing body to monitor, evaluate, and deal with capability issues relating to Heads. However, in practice, the LEA may find itself having to persuade governors of the lack of capability of a Head, and to encourage them to act.

3. The Case

OFSTED visited the school in 1997 and serious weaknesses were identified. In 1998 HMIs visited and put the school into special measures, with leadership and management the main issue. Two governors were deputed to deal with the problem and to set informal targets for Eliza in January 1999.

The targets set were to improve:

- the management of teaching and learning
- monitoring of standards of attainment and teaching and learning
- strategic management, prioritisation, and management of change
- communication systems and teamwork.

Within each of these were 4-5 SMART outcomes. The adviser co-ordinated support for Eliza and the school, and a literacy consultant was bought in. Eliza went on a number of courses including “Building Better Business” and “Evidence Based School Improvement” as well as having a number of individual sessions on monitoring and evaluation with the adviser. A senior adviser was brought in to be the critical friend i.e. to help Eliza meet the targets, to challenge, advise and feed back and a headteacher acting as mentor offered personal support.

There was no progress on the teaching and learning policy, teachers were not benefiting from feedback on planning, staff remained unclear about their priorities and strategies, and had no clear sense of direction. Eliza’s most significant shortcoming was her lack of monitoring of standards of teaching. She was not in the classroom enough, staff did not get consistent feedback on their skills, and her use of data to analyse progress was poor. Eliza was unable to organise things in a coherent way. She went into knee-jerk reactions so that staff was bombarded with initiatives, with no coherence. Although she had a lot of knowledge and sound educational views, she could not communicate them effectively. It was apparent at hearing and appeal that she was unable to assemble thoughts in a logical order, despite feeling passionately that she could do it.

At the review meeting in May 1999, it was felt that insufficient progress had been made and there was a formal recorded interview to go through to the formal stage with review in November 1999. At review, the case was referred to the governors with a recommendation for dismissal and Eliza was suspended pending the hearing. At the hearing Eliza was dismissed with notice; she appealed, but the initial decision was upheld. Eliza went on to get another job in education, but out of the county. A reference was provided for her saying that she would be fine in a classroom situation.

The case had not come to the attention of the LEA before OFSTED, mainly because Eliza inherited difficulties at the school and in her first two or three years, there was a wave of

parental opinion against her. The LEA felt that this was not justified as Eliza had tackled a number of very difficult staff and they left. However, once they had gone, she had a clean sheet, but she could not do the job.

Eliza was very defensive, she never accepted that she had shortcomings, and this made her resistant to the process. She failed to appreciate how serious her situation was, and she didn't work towards her targets. There was no ill health in the background, although she was under stress during the capability procedure. The case lasted from January 1999 to the date of dismissal in August 2000.

4. Personnel Comments

(a) On the case:

The outcome was appropriate. There was concern about staff morale at the time of suspension, but we seconded a head to help. The LEA has some advisory heads and we have to second people and shuffle them around in cases like this. The case made the press, but there was neither backlash nor waves of concern from the parents. We wrote to the parents to let them know who was coming in as acting head. In retrospect, there was nothing that anybody should have done differently.

(b) On procedures:

The procedures are very straightforward and I cannot see any way in which to improve them, they were very effective. I do not think that the July 2000 amendments are as straightforward, but the ones used at the time were very user-friendly and clear for Personnel.

(c) On the role of:

(i) the LEA

The advisers set the targets and went into school to interview staff at the formal stage as most targets related to management of staff. We fielded a new Personnel Adviser to advise governors, someone with no previous knowledge of the case. Advising governors at the hearing is a crucial role.

(ii) Occupational Health

Occupational Health was not involved.

(iii) the role of the governing body

Two governors were deputed to address the key issues and both had professional experience of education. They sought the advice of personnel and advisers. The governors were helpful and co-operative. Governors could choose not to involve personnel, but this is high risk and if the case goes to tribunal, the LEA may not meet the costs. Most schools buy in the personnel package.

(iv) the union (NAHT)

The union was helpful. He was a very sound union representative, and he represented Eliza at all levels.

(d) On the four-week fast track:

It is difficult to justify the use of it. Why would you suddenly become so concerned? It would only work with someone new to the school or to the profession.

5. Comment of Other Key Players:

(a) Adviser

The school was in a dreadful state with children climbing the walls. The Deputy was put on formal disciplinary procedures and left. Most of the staff were on formal disciplinary procedures, so it was a nightmare. Eliza was very disorganised and there was a poor relationship between her and the staff because of this. She got a lot of support, but she didn't even produce an action plan. You have to be clear that you have done everything possible in terms of support, otherwise the process might fail. In this case, we needed to get the Head out fast. We have a very good relationship with the NAHT representative, and he felt that we were doing everything right. It was an appropriate outcome, but the case dragged on. Eliza was a drama queen and attention seeking. She manipulated people in the community, in school, and in the media. I have no doubt that we were fair to her and she should have seen this herself. There were only two governors who were capable of being effective and it was hard on the Chair who was ostracised in the community for a while. It all should have taken less time, but there was no way to improve on the process. We should have used the four-week fast track, but this would have made us vulnerable and we needed to secure an outcome. We possibly should have got to formal earlier and not bothered with the informal stage. We didn't go straight into formal because of the inexperience of the governors. Personnel were good and the union (NAHT) were fair and realistic.

(b) Trade Union Representative (NAHT)

I gave the amount of support that was expected and required. It is hard to say if it was an appropriate outcome, as the Head was dismissed. I follow the instructions of my member, and represent them. Usually cases end with a compromise agreement, before dismissal. That may have been better in this case and there was an attempt at an agreement early on, but my member didn't want to discuss it. I felt that the LEA didn't give the appropriate amount of support. I am aware that this was not their view.

(c) The Governor

The governors looked at the procedures when we adopted them. Of course, it is very different when you come to use them. There were issues in the school before HMIs came in 1998, but going into special measures was a trigger to act. Another governor and I led the procedures. We worked hard together; it was a huge learning curve. We didn't just rubber stamp, we had to set the targets and put the papers together for the case. Personnel advised us so that we didn't slip up on technicalities. I think that the LEA discussed options with Eliza at a relatively early stage, but she didn't want a compromise agreement so it went all the way. This was difficult, as there was no precedent for this, but Eliza was in denial. The procedures are easy and effective in that everyone knows what they have to do, and they give the opportunity for someone to change. It is a tough thing to do and the emotional toll is enormous. You have to steel yourself to destroy someone's career for the good of the children. However, it was an appropriate outcome

in the end. In retrospect, things might have been different if support had been put in at an early stage. It was a much longer process than it would have been in any other business, and it damages the school and the community. The school is now out of special measures, but we still have to turn things round. The school got a bad press and was in limbo for a long time. One year is a long time in the life of a primary school pupil and the whole experience is as difficult for the community as it is for the individuals concerned.

I learnt a lot from this experience, but all of this expertise has not been shared. It would be good if others could learn from my experience; I am willing to share and it would produce something positive from a very negative event. Eliza is now working on supply. Her teaching ability was never in question, although she didn't get a reference from the LEA. Unfortunately, she is teaching only one mile away and this creates gossip. She wrote an article in a local paper about how she got on a year after being dismissed, and this didn't help matters. Immediately after leaving the school she took up a consultancy role with another authority.

1L 'Terry' (HT)

1. School and Headteacher Profile

The primary and nursery school has 160 pupils aged 3-11. The school had been going through a rough time, and was in a difficult catchment area. Terry had been Deputy at the school from April 1989 and appointed Head in 1998 when he was aged fifty. The school was visited by OFSTED in spring 2000 and placed in special measures with key issues around management and leadership.

2. Monitoring

See 1K Eliza

3. The Case

Following OFSTED, the LEA needed to put in place a framework of policies and practices and an effective management development plan. However, Terry immediately went on sick leave suffering from stress. Three governors were deputed to deal with the case and they invited Terry to a meeting which he did not attend. Personnel met with the NUT representative who reported that Terry wanted to leave. A compromise agreement was reached which included a pay off and an agreed reference for posts other than as headteacher.

4. The LEA Comments

(a) On the case:

Terry didn't have the necessary skills for strong leadership. He was possibly a good deputy, but he was not effective as head. Morale in the school was hammered because they were in special measures and they lost a head whom they liked. Terry was a very nice man and staff were hit badly when he went. The Deputy then chose to leave.

There was no reaction from the parents when Terry left. I don't think that anything could have been done differently in this case.

(b) On procedures:

The case was dealt with outside of procedures.

(c) On the role of:

(i) the LEA

Pay-offs are the responsibility of the school, but in certain cases, including this one, the LEA paid.

(ii) Occupational Health

Terry went off with stress, but it was all too fast to refer to Occupational Health.

(iii) the governing body

The governors were helpful, and there was no negative reaction when Terry left.

(iv) the union

We work a lot with this particular NUT representative, and he is always co-operative and handles things appropriately.

5. Comments of Other Key Players

(a) The union

This was an unusual case because of the background. In the lead-up to the OFSTED inspection, there were allegations of inappropriate handling of a child by the Deputy Head. The LEA always suspend in such cases, even though there was another adult present, and the case was subsequently dismissed. I felt very strongly that they should not have suspended in this case. Terry was devastated as he relied heavily on his Deputy and they had a good friendship as well as a good professional relationship. The staff were also very upset and it was only a few weeks before OFSTED. The governors and I asked that OFSTED be deferred, but this was refused.

Off the record, I gave the Head a lot of support before OFSTED. He asked me about the suspension and I advised him either to take personnel advice and suspend or to talk to the other adult present and make up his own mind. Terry was a weak head and frequently asked me about management decisions.

OFSTED came in and saw management deficiencies, some of which were caused by Terry's state of mind. Apart from the incident with the Deputy, he had personal problems which left him debilitated. At the end of OFSTED, Terry was devastated. I discussed extended sick leave with him, but he was very conscientious, and wanted to act quickly. Because he did 60-80 miles a day to get to school, he felt that he would be better off getting a job locally. As far as I know, he went into supply nearer to home.

The case never got into formal processes – we agreed an outcome. I wasn't particularly happy with the outcome, but then it's not up to me to be happy, it was up to Terry. In

fact, there was a vacancy for a deputy in the school, so he could have stepped down. The governors were very supportive of him, to an extent that was unwise for them. Perhaps this was because it had been the governors who encouraged him to apply for the headship. Terry ended up being a bit irrational at the end, but it was all concluded in a very good-natured way, as Terry wanted to fall on his sword to avoid trouble.

From my point of view, a lot of heads who are in schools in special measures don't get the right level of support. This is a worrying trend, but it shows accountability where it should be. In most cases where a school is in special measures, it is a matter of months before the Head goes, especially if the Head is over fifty. This particular LEA has a very high casualty rate.

1M 'Nicholas' (HT)

1. School and Headteacher Profile

This junior school has 422 pupils aged 7 to 11. Nicholas had been a head for over twenty years and had been a very good headteacher in the early days. His forte was with the parents and he was proud of knowing every child and the parents who had been pupils at the school. It was a very important role for him.

2. Monitoring

See 1K Eliza.

3. The Case

The Advisory Service were aware that SATS results were poor and educational standards were declining. OFSTED visited and criticised poor leadership and management. The Adviser and Personnel Officer worked with Nicholas and the Deputy on their roles, and on their relationships with the governing body. The process was supportive with no accusations. It quickly became apparent that the governing body did not understand their role and favoured the staff and Deputy against the Head. Nicholas and the Deputy were extremely antagonistic towards each other, with all of their antagonism focussed on an aborted school trip. Mediation did not work and the LEA decided on an independent review. As part of this process teachers and non-teachers were interviewed, as well as the management team. A second OFSTED was close, and the Adviser talked to Nicholas about the possibility that the school would go into serious weakness, or special measures. It was seen as imperative that there was clarity in the Head's role before OFSTED came in. At about the same time, a new Chair of Governors was appointed, and this was critical in getting the process moving. Nicholas, with his NAHT representative, was asked to attend a meeting to trigger the informal stage of procedures. The LEA and governors aired their concerns and twelve targets were set in relation to leadership and management, and communications between staff and governors. Nicholas was made aware of the support that would be made available, and told that unless all of the targets were met in full, the case would move into the formal stage.

By the first review date, three months later, targets had not been met. The meeting was embarrassing as Nicholas had not brought the list of targets and it was clear that he did

not know what his targets were. He started to talk about them, but when questioned and challenged, he had done nothing to meet them. It became increasingly embarrassing as each target was discussed. Three-quarters of the way through, the meeting adjourned. During the break Nicholas's union representative talked to him and then to personnel about the possibility of a compromise agreement. Nicholas was nearly sixty and he agreed to take early retirement with some severance money until he could access his pension. Parents were sent a letter saying that Nicholas had retired, and thanking him for his service.

Subsequently, a new head took up post, but was removed after two months. A part-time head then took up the post, followed by an acting head who has been very effective. The school should have a new head from April 2001

4. Personnel Comments

(a) On the case:

Nicholas was a very personable man and he would talk to me about poetry, his family, local issues. He clearly thought that the procedures were a nonsense and he wouldn't agree that he was incompetent. In procedures, Nicholas didn't attempt to address the targets, and this was indicative of the school's problems. Nicholas was a good talker, but lacked substance. In retrospect, the case should have started much earlier, but we were dependent on the Chair of Governors and he wouldn't act. The outcome in this case was appropriate. Morale in the school was very low, and it still is.

(b) On procedures:

The procedures were easy to operate, and I cannot see how they could be improved. We all have concerns about the July 2000 amendments, as the procedures were robust before. Using procedures is the best way of dealing with headteacher capability issues, as everyone is clear about what to expect. However, they should always be started early rather than waiting. At one time, we were handling so many capability cases that it was depressing. The number of formal cases has now tailed off and I think that we may be heading into a period of stability. The teacher shortage will affect the number because you would keep someone in front of a class if the alternative is not to have anyone in post.

Stress can be reduced by referral to the LEA stress counsellor and we encourage people to talk to their union. We push the idea that the procedure is supportive and that we want the person to succeed. Nonetheless the messages are not what you want to hear. We do have people who rise to the challenge and who change.

(c) On the role of:

(i) Occupational Health

There was no ill health.

(ii) the governing body

Governors were frequently in the school, but there were no focussed, planned visits. They saw themselves as friends of the staff, including the Deputy, but not of the Head.

They blamed the Head for all of the problems with the school. The initial Chair had wanted Nicholas removed, but was reluctant to become involved and the capability procedure only took off once he resigned. The new Chair was very good and very strong and she worked closely with the LEA every step of the way. The governing body was pleased by the outcome.

The initial Chair should have moved over or given responsibility to someone else. The LEA was in the position of having to convince governors how bad things were, and they didn't want to hear it. We created focus by telling them that the school would go into special measures. It all hit the governors very hard. Training governors on their role is very important, and we do this. You need to encourage governors to start early and to give them support.

(d) On the four-week fast track:

They are necessary in some schools where things are bad. I have only used them once. We have used the threat of fast track in a school in special measures, and in this case, the teacher left.

5. Comments of Key Players:

(a) Governor

I had training on capability procedures from personnel and I have been a governor at the school for the last fourteen years. I had cause to look at an extremely serious complaint against Nicholas in the past. The governors wanted to start capability procedures out against the Head about a year before we did so. The Chair at the time went to see the LEA, but came back with the message to keep our hands off. I think that this was because the Head had been a high ranking official in the NAHT and they were running scared. Meantime, the school standards were going down so we started in procedures almost despite our adviser and the LEA. Nicholas was blocking the governors from doing their job in trying to run an effective school. At one point, Nicholas and the adviser set targets for the school which were lower than those previously achieved, and the Adviser wouldn't back the governors and did not challenge. Nicholas had been in post for twenty years and had become complacent. There is a lot of resentment of governing bodies by old-time heads, and LEA staff; they view us as non-professionals who don't know what we are doing. Newly qualified heads are fine.

Anyway, OFSTED visited and placed the school in special measures straight away with leadership and management as the key problem. I was disturbed that we couldn't use the OFSTED report in our case to go formal; this seemed incredible to me. Shortly after OFSTED Nicholas went on a compromise agreement. I didn't find the procedures easy, in fact, they were extremely confusing. I run my own business and if people are incompetent, there is a short procedure. Leaving someone who is incompetent in such a premier post does enormous damage to the school and all of the children's education suffers. We also lost a lot of good staff through the affair being protracted. We had the evidence to go to formal, and we should have acted earlier, despite being blocked by the LEA. It was all a nightmare, but we did the right thing, and I have no regrets now that

the school is moving forward. The school had four acting heads in a year after Nicholas left, but we have a new head now.

I don't think that it was an appropriate outcome; Nicholas should have been dismissed. I agreed to the compromise agreement because it was the easiest and quickest solution. I think that after an OFSTED report like this one, you should immediately suspend the head and move straight to formal. Heads are paid a lot of money and in private industry they would be shown the door. Nicholas should have gone eighteen months before, but when we tried to address issues with him and to ask what help and support he might need, he was furious and asked us who the hell we thought we were. I have been involved with teacher capability cases, and they are fine. With headteacher cases the problem for governors is who to turn to when the LEA won't listen. Nicholas could be extremely charming and was able to pull the wool. He couldn't pull the wool over OFSTED. The previous OFSTED had been fine, but then for four years the Adviser had been visiting the school while it went downhill. Why didn't they pick up on this? After the case, we asked for replacement Adviser, and although we got flak from the LEA, we did it: we pay for the service.

LEA 2

2A 'Graham'

1. School and Headteacher Profile

The school is a Community primary school, which has 16 teachers including the Head and 400 pupils. The Head has been in post for six years, it is his third headship and he has a total of 11 years' experience as a head.

2. Monitoring

The Head monitors capability through lesson observation and discussion with pupils regarding the quality of teaching and learning on a week by week basis. He annually reviews pupil progress. The Head defined an incapable teacher as one that didn't effect learning on the part of the children. He said that teachers can have many qualities but their fundamental purpose is to teach and for pupils to learn- where this isn't happening then he considered that the teacher was not effective in their job.

3. The Case

Graham had approximately 34 years of experience and had been at the school for six years. He had been in difficulties with his class teaching over quite a few years and the matter came to a head following a formal inspection of the school. Graham had received a lot of support in his classroom practice for three years. The Head put in place informal procedures which lasted from December 1999 to about March 2000. Aspects of performance in need of improvement were identified. A key person in the school offered support and suggested ways in which he could improve. Graham's performance was monitored in class, and written and oral feedback was offered. In addition, recommendations of what could be improved were given and recognition was made of improvements which had been made. Graham was set targets such as, 'show and give lesson objectives and purposes at the beginning of the lesson'. Other members of staff were identified to offer support on curriculum subjects and he was advised to get support from his union and the District Advisory Officer. He was on formal procedures from about March 2000-July 2000.

Graham eventually resigned with the intention to take early retirement with actuarially reduced benefits but the Head didn't believe he took that. He is available in the job market in supply and is seeking permanent positions. The Head has given references for him. In the reference he comments on why Graham left and concludes with a recommendation or not depending on the job.

4. The Head's Comments

(a) On the case:

I think that the outcome was appropriate. The contract was terminated by mutual consent and it is appropriate that Graham's esteem, although damaged, was not irreconcilably destroyed by going to formal dismissal which would have scarred him. Graham is still available to seek employment in other schools and maybe in the right place he could do an appropriate job. Some members of staff were aware of the procedures but I never

engaged with members of staff in conversation on this apart from the school based union rep. There was empathy both ways for the member of staff and the management. Many who knew Graham would question his capabilities and understand why the action was taken. In primary schools, a lot of observation is undertaken by peers monitoring the subject delivery of their areas so he had been seen by quite a few teachers and they had noted that his performance had not really improved between the period of one observation and another. Colleagues should perhaps have told him to 'wake up'.

The governors were saddened but partly relieved by the outcome. They were saddened because of the impact on the person's life but they were relieved that they didn't have to convene a formal meeting. Those governors who had access to the documents felt that appropriate action had been taken and to the benefit of the school. The parent community was split- parents who had kids taught by Graham were aware that procedures had been acted on and could understand it. However there was a section of parents who felt that Graham had given so much to the school and that the school was wrong to take the action and petitions were raised to support him. (Graham had been involved in many extra-curricular activities.) The parents became aware of the procedures because Graham shared this information with them to court their support. There were also petitions from the children and the children became emotional because Graham had threatened to commit suicide in earshot of the children.

I think Graham didn't improve because he lacked the ability to command the full respect of the children. He was a weak disciplinarian and the children exploited this. He also had poor subject knowledge and a lack of understanding of how children learn. In retrospect, I should have taken the actions earlier in terms of implementing the procedures. I may well have suspended him after he threatened suicide in earshot of the children. I felt this threat was emotional blackmail as opposed to genuine.

I found the situation stressful and the Deputy who conducted the informal part of the process found it stressful as well as Graham. It is a painful process when you have worked with someone as a close colleague for many years. But I am pleased I had the courage and conviction to do it because I know it was the right thing to do- there were groups of children being failed by this teacher. In most other walks of life, the public doesn't accept unsatisfactory service, why should education be exempt?

(b) On procedures:

The case moved onto the formal procedures when there was no progress on the targets and because Graham seemed reluctant to acknowledge that there was a problem. The procedures were easy to operate and effective. The only problems were emotional ones. The case took too long and it was emotionally draining for everyone involved but in terms of being fair I can understand why it needs to be that length of time- there has to be an opportunity to improve and sustain improvement.

(c) On the role of:

(i) the LEA

The LEA provided clear and concise information, unpicked the procedures and looked at the documentation which I was putting together. The District Advisory Officer offered advice on the quality of teaching, how to support the member of staff and provided reassurance that I was taking appropriate action.

(ii) Occupational Health

They were not involved.

(iii) the governing body

The governing body made no contribution because they may become tainted and so it would not be possible to use them at a later stage.

(iv) the union

I think the union rep should have been involved at an earlier stage (they were involved just before the formal stage) and so get a fuller picture: by so doing they would have been able to offer more direct advice to their member. Union advice was supportive- they didn't make matters more difficult or put obstacles in the way. In the latter stages they supported their member very well by recognising the severity of the situation and trying to get that through to the member of staff. The rep was good in ensuring that the procedures were followed to the letter of the law. However, there was a certain lack of continuity as it passed between two field officers.

(d) On the four-week fast track:

It depends on the case. You need a wealth of sound documents from the informal support and procedures- it would be wrong to fast track because you wouldn't be given an opportunity to improve. However, if it is clear that they are not going to improve while they are on procedures it might be appropriate to then go as quickly as possible.

5. Comments of Other Key Players

(a) Member of Senior Management

The situation was thrown up glaringly because of OFSTED. I tried to be supportive and older members of staff were aware of the situation and tried to be helpful but he didn't take the advice offered him. When he was given so many weeks, it did affect morale. At the third meeting the union rep was trying to persuade the teacher to leave in preparation for the final meeting. The timing of the resignation was unfortunate; it was the day after he had taken a trip to London where the kids had won a trophy in a science challenge. The teacher was really good at the football, running and science club but he was neglecting his work in class. The parents were upset when he left that the kids would be missing out on these activities. (The football club has now been taken over but not the running and science clubs). He lived for teaching and thought he was doing the best for the children but he was just very misguided. These days you must keep up with preparation, marking, wall displays etc. Recently he taught on supply a whole term at one school and he has been asked to work another term. If he is not involved with outside activities he might be better.

(b) Trade Union Representative

There were three union reps involved with this case because the first union rep became ill and I couldn't attend the next meeting. I provided telephone support as Graham was a long way away. I tried to encourage him to have a more positive attitude and suggested strategies. I talked to him about not doing extra-curricular activities. Possibly the Head was not as supportive as he might have been but he seemed a bit hard, maybe rightly so. The outcome is not nice for Graham as he now has insecurity in his job and pension rights and 'doesn't belong'.

2B 'John'

1. School and Headteacher Profile

The school is an endowed village primary school, it has 12 teachers and 297 pupils. The Head has been at the school for 7 years, it is his first Headship. He has dealt with 3 capability cases altogether.

2. Monitoring

Teaching capability is monitored through subject leaders monitoring, through class observations by the Headteacher and through work trawling. The Head also looks at all the teachers' planning. The Head thought an incapable teacher was one who was not planning for or not delivering a satisfactory education for the children or not providing for their social or emotional welfare in school.

3. The Case

John was an NQT during the academic year September 1998-July 1999. As soon as he arrived there were concerns over his planning- he didn't hand in mid term plans and when he did they were not complete, there were no learning objectives and he didn't use school schemes. The Head was keen to see lesson plans in the core areas and was concerned when he did because he thought insufficient time had been put into it. John was just walking in and doing what he felt like, his class management was poor, he had put no thought into how to group children and he was not creating a learning environment. There were scant displays and the displays rarely changed. Marking was not being done, work was not being put in their folders, his grammar was poor, he never began sentences with a capital letter and he got the kids using scraps of paper instead of using their workbooks which were then lost. He had a mentor who supported him with marking and planning- she would virtually do the work for him but then he wouldn't act on it. However, the Head gave him some leeway thinking he was a young man with a wife and baby and he didn't want him to fail. However, the Head was concerned at the first parents evening that there was no evidence of work being done. The Head was not surprised when several parents expressed concern and that bright children were bored. The Head liked him as a person but the learning wasn't happening. The Head and mentor spent time reminding him of what needed to be done, John said that he would get the work in and make sure things improved. John was given lots of support and the Head and mentor were hoping he would improve.

John was a master of excuses- there was a problem with the baby, for example the baby had to go to hospital as it had a serious condition, the Head tried to believe him but there were a number of crises. There were also problems with his wife then they had financial problems. The Head thought, he was under pressure so he tried to make allowances but even with the mentor doing a lot of the support, all the issues remained- there were still problems with his marking and work. Even with the difficulties the Head would have expected some effort but he was leaving early. The Head got him involved in the school orchestra but he didn't want to do anything there- he was a reluctant partner. The Head got to the point of wondering whether he was being unfair or whether John was lazy or didn't have the capability to teach so he got in touch with the NQT overseer.

The NQT overseer observed him and talked to him during the first term. She agreed to return after Christmas if things didn't improve. The Head saw no improvement. Targets were set on 5th May at the first informal meeting with the mentor and Deputy giving dates of when his planning and termly forecasts for the subject co-ordinators should be completed. There were also targets for displays and for the children to be organised into groups properly. Other types of targets he was given were, "lesson plans for the week must be given to the Headteacher on the first morning of that week. This should continue until informed by the Headteacher. Lesson plans 'for the day' should always be available on request. The children's work should clearly show that they have corrected identified mistakes."

The Easter break was a chance for John to do his planning- his other problems had also eased- his finance was sorted, the baby's illness was going away, he had no major excuse but he showed no desire to produce the goods. There had been lots of meetings prior to this expressing concerns and deadlines to get plans in. The Head sometimes felt that it was like talking to one of the kids who had left his homework at home. John was observed on the 19th May by the NQT overseer, she had been forthright before and this time she told John that he was placing himself in a very precarious position. John agreed with her and was very honest. On the 20th May the Head commenced the informal stage of the capability procedures. On the 27th May there was going to be a meeting in which personnel attended and he was told that he had a right to have a union rep or workplace colleague. He didn't involve a union rep. His last comment to the NQT overseer had been that he didn't want to make the effort to do the things which he was being asked to do. The day before the meeting was due to take place, he handed his notice in.

4. The Head's Comments

(a) On the case:

I hope John doesn't teach again or comes to grips with the fact that if he does then he has to put the effort in. I am upset that a young man and a young family had to change direction. He was very personable, even if he was a little odd with his rasta hat and T-shirt but that was OK- it was tolerated. I am upset that he didn't take advantage of the support offered him. The mentor also spent a really frustrating year. I am also very upset about the references and couldn't see how it could be the same person- somebody's attitude must have changed drastically. In the reference it said he had no faults; I would say he didn't have many pluses. I have made a note not to appoint anyone from that

Teacher Training College again. His teaching practice school was in Special Measures so obviously it had problems- it shows how vulnerable you are when you are reliant on references. He had a bright, compliant group of kids so they were not climbing the walls but they were not taught well which was deeply distressing. It was appropriate that he left school but it still concerns me that he has the status of teacher. The last set of references which I did for him was as a security guard. It was very demoralising for the staff seeing someone not prepared to work but still taking a wage. When he left there was relief but also sadness. For the mentor it was very demoralising- she felt that she was failing him. There were a group of parents who had been complaining in a very nice kind of way. I was impressed by their humanity, when he was going they were concerned for him and his family. The governors felt relief tinged with sadness. He didn't improve because I don't think he wanted to work as hard as it takes to be a teacher.

In retrospect I would have started the appointment process before Easter so that I could appoint and interview early so as to avoid diminishing application lists but you are not always in a position to do this. Your biggest investment is your staff and making a good appointment is absolutely crucial. They give you your biggest problems and pleasures because it is through them that it all happens or not. I would have liked to have had references that hold water and bear some resemblance to the truth. College references can be word processed items with a bank of comments- better colleges do at least finish with some personal bits. The only way it could be made less stressful for me is if the process was taken out of my hands and for him the only way stress could be reduced is by complying. LEAs have a crucial role in supporting schools and advisers can provide impartial advice and support.

Given how poor he was, I would have to seriously question that he completed 4 years at a teacher training college without someone saying have you thought about something else. I now partner candidates with a teacher and the candidate will work with a group of children and we can see how they interact with the children and listen to how they explain things.

(b) On procedures:

If we had been using the NQT procedures as we have now the whole process would have been a lot quicker. The whole thing stopped the day before the informal procedures were going to begin- the threat of starting the process was sufficient. From talking to other colleagues and with personnel, the concern is that it could have taken the rest of the Summer term and next term because of re-visiting targets. I know a colleague who has been providing support for a teacher for 2 years and the teacher is just managing to complete some of the targets so he is providing fresh targets and more support for the ones not completed. Balancing the rights of the individual with the rights of the children to be taught well is difficult. An improvement would be to improve the access headteachers and teachers have to external support and oversight. I think there should be someone who comes in, in a more judicial role to support judgements one way or another because there could be a problem with a person making a judgement which is not sound or because of personality clashes. I can't see the LEA paying for it. There is Ofsted for schools, why not an external group to help Heads to reach judgements or provide support

for problems. Ofsted can get it wrong but they work within a framework. Advisers are related to schools / authorities and some advisers are better than others there is not a standard.

(c) On the role of:

(i) The LEA:

The LEA made me feel much better, because of the constant excuses I did stop and ask myself, is it me? Am I making him fail or is it him? It was useful to have an independent observation and it was useful for John so that he could gain a more accurate perspective and it helped diffuse the situation- John had been in tears on 3 occasions. Personnel also provided solid advice on procedure. It is good to get definitive advice and get your opinions confirmed because you can be quite vulnerable. I wouldn't want to act without them.

(ii) Occupational Health:

They were not involved.

(iii) The governing body:

I spoke to one governor- the other governors who were parents were aware because the jungle drums go quite quickly in a village primary. The governor who is heavily involved in personnel for the DTI and drafted the personnel manual for the Civil Service, talked about the possibility of the need to start capability procedures and made sure everything was in place to allow that to happen.

(iv) The union:

John did not involve a union rep although we advised him to get in touch with his association.

(d) On the four-week fast track:

I have not used it, it sounds attractive.

5. Comments of Other Key Players

(a) Teacher

It didn't affect the morale of staff- the majority of staff didn't know. I was his mentor and found it difficult, tedious and frustrating.

(b) NQT Overseer

I am the named officer for NQTs and the first port of call for them and for Heads who want a third opinion after the mentor. I look at situations as dispassionately as I can. As I recall, the Head called me in and I talked to John- he said that he was far better than the Head was suggesting. I observed him teaching. (I have experience of observing and working on standards). I looked at his knowledge, planning and assessments- there were gaps and he did not teach at an appropriate level. There was no display and he got in a mess drawing triangles on the board. There are a range of learners in the class and there are 27 different nationalities in the school but some very academic parents coming from a formal background so the style of education at the school is atypical. A lot of parents

were asking questions about John. I discussed weaknesses with John and he was comfortable with what I was saying. I set action points but John resigned. He had had a significant amount of allowances given and the Head got to the point where he couldn't go on. There is less room in a Primary school to soak up a problem than in a Secondary where a poor teacher may be giving only one lesson in a series to a class.

2C 'Eric'

1. School and Headteacher Profile

2C is a boys' secondary modern school with 28 members of staff. At the time, the environment in the school was particularly tough: the buildings were in poor condition, and the intake was solidly working class from an area of high deprivation and poverty. The Head has been in post for three years, and this was his first headship. During this time, the Head has dealt with two capability cases.

2. Monitoring

Monitoring is through line management and observation. The Head defines capability using OFSTED criteria; he starts soft focus, impressions and then looks into cases in more detail.

3. The Case

Eric was in his late fifties and had approximately 30 years' experience with the LEA, 20 of which were within this school. He was head of science, as well as a classroom teacher. Problems related to both posts. His teaching was borderline/satisfactory, and there were discipline problems.

When the Head first came to the school, his pressing concerns were to recruit a new Head of Maths. Since the school is a boys' secondary modern, it finds it difficult to recruit staff. When the problems with Eric surfaced, the Head and Eric started to talk about finding a solution in January 2000, and both approached the LEA. The LEA granted retirement on efficiency grounds very speedily, with the help of two advisers.

4. The Head's Comments

(a) On the case:

When I started at the school, the Science results were a cause for concern, as well as the litany of the children. It was clear that they were being very unpleasant to Eric. Eric had to give every ounce of his effort, time and care, to the physical and emotional demands of what he was doing in class so his leadership was non-existent. When he was given early retirement, Eric could have gone at the end of the summer term, but he felt bad about leaving the school with nobody, so he stayed on for an extra term. This was the sort of person that he was. He was much better in his final term, as he could see an end to it all. He was an honest, straight forward person who worked very hard and taking retirement on efficiency grounds meant that he could leave with dignity and honour. You can't shut the door on early retirement for these people. Capability procedures are not appropriate,

nor are disciplinary. Schools are becoming more stressful and you need more support, not less. There is a “Jaded Heads” scheme and there needs to be one for teachers.

(b) On procedures:

We ask more of teachers than ever before and, if at the end, they can no longer cope, you cannot just use capability procedures. It is an appalling way to treat people and is counter-productive. People will fight against it: capability can be messy, protracted and difficult. To use capability procedures would be morally wrong in these cases.

(c) On the role of :

(i) the LEA

We have very lean management in the school: I bought in LEA premium personnel service and I am very glad I did. I couldn't cope without Personnel, and I can't see how my case would have got retirement on efficiency grounds without them.

(ii) the governing body

The governors were not involved, the Chair was informed.

(iii) the union

The union was not involved.

(d) On the four-week fast track:

Four weeks is too fast, but the procedures are too lengthy. It doesn't help the institution, or the teacher, for capability proceedings to drag on. Most Heads won't take a capability case unless the case is absolute and the person is extremely incompetent. Heads will have tried the staff development route before taking out a capability, so the procedures should be faster. Unions probably negotiated a lengthy procedure believing that this would help their members. In fact, it is very cruel, because you already know that they can't do it.

2D 'June'

1. School and Headteacher Profile

This small infant school has thirteen teachers and 270 pupils aged 4-7. The Head has been in this, her first headship, for just over one year, during which time she has dealt with two capability cases. The previous Head appointed June to the school and it became a matter of pride that June had to do well. This Head was a colourful character, but he suffered from diabetes and stress, and the Deputy was very inexperienced. They left together, and there was a part-time deputy and acting head for a while. The school had an excellent reputation, and the junior section was particularly sought after. People bought houses in the catchment area, so the school had a wait list. The new head found major staffing problems in the school as there were a large number of teachers with 'bizarre' personalities.

2. Monitoring

The senior management team monitor regularly. The authority has a good appraisal system which highlights problems and issues. The previous head highlighted problems, but did nothing about them. An incapable teacher is defined as someone who is unable to do the job effectively. When the Head first arrived at the school, there were few systems in place for monitoring and the ones in place lacked clarity. Few of the staff were performing well but the Head had to put in place systems before taking action on competence issues. Performance targets were set for the entire staff, something that was very new to them all.

3. The Case

June had been teaching in the school for five years before the Head was appointed; she was a mature student in her fifties. It was clear that June was incompetent, as the children were not progressing and there were issues around her not allowing people into her classroom, blocking windows, and storing junk from home in the classroom. During the autumn term, June was off with an operation and when she returned, the Head had a return to work interview in the presence of the Deputy and in early February 2000 took the case into procedures. She had talked to Personnel to establish whether the issue was capability or disciplinary and it was agreed to focus on capability and to establish relatively simple targets. The Head insisted that it be informal because she was new and needed time to assess the situation. Teachers of the entire year group had problems, especially a colleague in the next classroom to June, so the Head needed to be clear and to give June a chance. It was agreed that there would be a review at the end of the term and outlined the grievance procedure. She also told June that she had concerns that her records of work which were missing, but June said that these might be at home. June attended some courses, but always reported back that they were boring or that she disagreed with the tutor. The deputy acted as her mentor and gave support. By the end of term, some of the targets had been partially achieved and the Head met again with her in April when the Head thought that she should give more time, although June could not see the point of any of it. The Deputy and Head agreed to renew the targets, but to break them down into smaller chunks.

In September 2000, the Head hoped for a fresh start and met June again. The Head had given June year one and a choice of classroom. June didn't get on with the teachers in her last year group, so it was hoped that new teachers would help and June initially appeared much more positive. The Head encouraged June to become involved with things, and gave her PTA work, as June said that she had done well with this before. Things went downhill rapidly from September, with behaviour problems in the classroom and toward the end of the term, June became depressed and would sit in the classroom unaware of what the children were doing around her, and there were also several outbreaks of tears and tantrums.

In the week before Christmas, a concert had been arranged, but June hadn't prepared her class for this. For no apparent reason, June was furious and wrote to her union blaming the Head. By this time, the Head felt exasperated by the whole situation in the school and she called a staff meeting the following day. June stormed out of the meeting and placed her resignation on the secretary's desk the following day. The letter asked if she

could resign “as soon as possible”. The Head rang Personnel and the Chair of Governors and the resignation was accepted for the end of term i.e. three days from then. The Head wrote a formal letter accepting the resignation and wishing June well. June was in school for the remaining three days, but, according to the head, was clearly unwell, as she seemed oblivious to the children around her. She left taking books, records of the children’s work, and keys and then spent most of the Christmas holidays on school premises. Over the holiday, she sent a card to every parent enclosing a long letter saying that it was with deep regret that she resigned, but that it was ‘impossible to do the job because of the current regime’; that she needed to find a new school ‘where the interests of the children were number one priority’. In addition, she had spoken to a number of new parents in the yard telling them that she hadn’t wanted to leave, but was forced out by the Head. Five families wrote to governors to report that the Head was a bully, and because the governors hadn’t been kept informed because of taint, they misinterpreted the situation. The Chair reassured everyone that issues were being handled professionally and without bias and most governors apologised. The case lasted for one year, all in the informal stage.

Both the LEA and governors are now urging the Head to take two teachers and the caretaker into capability procedures, but the Head says that she is feeling too exhausted.

4. The Head's Comments

(a) On the case:

It was strange that the school had a good reputation, because overall performance was appalling. I couldn’t tell people that it was poor relative to similar schools and that OFSTED may send the school into special measures or serious weakness. No one knew, because no one set foot in the school. The last OFSTED was in 1997, but it was a LEA team. They only highlighted a few problems but all of the records are missing. I was told that the head and the registered inspector knew each other.

There were enormous problems with June around poor classroom teaching, misconduct, and criminal damage; she victimized children from particular families and her time keeping was awful. She arrived early but then hung around without doing anything. It was the same in the holidays and at weekends; she would be in school, but not working. She painted the windows around the classroom so that no one could look in and she didn’t allow parents into the room. We had a number of bizarre personalities in the school of which she was one, and I found her very frightening.

When I first started in the school, she was very rude to me because I walked into her classroom. Visitors were usually kept in the hall. She undermined a lot of what I was trying to do and complained bitterly about me. When she was out of school on courses, she would make derogatory comments about me and she wrote to the governors questioning my ability and saying that the school had been fine up to the point that I took up post.

Over the Christmas holidays, all the personal files in my office had been pulled out. I knew it was her as she had been in school even though she was still supposed to be off sick. I started logging everything after this and locked the filing cabinet. I had parents

pleading with me not to let their child(ren) be in her class, especially when she had taught an older sibling. She was very rude to parents. As a new Head, it was all very scary. I was here one Friday night replacing carpet and, because she was still around, I hid the tools. At times, she would be normal and co-operative and then she would change suddenly. Her impact was such that she could walk into the staff room and clear it. Her effect on morale was very worrying. None of the advisers had been into the school for a number of years because they were so busy. I spent Christmas not sleeping and worrying about work. I have a city background, I have worked in industry, and in a tough inner city school as Deputy, but I hadn't come across anything like this.

It was a relief when she resigned, but I expected it to come back as constructive dismissal. The parents haven't reacted, but some have come to tell me about their earlier complaints about the teacher. I wish that I had known the views of parents while I was wondering what to do about the situation. The staff have also been telling me how they were afraid of her and it was very obvious to anyone that she knew nothing about teaching.

I think that there is an issue around mature students, and around students who are let through at college, and then through their probationary year.

I am under pressure to deal with two more teachers, but I need breathing space before starting again. The LEA had not visited the school and had left it with an acting head for a period, so I was assertive in asking for help. The local network of heads is fantastic and a great source of support. They see me as top dog because I tackled the problems in the school. These are still enormous. One of my problem teachers is coming up to retirement, she crawls on all fours past the window; she likes animals, but not people. She is very nasty and has low self-esteem. I have other teachers who are working for pin money, and they are not performing, but because of the teacher shortage, there is no one to replace them. I am pressured to act on two teachers and the caretaker, but I can't do it just yet, I am too exhausted and need a rest. Other heads advise me to talk to teachers off the record and say that I will go into procedures, and then they will leave. Another said that he would sack them and then pay if it went to tribunal: he said that it had to be cheaper in terms of time and money.

(b) On procedures:

The shortage of teachers is a barrier to taking a case, as is the possibility of parental outcry. I was reluctant to take the case at first because I was new, and felt that I didn't have the full picture. The procedures were easy in that I had been trained on them and they were clear. I had initial difficulty in deciding if the case was capability or misconduct. I was advised to keep it all informal and to highlight the main issues. Personnel kept asking me to ensure that June understood the procedures but she didn't understand, and she still doesn't understand that she is a poor teacher. Everything that I said to her was "against her philosophy", but I never knew what that was. The procedures are not effective because June still has no ideas what was going on: from her point of view, I was the problem.

Procedures are far too long, or I didn't move fast enough. In retrospect, I should have gone for disciplinary as it is much quicker or I should have used outside people to observe straight away. I did invite in a LEA adviser, but they didn't come so I should have bought in at that stage. I had a duty to June as an employee and this led to conflict. I thought that we could sort out the problems. Taking a case is very stressful. There needs to be greater clarity between disciplinary and capability and it would be useful to have case studies as examples. We all need to be more open about use of capability procedures. At the time, I didn't know anyone with experience, and I was ashamed to tell others. When I worked in industry, personnel were downstairs and you could have a chat, but it is very different in schools.

(c) On the role of:

(i) the LEA

LEA procedures were followed to the letter. My first Adviser was very busy and I never saw her; she left to take up a headship because of pressure in the job. The second Adviser was very good, practical and was in touch a lot of the time. I used personnel for support and to talk over issues. The Personnel Officer was superb and she guided me on wording and setting targets. They checked my paperwork after June left, and were happy with it. They hoped that June would contact her union, so that they could pick up the phone and put the other side of the story.

(ii) Occupational Health

There was no contact, although I wondered if I should contact them. June was overweight and had a blood pressure problem, and she was often depressed.

(iii) the role of the governing body

I discussed the situation with the Chair, but I was careful of taint. June had written to some of the governors about me, so some knew that there was an issue. The governors wrote to me in the summer of 2000 because they had received a letter from June complaining about me, but the Chair told them what they needed to know. Most governors are now very supportive and now that I have done it once they want me to do it again.

(iv) the union

I rang NAHT for advice, and they reassured me that I had done everything properly.

(d) On the four-week fast track:

I can see that it has a place, but I would have concerns about evidence.

5. Comments of Other Key Players

(a) LEA Personnel

I was involved with the case fairly early on and I offered advice on how to approach the problem with emphasis on support and training courses. I suggested that she bring in an adviser for an independent assessment. The Head bent over backward to help June. Because there were a lot of other problems in the school, the review periods tended to be lengthy. The outcome wasn't appropriate because June didn't recognise her failings. It

was best that June left quickly because her relationship with the Head had broken down completely. The Head questioned June's judgement and because she was new to the school which had such a good reputation, she addressed things in a very professional manner. I would like to increase the support given to heads, with more face-to-face work rather than on the telephone. I think the Head acted well; if she had been harder, it would have been quicker, but it could have been a lot worse.

(b) Trade union representative (NUT)

This wasn't really a capability, but June leaving in a fit of pique after an altercation with the Head, and this is atypical. I was involved after June resigned and I had to examine whether it was a case for constructive dismissal. I didn't think that it was and June didn't push for it. I wrote to the Chair of Governors about the way in which she had to leave the school in case there was another similar incident. I have heard nothing, so I assume that the case is closed.

2E 'Sheila'

1. School and Headteacher Profile

The school is a small primary school with five teachers and two teaching assistants. It had been placed in special measures with the result that the LEA seconded a head from January 2000 for two terms to help turn the school around. He had been a head for thirteen years, but this was his first capability case.

2. Monitoring

The Head monitors by looking at records and through observation. He gets a good feel from walkabout, from parental feedback, from at the children's books, and even the way children move round the school.

3. The Case

Sheila was in her fifties, had been a teacher for at least 20 years and had been in this school for seven or eight years. There were a host of issues around her teaching ability and a long history of significant absenteeism. In the previous two years there had been over 40% absence for a variety of reasons. The previous head had tried to tackle Sheila, and had started monitoring, but as soon as she did, Sheila went off sick and alleged bullying and harassment. The union came in, and the head backed off because she had singled out Sheila rather than monitoring all of the staff. The head then suffered a stress-related illness and left.

As there were major problems in the school, the new Head immediately established a system of monitoring of all staff. The Chair of Governors and Finance Officer left; one of the problem teachers changed attitude and stayed with the school, and two resigned at short notice. The Head suspended one of the learning support assistants while investigating allegations that she was being subversive against a teacher. She was given a formal written warning, but then resigned.

Because the school was in special measures, it received comprehensive support from the special support team which was made up of personnel officers, advisers, and heads seconded to the unit, as well as financial assistance. The special support team brought in advisory teachers or advanced skills teachers to help turn the school around and the head of the team gave moral support to the school Head.

The management team set targets for all of the staff, and the Head and two of the special support team spent three days monitoring books and teaching plans etc. Twelve of Sheila's lessons were observed and all were unsatisfactory. During this period, a teacher approached the Head to say that Sheila was not well because of the stress and distress caused by the monitoring. The Head asked the teacher to tell Sheila to come herself. When Sheila did not appear, the Head asked to see her at the end of the day. He told her that the team had found that her lessons were unsatisfactory and that books had not been marked. He added that they would need to put in support and set her specific targets within a time frame. Sheila was asked what help she would need, and the capability procedure, including the fact that it could lead to dismissal, was explained. The Head's script had been agreed in advance, so it was very clear and the Adviser who was present minuted the meeting. Sheila's learning support assistant also attended the meeting. Subsequently, the Head sent Sheila the notes of the meeting, together with a date to meet again. The next day Sheila was off sick and she said that she would not be able to attend the meeting, which eventually took place four weeks later. In attendance were Sheila, her NUT representative, the Adviser, a personnel officer, and the Head. At the meeting, twelve issues were raised; concerns were identified as well as appropriate support. The team asked Sheila how they could help and what support she needed, but absence records were also addressed. Sheila continued to produce medical certificates and she was referred to Occupational Health. The capability procedures could not progress and it was agreed that if Sheila did not return, the ill-health route would be used. Sheila subsequently resigned and was appointed to a teaching post, without a reference, at a school in which her partner is deputy. The case was very fast in the end, with procedures starting in April and Sheila resigned in May 2000.

4. The Head's Comments

(a) On the case:

Sheila had a lot of ill health from a wide variety of ailments and as soon as I started monitoring, she was off, initially with dyspepsia, and then anxiety. She had a tame doctor who turned out to be a family friend. Her problems, in relation to her teaching and absences, had been known about for many years, but no one followed them through. She was also the key player in a clique with the other staff and there were high levels of conspiracy. We tried the support route with Sheila, although I wondered if it would become disciplinary or ill health. Before I decided to go into procedures, I had the Adviser look at Sheila's books; she thought that I should go straight into procedures, but I wanted more time. You have got to be very certain that you have evidence and it was useful having outside people to validate your judgement.

When Sheila went off sick just as procedures were about to start, I wanted Occupational Health to determine whether or not she was well enough to teach. I wasn't going to let

her get away with this behaviour; it was either the capability or ill-health exit. She resigned and now teaches in her partner's school where I hear she is keeping her head down. The LEA told me to throw references for her in the bin, but I didn't get any requests. I wouldn't have given one, but I would have spoken to the Head on the telephone. The staff were very wary, they must have seen that if this could happen to the leader of the clique, that they would have to be very careful. They were surprised that Sheila was tackled.

The case had been going on for two years if you counted the time involving the previous Head, and this was far too long. In retrospect, I should have acted earlier, but there were so many issues in the school, and so much to do immediately to get it out of special measures. I had to wait for the evidence and the difficulty with this was getting her into school. Her best attendance ever was from the January in which I started as Head. The outcome was not appropriate, as she is still in teaching. I am not happy about it after all the heartache. She was a failing teacher for years and we did something about it but she walked back into a job. In some ways, this case is typical in that the teacher had not been dealt with for years, as previous heads had been unable or unwilling to grasp the nettle.

(b) On procedures:

Taking out a capability procedure is a difficult step for a head to take. It has an effect on other staff and you need to be sure that you have sufficient evidence, and that it isn't just a personality thing. It was very stressful for me and for the whole school. Stress can be reduced by support from the LEA and the union. The Head needs outside advice to run a capability procedure: you shouldn't do it without professional advice because of the implications for the teacher. Personnel were good on technical advice, but you need support and someone to talk to.

(c) On the role of:

(i) the LEA

Personnel support was excellent and the LEA capability procedure was used. Personnel told me what I could and couldn't say and I got a lot of support because the school was in special measures. Not all of the advisers have the same expertise to help with cases. If the previous Head had had more support from the LEA she might have succeeded without the school going into special measures. There is a big issue over the LEA targeting support. At the moment, the same amount of time is allocated to each school, whereas failing schools need a disproportionate amount of time. You need someone who knows local schools and who has the finger on the pulse. In the old days, we had inspectors with a real feel for the school and who had the respect of the staff.

(ii) the governing body

The Chair was kept informed and was very supportive. Most governors realised that Sheila had pushed too far and some were delighted with the outcome as they were sick and tired of her absence.

(iii) the union

The union felt that we had been fair and he did his job well: he was not aggressive and did his best for Sheila. The same union official had got the last head to back down, but he could see that we were doing things by the book.

(d) On the four-week fast track:

I am not up to speed on it. I can't see it in my own school, but I could see it in a school in special measures. Here I would look to provide support, support, and support. It would be a good route in certain situations, for example, where there are lots of complaints.

5. Comments of Other Key Players

(a) LEA Personnel

I became involved when the school went into special measures. My role was to support the Head and give him intensive coaching through the capability procedures, there was also a special support team Personnel Officer involved. We had one review period in the informal stage and Sheila resigned before we went formal. Sheila was in denial and there had been massive absences over the previous ten years. We dealt with the ill health absence at the same time; the Authority should have been more robust on absence management earlier. In this case, we had to suspend delegated powers before we could act because Sheila had improper relationships with some of the governors, who wouldn't do anything. The special support team is extremely strong and robust. The unions don't bother to argue if we take a case because they know that we have done it properly. We have a huge paper trail and very clear targets making the evidence absolute. We also work our dates back from the resignation dates and keep time scales very tight because this saves having to pay an extra term's salary and we don't do deals.

(b) Trade Union Representative (NUT)

I was brought into this case relatively late when Sheila was off with ill health. Targets had been set, but she couldn't face it. I prefer to be involved at an earlier stage. There is a problem with the 'special support team' as 'support' is an anomaly: when they go in there is usually a dismissal. They tend to be aggressive in their approach because they are in a panic, trying to turn the school around. The outcome was appropriate, in that it is sometimes better for the teacher to move on. In this case, it was better that she had a fresh start.

(c) Governor.

I had no training on capability procedures. The special support team suspended the powers of the governing body, so we were not involved in the process. We wanted this to happen because we had spent hours and hours with parents who were manipulating issues in the school and it was too messy. We weren't sure if we were capable of running a procedure, as we thought that we would fail on a procedural detail. It was all a minefield and we wanted to give up our powers. LEA support was pathetic until it became clear that the problems were not going away and when the crunch came, they were good. They tried to say that the governing body were not aware, but this wasn't true, we knew about the issues. The situation drove the previous head to a nervous breakdown, and a lot of governors went grey. The costs of delay were enormous and 20-

30 of the best pupils were removed from the school. The procedures are not easy for governors but the outcome was appropriate in the end. In retrospect, we should have had more documentation in the early stages and been more rigorous on ill health absence. The problem was that Sheila had a friendly doctor. Looking back, it seems stupid that we didn't get the paperwork together and act, but at the time, we were reactive, not proactive. We expected that Sheila would take control, or walk away to another job. We hadn't reckoned on her self-destructive nature. We were naive and approached the situation logically, when the people we were dealing with were not logical, they were vindictive. A reasonable stance doesn't work with this kind of person and we were ill equipped. I think we coped well in the end. The situation in the school was bizarre, it sounds like fiction, and I used to ask myself if it was really happening. We had parents coming into school shouting down teachers in front of pupils. There was a lot of ridiculous behaviour stirred up by one person.

It was a pity that the LEA weren't involved earlier because they had information to which we were not privy. I think that they were afraid to take it on, but when the DfEE started making noises, they had to act. The previous Head could have been good if she had been given support. The new Head got support and was able to deal with the issues. The school went into special measures but the delay cost a fortune. The support team brought in training for all of the staff, although the aim of the training was to get rid of people: we were training people to leave and this was wasteful. The support team supported, but they also had thumbscrews. After all of the gang warfare in the school, staff weren't receptive to training.

The governing body are not the best people to run a capability procedure, especially parent governors. They were our main nightmare because they were in the Mafia and the dynamics were awful. Governors are a non-professional body which meant that professionals were being dealt with by idiotic people with their own agendas, and they were capable of destroying careers. You should have a professional team to pursue capability procedures – teachers deserve it. A lot of governors just don't know what they are doing: children deserve the best, they only get one shot, but teachers deserve better treatment too. In this school, there has been a lot of unfairness with non-professional governors. When governors start gunning for a teacher, it doesn't build up trust from the rest of the staff. When the new Head came in he was very supportive, but gritty. You knew where you stood because he was like an anchor, and he was superb. He didn't enjoy sorting out the school and the human cost was enormous. He was a lifesaver for the school and he was the best investment in the whole shambolic mess. He kept me sane through it because you begin to wonder if it is you. In the middle of this, the deputy, who was a state of the art maths teacher, failed OFSTED. Teachers were going down with the strain of it all. The new deputy who took up post to help turn the school round was very quickly destroyed. The head coped where others failed. He appeared nice, when he was being as hard as nails, but he had to look like a genuine team builder to those who were out to get him, as they had brought down Heads and Deputies in the past.

2F 'Steve'

1. School and Headteacher Profile

The school is a foundation grammar school with 800 pupils aged 11-18 and 50 members of staff. At the present time, the school does not buy in personnel support from the LEA, but it did so at the time of the case. The Head has been at the school for nine years as headteacher, and this is his first headship. This is his only capability case.

2. Monitoring

Monitoring is through the line management system. The school is looking at a new scheme which measures classroom climate, which the Head thinks is a good measure of quality of teaching.

3. The Case

The teacher had one year's experience before coming to the school, and seven years' experience in the school itself. He was a mature entrant to the profession and is in his forties. He was Head of Department for the RE department, although he was the only member of the department. Problems related to his competence as a teacher as well as Head of Department. He had run an examination course which the Head said 'had proved a disaster'; there was no evidence that he marked students' work; and he refused to produce a handbook for the department. In 1999 OFSTED was highly critical of him. As well as competency issues, there were concerns in relation to a possible alcohol problem. Steve had a volatile temperament, which meant that he would be fine one minute and shouting the next. In 1995 he was disciplined for inappropriate behaviour at a school prize giving. He was given a first, formal warning at this time. The capability proceedings began in September 1999 at the informal stage. His line manager had set targets in relation to his marking and production of a handbook for the RE Department. There was no progress, and in May 2000 the formal stage of the proceedings was started. The Head wanted to deal with the case through disciplinary proceedings, as it was clear to him that Steve would not produce the handbook, rather than could not. However, on advice, the school went down the capability route, and put in extra support and help. Five weeks after entering the formal stage of the capability proceedings, the first review meeting took place in the presence of the NASUWT area official. Steve had not produced evidence of his marking, but said that he would produce a sample of this on the following Monday. The Head asked to see all of the marking. On the Monday, Steve came into the school, but not in a fit state, and was sent home. Ninety-nine per cent of the marking had not been completed and the handbook had not been produced. The case was referred to a panel of the governing body with a recommendation to dismiss, using fast track. Steve was then off sick with stress for a further period before being dismissed on ill health grounds. The governors dismissed Steve; they had an LEA personnel adviser to guide them at the hearing. The union appealed and the appeal was upheld, on the advice of a second LEA personnel adviser.

The procedures lasted from September 1999 – September 2000

4. The Head's Comments

(a) On the case:

The outcome was not appropriate; he should have been dismissed as he has been incompetent since starting at the school. The record of his incompetence and

misdeemeanours is very long and he had a drink problem. He shouldn't get ill-health retirement, he is in his mid-forties; he should have gone on disciplinary. I should have followed my own instincts and gone for disciplinary proceedings as they are much clearer cut than capability. It is useful to delegate some of the procedures as this gives me the chance to contemplate decisions and not have to speak off the cuff. It also gives an opportunity for my involvement at a later stage. There has been no reaction from parents. His leaving should have boosted staff morale.

(b) On procedures:

They were not easy to operate. First, the school used its own procedures which had been fine-tuned by a solicitor. He was not aware of the importance of timescales in schools i.e. the timescales need to fit with the notice period, otherwise an extra term's salary may have to be paid. We have now adopted the LEA procedures. Secondly, procedures are very time-consuming, expensive, and err on the side of the employee.

I didn't find them stressful, except at the point at which the appeal was upheld. You need a lot of support to take a case, and need accurate, consistent information. One major barrier to starting procedures is the way that teachers treat each other with professional respect and trust. However, I would have acted earlier if the subject had been more mainstream. The cost to the school was estimated at £15,000 and the LEA paid for the one-year period of ill health following the appeal, as well as the two months' full pay prior to dismissal.

(c) On the role of:

(i) the LEA

There were problems with the case because I wasn't given enough information, or contradictory information. I had not been aware that I would not be able to attend the appeal; I assumed both myself and the union official would attend. Steve wasn't present in any case. At the dismissal hearing, the personnel officer who was advising us didn't mention problems using fast track at this stage, whereas, at appeal a second personnel officer advised the governors that they couldn't use fast track, and the dismissal was overturned. I was surprised by the outcome, as was the union official. Subsequently the personnel officer apologised and said that he hadn't thought that they could go for fast track.

The LEA personnel services are potentially very good, but different officers have different views. Personnel up to the capability hearing gave intensive support. It would have been very difficult to take a capability without the support of personnel because they were invaluable in countering objections by the union .

(ii) Occupational Health

Occupational Health has clouded the issue of dismissal on ill-health capability by referring to "a problem with alcohol". Steve has been off since the date of the appeal with stress-related disorders, but he will be in the pub every day. It is not yet known if retirement on ill-health grounds will be granted.

(iii) the governing body

When the governors learnt the full story about contradictory advice from personnel, they were outraged. There was some talk of suing the second personnel officer for poor advice. Had I known that I would not be allowed into the appeal hearing, I would have ensured that the Governors had been briefed adequately.

(iv) the union

The area union representative (NASUWT) was very keen and raised a number of objections, which would have thrown me. Personnel were able to cope with these. The union official wasn't fighting at the appeal, as he assumed that it was a fait accompli.

(d) On the four week fast-track:

Fast track would be fine, as long as you can get away with it. Governors have the ultimate say, of course.

5. Comments of Other Key Players

(a) LEA Personnel

The Head had informally monitored Steve for maybe four years before going into procedures. When the case went to the formal stage, a hearing was planned. We gave very little help, but one of our personnel officers advised at the hearing. I was brought in for the appeal. Since the school had gone straight to the final written warning stage, I was concerned that they had not strictly adhered to the procedures. I advised that they had missed a bit, and should go back into the procedures before going to the final written warning. It was very difficult to establish at what point they were in the procedures; as far as I could tell, they had missed the meeting at which the case progressed from the informal to the formal stage. The school would have been vulnerable if the case had gone to an employment tribunal.

The Head was genuinely concerned to support the teacher, and the trade union representative was very helpful. It would have been useful if the school had contacted us early, as we could have then mapped out a clear process so that all parties understood where they stood. The school also messed up the timescale on this case. Notice must be given prior to 30th May in order to get the person out by 31st August. If this date is missed, the next leaving date is 31st December, so the school pays for an extra term. This was another reason for contacting us for advice. The dismissal is not effective until after the appeal, only then can you give notice. With appeals, there is scope for the individual to postpone, so you need to build into the process contingency time.

(b) Trade Union Representative

By the time that I became involved, Steve had dug himself a massive hole and had his head in the sand. He simply went off sick, and didn't talk to anyone, including the union. He didn't attend the hearings and he was dismissed just before the summer holiday. The appeal was initially adjourned in September because Steve was ill. I submitted a fresh appeal on the basis that the timescales had been too short for him to improve and he was off sick when he should have been meeting the targets. When I am involved from an early stage, I can ensure that mentoring and support is put in, and, given adequate time,

there is a chance of improvement. When cases are about to go into the formal stage of the procedures, it is very difficult to retrieve them. In this case the outcome was appropriate in that the appeal was upheld. It was a fairly classic case, in that the Head hadn't acted in bad faith, he simply hadn't known the procedures.

2G 'Lucy'

1. School and Headteacher Profile

This secondary modern school has 44 teachers and 780 pupils aged 11-18. The Head is in her first headship and has been in post for two years. She has dealt with three capability cases since taking up post.

2. Monitoring

There is a two-week period each term during which staff are observed by peers, line management, or heads of department, depending on the focus. Emphasis is placed on professional development and sharing good practices. The senior management team can quickly pick up where the teacher input should be and where it is missing. Poor class management is an outward sign of this, as are complaints from parents and students. Part of the whole school monitoring strategy involves discussion of what makes a good lesson; the school has open doors and an established quality assurance programme which is ahead of performance management. An incapable teacher is seen as someone whose learning outcomes are not reached and this is defined through pupil shadowing and mentoring.

3. The Case

Lucy was a mature entrant and had four years (made up of one year in each of four schools) in the teaching profession. She teaches maths, in which there is a shortage of staff. She was with the school for one year as class teacher during which time there was a series of complaints from parents and pupils, and students' achievement was low. From the noise coming from the classroom, it was apparent that she had poor class management skills.

The school wanted to find out what the problem was and put in place the informal stage of the procedures. However, Lucy did not acknowledge that there was a problem. The first review stage took place after six weeks and because there was no improvement the case moved swiftly into the formal stage. The Head, the Deputy (quality assurance manager), the Head of Department, personnel and the union attended the review meeting. Targets were set, support was given and three block periods of six weeks' monitoring were agreed. Issues and strategies were talked through and she was asked to attend behaviour management courses, also to observe teachers in the school and other schools.

The Deputy structured the monitoring and agreed what was to be judged based on the OFSTED handbook. Lucy was given immediate feedback after monitoring and evaluation.

Lucy was off for two weeks shortly after going into procedures: it was a thrombosis which may have been related to the case. The Head wrote to her to let her know that procedures would start as soon as she came back, so that the ill health did not alter the course of procedures in any way. By the end of the process there was improvement, but it was touch and go for a while. The case lasted under one year.

4. The Head's Comments

(a) On the case:

Because Lucy had four years' experience at different schools, I suspect that there is an issue about her references. At the first review meeting after six weeks in the informal stage, I think that we made some progress in getting Lucy to recognise that there was a problem. Before this, she had felt victimised and that other teachers were no better. We managed to turn it round and I said that we didn't want to lose her. She feels happier now; she has more respect and I am not getting complaints. The outcome was appropriate. There was no effect on staff morale, because they wouldn't know about the case. The Head of Department found it very difficult to deal with because of interpersonal issues. I talked to her about these, but it was difficult for her to monitor and then give critical feedback. In retrospect, I shouldn't have appointed Lucy, but she was the only candidate. I would have expected her previous schools to deal with problems because she should have had support earlier. I was amazed that she got through teacher training and there are fundamental issues around this; we have seen a number of teachers who should not have got through.

(b) On procedures:

They are lengthy and give you a high workload, but they are easy and effective. You have got to give people time to recover. LEA procedures were used and they are fairly well laid out. There are no barriers to entry, or moving from informal to formal once you have the evidence base. However, where you think that there is not going to be any improvement, the procedures are too lengthy. Fast track is needed for these cases, but there is a reluctance to use fast track because of the teacher shortage. The procedures were not stressful for me, although they are not pleasant. They were stressful for Lucy, and this can only be reduced by emphasis on training and development and turning the case round. In the end, procedures must have decreased her stress because her children were wild before. The year before, we had another case, again a mature entrant. I would have taken this case through procedures but the union rep persuaded him to resign. I didn't give him a reference and there was no compromise agreement. This was very frustrating, as it doesn't solve the problem; the teacher just moves on and another head has to spend time and money sorting it all out again. With poor heads, the Authority pays them off and this is an incentive to be bad, especially as the LEA offers them a job afterwards.

I can't see how procedures can be improved; they are a safeguard for both parties. I deal with competency issues immediately and we have had three teachers in capability. A lot of heads think that using capability procedures gives the school a bad reputation, and this may put them off. I think that it should enhance the reputation of the school.

(c) On the role of:

(i) the LEA

I buy in personnel services and there are different levels of advice available. Some personnel staff are more cautious than others and some try to put heads off doing it because they make it seem more complicated than it is. There is an issue that we buy in as the client and they may advise us to bring in an advisor as a safeguard, but we they have to pay extra for this and the implication is that we don't know what competency is. Personnel are about to be out-sourced and we will have to look at the range of providers. The LEA service is of variable quality and they are not pro-active, but come in when asked.

(ii) the governing body

Only the Staffing and Finance Sub-committees were informed. They were pleased that the issue was being managed properly

(iii) the union

The school union rep was involved and she was very positive and recognised that Lucy needed support, so she threw in ideas and strategies. It was useful for us to use the internal rep, because she knows the school. An external rep would have been more reticent about offering a contribution.

(d) On the four week fast track:
See 4(b) above.

5. Comments of Other Key Players:

(a) Head of Department

We appointed Lucy although, off the record, references alerted us to the fact that she had classroom control problems, but she was the only candidate. When she started, she wouldn't admit to problems and this made it difficult to help her. She was very defensive from the start and wouldn't even ask basic questions like where things were kept. We started monitoring during the first term, but Lucy blamed the students. I found my role very difficult because I had to support, whereas when it went formal, I had to give evidence against her. It was the catch-22 of trying to support while also reporting back to the management team. At the first formal meeting, she realised that I had documented her lack of progress and she felt stabbed in the back. She was visibly shaken and I felt awful. Even when we went into the formal stage, she insisted that there were no problems. We gave training on classroom discipline and she observed other teachers, but she couldn't see the teaching methods. She said that she didn't learn anything and that the teachers terrified their students to keep control. Right at the end of the procedures, she suddenly seemed to realise the seriousness of the situation and she tried to improve and took tips less personally. Her pace and explanations are better and her behaviour management has improved. Our relationship is also better and I have tried to give her small items of responsibility. She is good at certain things e.g. exam marking. The capability procedures worked well, although the Head of Department is in a difficult position, being both prosecution and defence. I was new in post as Head of Department. In retrospect, I should have insisted on putting in formal support at an early stage, instead of the gently "how are you doing?" That way, I may have sorted it without involving the

senior management team. Now that I have experience, I would ensure that I acted earlier with structured support and I would make the person accept it.

Lucy is not an easy character and has not made friends on the staff as she is abrupt with a lot of people. I'm not sure if the staff knew about the capability, as it does affect morale. There is resentment if other teachers are not doing their job properly. Using procedures was very effective in this case and there has been a huge improvement. There is an issue about honest references, as there are a lot of cover-ups. We rang one head off the record and they advised us not to take the teacher.

(b) LEA Personnel

I have a good relationship with the Head and I offered a lot of support to the Head. There was a clash between the Head of Department and Lucy, because Lucy didn't acknowledge that there was a problem and resented everything. The Head of Department saw her twice a week to discuss problems, progress, and strategies. In the end it was a good outcome, and Lucy turned it round although she then said that she didn't know what all the fuss was about. The union was involved at an early stage and this is always helpful. All of the relationships were professional and no damage was done; sadly, this is very rare. I wish that we could put in the amount of support that went into this school, but schools have to pay and this level of support is very expensive. When we work this intensively with schools, they learn how to do it themselves. In most cases, if teachers are tackled early, they never turn into capability cases.

2H 'Alice'

1. School and Headteacher Profile

The school is a Community primary school with 23 teachers and 420 pupils: this includes ten profoundly deaf children and in addition there is a 52-place nursery. The Head has been in post for 14 years, it is his third headship and he has dealt with four capability issues altogether.

2. Monitoring

The Head monitors teaching by visiting each class on a regular basis and he writes a report every term. He gives them a copy of this- it is written in a supportive and positive style. He uses it to point out training implications.

3. The Case

Alice was provided by an agency. She performed reasonably well and so the Head paid £2,000 to the agency to release her, but as soon as she had a one-year contract her capability deteriorated. The problem was with her attendance and then the quality of the teaching. The Head also had a strong impression that she was abusing alcohol and/or other substances. It started off with her being late every morning. The Head gave her what he termed a management warning, then a formal warning and then a written warning.

The absence problem began on the first day of term when Alice rang to say that she was ill. Throughout September 2000 she was late for school or left early without obtaining agreement from the management. In October 2000 Alice was absent because of a sprained knee, a dental appointment and food poisoning, and then there was a doctor's certificate saying that she was suffering from a general malaise. She returned to school during this period but an incident in the class upset her and she went home. At the end of October she said her father died and that the next day she had to attend the funeral and sort out her father's affairs. However, it is impossible and illegal to bury someone the next day as you need two doctors' certificates. The coroner also has to release the body if the death is unexpected. The funeral parlour had no record of the death and the undertaker said that the fastest you could bury someone was in three or four days and it takes months to sort someone's affairs out.

Alice said she would return to work but then she phoned to say that she was stuck in a traffic jam, then she was too exhausted to come to work, then her mouth was bleeding because of two extractions. On the 2nd November 2000 a letter was sent asking to meet informally and asking what the school could do to help, stating that if there was no early return to work the Head may have to ask her to see Occupational Health. It was going to be an informal meeting but the LEA would be there and she was asked to bring a trade union rep or workplace colleague but Alice didn't attend the meeting. The Head then wrote formally saying that she must get permission from the school to be away. She was asked to contact the Head in person otherwise her absence would be seen as without leave and it would be a disciplinary offence. She was advised to contact her union or workplace colleague and if the Head didn't hear from her he would consider stopping her pay. There was no reply so the Head stopped her pay on 13th November and she was asked to get in touch with the Head. On November 14th 2000 Alice said that her mother had gone to hospital and then on November 20th she phoned the school at 1am to say that she would be in! On 22nd November she was asked to attend a disciplinary hearing. It transferred to disciplinary as she was taking unauthorised leave of absence and was grossly negligent in failing to attend to her duties. She was sent full copies of the disciplinary procedures. On November 22nd she said that she had a miscarriage and had a dental appointment that morning. She didn't provide a medical certificate for the time she was away apart from once in October.

There was very little opportunity to provide support. The Head offered advice in letters and the family liaison officer offered help. The Head followed the capability procedures initially but then it changed to disciplinary procedures. In terms of her teaching she didn't complete her records or plan or prepare. Teachers plan in groups and the other two teachers did all the planning and she used that and didn't differentiate; however, the main problem was her absence so the Head never had a chance to set targets.

She attended the second disciplinary hearing, arriving late. She chose a workplace colleague to come to the meeting, and although the colleague was unaware of the situation she did her best to support Alice. A member of the LEA was also present to support the teacher to ensure that she understood what was going on because there was a

concern about this. The outcome was dismissal. Alice is applying for other teaching jobs.

4. The Head's Comments

(a) On the case:

I think she was mentally disturbed and certainly emotionally incapable of coping with day-to-day situations. Alice didn't improve because she didn't come into school to teach. The case also caused me mental strain.

When a head goes through an agency they don't do the searches which are appropriate. The DfES needs to look at this closely to check that the supply teachers have not been involved in disciplinary or capability procedures. I have used different agencies and the quality of the teacher is often very poor. The other members of staff were initially disgusted with her and resentful that she was getting paid and was not turning up. I kept the procedures confidential and so they weren't aware of the action being taken and the other teachers thought I was not dealing with her harshly enough. I tried not to let the teachers know anything about it.

(b) On procedures:

I was clear that something had to be done about the situation and frustrated by the timescale of the capability procedures. I think it is extraordinarily long and protects the teacher but doesn't make the running of a school easy. The procedures were effective but the problem began on the 1st September 2000 and was not resolved until the last day of term in December by using the disciplinary procedures. It was apparent far sooner that the teacher wouldn't be returning to work of her own volition. The change from using the capability procedures to disciplinary was seamless and seemed obvious because she was refusing to reply or letters or send medical certificates. The procedures are there to safeguard the rights and responsibilities of both parties. Stress is inescapable; if it were not stressful there might be a tendency to treat it in a cavalier way. In certain circumstances the procedures should be shortened.

(c) On the role of:

(i) the LEA

The LEA explained the structure of the procedure and ensured that I followed it.

(ii) Occupational Health

Alice didn't keep her appointment with Occupational Health.

(iii) the governing body

The governors convened for the hearing but she didn't turn up so she was given another opportunity. The only governors who knew were the Disciplinary Committee who were sworn to secrecy. They felt under stress making the decision- they are ordinary people, some retired and one businessman. I presented the case; they wanted to know that I had been fair and that processes had been followed. The decision to dismiss was unanimous.

(iv) The union
They were not involved

(d) On the four week fast track:

I wish I had acted quicker, the fast track would have been appropriate. The LEA felt that because they were using the capability procedures they should make every effort to continue down that track until it was untenable. When we reached that point they went as quickly as they could but were defeated when she didn't turn up for the first dismissal hearing. I wanted to dismiss her when she didn't turn up but LEA personnel advised against this. I think fast track should be used in cases which are obvious but not to shortcut the possibility of improvement-only when it is obvious to all parties. I need additional training for fast track.

5. Comments of Other Key Players

(a) The LEA

The problem with Alice is that we never saw her apart from at the hearing. She was slightly off her trolley and on a hiding to nothing. She refused to answer letters and left weird messages on the school answer-phone at ridiculous times of the night. She committed professional negligence and so it became a disciplinary case- there were no medical certificates, she was just deserting her class.

LEA 3

3A 'Ruth'

1. School and Headteacher Profile

The school is a Catholic secondary school with 61 teacher and 1070 pupils: the Head has been in post for 15 years and this was his first Headship. He has dealt with two capability issues, one concerning performance and the current case focusing principally on absence.

2. Monitoring

Monitoring of staff takes place through Heads of Department using formal methods as well as informal routes. In addition, exam and test results are analysed and complaints from parents and pupils are monitored. The Head would define an incapable teacher in terms of classroom management; discipline; under-performance by pupils, poor test results, unsatisfactory lessons (i.e. poor structure, organisation, pace, teacher involvement and inability to motivate and engage pupils) and poor setting and marking of homework.

3. The Case

The member of staff concerned in this ongoing case is a classroom teacher with 20 years' experience, all of it in this school. The problem was principally one of sickness absence which was becoming increasingly apparent, although there were also performance issues when the teacher was present. In September 1997, the Head had a meeting with the teacher to discuss her absence during the academic year 1996/97. No one else was involved at this stage although advice had been sought from County Personnel. It was made clear to the teacher that she needed to improve her pattern of attendance and around this time she was referred to Occupational Health, a specialist and a psychiatrist. In the event, the teacher's attendance during 1997/98 was very bad, with long periods of illness, so at the end of the year she and her union rep (from outside the school) met with the Head to discuss the problem and find out if there were things they could do to support her.

During 1998/99 there was an improvement, but then 1999/2000 was a 'bad year' and the Head called what he described as a 'summit' meeting in the summer. At this point the Head asked Personnel whether it would be possible to start capability procedures but in their view there was too long a period between the two meetings. In October 2000 a review meeting was held involving the Union and at this point, the informal stage of the procedure was triggered. The biggest issue raised at this meeting was that these absences were for certified sickness, but the Head's view was that through sickness it can become apparent that a person is not fit to do the job. Although he did not perceive 'barriers' as such to moving into procedures and found them straightforward to operate, he admitted that keeping track of the absences and collecting the necessary evidence whilst also having regard to the person's difficulties was hard. The next review meeting was scheduled for just after the February 2001 half term, but in fact in November the teacher went off sick again for a total of 75 working days and returned only a short time before the review. At this meeting the head signalled his intention to move to the formal stage

of the procedure but was prevailed upon by the union rep to wait until after the teacher had been to Occupational Health on 3rd April. The Head agreed to meet on 6th April to see what had emerged and a further meeting has been scheduled for after Easter. His perception was that the union felt that if Occupational Health were in favour of ill health retirement, there would be no need to move to the formal stage.

4. The Head's Comments

(a) On the case:

In my opinion, the length of time this has taken is ridiculous – horrendous and the tendency for things to drag out makes you dispirited and you lose the ability to engage with the problem. The effect on other staff within the teacher's department has been very bad with complaints from individuals and increased workload for those who have had to take over classes. The Head of Department in particular has become stressed and frustrated at the lack of progress of some of the classes. I also feel that it has been stressful for the teacher concerned particularly because the performance issue has now been picked up and she has been subject to classroom observation.

(b) On procedures :

With hindsight, I feel that if I had had more time and energy, I would have monitored the situation more carefully and speeded up the process. I did my bit to prevent it dragging on, but it's difficult to deal with attendance when there is some improvement, and then subsequently one has to start all over again. My view is that dealing with issues such as this, particularly where the Disability Discrimination Act could be relevant, is too complicated, too long and too difficult.

(c) On the role of:

(i) the LEA

I found the LEA Personnel input was helpful, particularly in their dealings with the union because they have a good feel for the union response. It would be nice if Personnel could be the ones to bite the bullet or if I could rely on others in school to carry out more effective monitoring, but I recognise that Personnel are overstretched too and that other staff cannot always find the time.

(ii) Occupational Health

I did not find their input helpful because, we asked specific questions (like how long is she likely to be off and when she comes back will she be reliable?) and they didn't give specific answers. When they did give answers, these invariably turned out to be wrong and their reports were very brief.

(iii) the role of the governing body

The Governors were not involved other than via normal reports which would indicate staff absences, but I would have appreciated being able to discuss the problem. However, I was concerned that involving them early might invalidate their involvement at later stages: I would like clarification about whether the staffing committee members could be approached even if those from the dismissal committee and the appeal committee could not.

(iv) the union

I did not find the union input helpful because the union representative had the interest of the teacher at heart and when the *school's* problem was emphasised, the response was that that was a management problem for *me* to sort out.

(d) On the four-week fast track

I don't know a great deal about it but I think it refers to people with extreme difficulty, for example, in control. It sounds good as long as you don't get opposition from the unions.

5. Comments of Other Key Players

The Head of Department

I had been in post for four years and regarded Ruth as a 'borderline' case, although I'm not sure what the criteria were. I was aware that there had been a problem with her for 10-15 years, but felt my loyalties to be divided – on the one hand to a member of staff, but on the other hand to the pupils. I also felt that morale had been affected – not by the operation of the procedures, but because other staff were having to pick up the pieces when Ruth was absent.

3B 'Joe'

1. School and Headteacher Profile

The Head of this primary school was appointed in 1997 and it was his first headship. The school has ten teachers and 253 pupils.

2. Monitoring

When the Head arrived at the school he found that there had been no formal monitoring unless there had been a problem, so when he decided this should happen, the staff found it traumatic. In his first year, he covered the whole school using 'triad' monitoring whereby staff monitored each other, and staff watched him teach too. He also got feedback from the School Council and sent a questionnaire to parents. When monitoring other staff, teachers were asked to use a monitoring form which he devised and which focused on looking for *evidence* of specified matters rather than making quality judgements. Once the staff became more open to being looked at, the scheme became more judgmental, but when reporting back takes place in staff meetings only *general* statements are made. Formal monitoring for numeracy and literacy takes place twice a year, with the Head seeing a lesson for each member of staff. In addition, the Head has now appointed Curriculum Co-ordinators for every subject who are released for half a day each half term (and supply teachers are brought in) and go in to watch lessons. In carrying out their monitoring, the co-ordinators will focus on what has been agreed with the Head to be the major issue in that subject. They then feed back to the Head at an individual level so that each member of staff's strengths and weaknesses are known.

As well as monitoring, the Head has devised a system of having large classes which are then team taught by more than one member of staff. Each teacher then only has to take

responsibility for part of the syllabus, but then they will sit down together before and after classes and develop a shared team approach which is felt to be less stressful and more supportive. The children themselves also produce a Study Work Book of completed work every half term, with an emphasis on 'quality' (of which they are apparently very proud!) and these are shared around and seen by the Head. The Head also scrutinises large scale data on Maths and English (NFER) testing, comparing each cohort of pupils with average scores.

For this Head, capability is to do with pastoral duties, behaviour and classroom management, and attitude. Because the school is semi-open-plan he feels he can tell from noise levels whether children are focused on their work; he also picks up problems via pupils' comments at the School Council or from parents' telephone calls.

3. The Case

The one and only capability issue that the Head has had to deal with, concerned an inherited problem with a member of staff (Joe) of 25 years' experience who had been at the school for 16 years. When the Head came to the school, the Governors asked him why Joe had a 'B' allowance and he therefore had to investigate. He found out that originally Joe and two female members of staff each had a 'Scale 1' post and that when the new scales were introduced in the late 1980s, the then Head allegedly decided that since Joe was a (breadwinner) male, the two female teachers would return to the basic scale and the whole of the responsibility allowance would be given to Joe. The problem was that his 'responsibility' was never very well defined. At one time he had undertaken after school activities, but many of these were withdrawn at the time of the industrial action. He also used to run clubs, but many teachers were now involved in such activities and although he acted as Co-ordinator for Science and Geography, other teachers who had no allowance were also responsible for two subjects. In addition, although he was well-liked by the pupils and was perceived to be a good teacher of Maths and Science, the Head had concerns about his pastoral style and felt that he was very poor on Literacy (the latter was highlighted by low SATs results). The Head's view, therefore was that Joe's role had to be 'renegotiated'.

In consequence, the Head discussed the matter with his Advisor, whose view was that for a 'B' allowance, Joe should be taking on some sort of leadership/management role. As it happened, the school did not have a Special Needs Co-ordinator because the previous Head had carried out this role. Because Joe knew most of the families of the pupils and was a good administrator it was felt that this would be a suitable role for him and in autumn 1998, he agreed to take it on. In the meantime, the Head put in substantial support for Joe on the literacy side. However, by spring 1999, the role of Geography Co-ordinator had been given to another member of staff, so the Head felt he had to look for an additional area of responsibility for Joe. About this time, the Adviser came into school and pointed out that as Numeracy was due to start in September 1999, a Numeracy Co-ordinator would be needed. Discussion then took place with the Governors and the Adviser as to whether Joe should take it on and in March 1999, the matter was put to him. It was agreed that both the Maths Co-ordinator and the Head himself would also go

through the necessary training and give him support, but that he should act as Co-ordinator.

Joe accepted the role, but as the first training day loomed at the end of the summer term, the Head had to put constant pressure on him to prepare and in the event it was a disaster. Joe admitted people were not happy and that there were things he had not done, so it was agreed before the end of term what needed to be done for the next training day in September. This time Joe had prepared properly and the day went well. The third training day was scheduled to take place in October after he had a half term's experience and on this occasion the Head felt that again he had not done the job properly. Before leaving that day Joe complained to the Deputy Head that he hadn't really agreed to the role and that he had been paid in the past without having to do anything extra.

The week after half term, the head was due to take Joe's class on a residential week (which Joe had always refused to do) and having given the matter some thought he sent a memo to Joe over half term about several matters and he also agreed a timetable of what Joe would do whilst his class was absent. However, on the Thursday of half term the Head was telephoned by Joe to say that he had been signed off for two weeks with stress. The Head felt that Joe was 'trying it on' but was advised (by the Advisor) not to challenge him but merely to meet with him on his return. When the meeting took place, Joe said he was not going to act as Numeracy Co-ordinator, that it was too stressful and that he wanted the union involved. The Head therefore arranged a meeting between himself, Joe, Joe's union representative and an individual from LEA Personnel.

By this stage, the Head was discussing whether or not this should be treated as capability or as a disciplinary issue. In addition, the rest of the staff were feeling that Joe was getting paid for something he wasn't doing. The outcome of the meeting was that Joe agreed to be referred to Occupational Health and the Head indicated on the referral form (seen by the union) that if their view was that it was not a 'health' issue but a 'management' issue, then he would proceed down the 'capability' route.

By the time of the next meeting in December, the Head stated that the view of Personnel was that if it was not ill health, he was going to be 'shown' the door. He said that they were 'tightening up' and would push for dismissal on the grounds that Joe was not 'capable' unless he agreed to give up one responsibility point. The meeting developed into a bargaining match as to which responsibility Joe was willing to take and for how many points (or indeed, ½ points!). Personnel advised the Head to agree to his having 1½ points to be responsible for Science and Special Needs, but at this point the Head put his foot down and refused. It was decided there would be a final meeting in January to resolve the issue one way or the other, and eventually it was agreed that Joe would continue to do Science and Special Needs, and drop the Numeracy Co-ordinator Role, keep the B allowance until September and in the meanwhile he would be responsible for the School newsletter and look at the Sex Education Policy. The Head also decided that Joe's Year 6 class would be taken off him, thereby releasing four and a half hours of Joe's time.

4. The Head's Comments

(a) On the case:

Although it was painful for me and stressful for Joe, I think the outcome was appropriate and that it had been necessary to deal with the issue. The staff were pleased that something had been done, and Joe and I now get on well.

(b) On procedures:

I think that procedures are easy to use when you have supportive personnel (as we have) to take you through them step-by-step. In this case, procedures were effective as a threat and we got the desired outcome. They were far too long in the past, and I am pleased that they are now shorter. Performance management helps with the operation of the procedures as it ensures that there are regular reviews and that issues are identified at an early stage to both parties. Teachers can no longer claim that they were unaware of a problem. To some extent, stress is integral within a capability procedure, however, shortening the amount of time helps. Stress is decreased for the Head by getting a second opinion, and having a supportive LEA. There is pressure on a head to take the lowest cost outcome. I think that heads need to know that the outcome is morally and philosophically the right one, and this may not be the cheapest outcome.

(c) On the role of:

(i) the LEA

The input of personnel was essential because personnel issues are a nightmare for a Head and it was difficult to keep a professional distance.

(ii) Occupational Health

Occupational Health were not only helpful, but also crucial in excluding medical issues from the resolution of the problem.

(iii) The governing body

The governors were not actively involved, but I spoke to the Chairman and the matter had been covered in my Head teacher's report (in part 2, which was confidential). In the spring of 2000, I reported back to the governors that it had not been a health issue because they were apparently wondering whether stress counselling needed to be put in place.

(iv) the union

The union made matters more difficult because the union representative wanted the best for his member. He made us work for everything.

(d) On the four-week fast track:

I can't foresee a situation here, but I could with difficult people I've had contact with in the past. I would want them out because they were not up to the job; they should never have been there and they were damaging children's education. If someone wasn't capable (after support had been given) the quicker they are out the better for everyone.

3C 'Lorraine'

1. School and Headteacher Profile

The Head had been a head since 1985, a deputy since 1978, and has experience as a county inspector for primary and special education, and as an OFSTED inspector. He has been in this post for three and a half years. He has dealt with ten capability procedures, two in each of his previous schools as Head, and six in this school. The school spans the ages of 2-19 and has facility for special day and residential care. It accommodates 120 physically handicapped children and young adults and has 150 staff.

The school had major problems. Five weeks after the Head took over the school in 1997, OFSTED came in and the school was placed in serious weakness. There were problems with the senior management team, the quality of teaching, and the school was not providing value for money. HMIs came in and re-inspected a year later and found that very good progress was being made.

A proportion of the staff had been with the school for many years; two had psychiatric problems and were given early retirement, two more stepped down and a few staff left. A number responded to the new challenge and fifteen new staff members have been appointed since 1997. The fifteen-strong senior management team was pared down to four. Apart from a number of capability issues, child abuse allegations came to light from 1999 and led to a large-scale investigation which resulted in arrests and resignations of a number of staff. During this time, the Head was subject to a series of threats and was given police protection.

2. Monitoring

Capability is monitored through the direct observation of the Head and shortfalls are noted through hearsay or direct observation. Capability is then defined in relation to the individual's roles and responsibilities and their conditions of service.

3. The Case

Lorraine was one of six teachers in the school whom the Head felt were less than satisfactory. Lorraine was the music teacher and had a part-time contract of three days per week. She had over twenty years' experience in teaching and had been in the school for more than twelve years.

As part of his monitoring programme, the Head met all staff to get a picture of their effectiveness and to encourage self-evaluation. He found that Lorraine was usually unable to feed back what had been discussed in meetings, or had a very different interpretation. She was always genuine and helpful, but very muddled.

OFSTED had not identified Lorraine as a problem - in fact, they reported that she was a good teacher. However, HMI noted intransigent problems relating to her absences as well as her organisation. The Head calculated that she averaged only two days in work out of three over many years. Sick notes mentioned a wide range of ailments including nausea, stomachaches, colds and flu, migraine etc. Apart from her poor absence record, Lorraine was very unreliable when she was in school. She would often be away from the

classroom, her planning was poor, and her delivery and implementation were weak. However, she could teach well and remained focussed when observed and she was very pleasant with the pupils.

Lorraine went off sick for six months in 1998 and when she returned in November 1998, the Head started the informal stage of capability procedures. The Deputy and the two Assistant Heads provided support and monitoring and this allowed the Head to step back and carry out review monitoring. In addition, a link governor who taught music offered Lorraine professional befriending. However, the governor could never track Lorraine down, as she was either off sick, or not to be found in school. Similarly, when meetings were arranged with the union rep and the Head, Lorraine was usually off sick. It was uncertain whether Lorraine was being deliberately obstructive or whether it was a symptom of her inability to organise herself. Lorraine tended to blame everyone else for her problems, “my team leader didn’t tell me”, and “I was away so I didn’t know”. The union and Head agreed that weekly briefings should keep her informed. However, it proved difficult to progress through the procedures because Lorraine was not in school long enough to work through the targets, nor for effective monitoring to take place.

In the formal stage of the procedures, the LEA came in with a deal and Lorraine left within days (December 1999). It is understood that she has registered with an agency for peripatetic work. The procedures lasted 12 months from late autumn 1998 to Christmas 1999.

4. The Head ‘s Comments

(a) On the case:

There was no effective leadership from the previous Head and staff questioned OFSTED’s role on the basis that OFSTED inspectors would not know anything about special education. When I had to use procedures, I suspect that staff viewed me as a hatchet man and it is ironical as I saw this job as a nice final job before retirement because the school had such a good name.

When Lorraine was off so much, I sometimes felt that she was malingering, but I tried to deal with her objectively and in a supportive way. Giving support is the only way to end up with a happy culture in the school. Lorraine couldn’t improve because she was not on the same wavelength; either she didn’t pick up the messages about how to improve, or she was ignoring them. Lorraine was an unusual personality type. For example, she grossly over-reacted when one of the HMIs, who had a warm and supportive style, gave her mild criticism. She was not capable of taking criticism or of self-evaluation and she drove the rest of the staff to distraction.

In retrospect, if my workload had not been so high, I would have dealt with this case earlier. Certainly, my predecessors should have addressed the problem because it is indefensible that severe damage was done to the music department.

When the case went formal, the LEA arranged early retirement for Lorraine and there was a pay-off. I gave her a truthful reference for work. I think that it was an appropriate outcome in this case. I did not find the procedures stressful because I enjoy solving

problems, and this wasn't hard compared to dealing with the disciplinary cases. I am not sure if the stress could have been reduced for Lorraine because all the people who supported her were very gentle. I don't think that she would have changed if they had been tougher; besides, where management is too hard, there is damage to the whole school culture.

(b) On procedures:

On balance, the amount of time was fair because it gives people a chance to improve. However, this is dependent on people believing that the procedure is a genuine tool for giving support with the aim of turning the teacher round. Where there is no faith, and the teacher doesn't work at it, then the procedures are too long. I have yet to experience a teacher who was willing to work at it and turn it round, although I have experience of this with non-teaching staff. I found the procedures easy. It is difficult to judge on their efficacy in this case because it was hard to make a medical judgement as to whether Lorraine's illnesses were genuine. I can see no way that the procedures could be improved. Outside of procedures, I find that a "setting of standards" letter is a very effective method of getting the message across. Again, I emphasise that this only works in a culture where the staff have faith in management being helpful. Using the letter often pre-empts problems. In all of the capability cases with which I have been involved, the teachers have gone off sick and I find this very frustrating.

Within schools there is some confusion about the linkage between performance management, pay policy, and capability procedures. I think that all staff need training on how these issues overlap, as well as on the attendance policy and return to work procedures. The school has been praised on the way in which performance management has been embedded, and there is a high degree of trust in the leadership and management of the school making for a very healthy culture. OFSTED also complimented the school on its comprehensive staff handbook which details expectations. Because we have shift-working staff it is important that everyone is clear about what is required of them.

(c) On the role of:

(i) the LEA

LEA procedures were used and the school buys in the personnel package. I found LEA personnel excellent. Because I had six cases, I could use them as a sounding board when I asked, "Is it me?" Having been an inspector helped firm up my resolve because I had to bail out heads who weren't dealing with capability issues. The Link Adviser was not effective as he was awaiting early retirement and was absent almost as much as Lorraine. The new Link Adviser is marginally better. I think that the LEA were trying to spare me having to deal with this case, because of the seriousness of the disciplinary cases which were current at the time.

(ii) Occupational Health

Occupational Health was very useful when Lorraine suffered a bereavement during the procedures. They were able to say that Lorraine's health problems were "not long term" and agreed with me on the unacceptable levels of absence. The school generated an enormous workload for Occupational Health and they did a good job as long as I gave

them sufficient detail on each case. If you don't let them have detail, they tend to take a superficial view from the employee's perspective.

(iii) the governing body

The governing body was involved and we had a very active personnel committee to deal with all of the capability and disciplinary cases.

(iv) the union

The NUT representative was very professional with good intellectual ability. He helped to make it work, although I suspect that he felt as exasperated with Lorraine as I did on occasion. We have very good quality representatives in this area.

(d) On the four-week fast track:

I think that there is merit in having a four-week fast track procedure, although there is great reluctance to use it.

5. Comments of Other Key Players

(a) LEA Personnel

Personnel were involved with the case from November 1998. OFSTED had been in and although they hadn't been able to observe Lorraine's teaching, they commented that her planning was weak and this supported the school's view. There was a meeting of the union, personnel, the Head and Lorraine at which the Head said that he wanted to review music provision in the school and to decide on further action. Lorraine was then off sick from April 1999 with reactive depression. The union wrote to personnel in May 1999 saying that Lorraine was bewildered and distressed because a number of responsibilities had been taken from her, and that this had heightened her insecurity and led to her feeling undervalued. In November 1999 she applied for early retirement and this was granted from December 1999.

(b) Trade Union Representative (NUT)

I have had a great many problems with this school and I don't trust the Head. In Lorraine's case, I was involved at an early stage and I met with her, accompanied her to meetings, and had conversations with the Head and personnel.

I feel very strongly that in all the cases at the school, there was no real desire on the part of the Head to work through the capability procedures. He had no interest in the process; either your face fitted or it didn't. In this case, the statistics were there to support the ill-health absence, but there was a paucity of evidence for lack of capability. This was typical of the way that the Headteacher dealt with capability.

In the end a deal was agreed. I think that it suited the Head to hide behind personnel. I'm not sure that this was an appropriate outcome. If there had been a competent manager, Lorraine's attendance would have improved and I am not convinced that there was a capability issue. Specifics should have been dealt with from the outset, and it should have been made clear to Lorraine what was required of her. The LEA acted in an ill-judged manner but with the right intention. They wanted to get stuck into the school,

because they were aware that they had failed to deal with known problems with the previous Head. As a result, they were over-zealous in their support for the Head, and he could put up a good front.

(c) Governor

I was involved just before the capability. I think the Head wanted help to see what was going on and for someone else to try to chat to her; he was trying to avoid procedures at that time, and wanted to see if we could support.

As part of my role as link governor, it was agreed that I would try to support Lorraine. However, I didn't get involved in that every time I tried to see her she was off. I spoke to her once when I called into school without telling her, but she wouldn't let me in the classroom. She blocked me and asked me why I wanted to come. I said that I was a musician who had many years' experience of teaching, and as a governor wanted to see what support we could offer to the music department.

On the morning that OFSTED were due in the school, shortly after the Head started, he asked if I would play after assembly. Ordinarily this would have been the music teacher's role, but she wasn't reliable and the Head described her playing like "Les Dawson on a bad day". When I got to the piano, it was locked because she had left the keys at home; in any case the piano needed tuning and most of the keys stuck. You would have thought that the music teacher would have seen to this pre-OFSTED. Then she couldn't find a keyboard with a plug. Eventually it was found but all this went on with the OFSTED inspectors sitting at the back of the hall. I saw the Head after this and said that I could understand his concerns. As soon as anything happened, she was off sick. OFSTED didn't see her teach, but I know that the head would have liked their opinion.

She muddled on for a while longer, with lots of short self-certificated absences. A deal was agreed in the end and she disappeared, to the relief of a lot of people. It had all been going on for a long time and her name was often mentioned at the staffing committee. I was aware of the matter as soon as the new Head started; he has a much more open policy. The previous Head would say that everything in the school was fine, and you believe what you are told when it is said with authority and conviction: at the time, governors didn't go into the school except for meetings.

We soon became aware of problems when OFSTED came in. The Head, with the governors, have put in place a lot of different strategies to make staff more accountable, to increase teamwork, and to encourage more openness. Governors are now much more involved and it is not so easy for poor teachers to slip through the net. There is also more accountability in relation to absences in that there is a return to work interview. Lorraine would try to avoid this by creeping back into school for the day, and to leave before the Head had a chance to have a chat with her. The Head has made massive changes so that staff are happier and morale is high.

I have had no training in capability procedures, but LEA personnel ensured that we had clear guidance. We have done a few cases in the last few years, with a steep learning

curve. The LEA talked us through each part very carefully so that we didn't do or say anything that would be illegal and could lead to a case going to employment tribunal.

The outcome was appropriate. It is best for the person to leave as part of a compromise agreement; the alternative is for the case to drag on to the detriment of the children's education and the school. It is best to get rid if it is obvious that the person won't change. In retrospect, I wish that I could have helped Lorraine, but she wouldn't even speak to me and she was so very resistant to change.

Governors have enormous powers now, I am a performance management governor with responsibility for vetting the Head's performance and setting his salary level. It is very hard for governors.

3D 'Sam'

1. School and Headteacher Profile

first headship, for ten years during which time he has dealt with two capability cases.

2. Monitoring

Capability is monitored through the performance management system. An incapable teacher is defined as one who cannot reach the required standards in terms of learning outcomes.

3. The Case

Sam had been in teaching for around seventeen years, all of which had been with the same school. Problems related to his classroom teaching, and the trigger for the case was complaints by students and parents which were backed by colleagues. In fact, there had been complaints about Sam's behaviour going back to 1991 when the Head took up his post, and probably before. On each occasion, the Head discussed these issues with Sam. In 1992 the Head started the informal stage of procedures, and in 1993 referred him to Occupational Health. Sam had a lot of absence: flu, coughs (nerves?) and there were continual home problems, but Occupational Health began to cite school-related problems more and more.

During 1995-1996 there was a further period in capability procedures at the informal stage. After six months' monitoring it was felt that there had been sufficient "improvement in demeanour and responses". The Head had further complaints from a member of staff during 1998 and saw Sam with his (school) union representative. The Head suspected that Sam was drinking heavily and having giddy attacks and Sam was referred once more to Occupational Health. Sam was off again with ill-health but returned to work after a sleepless night during which he told himself that he could do it. In April 1999 the Head met with Sam to tell him that if things did not improve, he would invoke the capability procedures once more, and this he did early in the 1999 academic year. The Head's instincts were to go for disciplinary action, but the LEA advised use of the capability procedures. While in the procedures, Sam was verbally threatening to a sixth former about where he had parked his car (November 1999). Apparently Sam did

not drive and was volatile about cars. The Head decided that this should be a disciplinary matter, and the union concurred. Sam then went off sick and subsequent to a meeting with the LEA, the union, and the Head, Sam resigned his post.

4. The Head's Comments

(a) On the case:

Sam was not coping with the everyday demands of working with children and this manifested itself in the way that he spoke to, and interacted, with them. I had supported him in the past in the face of complaints, but the number of complaints were increasing and there seemed to be a pattern emerging. He could be a good teacher when he was relaxed and his exam results were satisfactory or better. However, he got wound up with the kids, for example, when they didn't do their homework. He would frequently leave the class and go for a walk for ten minutes to avoid exploding in the classroom. When he was off sick, he would come on site to see colleagues, who really didn't want to see him, and he would telephone them in the evening to say that he had "been sent home". Targets which we set were about staying in the class room, controlling his anger, eliminating dubious jokes, and not openly criticising colleagues and/or subject areas in front of students. The deputy head and the union representative both helped to support Sam but I don't think that he could improve because he couldn't help himself. Staff would wonder how we got through our meetings without violence, but, more often than not, he was in tears.

I gave Sam a reference for work as a postal worker: I have strong views about references, and I would not give one for a teaching post. I know that sometimes references are part of a deal and that sometimes they play down incompetence and poor conduct. This is very wrong in a profession like teaching. I was very sorry that I had let problems with Sam go on for so long. I looked back at his college reference at the end of it all, and I could see that seeds of doubt were sewn at that stage. However, I think that in the early days, colleagues would rally round. It was always Sam against the world and he blamed everybody else for problems: he said that nobody else but him bothered about standards. There was no more ill health during procedures than there was at other times.

(b) On procedures:

Barriers to taking a case into procedures are psychological. When you take a case, staff may wonder who is next, so there is a danger that it affects morale. Informal to most people means casual, but highly structured. Although heads get a grip on this, I am not sure that it is clear to the person on the receiving end, and they may not be fully aware of the seriousness of the case. Usually heads have done a lot before getting into procedures. Barriers in relation to moving from informal to formal include having sufficient energy and determination: this implies that you have made up your mind and that you need considerable commitment to see it through. However, they are easy and effective, but far too long. It leaves a whole department in limbo and people have to walk on eggshells throughout. The children see what is going on and their behaviour could lead to an adverse conclusion. In this case, everybody in the school knew about it.

I don't believe in the LEA and the union agreeing compromise agreements unless there is an entitlement in lieu of notice. The case nearly came unstuck as the union asked for pay in lieu of notice, but the governors refused as there was no entitlement.

Taking procedures is very stressful, it was for me; and Sam was at the end of his tether. Making them shorter could reduce stress, and this would make them more manageable. They are also very time-consuming; it is too much to ask the Head to do it all personally.

I think that there should be more emphasis on data e.g. exam results. Where one teacher's results are bad year on year, then you have a problem and this should be a trigger. At the moment, triggers are parents and children; hopefully, performance management should help.

I am not happy with procedures which are unresolved in that the teacher takes premature, or ill health retirement, or resigns. The problem is solved, but the correct judgement should be that they are incapable.

I suspect that threshold assessments could further complicate matters as heads will be reluctant to use capability procedures on teachers who have gone through threshold. With threshold assessments, the teacher cites the evidence, but they may not be able to teach a particular subject. It is then two years before they are re-assessed and the Head might want to move to capability procedures in the meantime. Heads have been told to err on the side of generosity on threshold and this could impact on usage of capability procedures.

(c) On the role of:

(i) the LEA

Personnel were very helpful, and Advisers come and go.

(ii) Occupational Health

Occupational Health were useful. However, anybody can go to Occupational Health and say what they like and they have no other frame of reference which reinforces the fact that their client is in the right.

(iii) the role of the governing body

The governors were very supportive, and I had confidence in the Chair. Governors and parents were very relieved when Sam resigned.

(iv) the union (NUT)

The union was very helpful. The school union representative initially supported him and he gave me lots of ideas too.

(d) On the four-week fast track:

I cannot see what circumstances would suddenly arise. However, I am not averse to a four-week procedure if someone is uncooperative and there are very serious reasons why

they won't improve. The unions would point out that anything that can't be fixed in a month should have been picked up before. However, the other procedures are far too long

5. Comments of Other Key Players

(a) Teacher (and school union representative)

The guidelines for using the procedures are clear and they can sometimes be effective. I was present in this case to mentor and support. I handed over to the NUT regional representative when it became serious and could have led to Sam leaving the profession. I am involved in most school cases, and they are all documented. I became a safe haven for Sam, and he would come to me during lessons, and to my house out of school hours. This might be unusual, but this is the sort of school we are – very supportive. I think that we did all that was humanely possible in this case. When Sam went, morale was lifted. Staff wondered how far you had to go before management acted. We all supported Sam over years, but nothing changed. I think students didn't opt for geography because Sam taught it.

(b) LEA Personnel

Sam left at the end of December 1999. He was suspended pending disciplinary, but he resigned so that the "process was suspended indefinitely". Prior to this, I was involved in the capability case in 1995 when Sam successfully went through the process. The case was re-opened in 1999, and because Sam had been through capability in the past, it seemed pointless to go back to it. I therefore advised that we go into disciplinary. Sam didn't argue because he knew what had gone before. Sam's problem was that he couldn't handle the kids, and he had an explosive temper. During the 1990s, he argued that he had difficult personal circumstances, but this can only be an excuse for a certain amount of time. The school lost trust in him. In the past, teachers would support oddballs, but the culture is changing and there is not the same level of collegiateness; teachers won't let someone drag them all down. If a case gets into formal procedures we feel that we have failed. Once in formal, teachers know that the outcome is usually dismissal and the unions know that there is no going back. It was the best outcome in this case.

(c) NUT Trade union representative

I was involved in this case before it became serious. I met with the Head, LEA personnel, and with Sam, and had discussions behind the scenes with personnel and the Head. It was capability entwined with health, although it could equally have been a disciplinary case. However, using disciplinary procedures wouldn't have been in anyone's interest because it was tangled with ill health. The outcome was appropriate.

(d) Chair of Governors

I have not had any training in capability procedures, but I think that they are fairly easy to operate. I was involved from an early stage and I met with Sam, the Head, and personnel. The Head and I had already discussed the case. Before we got into disciplinary proceedings, Sam resigned. This was the best solution. It might have been a good opportunity for Sam to sort himself out, but he couldn't.

3E 'Louise'

1. School and Headteacher Profile

This secondary school has 970 pupils aged 11-16 and 54 teachers. The Head has been in post for four years and this is his first headship. Louise is the only teacher with whom he has had a capability issue.

2. Monitoring

Monitoring of staff is carried out by observation of classroom teaching once a term by either the Head, the Performance Management Team Leaders or the Senior Management Team 'link' person (one for each Department). Observation is carried out to a standard format based on a document setting out what is regarded as good teaching. In addition the Head monitors attendance on a monthly basis : he defines 'capability' as 'fitness to teach', i.e. to be able to be in the classroom and teach to the standards expected.

3. The Case

Louise is a classroom teacher of 27 years' experience (all of it in this school) who was also a Key Stage 3 Co-ordinator. She had a history of poor attendance which the previous Head had not tackled but until autumn 1999 the current Head had had no complaint about absenteeism. In October of that year the Head became concerned that Louise was starting to isolate herself and relationships with other staff were beginning to break down. He confided in his Deputy and the two of them had a meeting with Louise. The following week she went off sick and a series of sick notes stating anxiety and depression followed. At this point Louise was referred to Occupational Health and it transpired that she believed the cause of her illness was school based issues – e.g. she was uncertain about her role, did not like her room and did not get on with her Head of Department. From January 2000 several meetings took place at which each issue was discussed in more depth. It was agreed that another room would be found for her, her role in the school would be considered as part of an overall review, and (in conjunction with Occupational Health) a phased return to work was agreed with a target of completing a full week's teaching at the end of six weeks.

In the Head's opinion the phased return did not go well because he felt that *she* felt she was in charge of the agenda, and on 3 April – which was the start of Louise's first full week back, she walked out of school. On 5 July, the Head met with Louise and her union representative at her home and it was agreed that on 17 July she would come in unofficially to meet with her Head of Department and would be accompanied by a friend. However, at 8.30 a.m. on that day, Louise's trade union representative rang to say she had gone back to her GP. On 24 August, Louise met with a member of LEA personnel and her union representative but (at her request) without the Head being present and it was agreed (at the Head's insistence) that there would be no further phased return but that during her first two to three weeks back, she would not attend meetings or do duties. However, on 31 August the Head was telephoned by Personnel to say that Louise had been back to her GP and was asking for a phased return and further reduction to her teaching timetable (which by now was 36 lessons out of a possible 50 in a week). The

Head would not agree except to the extent of offering to remove her IT teaching for four weeks. On the first day of term, at 7.50a.m. the Head was telephoned by Louise's trade union representative to say that she would not be in school and was going to her GP.

Since that time the Head has had no further contact with Louise. He was intending to refer the matter to the governors and push for dismissal for non-attendance, but Occupational Health have told him that she is possibly disabled and if so the school would have to make adjustments for her. He has also heard that she has applied for ill-health retirement.

4. The Head's Comments

(a) On the case:

I think the issues here were more personal than professional; Louise thought she should be paid more for her responsibility and this was the first time she hadn't got her own way. I believe that when Louise walked out on 3 April, I should have gone down the disciplinary route and my perception is that the other staff think she is playing the system. The experience was stressful for me, but I would now have a clearer idea of what the steps were and when there would be likely to be an outcome.

(b) On procedures:

The whole thing took far too long. It was difficult in these circumstances to maintain the curriculum.

(c) On the role of:

(i) the LEA

I regarded the input of the LEA as absolutely invaluable; I think the majority of Heads would be willing to pay more for their services if necessary. However, I did feel that they should have had more of a grip on Occupational Health to carry out their role as I perceived it; I think they were wary of moving into procedures where the DDA was involved.

(ii) Occupational Health

I was very annoyed that whereas I had referred Louise to them, they then subsequently acted like *her* doctor and would not report back to me. I also think that contrary to their view, Louise was not fit to come back to work when the phased return was implemented.

(iii) the governing body

Although the governors knew that Louise was undergoing a phased return, I did not go into detail with them because I did not want to disqualify them from potential future involvement.

(iv) the union

I regarded the union input as helpful, particularly in trying to get Louise back to work and in reaching agreement on various issues in meetings.

(d) On the four-week fast track:

I see this as a good thing.

5. Comments of Other Key Players

(a) Governor

The Head has dealt with the case in detail but discussed it with me as Chair. I approve of what he does: I think the outcome was appropriate – at the end of the day, early retirement is the best solution. The Head couldn't have done anything more than he did.

(b) Personnel

I advised the Head with respect to long term absence and we became involved in trying to get Louise to return. She has been granted ill-health retirement by the DfEE. In terms of the DDA, we acknowledged what she was saying and directed it to the Occupational Health Unit but they were not able to say categorically whether it fell within the definition. They said that she probably did. It is difficult to say whether the outcome was appropriate as I am not a doctor, but the school had made more than reasonable adjustments. The union were not saying that she fell under the DDA until January 2001.

3F Dominic

1. School and Headteacher Profile

The school is a 11-18 Comprehensive with 840 pupils and 51 teachers. It is situated in a pleasant, rural, small town. The Headteacher had experience of the role for eight years, five in this school. This was his only experience of a capability issue.

2. Monitoring

There is a formalised review process throughout the school which includes lesson observations as well as an official procedure for dealing with complaints from parents. Soft data is used to pick up problems, for example, where a teacher over-uses support mechanisms or where work is not carried out and is picked up by others. Absence records are analysed, with referral to Occupational Health as appropriate. The culture in the school has been one of closed doors but the Head and senior management are now working to change this culture and to establish one which rewards achievement. Nonetheless, some members of staff are still prickly about monitoring, and some go off sick because of it.

3. The Case

Dominic is in his early fifties, and has always been a teacher. He was redeployed to the school in 1981 from a Deputy Head post and still receives the Deputy Head level salary. His responsibilities, apart from teaching, include Head of Year, and Head of Art: the problems related to his role as Head of year and his absences, usually stress-related. Dominic was an excellent teacher, with very good results, but his behaviour could be bizarre and he used a lot of avoidance strategies, such as going off site at lunchtime. He was a heavy smoker, and following a complaint from a governor, it was agreed that, if he was desperate, he should leave the school. Unfortunately, he then used this permission rather freely. He was rude to support staff; he often forgot to do things such as organise a parents' evening and he referred upwards rather than dealing with issues. If he talked

about something in a meeting, he usually took an extreme stance, and it all turned into something about him. He complained to the union about stress levels and after that management had to make appointments to speak to him or to ask him to do something, so that work was not “sprung on him”. He had a lot of support, including counselling which took place in work’s time.

The Head had meetings with Dominic over a three-year period. During 1999-2000, Dominic’s attendance worsened, and the Head resolved to act. Dominic was given substantial support from the Deputy Head who met with all of the year heads fortnightly. However, he rarely took her advice and notes of these meetings were not formally recorded. Further meetings took place with the Union Representative, and an LEA Personnel Adviser. The case has been resolved by allowing Dominic to step down while retaining his threshold allowance, and his pension rights.

4. The Head’s comments

(a) On the case:

Dominic was not nearly as efficient as other Year Heads, and the team was not getting support. For a long time, staff were loyal to him, but this filtered away, partly because they had to cover for him. Step-down was seen as the most appropriate solution. If this agreement had not been reached, capability procedures would have followed. Staff in the school saw that Dominic had been treated very well, and they were aware that his absences and shortcomings impacted on their work. I don’t know what impact there may have been on staff morale. He seemed to improve once we reached an agreement, so he must have been unhappy with the situation.

(b) On procedures:

These were not used

(c) On the role of:

(i) the LEA

I buy in the full personnel package from the LEA and they have provided very good support, but tend to be very slow. Advisers are bought in ad hoc: but I find the experience and quality of advisers is very variable.

(ii) Occupational Health

On this case, they were neutral; they said that he was fit for work, although he had problems. We carried out a mental health risk assessment in the school, to identify how to make things easier for Dominic. Counselling was provided as a result of this. We have also adopted a stress management policy in the school. In the past, I have had problems with Occupational Health. On one occasion a nurse wrote a report for the school in which she said that “the culture in the school was negative”. Personnel took up this issue, and it has now been resolved. Occupational Health doesn’t work on behalf of the Authority, but on behalf of the patient. There is only one doctor in the service who seems to understand the culture of schools. They sometimes let us know that a member of staff should be off for a term, but they tell us when it is too late to advertise and find a replacement. Where this involves a key member of staff, it makes it very difficult for us.

(iii) the governing body

The Chair of Governors has been informed throughout and is aware of issues.

(iv) the union

The Regional Union Representative thought that the school had a lot of problems, because the school rep passes most things on. In addition, Dominic and three other teachers complained to the union about stress levels, laying the blame on management. The Regional Representative worked with us to compare stress levels in other schools, and how the role of management impacted on stress in this school. It was accepted that the stress levels are generally less here, and that management is not at fault. I think that the Union Representative now views the school in a new light. The union only hears one side of the story.

(d) On the four-week fast track:

I cannot see that this would be a viable option.

5. Comments of other Key Players:

(a) LEA Personnel

This case went on for a long time. I originally discussed Dominic's deputy head salary with the school, because they had to take over the payments after redeployment. This dates back to the times when we moved problems around and I am now revisiting them all. The previous Head wouldn't tackle any of the problems. It all came to a head around the end of the last academic year and I advised the school that it needed to be dealt with through the competence procedures. We met within the trade union early this academic year to say that we would be going into procedures and it was at this point that it was agreed to make a deal.

It was an unusual case in that there were no issues over teaching standards. Dominic was an outstanding art teacher with some of the best results in the country. However, the Head of Year job was too big for him. Rather than go into capability procedures, it was agreed that he would step down, and give up that part of his pay. I am getting more and more step-downs. When people are over 50 they can step down and pay into the pension fund at a higher rate. If they do this, they have to put in the employer's contribution at a higher rate as well. If people are below 50, they have pension problems. We did a deal so that Dominic was paid up to the end of the academic year, before losing his two points and we agreed to pay the employer's contribution for a further two years. We don't throw money at cases, but this didn't cost much, and avoided the time involved in capability procedures. If we had gone into procedures, he could have been sacked, or the governors could have chosen to demote him compulsorily - he would then have had no benefits. It was a cost effective and an appropriate outcome.

(b) The Trade Union Representative

This case has run and run and run. The new head has been the trigger for a lot of things, probably because he is a perfectionist. I was involved quite early on. It didn't start as a capability, although that was in the background. I was given to believe that capability

would have commenced if a deal hadn't been agreed but this was not made explicit to the teacher. It was not a standard case because it involved a part of Dominic's role, and there was no strategy for dealing with this.

The capability procedure was used as a threat and this saved the school an enormous amount of time as well as a possibly adverse affect on morale in the school. There were health issues in this case caused by the death of the teacher's wife some years ago. The deal includes a financial commitment that will keep him in teaching for 5-6 years and he is doing an excellent job in the art department. It was a beneficial ending, as Dominic couldn't have coped with a capability procedure, and the school may have lost an excellent teacher. What we got was win-win without going through procedures.

3G 'Anna' (HT)

1. School and Headteacher Profile

Anna had been in post at this school as head for six years, but had approximately eleven years experience as a headteacher and seven years as deputy headteacher prior to that. The school was a primary school in a very affluent area, but was under-performing given its intake. Pre-OFSTED, the Deputy Head had raised complaints regarding the Headteacher's lack of leadership and management style. There had also been parental complaints and a rapid staff turnover in the preceding five years which seemed to corroborate the Deputy's grievances. The Deputy, on forming the opinion that she 'could no longer work with the Head', resigned.

2. Monitoring

Once concerns are raised, the LEA sets out review dates and provides an adviser. Consultations with the Chair of Governors and the headteacher concerned take place and an action plan is put in place. This LEA's approach to capability is to ask the headteacher and/or the teacher, as well as the Governing Body Chair for headteacher capability cases to: set out a chronology of events before and up to the capability point(s)/complaint(s); provide examples of capability issues; and provide supporting evidence. The test in this LEA is that if all tasks are satisfied then formal capability procedure ensues. Otherwise informal steps are taken, or no action, depending on the circumstances. Common triggers in this LEA are OFSTED reports; parent and pupil complaints. The LEA's common indicators, from case work, for capability cases are : lack of pupil progress; complaints; pupil discipline issues. It was suggested that from experience, absence and sickness are associated, or rather lead to, capability matters in the future. Due to the latter link this LEA has Occupational Health referrals to personnel once a teacher or headteacher has had six days off with sickness.

3. The Case

Following a series of staff, Deputy Head and parental complaints from 1999, it was not surprising that in February 2000 OFSTED presented a highly critical report of the school results and in particular the Headteacher's leadership and capability procedures commenced. The Adviser felt that the previous support for Anna, including attendance at a course on Effective Leadership had failed and that the school was now at risk. A

series of reviews took place, in which Anna denied her weaknesses. The Adviser went into the school to meet with the teachers and the governing body and to set targets and timescales for Anna. Anna continued to deny the problems and had great difficulty in accepting the LEA concerns. Such denial led to Anna take time off with stress, for which she received support and assistance from Occupational Health. Since the situation was deteriorating, in the 'interests of the school' Anna was placed on formal procedures from September 2000. During the formal stage, persistent tracking of performance indicators took place. At the formal stage, Anna sought the assistance of her union. The LEA desired a 'quick exit' for this Headteacher, in order to safeguard the school. In December 2001 before the intended dismissal was to take place, a mutual agreement to resign was reached between Anna and the LEA. Anna is now a supply teacher in a neighbouring LEA.

4. Adviser Comments

The Adviser noted that scoring unsatisfactory in an OFSTED report should result in capability procedures. The problem in this case was that it was a primary school whose small size and closer working relationships slowed down the process. This capability case arose out of dispute about lack of leadership between a headteacher and her deputy and was slowed down by Anna's sickness. Whilst Anna was a poor headteacher, as a teacher she was creative and of a high standard. The problem was in her denial of problems and dismissive nature concerning complaints or criticisms. Her reluctance to accept problems and change seemed rooted in the fact that her father was an excellent teacher and she 'thought therefore that she was born to teach'. In retrospect, the LEA followed its procedures and removed the poor headteacher, but it took too long and cost money. Overall, the union was very co-operative and helpful in resolving the matter as quickly as was possible in the circumstances.

LEA 4

4A 'Doris'

1. School and Headteacher Profile

The secondary school is located in a pleasant city area, and has 45 teachers and 658 pupils aged 11-18. The Head started in post in September 1997 and this is her first headship. She has only dealt with one formal capability case in this time.

2. Monitoring

Monitoring is carried out by a variety of means including observations and work scrutiny. This is done at different levels by the senior management team, by departmental heads and by peers: specific curricular areas are monitored systematically. Statistics are used together with student surveys and interviews, feedback from school council etc. An incapable teacher is seen as one who, despite professional support, does not improve, and/or is in a management post and unable to carry out their responsibilities. When someone is unable to carry out their responsibilities, the Head tries to move them to another role. This strategy has worked well in the past.

3. The Case

Doris had been teaching in this school for over twenty years. Problems related to her teaching and her management post (3 points). The staff in Doris' department was not speaking to each other and the Head was aware of problems. Five months after the Head started at the school, OFSTED visited and failed both Doris' department and her teaching. The Head negotiated a new role for Doris from September 1998, effectively making her a one-woman department. The Head chose to concentrate on her teaching role, as this was critical: her students were not learning and a lot of the work which she gave to them was unrelated to the syllabus. Doris was given professional development support and the chance to visit other schools to observe good practice. Staff in the school did not want her in their classes, so she had to observe elsewhere. At this stage monitoring was very informal and outside the procedures. Doris went off sick from January 1999 and this turned into stress-related ill health. She had a long history of ill health and had been referred to Occupational Health on numerous occasions. When she came back, she wanted to see all of her files and asked the Head whether she could be compensated financially because she had missed out on promotional opportunities whilst she had been off. Her aim was to have four management points before retiring. While she had been absent, she had written to the Head alleging incompetence of several other members of staff, mainly colleagues, and she added, "someone is plotting my downfall". A phased return was agreed for September 1999 and she started back full time from December. In January 2000, the Head started the informal stage of the procedures. The informal stage lasted approximately seven weeks and the formal stage comprised two thirteen-week blocks. Throughout the procedures, the targets remained the same, but Doris failed to meet them. A committee of governors met in early March 2001 and dismissed Doris, giving her until 21st March to appeal. On the morning of 21st March, her resignation was faxed to the school and the LEA advised the governors to accept this. Her notice expires at the end of August 2001 and she will get an agreed reference. Doris

has written many letters to the Clerk to the Governors, mainly going over the ground covered in the procedures, and she is currently in touch with a grievance agency and will probably take the case to tribunal. The case lasted 15 months in procedures.

4. The Head's Comments

(a) On the case:

I was aware of a problem when I came to the school prior to my interview. Doris identified herself to me by the way she spoke to me, and then I heard things from the acting head. Although Doris was frequently difficult with other staff members, she was never horrid to me. I had genuinely tried to salvage her career by organising a new post for her and giving her professional support. It was very difficult to keep her focussed, and while she was off sick, more and more came to light about the quality of her teaching performance. I believe that she was ill in one sense; she was very paranoid and she couldn't organise or focus. There were endless problems with other staff because of the way that she presented herself or said things.

This case has had a devastating effect on the children and has cost the school a lot of money. One year group only achieved 9% grades A-C GCSE in her subject area. I changed the course to GNVQ, but this led to complaints from her. I have to focus on the fact that I am here for the children, and this keeps me going. The school pays £24,000 per annum for ill health insurance, but this doesn't cover stress, so it has been very expensive for us. In addition, I have one filing drawer full of paperwork on this one case. Doris had all the time in the world when she was absent to bombard me with letters, emails, faxes, and telephone calls. The union representative is paid to devote her time to the case, but I have a school to run as well. The unions are experts, whereas for me, it was my first headship and my first case. I had no time to prepare the case and I was on tenterhooks about the procedures because I had no expertise. Two of the senior management team refused to have anything to do with her.

Doris couldn't improve because she wouldn't accept guidance and I don't think that she had the capacity to improve. She said that other school visits were irrelevant to her and at the third formal hearing she asked, "what is a learning objective" when this was one of her targets. The union representative had to tell her. At one stage, she made allegations of bullying and harassment against me, but when she was told to make them formal or retract them, she retracted. The outcome was not appropriate, as she should have been dismissed. If she had resigned early in the process, this may have been acceptable. It all should have been dealt with years ago. I suspect that staff are probably relieved that she has gone. Supply and demand of teachers makes taking cases difficult now.

(b) On procedures:

The procedures were draining and took me away from my main job. In future, I would try any other means than to go through procedures. In fact, another teacher left this summer because of pressure: I was unprepared to start procedures because it is so hard and very destructive for the children. Use of procedures in Doris' case was effective, but it took far too long, making it inhuman for all concerned. The pressure is huge and heads wouldn't use them unless they had exhausted all other strategies. The paperwork is easy,

but the unions make it difficult. In retrospect, I would have found a way to be more proactive. The procedures are very stressful, and the only way to reduce the stress is by making them faster. Heads need to be alerted to the amount of evidence needed. Procedures invite sickness absence.

(c) On the role of:
the LEA

I buy in the personnel package, but they were only involved in coming to the formal meetings. They are very difficult to get hold of and they are always busy. I bought in an educational consultant, and I would have failed on technical issues if I hadn't his guidance. I was very upset when the subject specialist observed Doris' lesson, because she was here for fifteen minutes but I was charged £240 for half a day. Personnel are nice people, but we are left very much on our own. I always asked the LEA nicely, whereas I should have hounded them to give me more support. They should have shared the burden, especially as they reserve the right to be the employer. In the end the LEA has the last word and they said that we had to accept the resignation. If they want this degree of control, they should be involved and supportive. I used the LEA model procedure to the letter, but the LEA should have done it.

(i) Occupational Health

They were totally unhelpful because they act as a second GP.

(ii) the role of the governing body

The governing body was wonderful and very supportive. They don't have the background to deal with these issues and they were very nervous and frightened. The Chair was brilliant and put in hours and hours, but nobody from the LEA contacted him neither to explain nor to offer support. The Chair of Governors was very unhappy that they had to accept Doris' resignation in that she would be able to go and teach at another school after all the time and effort put into the capability procedure.

(iii) the union

The union was unhelpful and the individual was quite difficult. It was clear that there was no improvement in Doris' performance, but the union representative went in circles and it all went on and on. There seemed no way that we could communicate effectively, and the school union representative didn't want anything to do with the case. The professional associations are too powerful.

(d) On the four-week fast track:

This is very good, but the LEA won't allow you to use it.

5. Comments of Other Key Players

(a) LEA Personnel

I was involved in the case from September 1999. The Head asked if a LEA representative could be at the informal and formal meetings. I attended at the informal stage and ensured that the process was going smoothly. The outcome was appropriate and nothing could have been done differently. The case was slightly muddled because of

health questions, but Occupational Health were very helpful and said that Doris was fit for work. The case went on for too long and this is a source of stress for the Head as well as for Doris. In the end, Doris didn't accept that the case had been dealt with properly. Fast track isn't a viable solution because you have to give people time to improve and meet the targets. Capability procedures are a strain on school resources.

(b) Trade Union Representative (NASUWT)

I was involved from an early stage and I offered support and counselling and attended all of the meetings with Doris. We always talked before and after meetings. After the hearing, I asked for the case to be deferred to give her extra time. There had been some improvements in the last two observations, and it was just possible that she could have pulled it round. The governors refused. I think that they should have given her more time and support outside the procedures. The union will help with this as we take cases very seriously. Once inside the procedures teachers feel doomed. It is less stressful to work outside procedures and you are more likely to see a change. Schools often leave the teacher to organise their own support and then say 'she didn't ask'. When teachers feel isolated they need a mentor to act as advocate and companion.

(c) Governor

Procedures are not easy; this case took 15 months and this is a long time, making it a big burden for the Head. They are easier for the governors and I didn't find the formal hearing too challenging. Procedures are effective in the end, although they are way too long. I am not in favour of sacking at a drop of a hat and that part is not easy. It puts the Head under enormous stress and an enormous workload. The Head briefed me in general terms about Doris, but I needed to be dispassionate at the hearing. The Head presented the case at the hearing, and there were one or two technical issues raised by the union which revealed a flaw line in the LEA procedures. The teacher complained that she should have been given notes of every meeting. Yet, prior to this, the Head had been criticised for producing minutes which were too long. I ruled that the objection was a technicality and we got on after recording this point and the rest went well. There was one point when I had to rule the Head out of order for producing new material. This was good as it helped to show that I was impartial. The outcome was appropriate, although we all felt sorry for the person. I haven't had training on capability procedures. In retrospect, the LEA support should have been better. Minutes of the formal meetings were left to the Head, but I think that the LEA should provide a clerk. You can't expect individual schools to run a capability, and the LEA has the proper expertise.

4B 'Derek'

1. School and Headteacher Profile

The Head was approaching sixty and had been a Head for 25 years, during which time he has dealt with approximately 20 capability cases. He had been asked by the LEA to take on three schools in special measures in the past; this he had done, each for a minimum of three years. This school would be his last such challenge. He took on the school and 6th

Form Centre two and a half years ago when it was in special measures. The school has 50 teachers and is located near the centre of a large inner city area.

2. Monitoring

Monitoring is carried out by the Faculty Heads and Heads of Department. Lesson planning and teaching are looked at closely. The Head's view was that when children are not learning, you have an incapable teacher.

3. The Case

Derek had a Ph.D. and was a class teacher of English. The Head started capability procedures soon after taking up post. He heard noise from Derek's classroom, and found pupils throwing coins at Derek. There was no classroom control. The Head had several informal meetings with Derek and then the TU representative became involved. Targets were set, involving lesson planning, and schemes of work, attention to order in the classroom, appropriate resources and differentiation. Support was arranged from the Head of Department and the Head monitored. An external consultant (LEA Adviser) was brought in to get an external view. The support continued for some time after which Derek started to look for other jobs. Eventually, he found another job, without having a reference. The case lasted just over one year.

4. The Head's Comments

(a) On the case:

I don't know how Derek became a teacher. He couldn't control ten kids, let alone a class. Derek was a good attender and punctual, but he wasn't capable of change: he didn't want to change. Good attenders don't realize that they are no use. He set 'A' level exams and was very bright, but he couldn't teach at all. Derek resigned because he knew that I would take it to the wire: he didn't work out his notice, I let him go with a pay off until the end of the term. When the capability was beginning to wear him down, we walked across the field having a chat and he suggested that he leave. A lot is done this way: it is most effective and I work to help teachers to re-appraise their career choice. He got another job outside of this LEA without a reference. It is not unusual for teachers to be taken on without references. I ignore requests where I would have to give a poor one. I wouldn't sell a pup within our LEA and where there is a network of heads. I have children and grandchildren and care passionately about the quality of education and this makes me sure that weak teachers must be dealt with. For this reason, I feel that dismissal was the only appropriate outcome in this case. In the early days at the school when I wasn't known, I had to be sure I was fair to Derek; I liked him. The school was in special measures, so there was already very low morale: you have to be very careful to be seen to be fair. I don't think that there was any reaction from the staff in this case: in retrospect I wouldn't have wasted so much time.

(b) On procedures:

I tend to follow my intuition rather than the procedure. The capability procedures are not easy as they are geared to support the teacher. Nor are they effective: Derek is still teaching.

On the whole, capability procedures don't work because the odds are stacked against the school unless you have a cast iron case. If a teacher wants to take it to the wire they win in 9 cases out of 10. Invariably, they become sick and being tied down to procedures is an energy trap. Moving a capability case forward is a slow process and often causes a lot of ill will with the staff: it can create a martyr situation in which the Head then becomes powerless. The procedures deplete energy and are far too long. Most Heads take the easy way out and don't do anything about problems. The procedures need to be re-structured dramatically. The formal stage should have very clear targets and should last a maximum of half a term, because of the harm that is done to the children in the meantime. Before getting to the formal stage, you need an informal stage with no time scale, during which other people are not dragged in. Specific evidence can be gathered during the informal stage. If improvement were not made the formal stage would last half a term, then dismissal.

The procedures are stressful for all parties. Stress could be reduced by creating honest, speedy, meaningful structures. Heads don't enjoy them because they are dealing with lives, mortgages, and families. The majority of people on capability procedures are nice people. It is a lonely decision, and you always ask yourself if it is you, have you got it wrong. You can't always take advice from other staff, because they may have an agenda. It needs taking away from the Head, you need a mechanism to ensure fair play and heads are not trained in personnel. By nature, teachers are trained to trust, increase aspirations and life chances: capability procedures are the antithesis of this so there is an inherent role conflict. Wherever you find someone on capability procedures, you find an indictment of the previous Head and the LEA. The whole procedure is too cumbersome, anti-school, over-bureaucratic, and disempowers schools. It is also way, way too long.

Capability procedures are inappropriate for certain cases. I have had several cases: one was the nicest woman I ever knew. Her husband was a vicar and had Parkinsons: she struggled and it would have killed her to continue. My only option was to use capability with her. I have a good teacher who is coming to the end of his career: I have given him a reduced timetable on efficiency grounds, but the cost to the school is high. He was good in the past and his standing in school and with parents is very high. All Heads agree that you need a decent way to deal with these cases. I have another teacher with a progressive illness: not enough to go on health grounds and much loved. I could win on capability in this case, but it is not appropriate. You need alternatives to capability procedures for those aged over 50.

I also have a teacher who is hopeless, but I know that I couldn't replace her in the current teacher shortage. The supply of teachers is a major barrier to taking a capability case; it is a bigger issue in challenging areas, as it is hard enough to attract staff at the best of times.

(c) On the role of:

(i) the LEA

LEA Personnel were not involved. A LEA Adviser was brought in to get a second opinion, and this was helpful. LEA procedures were used. I buy in the package from

LEA. I can name whom I use from Personnel and Advisers. We have the best LEA and Director of Education in the Country, and the LEA is very supportive. The LEA knows that I skate close to the wind: if all goes well, they are happy, but if it goes wrong, I would be the villain. Heads are the main people to be hit by performance management! Heads aren't given the tools in terms of backing to do the job: there is a plethora of initiatives, but no legal backing. Successful heads are risk-takers, and the climate doesn't encourage risk-takers. When a school is in special measures, you don't get support, but money: it pre-supposes that money is sufficient.

(ii) Occupational Health

They are a big problem: doctors get written evidence from colleagues who have consultant status so they always take the consultant's view rather than using their own judgement. They should be on the side of management.

(iii) the role of the governing body

The governing body was disbanded and a new one formed; they were ineffective and didn't really exist. Half had gone and the rest were very ineffective. There was no reaction from the governing body to the case.

(iv) the union

It is essential to have them. In my experience, they are viciously adversarial. They don't take into account the needs of the school and the children, or the needs of other teachers. Their approach is unprofessional; they use old-fashioned bullying and view the Head as the baddie. I think that the union tells the person to go off sick so that the case will drag on.

(d) On the four-week fast track:

This would fit as the final part of the six-week procedure which I have highlighted above. It can't work independently because of habeas corpus.

5. Comments of Other Key Players

The Head specifically requested that we did not approach anyone else to ask about this case.

4C 'Jane'

1. School and Headteacher Profile

The School is a secondary girls' technology school. There are 50 teachers and 750 pupils. The Head has been in post for 11 years and it is her first headship.

2. Monitoring

The Head monitors capability through lesson observation, pupils' work, walking around the school and sometimes pupil and parental complaints, although these must be fully investigated. She also monitors through the induction programme for new staff, work moderation and results. The Head thought that a teacher can be incapable in a number of

areas: it could be that they can't form positive relationships with pupils, it could be class management issues, pupils might have difficulty understanding their lessons, explanations and activities might be inappropriate, learning might not be pitched at the right level. Also the teacher might not follow school procedures, or might not stick to the scheme of work which is important for SATS and Key Stage 4. Another sign would be if pupils don't make progress and the class is under-performing. If the teacher has a management post they might be unable to fulfil their management responsibility. Also they might not be good at organisation.

3. The Case

Jane had at least 25 years of teaching experience. She had been in post for three years. She came on supply, then the post was advertised and she got the job in October 1997. Once she got the job her behaviour changed. Concerns were raised by the Head of Faculty concerning her class teaching. A programme of monitoring and support was put in. There were weekly meetings between her and the Head of Faculty and the school Adviser observed lessons. There were lots of problems in terms of organisation and administration. It was not that she couldn't control the class but that she had a very laissez-faire approach, so pupils weren't particularly expected to work. The Head of Faculty set her targets over expectations of pupils, marking and preparation. The targets were around department and school policies, lesson planning and marking. There were also issues regarding her coursework. She said that the English Department was victimising her and she involved her union rep fairly early on. The problem was that Jane did not think that there was a problem. She was seen in October 1998 on a number of issues about under-performance. In OFSTED she managed to perform well; she was lazy but she could do it when she wanted to. In May 1999 there was the moderator's report; her coursework was over-marked and it had to be moderated again. There was then her first period of absence which began in 1999 at the start of the summer term. Then Jane created a lot of bad feeling against the English Department. The Head prepared a full set of concerns; ready for a formal meeting to start capability procedures. The Head considered using the disciplinary procedures because it could be seen as a disciplinary problem with Jane refusing to follow procedures.

In June 1999 there was a school trip where the pupils weren't supervised properly. This went to a formal hearing of the disciplinary committee. The governors gave her an oral warning. Jane cried at the hearing and the governors saw her as a bumbling, well-meaning teacher. The staff were up in arms about this. At the end of the summer term 1999 there were issues over how she collected money in for Comic Relief- some of the money was in her own bank account. All the time Jane used the victimisation card and the union rep was heavily involved in a lot of corresponding. At the start of the autumn term 1999 she had a hysterectomy. She said that she had cancer but a lot of people questioned whether that was so. She didn't come back to school for ages. At the end of January 2000, the Head planned a phased return to work. She returned in February and did the phased return and then she didn't come into school again, having found notes which the Head of Faculty had written about her. The Head had informal talks with her union rep, and the union rep agreed that she was off the wall and they would no longer represent her. The Head asked the governors to investigate for a report. In May 2000 the

Head referred her to Occupational Health. The Head is not sure if they saw her then but she made an appointment in July 2000 and was seen at that point. They said that it 'seems the situation is very complicated and we will need to see her again and will request information from her GP; we are concerned that a reaction to her colleague precipitated this'. They didn't say whether she was capable to work or not. She then resigned. She is now working as a mentor for pupils at part of the Excellence in Cities project and she is on supply.

In January 2001 there was going to be an employment tribunal case where Jane was going to argue that she was discriminated against because of her sexuality and that that had been the reason that the Head had tried to get rid of her, but she subsequently withdrew the claim.

4. The Heads' Comments

(a) On the case:

There was a problem with Jane as soon as she was appointed as a full-time teacher. I made the appointment against my better judgement. I had a candidate which I preferred but the Head of Faculty and the particular circumstances persuaded me- the department already had an NQT and Jane had done a reasonable job to date. She also taught a good lesson for the interview so she could do it when she wanted to. The main thing now is that the situation is resolved. I mentioned her name to another Head who had employed her before and who had had problems with her, so I am concerned that she is going round the system. The problem is resolved for this school but not for education in the broader sense. The problem reflects the teacher recruitment crisis.

The case was very bad on the morale of the other staff. It made the working atmosphere in the English department almost impossible. Jane and a colleague who started at the same time found themselves isolated. They emptied the staff room because the staff didn't want to hear them ranting. Jane regularly undermined other members of staff in her class. For example when the girls were going on a trip, I went in and told them off for how they were dressed and told them what was expected of them. When I left the class, Jane then made a derogatory comment about the way I had dealt with them. The stress levels in the English department had gone up and everyone was relieved when she left. My stress levels also went up and I developed physical symptoms which I had not previously had. It was the relentlessness of it. The parents didn't know about the situation but the governors were relieved when Jane resigned.

I think that she didn't improve because she was lazy; she wanted a cushy life and was not a true professional. In retrospect I wouldn't have appointed her. I also wish that I had gone onto formal capability procedures sooner but this was made difficult because of the Head of English going off sick (partly because of the stress of the situation). The Head of Faculty also shouldn't have left notes about Jane which could be found. The situation was stressful for me and for Jane. It is always stressful because you are dealing with people. Most people don't want to hear that they are not doing a good job. When someone is genuinely trying but they haven't got it, then you feel sorry but I think Jane was doing a lot of underhand things. Nevertheless it must have been stressful for her.

I hope I don't have to do it again. It is hugely time consuming and very depressing. It takes you away from other things- there is extra work and extra pressure. You could feel very isolated but the staff thought it was the right thing and got frustrated at the length of time which it took.

(b) On procedures:

The case was on the point of going onto formal capability procedures, then there was the disciplinary hearing, then the absence and phased return. I then wanted to begin the capability procedures but Jane never came back. The length of procedures is also a problem although the newer ones are shorter- in the past they were far too long. You can't be seen to put too much pressure on teachers on capability or disciplinary procedures or it can be seen as victimisation. The teacher can go sick but where does that leave the school and pupils? At crunch points within procedures people can't cope and walk out- how you get round that I don't know.

(c) On the role of:

(i) the LEA

The LEA personnel were supportive, especially over the employment tribunal. I used a management consultant who used to work for the LEA as well.

(ii) Occupational Health

Occupational Health didn't say whether she was capable of working or not.

(iii) the governing body

When the governing body only gave Jane an oral warning after the disciplinary meeting, it was the first time that I felt let down by them. They were asked to investigate after Jane found what was written by the Head of Faculty.

(iv) the union

The union viewed me with suspicion, as there was another teacher who started at the same time as Jane with whom I also had problems. Both were members of the NUT. Eventually the union rep saw the problems and I had support from SHA which helped. My rep came along to meetings and he had a good rapport with the NUT rep.

(d) On the four week fast track:

I am not sure how it works in practice. I think four weeks would be unrealistic to the other extreme.

5. Comments of Other Key Players

Management Consultant

I worked for 20 years with the Authority and now I work as an independent adviser. I advised the Head by talking to her as the situation emerged. We talked about whether the situation warranted procedures. Currently it is not clear whether Jane will take the case to an employment tribunal. There were difficulties with the situation, as all sorts of factors were thrown in to confuse things. This can happen; the teacher doesn't think its

fair and so throws in grievances. Jane eventually bailed out using matters not to do with her capability as the reason.

4D 'Ken' and 'Tom'

1. School and Headteacher Profile

The Head has been in post for 24 years at this primary school which has specialist facilities for children with physical disabilities. The school has 35 teachers. It has IIP, the Chartermark, a Government Improvement Award, it won Special Needs Teachers of the year and the Head came second in the Head of the Year. These are the only capability issues with which Head has experience.

2. Monitoring

Capability is monitored through performance management which was embedded in the school twelve years ago and has since developed. There are regular appraisals and monitoring, so that any problems should become apparent quickly. The Head regards an incapable teacher as someone who doesn't do the job, and who doesn't turn up to meetings.

3. The Cases

Ken, the Deputy, had been in teaching approximately 20 years and had been Deputy for eleven years. The LEA appointed him to this school as part of a swap in 1993. It was felt that Ken was becoming disillusioned and it was hoped that a change of school would kick-start his career. Shortly after joining the school, he was criticised by the 1994 OFSTED team for his discipline in the classroom and, as a result, he was relieved of class contact by the Head. However, he did act as a floating teacher and in the 1996-7 OFSTED he had a good report on his teaching.

Tom joined the school in 1992. Both men were in their mid-forties and were deemed to be lacking in competence by the Head. However, before either one was taken into procedures, relationships broke down and both were off with stress. It was during negotiations resulting from their absences that competency issues were raised. Ken took sickness absence in September 1999, having been asked to take a class from that time. He sent in sick notes which spanned almost one year after which he was dismissed by the governors on ill-health grounds and the original decision upheld at appeal. Ken took the case to an employment tribunal but the LEA settled in advance.

The Headteacher was about to start capability procedures against Tom when he too went off sick later in the 1999-2000 academic year. The LEA found another post for Tom, and a deal was struck that if Tom resigned, the school would pay his salary up to the end of the academic year. He did not perform well at this school and it is not clear if he is still in teaching.

After Ken and Tom had gone off sick, allegations were made to the police and social services that the Head had physically and sexually abused pupils. The allegations were not substantiated, and the Head was not suspended from post at any time.

4. The Head's Comments

(a) On the case:

Ken was perceived as someone who did very little in the school except drive the school mini-bus and spends most of the rest of his time on the computer. I encouraged him to consider headships, but I felt that he would need to widen his experiences and that this should include class teaching. He complained bitterly that I was going to put him back into a class situation. When I returned to school in September 1999 there was a sick note on my desk for asthma, this then turned to stress, and he was off for a year before he was sacked on ill health grounds.

Meantime, Tom was not marking books, rarely turning up to planning sessions, and I was getting complaints from parents about alcohol abuse. I was about to start capability procedures with him when he went off with stress.

Shortly after this, some parents came to me to say that Tom and Ken had telephoned them to say that I had abused their children. The LEA investigated, I was not suspended, and the allegations were seen to be mischievous. All of the staff supported me throughout, as did the parents of the allegedly abused children. Tom and Ken were meeting at a local pub and plotting against me. One of my parents was a barmaid there, and was able to report back to me. It was very stressful. Tom and Ken had also threatened a grievance against me over an eighteen-month period: I wished that they would take it so that I could deal with their allegations. Eventually, the grievance was dropped in January 1999, as all nine issues were totally ridiculous.

Ken and Tom are part of a group of teachers who meet locally and who work the system. There are five of them altogether and they meet in a local pub. Rather than go through capability procedures, they go off with stress. They are all trying for early retirement. These people know how to swing the lead, and there is no organisational machinery to deal with it. The system doesn't support you if someone decides to have a go at the Head.

The case has cost the school a lot of money: £30,000 each per annum to pay their salaries, plus cover for their senior posts, while staff members have to cover and pick up the pieces. All of the teachers were subject to more stress because of extra cover. The odds are in favour of the teachers whilst I became very ill because I had no control over the situation. It was so unfair; I had my hands tied. I was lucky to have had such a supportive Chair of Governors and staff; but you are still very much alone and vulnerable.

In retrospect, I should have acted earlier with both cases. It all lasted three years in total. I collapsed with pneumonia once it was all over. I should have taken time off for myself, as it all made me very ill. I believe that the outcome for Ken was fair: he deserved to be

dismissed, but he shouldn't get early retirement on ill-health grounds. Tom deserved to be dismissed. Parents and Governors were pleased by the outcome in both cases. I would have given Ken a fairly positive reference up until the day he walked out; the union asked for a reference and I agreed to one up until that date. The union found my reference for Tom unacceptable, because I didn't comment on relationships, teaching, or marking.

(b) On procedures:

There should be an external body to investigate these cases, one that could act quickly.

(c) On the role of:

(i) the LEA

I buy in Personnel services from the LEA and they are usually very good. The LEA legal department were very helpful, but there is a limit to what they can do. The LEA guidance is always not to dismiss, and the unions don't want their members sacked. The LEA supported me over the allegations.

(ii) Occupational Health

OHU were particularly helpful at Ken's appeal: personnel referred to their third report in which they had effectively said that Ken was a fraud. Usually there is no challenge if the GP says that they are sick

(iii) the role of the governing body

My Chair of Governors was excellent; he ran the case all the way through. I was lucky.

(iv) the union

Unions are a major barrier to getting into capability procedures, because they recommend that their members go off sick. I found my own union was no help to me after paying in for so many years. There has got to be criticism of the unions for not standing in the shoes of the school. NUT came in to talk to our three staff members, but the majority of the staff and I belong to the NASUWT, and they didn't support me, nor did they come to visit the staff despite repeated requests.

(d) On the four-week fast track:

Fast track can only benefit the system. Ken and Tom's cases were twelve months and fifteen months respectively and this length of time doesn't benefit the school nor the individuals concerned. It is important that someone from outside should quickly investigate issues.

5. Comments of other Key Players

(a) Teacher

I know very little about capability procedures. I know that there were problems at the school with Ken and Tom. I worked with Tom, so I am well aware that his performance was weak. I also knew that Ken was under-performing. I covered some of the work, but didn't offer either advice, as they were both senior to me. In retrospect, it all should have been handled earlier. Tom didn't want to be helped; he couldn't adapt to the demands on

teachers and wasn't prepared to put the effort in. All of the staff in the school felt frustrated that nobody seemed to be doing anything. Tom was getting support and then time off on full pay. We could see that the school was suffering, and the staff were angry because we could see that he was not committed. The LEA came in but nobody talked to the staff. Confidentiality means excluding the staff and this is very frustrating. Morale in the school went up when they both left. The outcome was appropriate: Ken left and refused to come back. Tom shouldn't have been in teaching; kids deserve much better than that.

(b) LEA Personnel

I was involved in the case because of the accusations from Tom against the Head. I investigated the accusations of abuse and favouritism. By this time, there was a clash of personalities and both sides were very awkward. At a meeting to discuss reconciliation, Tom was not prepared to co-operate. However, the Head threw in allegations of incompetence at this stage, but this had not been mentioned before.

The deputy head was off sick and was dismissed on ill-health capability. He lost at appeal but took the case to employment tribunal. We paid him off on a technicality before the hearing. It would have been helpful if I had known about the problems earlier, but maybe it was not that sort of case; it just exploded, and there was no way that Ken or Tom could work in the school again. The Head was very strong, and very assertive in one way, but he probably didn't raise issues of capability with Ken or Tom at an early stage. The relationships in the school had broken down completely and neither party would back down. A lot of the allegations about Tom were true. Maybe there is an element of truth about the way the Head handles the children, but he is a very old fashioned head running a very good, popular school. The parents and children love the Head and we didn't get any accusations from the children.

(c) The Trade Union Representative (NUT)

There was no capability procedure instigated. Ken walked off the job and claimed ill-health early retirement. The Head was very autocratic and bullied the Deputy out of a job and he was dismissed on ill-health grounds. I found it difficult to accept that Ken was incompetent, although there had been difficulties with him at his previous school. I met the Head, the Chair of Governors, and personnel on numerous occasions and I represented Ken at the two hearings for dismissal and helped with his case for ill-health retirement. This was refused the first time, but we resubmitted, and it has now been approved. This was the most demanding case that I have taken. Ill health was an appropriate outcome in this case. The LEA and Governors should have investigated the allegations of bullying and harassment. In retrospect, perhaps Ken should have resigned straight away, and he could have found work elsewhere and saved his career. This is probably true about a lot of capability cases.

In Tom's case, he is now trying for ill-health early retirement. There were concerns about his ability. Ken was able to help him and deflect a lot of criticism, but when he went, the pressure was on Tom. We had a meeting with personnel and the Head to talk about his return to work after he had been off for about 6 months. There were clearly

concerns about his organisational skills, preparation of lessons, delivery and record keeping – and these are fundamental to the job. All of this was confused by flak, and we had evidence of bullying and harassment. If you have got such mitigating circumstances, you concentrate on these rather than the capability. The meeting took place in December 1999. Sparks flew at the meeting, and I felt that the attitude taken in the meeting showed that Tom had been constructively dismissed. He didn't teach for a year because he was quite poorly and on medication. I think he is now working on supply. If he had gone back he would have been on capability, and it would have gone formal and to dismissal. I felt in both cases that the LEA was not actively involved enough.

If the Head had handled the capability issues at an early stage, relationships may not have broken down, and become so personal. The Head should have discussed with Ken the reasons for giving him a class rather than letting the whole business fester for three months. Communication, discussion, and explanation are key issues in resolving capability issues before they take on a head of steam. As far as I know, the Head never discussed any problems about laziness with Ken before deciding to give him a class. One of the problems was that the Head never gave Ken a sense of direction, but then the Head was critical of the various roles that Ken took on. As for Tom, there should have been wider monitoring than just by the Deputy, because then they both came to be seen as the same problem.

(d) The Chair of Governors

I have not had training on capability procedures within the Education system, however their procedures are similar to those used in industry. I have a close working relationship with the Head, and I was involved in both cases from the beginning. With Ken, I was involved when he went off on long term sick leave. We invoked the help of the human resource people at the LEA. I met with Ken but I found him difficult to deal with as he was an unpleasant character, although I tried very hard to be neutral. He said that he was sick, but that he was well enough to work elsewhere. We went through the procedures and three governors, including myself, met and agreed to 'cease his employment' on ill-health grounds. The appeal panel comprised a further three governors and they upheld our decision. I frequently had to go into the school, as there was a fair amount of ill feeling towards Ken. Staff felt that he was pulling the wool and working the system, and then they had to cover his work. There was a great deal of loyalty to the Head from staff and the governors. In Tom's case, he was a senior teacher who decided that he had a conflict with the Head. He made allegations about racism and physical abuse because he had "personal difficulties" in working with the head. I arranged a meeting to discuss the allegations, but he was off sick and didn't get back to me. I held an enquiry into the allegations, but there was no evidence. On the contrary, the family of one allegedly abused child supported the Head and showed me an anonymous letter which they had received: it clearly came from either Tom and/or Ken. They both worked together at conniving and getting drunk. There was a great deal of anger and resentment from the staff, and there was a lot of gossip in the local community. The two of them had tried to get a petition going, but I had a file of testimonials from staff and parents. Eventually Tom withdrew all of his allegations and we had a meeting in December to clear the air

before his return to school in January. He resigned after the meeting. There was then clearly a vendetta against the Head and me and rumours continued to circulate.

I felt that the outcome was appropriate in both cases. We didn't get into procedures, but we would have been guided by personnel and got good support. We should have moved faster on both of these cases. This was very difficult as Tom and Ken were not what they appeared at the outset: they were not willing to stand up and be measured.

4E 'Neil'

1. School and Headteacher Profile

The school is a junior school, controlled by the Church of England. There are eight full time teachers, two part-time teachers and the Head. There are about 200 pupils. The Head has been in post for three and a half years. It is her first headship.

2. Monitoring

The Head monitors capability by looking at planning, marking and assessments and profiles. The Head said that you couldn't define capability, you had to take each case as it came.

3. The Case

Neil had 25 years plus experience as a teacher. He had been in post for 18 years. He was a teacher and was the curriculum leader for Mathematics. There were various problems. He didn't want to follow the National Curriculum and thought he could get away with it. There was an OFSTED two terms before the Head came, unfortunately it was not a very competent team and Neil had the gift of the gab and got straight A's. He would arrive at 8.50am and leave as soon as possible after the bell went. He left school at lunchtimes and so never did duty and did not stay for staff meetings. He only stayed at Key Stage meetings as long as they interested him. He couldn't see the point in either type of meeting. The Head was aware of the problem as soon as she came. It was a personality clash to start with and then it became open defiance. Neil had great support from the staff, a lot of whom had been at the school for 15 years, but eventually even they thought they were doing the work and he wasn't.

Neil was accused of hitting a child. The child is in care and so Social Services were involved. Neil didn't remember doing it. He thought you should be allowed to smack children and he did manhandle children. Social Services were happy for the Head to do the disciplining. He brought a friend with him and the Chair of Governors was spoken to but on advice from him the Head did not take it to a full disciplinary meeting. The Head hoped that this incident would wake him up. In the spring term of 1999 he was off with stress- he had high blood pressure. The Head offered him an appointment with the Occupational Health. Teaching has changed and some teachers can cope with it and some can't. Neil didn't think the changes were doing any good for the children and they were just giving stress to the teachers. Neil simply told Occupational Health that it is a stressful job. He came back in the summer term.

The Deputy didn't get on with him but the Early Years Co-ordinator was a best friend socially. She understood the problem and the Head asked her to impress upon him the need to do basic things. But Neil was determined not to give in to it, he would argue that he was right and he didn't have to do what anyone told him.

Neil didn't come to management meetings (he was the fourth most senior member of staff). He also hadn't moved forward Mathematics or ICT. He forgot to prepare for Inset courses he was supposed to be doing and the Head would have to step in. He also did not monitor the Mathematics budget. The Head was not sure whether he was not fulfilling his role as curriculum leader because he didn't want to do it or because he was incapable. One member of staff offered to do ICT. Neil wasn't handing in planning and when the Head did a book trawl there were pages and pages of unmarked work. The Head didn't want to go down the disciplinary route because he had taught for so long. The Head decided to start the capability procedures but he handed in his notice before it happened. He handed in his letter of resignation Friday lunchtime after going to the pub. He said that he would work until Easter. He also worked through OFSTED where he scored satisfactory across the board.

Neil had grand ideas; his wife also taught and was disillusioned. He never took work home. (His wife also resigned from the school where she taught. They are now both doing supply). He also did a term in a Special school. As a supply teacher you could phone Neil up and he would be able to take a class without planning for a week and would probably do it fairly well but he would not be following the National Curriculum and he wouldn't follow any planning left for him. He could prepare a class assembly in a day; he was a good old-fashioned fly by the seat of your pants teacher.

4. The Head's Comments

(a) On the case:

I didn't move more quickly because I know it is difficult and he had been a good teacher but he hadn't changed his attitude to discipline- he still shouted and was quite physical, for example he would bang his hand down in front of a desk. He didn't come up well in the second OFSTED. For example there were photo pictures up on the wall and there was one of him showing his chest. An OFSTED Inspector wanted him to take the photo down, but he refused to take the photo down so I had to. I think Neil's stress was caused by the continual pressure on him to do things. It was interesting that he resigned just before I was going to start capability procedures. I had typed everything out and nobody else knew but he chose the day before to make his decision.

In terms of the staff response to him, at first he had the element of sympathy because I wanted to change things. For example I wanted planning done in a uniform way. By the end of the first 12 months the teachers saw the benefit of it and they were supportive of each other. They also tried to support Neil. In staff meetings we would discuss how we could cut down on planning and Neil would say, 'I don't agree with planning'. The staff got fed up. If staff complained to me that they never had enough Maths books or equipment, I would push them towards Neil but he wouldn't order them. He lost a lot of

the camaraderie- he had lost the friendship vote at work and the sympathy was not with him. His resigning saved his going through a dismissal.

There were mixed reactions from the governors and the parents. Most of the governors thought Neil was very good as he had the gift of the gab. The parents were split; some thought he was great and others didn't want kids in his class because he shouted at them and hit them- there were several instances when he grabbed them. He also had favourites- especially the girls, whilst other children were virtually ignored. He didn't improve because he didn't see the reason for doing the things he had to do so he didn't think he had to improve, he believed he was in the right. In retrospect, I would have moved earlier but it is my first Headship and you are playing with someone's life. But by that stage I knew it wasn't going to happen and that the other staff were working five times harder and not getting his pay packet and staff saw that it wasn't fair.

He presumably found it stressful and so did I because I knew he wasn't going to change. In the end I was going on the Maths courses too so that I knew what was going on. I was bending over backwards and doing a lot of the Mathematics job for him. The job had changed and he hadn't changed with it, he took pride in being one of 'Blair's dinosaurs'.

(b) On procedures:

I wasn't sure if it was capability or disciplinary. The LEA adviser and personnel advised me to pursue the capability procedures as it is difficult to prove an attitude of mind but it is easier to gather evidence on the things he hadn't done. The procedures are quite lengthy. The length makes it more stressful for everyone. The stress could only be reduced by shortening the procedures. At a new school it is difficult to judge whether someone will change or not. He had taught so long and he was well liked by the majority of staff who knew him. He was a good old-fashioned teacher but he was not planning and assessing. After two and a half years I knew he couldn't do it but I would have had to start again with him on procedures.

(c) On the role of:

(i) the LEA

The LEA spent time going through the procedures and helping me get the documents up to date. The LEA is very good for training courses and I did a course on capability procedures as a Deputy and again as a Headteacher as I knew it was coming up. Personnel are very good at following through. The Adviser is excellent and used to come in every half term in the morning- they would have an agenda and I would have an agenda, now they only come once a term and they have a longer agenda.

(ii) Occupational Health

The Occupational Health gave support but it was not necessarily useful for me.

(iii) the governing body

The Chair was advised as to what was happening.

(iv) the union

They were not involved.

(d) On the four week fast track:

It wasn't around at the time. It is probably a good idea if they have already been given plenty of warnings and they have been logged and the evidence is there.

5. Comments of Other Key Players

(a) Teacher

It was an attitude of mind with Neil. He disagreed with what was happening and the changes. He was a good teacher. I used to team-teach with him and I learnt a lot. He used to say, 'I think the system is wrong and I won't be part of the system.' I have some sympathy with this- more and more is piled on us. I hope the General Teaching Council will not be puppets of the government but address the issue of overwork and feeling unimportant. You don't want the kids upset so you just carry on. Neil took a stand but not in the right way. We all told him but I could see where he was coming from. Neil was capable but he was not making use of his capabilities. He was brilliant at drama and gave the kids a confidence in their own ability but he didn't stick to the curriculum.

There is a problem of retention- within five years most new teachers leave because it is not a nice 9am-5pm job with lots of holidays. I reckon I do 62 hours/week and the Head does more. It takes over your life. I am also concerned about teacher training institutions- I had a student teacher who I said should fail and the Head backed me but the tutor ignored me and passed her. There might be schools where she would be better but she should have been moved to see. If lots of different schools say that the person should be failed then they should be failed but Colleges ratings are important. I am worried over the shortage of teachers; I think schools will accept people who perhaps shouldn't be accepted.

4F 'Karl'

1. School and Headteacher Profile

The School is a primary school with 17 teachers and 350 pupils. The Head has been in post for 14 years. It is his first headship.

2. Monitoring

The Head monitors teacher capability through class observation, work sampling, the checking of planning, talking to senior post holders, looking at reports on children and test results. The Head considers that an incapable teacher is one who is not giving the full entitlement to children for the care they deserve and the education they deserve. Also one who doesn't follow school policies.

3. The Case

Karl qualified in 1997; he had done bits of supply and taught in another school for 12 months. At the school he was the teacher in charge of history. He followed the induction programme for a new member of staff but it became obvious that policies were not being

followed such as homework and planning and there were complaints from parents. The Head had a meeting with members of staff who had shown concerns- the Deputy and the Mathematics Co-ordinator. The Head decided to check and investigate things in the class. The Head looked at Karl's planning, observed lessons and looked at assessments and displays in class and made a series of comments. Exercise books were not being regularly marked, the marking policy was not being followed and the full number of assessments had not been tackled. Displays were also incomplete and nothing was put up during the Easter term of 2000. There were piles of unmarked work and work was not filed. The behaviour policy was not being followed and there was little evidence of ICT work despite the teacher spending a lot of time on the computer. The Deputy pointed out the problems. The Head was going to use the capability procedures if things didn't improve. The Head asked for an explanation. Karl said he had a health problem but he didn't know what it was, he was very embarrassed and would endeavour to get on top of the situation. The Head said he would offer support, for example going through the policies and teaching strategies especially numeracy. The Head also gave him time before the parents' evening to get the marking up to date. On a regular basis the Head would make sure that the teaching met the planning by ad hoc observations and he would collect work samples to make sure policies were being followed. The Head asked Karl if there was anything else he would find useful.

The Head and Deputy started to give support and observed the teaching and collected the samples of work to see that he was following his planning. The Head also gave him some cover time to catch up with his marking and time to meet postholders to discuss policies and strategies. The Head checked the planning for the day and suggested resources he could use and the year group co-ordinator was offering a lot of support. The Deputy also did some observations and offered other support such as in-service courses. As part of the monitoring the Head met him on a regular basis with the year group co-ordinator to see if there was any other help he needed and the Head checked on his health concerns. After a while the Head discovered that he was working on his computer and whenever anyone came in he closed the doors on the computer so you couldn't see what he was doing. The Head became concerned. The monitoring had begun in February 2000; on the 13th March 2000 the Head decided to check what was going on. The Head and Deputy looked at the computer and a history of the sites being used and were alarmed at their content as they were child pornography sites. The Head noted down some of the sites and telephoned the School Support Manager at the LEA and spoke to the ICT Services Manager. The ICT Services Manager advised him to remove the computer which the Head did, and tell Karl that there was a fault on the computer and it had to be taken away. Karl was disgruntled. He said that he had been looking for sites for children's' clubs and had said that some pornographic sites had come up immediately and he had e-mailed the sites to tell them this. He also spoke to a member of staff and said that he was worried because he had been accessing inappropriate sites.

The Head got in touch with school management at the LEA and they got in touch with the police. Karl was charged by the police but allowed out on bail. The school suspended him on the 14th March. The governors organised a meeting as soon as they could and a disciplinary committee was set up where the case was discussed. The

disciplinary hearing was set for 12th April. Karl's union rep argued that the monitoring of Karl's teaching was not relevant but the Head explained that that was how it started. The governors followed the procedures and he was dismissed on grounds of gross misconduct

The LEA put Karl on list 99 of undesirable teachers. The police pressed criminal charges after looking at the hard disk. He was put on probation for three years and had to pay costs. He was also charged with taking indecent photos of a child under 16 who was not at this school. Part of his probation was to have counselling. The school computer revealed that he had visited over 14,000 sites.

4. The Heads' Comments

(a) On the case:

Everyone was horrified and upset. I couldn't tell the parents before it went to court for legal reasons so it was in the newspapers before I could write letters home. Some of the parents were upset as Karl had taken their children swimming but there was no evidence of any activities affecting the children at the school.

(b) On procedures:

The capability procedures didn't get very far in this case. The general consensus about them is that they are too lengthy but things have improved and they are better than they were. I have not had any training on the disciplinary side and faced an experienced union rep who had done that sort of thing on a number of occasions. Perhaps there should be training on this so that Heads are aware of what they would have to do. I was fortunate because there wasn't a great deal of argument but other situations might be more difficult.

(c) On the role of:

(i) the LEA

They gave advice on how to deal with the situation once it was clear that Karl was misusing the computers.

(ii) Occupational Health

They were not involved.

(iii) the governing body

The governors were involved in the disciplinary hearing.

(iv) the union

Karl had a union rep present at the disciplinary meeting.

(d) On the four week fast track:

I think the four-week fast track is good where children's safety and security are in danger.

4G 'Karen'

1. School and Headteacher Profile

The school is a primary school with 21 teachers and about 470 pupils with a very high percentage of ethnic minority pupils. The Head has been in post for 10 years and it was his first Headship.

2. Monitoring

The Head monitors capability through an annual review which the LEA adviser does; there are two observation weeks each year. The Head is also involved in literacy and numeracy audits and in normal circumstances each curriculum area organises two days of curriculum monitoring and senior teachers do one day per week curriculum monitoring. If concerns are raised then the Head seeks to support. The Head 'cranks it up', if after support there are still concerns. There are ways of defeating the system, for example teachers being off sick when they are due to be observed and so it is difficult to get formal evidence.

3. The Case

Karen had been in post for four years and she had four years' experience prior coming to the school. She was a Key Stage 2 teacher with one management point for a curriculum area. The Head was concerned about the quality of teaching and the levels of progress of the children. A significant percentage of her children made little progress in the academic year and a significant number went backwards instead of forwards. The management of her subject area was not the issue as she was an effective co-ordinator. The Head realised quite quickly when she took up the post that she wasn't going to be as effective as the Head was led to believe by references. There were concerns about the behaviour of the children, the style of teaching and the delivery of the curriculum content. She never pitched it at an appropriate level for the children and this impacted on their behaviour. The Head spent a long time seeking to support the teacher and make suggestions. He observed her teaching and sought to be positive. The senior management style was supportive and positive. The school Adviser had concerns from reviews and during the first OFSTED there were some concerns about her. However, the pupils at the school are not easy in that there are challenging children in every class and a great diversity academically; there is also high pupil mobility. The Head said that it was a challenging task on a day to day basis without there being a competency issue. The references she had been given from the two schools she had taught at were good. The Head might have been misled and he certainly felt he had not been told everything. There had been difficulties, the Head discovered later, between Karen and her last Headteacher so he was sent a good reference so that her previous Head could get rid of her.

The Head said that Karen is not a team player- there are two teachers in each year group and everyone has found her difficult to work with- she was apparently like that before, but the Head was not told this in the references. In the first year the Head gave her a chance, but in the next two years there were sustained concerns. There was a constant problem in that whenever the Head tried to crank up the agenda she became ill. She

worked the first 12 weeks in the autumn term, 1999. There was a difficult parents evening and a second OFSTED which was a short inspection; they observed one lesson and deemed it unsatisfactory- it was the only unsatisfactory lesson observed. Karen then went off sick in June 2000 so the Head currently can't move on the capability procedures. The sick note said she has stress and then this later became depression. The Head can't be seen to be intimidating. If it carries on it will become an ill health capability situation. In 12 months she has been absent for 75% of the time. Depression is now seen as being covered by the Disability Discrimination Act so care needs to be taken in such cases. The Head felt that it would be difficult to use capability procedures at the moment as it would be seen as insensitive management and would give ammunition to the union.

The Head has had many conversations with personnel and Karen has been referred to the Occupational Health. Occupational Health says that she is receiving advice but is not fit to go back to work. The LEA has started to move things forward. They take the view that the relationship between the Head and Karen has broken down. Karen is being offered other opportunities. The LEA adviser and teacher association have been active in this and the Head thinks that this is where things will go. When Karen is fit the Head doesn't think she will return to the school. At the moment the Head has to get cover for Karen, as he can't yet reappoint. He has put the SEN co-ordinator in the class- normally she is non-class based working with a variety of groups, so these groups are not being covered because the Head can't get supply and can't afford supply for the SEN co-ordinator. It is a large school so the Head is fortunate to have the SEN co-ordinator- she knows that she would be used to cover a class if there is a long-term absence.

In February 2001 Karen was offered a secondment at a different school but she was not well enough to take it up. The Head heard second-hand that she doesn't want to return to this school. The union is looking for an alternative for her.

4. The Head's Comments

(a) On the case :

It would be difficult for Karen to return to work here. She has strengths and weaknesses and it may be appropriate if she has a job opportunity in a different environment. We would like a resolution for the kids' sake so that we can move forward. Her colleagues are sensitive because of the concerns about her and they are guarded over how they talk about the issues around Karen. Staff are supportive but there is a degree of debris when other people have to pick up the workload because of it. She probably isn't the most popular member of staff in the community. She genuinely is ill and this has an impact on the school- a curriculum area is not being managed and there are financial concerns because of the absence but she shouldn't return if she is not fit to work. However it is difficult to know for how long you let it run. Karen didn't improve because she didn't think there was a problem and this makes it difficult to move things forward. She thinks the senior management is the problem, not her. In retrospect, I would have cranked up concerns earlier, I sought to be supportive for too long. She should have gone on to formal procedures at an earlier stage. The problem is that you crank it up and then there is ill health which stymies the procedures.

It was stressful for her and for me. It is the most difficult staffing issue I have had to manage. You are dealing with lots of people's futures- the kids, the member of staff. It is very difficult for all concerned- no one can look back with any real satisfaction. I hope there will be a resolution.

(b) On procedures:

The capability procedures are fine. They are there to protect the management and the members of staff. It is a clear process. The difficulty I've had is the ill health factor which makes the situation harder to resolve.

(c) On the role of:

(i) the LEA

The quality of advice from personnel is good. The advisers are generally good - the Adviser concerned would probably agree that we should have cranked it up earlier.

(ii) Occupational Health

Occupational Health is there to support the employee. I am not happy about it and it is not helpful to the employer. Most headteachers would agree. The last letter did say that Karen was not capable of going back to teaching at the moment but there was no timescale on it and no advice on how to move forward. If the note kept repeating I would look at ill health procedures. Karen is meeting Occupational Health regularly- in the past there were big gaps in the Occupational Health appointments. I get a letter after every appointment and there have been three appointments between January and May 2001, mainly saying that she is not fit to return.

(iii) the governing body

The Chair of Governors is very aware of concerns and was alerted early and the Chair of Personnel is also aware and is advising me.

(iv) the union

I consulted my own association and they have been helpful as a mediator with Karen's association. I spoke to her union rep on her return to work in July 2000, but it was not an easy meeting. From her point of view she felt that she was not being supported and had issues around this. The union acted in support of their member. There was a further meeting in October 2000 where issues were discussed on the management of the member of staff. This made matters more difficult for me but I haven't heard from then since then. The LEA has also had meetings with the union.

(d) On the four week fast track:

It is very difficult- you would have to have a very, very clear case to go through that. In the context I had, I couldn't have used it. There could be grounds for appeal that the employee was not given a chance to resolve the situation.

4H 'Elspeth'

1. School and Headteacher Profile

The school is a special school (MLD) with 27 teachers. The Head has been in post for two and a half years, and has dealt with two capability cases in this time.

2. Monitoring

The Head monitors through the line management system, lesson observations, monitoring of planning, and through the performance management programme. The Head defines an incapable teacher as one who is not delivering.

3. The Case

Elspeth had at least twenty years of teaching experience, and had been in post at the school for about 19 years. She was a class teacher on D allowance or with plus 4 points. This case was dealt with outside of the procedures and ill health was an integral part of it. The previous Head had known issues around Elspeth's performance and ill health. He put it down to personality clashes between the Head of Department and Elspeth. The new Head could confirm that it wasn't just a personality clash as a new Head of Department came into post, and both reported the same problems. At this stage, the new Head referred Elspeth to the Occupational Health Unit. They said that she was fit for work. However, Elspeth was soon off ill again, and she was re-referred to the OHU. They again said that she was fit for work but may have "difficulties which would recur now and then". The Head then met with her in March 2000, as both Elspeth and OHU agreed that she was fit for work. The Head explained that she must therefore start informal capability procedures. Elspeth went off with anxiety, and retired in December 2000. She was aged 49. She was off sick throughout the 9-month period from March to December.

4. The Head's Comments

(a) On the case:

There is greater accountability since I came into post as head. The last head did a lot of moaning about her, but didn't do anything. The Head was unsure if colleagues knew what was happening. They were sad that she had gone, but all felt that it was best for her. The Head of Department was particularly worried that she would come back to school. Elspeth was very stubborn and blinkered, and couldn't see that she had a problem. I feel very guilty about it, but I tried to help her as much as possible before considering capability. There was little reaction from most parents; one had complained about her, and others were over-familiar with her. It was stressful for both of us: it always will be stressful, because it is about their being - the role defines who you are in teaching. Best practice may be to pass it on to someone else, outside of the school. This way, it wouldn't just be my judgement, and it would take any personal element out of it. In retrospect, I couldn't have done anything differently in this case.

(b) On procedures:

The procedures were easy. I had prepared targets, and would have measured the outcomes, and, I hope, been supportive throughout.

(c) On the role of:

(i) the LEA

I used the LEA procedures. The Adviser was very poor and offered no support. Personnel were involved.

(ii) Occupational Health

Elspeth was referred to them twice. They arranged for a counsellor from MIND to meet us both. We had two meetings together and these were very productive as the counsellor offered a great deal of constructive criticism. I think that this is why Elspeth rejected her, and we didn't see her again. I think that the teacher had every sort of medical treatment. Some teachers are very plausible and convincing and know to say the right things to Occupational Health.

(iii) the governing body

The Chair was kept informed and was supportive

(iv) the union

I met with the union representative without Elspeth. He advised that she should go, we all agreed that it was the best thing

(d) On the four-week fast track:

I would welcome fast track.

5. Comments of Other Key Players

(a) LEA Personnel

I was informed relatively late on in the day. I advised the Head and referred to OHU. The outcome was appropriate in this case; it was clearly health based, and I couldn't have done anything differently.

(b) Trade Union Representative (NUT)

I was involved when Elspeth contacted me about her long-term absence. I explained the options to her and it was a big decision. If she had wanted to return, I would have discussed a phased return with suitable support. In the end she resigned and I negotiated the exit strategy. She got three months' gross pay and a reference. She wasn't getting any better, and I made sure that she was aware that if she went on ill health that she wouldn't be able to teach again. The outcome in this case was appropriate. She is considering putting in a claim for personal injury against the school; if she does, it will run for years.

4I "Gerald" (HT)

1. School and Headteacher Profile

Gerald had been in post as Head for approximately eight years. The school was a junior school in a very middle class area, but was under-performing given its intake. The school had union problems, parental problems, and high staff turnover resulting in a significant proportion of new staff. The staff on the ground worked hard, but leadership was lacking.

2. Monitoring

Weak heads in the LEA are identified through a variety of external and internal data. OFSTED is not always a good indicator, and is not used as a sole measure. When a school is in special measures or serious weakness, it is usually because of issues around leadership and management. Schools are categorised by the Advisory Service into strands one, two, and three, with the latter as the worst category. Once a school is placed in the worst category, the LEA sets up intervention, targets, and support.

3. The Case

OFSTED gave the school a damning report (the worst the LEA had ever seen) on leadership and management. However, they did not put the school into special measures or serious weakness because the lead LEA Adviser intervened. The Adviser felt that the school would go into freefall if it had gone into special measures or serious weakness. Unusually, OFSTED asked that the LEA monitor and report back to the governing body. The Adviser went into the school and met with the senior management team and the governors. The LEA team decided to put in support only for Gerald. There were some minor problems lower down in the school, but nothing major. The Adviser met with the Chair of Governors and set targets and timescales for Gerald who had to accept the package of support. Gerald was given support; he was asked to attend courses, and offered a headteacher mentor who worked with him for two half days per week. Advisers were in the school every second day to give support. Two Advisers were used: one to offer support, and one to monitor. National standards for headship were used as targets and this helped to depersonalise things. NAHT also supported the Head. There was no progress at review, so the case moved from the informal to the formal stage. The day before the meeting with governors to recommend going through to the third stage, a letter of resignation arrived. The process took just under one year. Gerald is now self-employed outside education.

4. Adviser Comments

Gerald wasn't a good head, and probably not a good teacher. There was no self-analysis and no ability to take constructive criticism. He didn't see problems and was incapable of dealing with staff and confronting issues. So many things were wrong, yet it should have been an easy school – white, middle class, with well-educated parents. Following the OFSTED report, Gerald dug his own grave at the meeting with the OFSTED registered inspector. He was obstructive and denied any shortcomings on his part. We always feel that monitoring a head is one of the most difficult tasks for governors. In this case, OFSTED specifically asked that the LEA monitors and reports back to the governing body. It was an appropriate outcome: the staff, governors, and parents were pleased when Gerald went. In retrospect, nobody could have done anything differently.

(a) On procedures:

It can sometimes be difficult to find sufficient reliable, objective evidence on headteacher capability. The procedures are not easy to operate because they are unwieldy and difficult, especially if you haven't used them before. It is better to catch weak Heads at an early stage; the majority have been in the system for too long. There is an anomaly in

that the school holds the money, and all we can do is to encourage it to buy in our support service.

(b) On the role of:

(i) the LEA

We don't do deals. We might try to get an enhanced pension for heads in their fifties.

(ii) Occupational Health

They were not involved, as Gerald wasn't off with ill health. Occupational Health can be a problem as they don't understand the role of heads and teachers, nor how schools are funded.

(iii) the governing body

The governors were kept fully informed at each stage of the procedures and the Adviser gave them a termly report on targets. Where we know that the Head is weak, it is sometimes difficult to persuade the governors. There is very little we can do in these cases, where the governors won't listen and the Head won't be persuaded to resign.

(iv) the union

The unions are a barrier to getting a case into capability procedures. The representatives can be very bullying and intimidating. The unions here are quite strong and put up a fight. However, in this case, they were helpful. Our procedures are agreed with the teachers' associations.

LEA 5

5A 'Lisa'

1. School and Headteacher Profile

The school is a community primary school which has 14 teachers and 320 pupils. The Head had been in post for 16 years, it is his first headship and he has dealt with two capability issues altogether in that time.

2. Monitoring

Capability is monitored through curriculum co-ordinators as well as the Deputy and the Head's own observations of lessons. An incapable teacher can be identified when a class of children is not making appropriate progress and there are unresolved disciplinary problems. This may be linked with excessive sick leave. Other signs are excessive noise, a high number of children involved in incidents, or a high number of parental complaints and complaints from curriculum co-ordinators

3. The Case

Lisa had been a teacher for 14 years at the school. There had been previous issues with her which had been resolved but there was a particularly challenging class who were a handful. Lisa had also been used to older children. The Head and other key staff were doing support work with her when Lisa went sick. The Head felt it was important that he was pro-active in doing something about it. He made contact with Lisa with help from personnel and Lisa visited Occupational Health. She was off for half a term during the winter term of 1999-2000. The Head had a meeting with her before her return to work and made a contract with her in which the school undertook to provide support. The Head was sympathetic but made it clear that it was her responsibility to implement what was agreed. The Head and Lisa identified another member of staff who could act as a mentor.

The Head and Lisa agreed to establish the causes of the problem and what to expect on discipline and standards and roles, and they established a programme of re-introduction. A position statement was agreed which stated that the class had challenging children but that it was not as difficult as classes Lisa had worked with and that the children were capable of reaching a satisfactory level. It stated that Lisa must be consistent and the cycle of bad behaviour of some children had to be broken. Lisa must be clear about expectations in terms of progress and which aspects of behaviour rest with the teacher and which with the line managers. The Head would not change the class. The Head and Lisa then looked at the causes of the problems, their scale, particular aspects causing stress and what challenge and support was needed. Ways forward were then identified such as having someone to support with music and additional literacy support. They also looked at her career and her training interests and then at solutions. Support was given from a mentor and advice and strategies were provided from the Head and Deputy. Training was provided and there were weekly reviews. There was an argument over whether the pupils were capable of the work but the Head maintained that the curriculum had to be followed. The Head also monitored progress.

The Head brought in a teacher to cover while she was off and used the teacher when Lisa came back after being ill so that she had a phased return to the class. On the first day Lisa observed and then she gradually built up the time she spent with the class. The Head held meetings every week in which progress was reviewed, needs were identified and support provided and there was a planned programme for the following week. Lisa improved and the class she has now is doing pretty well. The Head said that in an ideal world teachers would be able to teach all age groups but in reality some teachers are suited to particular age groups.

5. The Head's Comments

(a) On the case:

The outcome was appropriate; we achieved what we set out to achieve and if you think of it as a continuum then Lisa is a lot further along than she was. The other teachers were aware of the situation and staff were supportive and thought, 'there but for the grace of God go I'. Lisa had the will to improve- she is a tough lady and we made it clear that it's OK to have problems and with support they can be solved. This was something coming to a head- her father was dying which was a contributory factor; she had been effective in the past. I was happy with the overall thrust of the strategy, although in retrospect I might have refined things a little, for example having slightly different targets, but that is all. It wasn't stressful for me - for her it was initially stressful but the return was so clear and supportive that it was fine; it was not punitive. It is important for schools to look at their practices and ways in which they operate. For example, there is very little non-contact time and some very difficult children. Schools need to ask themselves, how do we group children, are the discipline policies right?

Fellow headteachers see capability as being the problem of the teacher but the institution might be contributing to the problem. However, schools are under pressure to solve problems quickly and quick fixes are not always the best. There might be a role for external assessors such as advisers. It is important to have a clear analysis of the nature of the problem- a lot of the time the teacher situation might be made worse because of the actions of the institution such as the workload or the make-up of the class as well as personal circumstances. You could argue that personal circumstances shouldn't affect professional behaviour but I don't buy it. I have seen good headteachers and teachers pack it in because they are no longer capable of doing everything which is asked of them. Is that capability or over-load? There is also an equal opportunities angle- you can only make a judgement about someone's capability if you are operating on a level playing field, for example some classes and age groups are more difficult than others.

I am concerned that it is very easy to say that a teacher is rubbish but it is much more difficult to put all the support in. In initial teacher training- on a four-year course, it should be clear after two teaching practices whether a person can hack it. The question is how tough are the institutions with the pass/fail.

(b) On procedures:

The fact that Lisa was flagging up problems triggered the informal procedures. The procedures seemed to be a logical step; they were like helping someone back on a bike after they'd fallen off. The procedures provided a framework but it is what your action is within them which is important, for example having a re-introduction programme. In terms of the length of the procedures, if you have a programme which will work then the fact that they are long is OK but if you have someone who is a complete disaster then they are too long. It is really what happens before the procedures which is important-putting lots of support in. I think once you are on capability then it should be fairly quick. If the person is refusing to co-operate then you want something fairly swift to remove them.

It would be useful if the school could draw on a fund, for example paying for a cover teacher. It also might have been useful to have an external counsellor- a counsellor is available at the LEA but I don't know if Lisa used him/her. There is also nothing in the procedures which outlines possible solutions. It is what you do before you get to the formal procedures which is important.

c) On the role of:

(i) the LEA

I found the LEA very useful.

(ii) Occupational Health

Occupational Health made it clear that Lisa wanted to return. I was able to contact her via Occupational Health and Personnel. Occupational Health gave the school a go-between as it is considered bad form to contact teachers when they are in this situation and ill; it could be construed as harassment. It was easier for me to make contact when I knew she wanted to return. Occupational Health can only make a judgement over whether a teacher wants to return to work, sometimes they can't tell until they are back whether they are capable of returning. The teacher has to come back and sort out the problems which are causing the stress. What is important is the nature of the programme of re-introduction.

(iii) the governing body

They took no part in this case.

(iv) the union

There was no union involvement.

(d) On the four-week fast track:

The danger of the fast track is that the faster the track the less time there is to support the teacher. Where it is clear that there is no future in someone staying in teaching then the sooner the better as long as the school can demonstrate that it is all above board.

5B 'Martin, Russell and Natasha'

1. School and Headteacher Profile

The school is a secondary school. It has 439 pupils. The Head has been in post for five years; it is her second headship and her tenth year as Head. The Head took the school over in Special Measures. There was a problem with the quality of teaching, because many staff had been there several years, had not had any training and were not up to speed on OFSTED.

2. Monitoring

There is whole school monitoring and evaluation as a result of the school being in Special Measures. All lesson plans are looked at by the Head of Department and the Senior Management Team responsible for the particular areas in the school do lesson observations. There has been a staff Inset on this monitoring and there are paired observations. There is agreed format and feedback from the observations and any issues which come out are built into the training plan of the Department. Teachers with a particular need may go on courses or observe senior members of staff teaching or look at what happens in other schools; alternatively, staff have been brought in from other schools to help. If lessons are not satisfactory and the Head of Department has a problem dealing with it then it is directed to the Head. The teacher would then step out of whole school monitoring and would follow capability procedures. The Deputy and Assistant Head are involved- one acts as a critical friend, the other does lesson observations. They then report to the Head. The Head talks through the findings and sets targets which are time related. If there is a need for support, counselling, equipment or training courses then these are provided to try and alleviate the problem. The Head also asks about personal problems which may be affecting the person and tries to be sympathetic over this.

The Head would define an incapable teacher as one whose planning, preparation or delivery is less than satisfactory; if behaviour is not acceptable or progress is not evident in classes; if the teacher is not doing lesson planning or marking; where there are no clear aims, pace or challenge; or where subject knowledge is lacking.

3. The Cases

Martin had 25 years' experience and was a Head of Department. He had spent the whole of his teaching career at the school or from one of the two schools which amalgamated to form the present school. The problem with Martin was his absence, quality of teaching, lack of up-to-date knowledge on changes in the curriculum and his old-fashioned delivery. He was on informal procedures for a couple of years and on formal procedures for six months. He was absent for six months with stress but having returned to work he had further periods of absence. The Head looked at his attendance and saw that he was always off when there were HMI visits and he left other members of the Department to deal with it. When the Head challenged him, he became aggressive. The members of his department supported him during the procedures but at the outcome they were pleased. The governors dismissed him on performance grounds - that the education of the children was suffering because of the amount of time off and despite putting in a lot of support (at the time the LEA did not have sickness procedures in place). There was

an appeal but the governors upheld the decision. Martin got an ill health pension and a seven-year enhancement.

Russell had also been at the school for 25 years and spent his whole teaching career there. The quality of teaching was the problem- the lessons were poor, there was a lack of clarity and there were no clear aims and objectives. The children were also not behaving appropriately during the practical lessons because there was no control. Russell thought that that was fine and challenged the Head's view. As exam officer he also entered children for the wrong tier of examination and had written warnings over this. The school also received a written warning from the Director of Education. The Head started meeting with Russell but he wouldn't accept the problem and became aggressive. The Head involved the Advisory Service to confirm the findings and worked with him on an individual basis; she helped him re-organise his class and did team teaching with him. Russell's lessons improved from poor to satisfactory. There was awareness raising across the school on data on children and looking at levels of entry, and Russell's role as exam officer also improved. The case took just over a term. The staff regarded the Head as the 'baddie'.

Natasha had about five years of teaching experience. She was in a department which had lost its Head of Department and was being line managed through senior management. (The Head was unable to appoint a Head of Department for Expressive and Performing Arts). She had expectations of the children which were too low and her attitude towards them was wrong- she was very much above them. There was also a lack of discipline in the classes. A senior member of staff worked on planning and delivery and behaviour strategies and her union rep was very supportive of the Head. Her teaching improved to satisfactory. It took just over a term. She has now left the school and has gone to a school more suitable to her own philosophies and beliefs (a private school in a leafy suburb).

Each member of staff was set targets and had a written memo with them set out. They could come back to dispute anything. There was a Care Inspector assigned to the school and subject specific Advisers who supported and gave advice.

4. The Head's Comments

(a) On the cases:

I have found the cases stressful particularly Martin's case as he was very aggressive and I felt uncomfortable; as I was standing alone it was a relief when that was sorted. I think the outcomes were appropriate in that there was obvious improvement which has been sustained and I felt justified in Martin's case; he became very nasty in his attitude and in the interest of the children and the other staff, I did the right thing. The other teachers didn't like my using the procedures; they felt it was my fault and that my expectations for the pupils were too high. Other members of staff went off ill because I looked at a lot of documents and statistics. I also sent memos and warning letters. Before performance management came in I met with the staff on a regular basis and so could keep the situations anonymous.

I think Russell and Natasha improved because the procedures gave them a clearer focus with the setting of targets and it gave them the mechanism for improvement. Martin didn't want to improve; he thought he was fine and that it was me who was putting too much pressure on him.

The parents were not aware of the situations. They tend to be loyal and are not very vocal. They will be vocal if they think a member of staff has manhandled their child. It is only when the member of staff has left that they are upset- they are not proactive or pushy. Many of the parents are unemployed and all are in rented property; very few are car owners.

I felt as much stress as the member of staff did because they are not easy issues but you have to go for it and it is only natural that they would feel stress. I think that stress could be reduced in operating the procedures if there was Inset on the process. Staff have a copy but the unions could induct them into it and explain that these are the expectations. Older staff tend to say, 'I've been teaching for 25 years, you can't tell me what to do', but we are in a learning age and we all need to move with the times. You have to be prepared to change because there have been so many changes in education.

(b) On procedures:

You need to use capability procedures and I believe you should be providing a good quality education. It is the Head's responsibility and procedures should be activated if they are needed. It is also about maintaining relationships as you have to work with them after. The length of the procedures is fine; it gives a teacher a chance. Teachers take a while to believe it and internalise it: until they accept a need for improvement they can't move forward. You have to bring the person along with you.

(c) On the role of:

(i) the LEA

The LEA made a very useful contribution all the way through. One Adviser set training and gave support and advice, and was present on one occasion when my credibility was being challenged. Personnel were also useful.

(ii) Occupational Health

Occupational Health were helpful and made recommendations concerning Martin. I am not sure if they can tell whether a teacher is capable of coming back to work. They can listen but they are not aware of the circumstances. Some teachers use Occupational Health, whereas others are genuine. It is easier if it is a physical illness rather than stress which is more difficult. Martin got his ill health pension on the strength of the Occupational Health comments, although to me he seems fine. I think it is possible to pull the wool over the doctor's eyes.

(iii) the governing body

I meet with the Chair of Governors on a weekly basis and discuss capability procedures with her but she can't sit on disciplinary or appeal committees. I don't discuss individuals. We also discuss the monitoring of the school generally. The governors are very supportive and will ask searching questions, they won't just go on the headteacher's say so. They do give a fair hearing to staff and make their own decisions. The governing body has changed from one which was inactive to one which is proactive. Younger members have joined- they are business, management and finance people who deal with personnel issues, and they are very able. The Chair has been extremely supportive in raising standards and getting a quality education.

(iv) the union

The union reps were either learning or going along with it- they did ask for points for clarification but I didn't find them obstructive. They were helpful in calming their member down. The availability of union reps and having to fit in with when they are free can be a problem- many local ones are teachers and the procedures have time limits which you have to meet.

(d) On the four week fast track:

I have not used it. Unless someone is dire over a period of time I would question why you have to use it. I prefer to give a certain length of time. I don't know many colleagues who have used it. Maybe if there was a new employee and they were dire from day one.

5. Comments of Other Key Players

LEA Personnel

I was involved with Russell's case. The Deputy at the school was asked to investigate and I spoke to the Deputy about her role. I was never informed of further developments.

LEA 6

6A 'Margaret'

1. School and Head teacher Profile

The school is a Roman Catholic, Voluntary Aided primary school. There are 10.6 teachers including the Head and about 240 pupils. The Head has been at the school for 15 years and it was his first headship. He has dealt with three capability issues in that time.

2. Monitoring

The Head monitors teachers through documentation required, lesson observation and LEA advisers.

3. The Case

Margaret had been a Deputy Head at the school for 18 years and had had about 30 years' teaching experience altogether. She had done class teaching in KS1 and KS2 and was responsible for language in the curriculum. Initially the problem was with Margaret's role as Deputy, but it then became class teaching as well. She had a history of under-performance as far as the management aspects of her job were concerned. The Head had tried to deal with this over the years and she had had four action plans but there was not significant change. Over the last two years there were also problems with her class teaching – she failed to produce plans on time as requested and there was a need for her quality of teaching to improve. In September 1999 the Head informally made it clear that he expected improvements that year.

In December 1999 the Head met with Margaret to initiate the capability procedures, in the presence of a union rep and a Diocese rep. It was intended that in March 2000 there would be a meeting to consider Margaret's performance but she was off for three weeks after the February half term holiday and so some of the possibility for monitoring and the March meeting were postponed. A further meeting was organised in May but there were difficulties for the union rep in attending and it was then arranged for June. In May the Head and Margaret met to discuss how far she had got and in June the planned meeting took place. Up to that point Margaret had maintained that she could fulfil her teaching and Deputy role. In the June meeting she recognised that this was not the case and that the management role was affecting her teaching. The Head agreed to her request to move her to KS2 as she thought she could then perform better as a teacher and fulfil her management role as well. This meeting was at the beginning of the formal procedures. The union representative tried to argue that it was too early to move into the formal procedures but the Head argued that because of the background he felt it was appropriate.

An OFSTED visit took place 2000-2001. Margaret failed because as teacher as she didn't prepare well and her performance as a manager was also unsatisfactory. There was a meeting arranged for the 4th October but she went off sick on the day of the meeting. The union rep came to explain that she was off with stress and since then she

has been off for six months. The Head has called a meeting to request an indication as to whether she can return or not as he needs to know for the sake of the organisation of the school.

4 The Head's Comments

(a) On the case:

I am frustrated by the outcome as I would like to see the situation resolved. I haven't given out too much information to the staff because of the confidentiality of the situation but the staff are frustrated with Margaret. The teacher who is taking the Deputy's management role is also frustrated because she feels that her hands are tied as she doesn't know whether Margaret will return. The parents are anxious to know whether Margaret is going to return, especially if it affects their child. The parents might also become anti-Margaret if she returns and continues to perform at the level she did on the OFSTED report.

Margaret didn't improve because of her attitude to her job – she seemed to place her family commitments before her obligations to duties. For a large part of the time she felt that she was capable but in my view she was not sufficiently motivated or interested to put the effort in. Her teaching declined because of her over-ambition in wanting to change departments and key stages. I wish that I had started capability procedures years ago but I wished to try different strategies to establish a working relationship. I tried the carrot and stick approach, giving leeway for Margaret to improve and then putting the pressure on. It didn't work because she was not prepared to respond.

I would have appreciated more help from the Diocese in helping to move things forward. I was stressed because of the workload I had borne because of Margaret's lack of support but I blame myself for tolerating the situation to my detriment and the school's. Margaret did not find the situation stressful until capability procedures began. Not enough management clout had been brought to bear upon her and so she felt protected and immune.

(b) On procedures:

I had to decide which set of procedures to use because as a Catholic school we could either use the Catholic procedures or the LEA procedures. It was decided at the first meeting in December 1999 to use the LEA procedures since these were regarded as more straightforward. The Diocese was happy with this. However, I felt frustrated by the process as there seemed to be a compromise at each meeting and then it seemed to be left vague as to what the next step was. The process also seemed to become rather protracted. The LEA and Diocese were helpful in explaining what could and could not be done and in issuing words of caution so as not to give grounds for grievance but this did make the process longer. The procedures were effective because they resolved the situation which I had not managed to do in previous years. However, I did think they were too drawn out but realise that people in this situation need a chance to improve. This case is still not resolved because of illness. The procedures could be improved by making the time spans clearer; because they are not set it gives the union a chance to prolong things longer than is desired.

(c) On the role of:

(i) the LEA

LEA personnel had made a useful contribution. The Adviser had been aware of the under-performance at a management level but had left it to me to get on with resolving it. I would have appreciated more help from the Advisory service in moving things forward. The changes of advisers have also not helped; I have had seven advisers in 15 years.

(ii) Occupational Health

Occupational Health has been more helpful to Margaret than me and because of the confidentiality, I only get a brief summary of the outcomes. Margaret went for her second interview with Occupational Health and as a result of the report, personnel think that they have enough grounds to seek a meeting and ask Margaret whether she feels that she will be able to return.

(iii) the governing body

The governing body have been aware of the situation for some time and have wanted to become involved actively but they were told that they couldn't do this because they might be needed at the dismissal stage. The governors share my anxiety in wanting to see the situation resolved for financial and organisational reasons.

(iv) the union

The union didn't act professionally but they have made it more difficult to resolve the issue. Their main agenda seemed to be to draw out the process as long as possible.

(d) On the four-week fast track:

I have no experience of it although I think it could have been employed in this case, but I was not sure if it was appropriate. I would look at that kind of timescale if Margaret decides to return.

5. Comments of Other Key Players

(a) LEA Personnel

I advised the Head on the process and was present at the meetings. The advisory service monitored and recommended training. Margaret was offered a mentor but didn't take up that option. We are having a meeting tomorrow to determine Margaret's intentions. I don't believe she will return and will either resign, get ill-health retirement or her employment will be terminated on ill-health grounds. I advised the Head to finalise the capability procedures much earlier but it didn't happen and there were misunderstandings because it was not done as formally as it should have been. It is often the case that Heads feel uncomfortable with the procedures but say that they have done all this and feel they are repeating it, which they are because they delayed the formalisation of it. People don't register the seriousness of the situation until it is formalised, only then do they recognise it as a real problem. The length of the informal stage is also a common failing. Following OFSTED the Head himself was subject to an action plan and informal work was done with him. There was improvement and things began to get done. Management and leadership was an issue. There seem to be more issues in primary than secondary

perhaps because there is closer scrutiny of primary schools and in secondary schools issues get hidden more easily.

(b) Trade Union Representative

The procedures are supposed to be remedial but they are used in a destructive, non-supportive way. They are used when people are at a particularly low point and they add further stresses. They are ineffective as a method of securing improvement and are used in a way that leads to someone leaving. They are a tool to help remove a person from a school. One thing which is a low priority is addressing the question of why – why someone who has skills, expertise and training has suddenly dipped in performance. If no one attempts to understand the dip in performance then they won't improve – it might be personal relationships, the home, alternative pressures. You must go to the cause of the symptoms rather than concentrate on the symptoms. Management come at it from a position of power and control; it is impossible to create partnership. There is real negativity in the monitoring with the emphasis on what is wrong. The emphasis should be on building self-confidence because the person often has self-image problems. However, sometimes the teacher is in denial. There is little in the way of encouragement and it is often left to the union to bring a pragmatic view. The procedures could be improved by trying to make it co-operative and going to the root cause. Currently with Margaret I am counselling and listening to how the incompetence of the Head has led to the situation – he is also under capability procedures.

LEA 7

7A 'Roger'

1. School and Headteacher Profile.

The school is a small primary school in a tiny village: it has 140 pupils and six teachers including the Head. The Head had been Deputy in the school and was appointed at the same time as Roger. There were major problems for the Head to sort out when she took up post, mostly relating to the finances of the school. In the June of her first year in post, OFSTED inspectors placed the school in the serious weakness category.

2. Monitoring

The Head monitors all planning half-termly, scrutinises work, and observes lessons. Capable teachers are defined as those who ensure, and have the ability to ensure, that children make good progress. They must have a good knowledge of the children and their abilities as well as of the subject and must be able to use this knowledge to get children to their highest level of attainment.

3. The Case

Roger came to the school with three very good references and had nine years' teaching experience in total. This was his first deputy head post. Parents and children very well liked him, but there were major problems with his teaching, as well as his role as Deputy Head. These came to light in an OFSTED inspection in the June following his appointment. The LEA asked the Head to monitor for one term; she did this and became increasingly unhappy. The Link Adviser agreed that there were problems. The informal stage of the procedures ran from September 1999 – February 2000, and the formal stage from February to June. Roger was given teaching targets and targets related to the job of deputy headteacher. The initial stages of procedures addressed problems in relation to the class teacher role. Those introduced from March 2000 related to the deputy head role. During the period from September to April, Roger was relieved of deputy head responsibilities, while keeping the salary. OFSTED had identified that Roger was not marking work and that, although his planning was meticulous, there was no evidence that he was delivering his plans. The standards of work in Roger's year 6 class were poor, as were the SATS results.

At an initial meeting in February, the teaching targets were agreed, as well as the support strategies. Specific deputy headship targets were to be finalised and put in place from March, with review on 7th June. An Adviser helped the Head to draw up both sets of targets.

The Adviser visited Roger to observe and give clear and specific guidance and feedback throughout. Intensive literacy support was given to the school as a whole with individual support to Roger, as well as individual specialist maths support. One to one courses were provided on teaching strategies, classroom management, behaviour management, and on the deputy head role. Roger was asked to observe good practice in KS2 in another school; a deputy head was appointed as a mentor; and he attended a number of training courses.

Roger became very gaunt and stressed and he was hospitalised with pneumonia over the Christmas holidays. Although he was offered stress counselling, this wasn't taken up.

Roger felt very guilty and tried very hard to take on all of the advice that he was given and eventually, his class teaching was raised to a satisfactory level. However, he couldn't achieve this combined with the deputy head role and he agreed to step down. At the June review meeting, it was agreed to keep the capability procedures going as he had only just got his teaching up to satisfactory; he was signed off in December 2000. However, Roger's feeling of embarrassment and guilt made him desperate for a fresh start. He got another post and, although it was out of the time scale for resigning, the school released him. He is now working in another school in the county and is reportedly doing well. The parents were very sorry to see him go; they thought that he was the best teacher in the school, and that OFSTED had victimised him.

4. The Head's comments

(a) On the case:

Roger was incapable of planning: he didn't understand differentiation, and the work was not appropriate for upper level children. He had special needs children whose behaviour he couldn't control, so he sat with them and ignored the rest of the class. His class organisation was poor, and although he had objectives, he couldn't deliver them. He was also ITC co-ordinator, but we had to teach him, he could only use acorn computers. He was very nice, personable, and entirely incompetent. It was a clear-cut case and I had to get into the process. Kids come first and I had to sort it out for them, they must always take priority. He deserved to be signed off in December 2000 as he took on board all of the criticism and was very keen to improve. I naturally continued to monitor after this. It was an appropriate outcome as we all recognised that he wasn't capable of doing both jobs. I had a very difficult time when he left. Some parents thought I had driven him out. Staff morale was affected; they were all pleased that he was getting help, although we were all upset by the amount of monitoring. In retrospect, he shouldn't have been appointed. He came to the school with a glowing reference; I rang the Head and she was very flattering about him. I would never have appointed him if I had seen him in front of children. While the advisers were monitoring Roger they were also monitoring us and we all felt under the hammer. We got sick of the sight of them coming in; he got all the support and we got all the monitoring.

(b) On procedures:

There are no real barriers to the informal stage, but I should have acted earlier. The procedures were easy and effective. He will always be just satisfactory as a teacher but the procedure helped him as he desperately needed the extra training. The move from informal to formal was fine; personnel felt that he needed the extra support that it would provide and NUT agreed. The procedures could be improved by limiting the informal stage to one term. Our relationship remained intact, although I was upset by it. We had an OFSTED visit last November, and we were fine.

(c) On the role of:

(i) the LEA

Two advisers carried out a pre-OFSTED visit and didn't find any major problems, so the OFSTED report came as a shock. The LEA procedures were used; they were easy and effective. I buy in the LEA personnel package and they led the school through procedures so that each step was very clear. Everyone involved knew what they were doing and roles were clearly identified. We were all impressed by the LEA. They have a tight rein on schools and they felt that we had slipped through the net. The county knows its schools very well. You couldn't fault the support that the LEA put in: they were wonderful and I couldn't have done it without all of their input.

(ii) Occupational Health

OHU were not involved in this case.

(iii) the governing body

Governor confidentiality means that they are only told on a "need-to-know" basis. Only some of the governors knew about the case and they were all very helpful, even though two of them had children in his class.

(iv) the union

The NUT rep was very good.

(d) On the four-week fast track:

I don't know it.

5. Comments of Other Key Players

(a) Teacher

Roger was the teacher governor until the capability procedures, and then I took over this role. I didn't know a lot about capability procedures before. I am from a retailing background. It was very appropriate to use the procedure and the LEA was very good and there was lots of support. It was low key about who else knew.

I spent a lot of time with Roger after school and he observed my lessons. I became the special educational needs co-ordinator and helped him with strategies with his special needs children. This felt strange in one way, as I was relatively new to the profession and he was my senior. He was monitored by the LEA advisers pre-OFSTED and they picked up peripheral problems, then OFSTED criticised him. I wonder why there was such a big difference in views. It was clear that they didn't look deeply enough initially although all advisers are OFSTED trained, so they should have known.

Morale was very much affected. There was a mix of feelings including anger that the school had been let down. It should have been spotted earlier. Monitoring made everybody on edge: when the teacher next door is monitored, you can't relax. There was a lot of uncertainty about what might happen next. After he'd gone, everyone felt sorry. The school shouldn't have been put in that situation, but now let's move on. We have all been through the wringer in the last two years. The last (satisfactory) OFSTED made people feel better. The outcome was appropriate and it was all handled very well, though

it was horrible for everyone. It is a soul destroying process; in a similar situation, any one of us would have left, yet Roger showed a great deal of strength just to keep going and he kept trying to do the deputy head role as well. The school felt over-monitored; it is particularly burdensome in a small school.

(b) LEA Adviser

I worked in the school to sort out problems and after two months we went into capability procedures. The case lasted one year, and it shouldn't have been this long. Reviews took place at six-weekly intervals.

Roger was not a high flier. It was a case with a new (female) head and a male deputy. We were alerted to the problem when the school went into serious weakness. We must have known something of it before this. The Area Personnel Officer was heavily involved as well as the Link Adviser and myself. I gave most of the support together with staff in the school and Roger was very receptive to our advice. There was a relationship issue between the Head and the Deputy and the Head didn't give a lot of support. The outcome was appropriate in this case. The procedure could have been improved by shortening the informal stage.

(c) LEA Personnel

This was a case with a successful outcome. Roger had very little management experience before coming to this post. I was involved with the Adviser and we met with the Union rep. The initial meeting checked where they had got to informally and we explained the capability procedure and agreed an action plan. We started to look at his teaching first, then the management concerns later on. He had difficulty in combining the two, so he asked to step down and the Governors agreed. In retrospect nothing could have been done differently. Usually the person goes off sick, but he stuck to it.

(d) Trade Union Representative

Roger didn't know that the case had gone through an informal stage so he didn't realise the seriousness of it all. The first I knew of it, it was at the formal stage. It wasn't unreasonable, but it hadn't been made clear to him. In this case, the teacher got an amazing amount of support from County – it was very expensive but we got him back on track. I think that Roger was a reasonable class teacher but he took on the management post and didn't realise how much work there was to do. He may have been losing the plot before OFSTED came in, but when they came in, he really lost it. Roger didn't get on with the Head yet all the other staff did. He didn't scan the class even though this is very basic, and if he wasn't doing this, he was in trouble. He got lots of support and he got on track but dropped the deputy head role. When I first got involved in the case, I telephoned daily to give reassurance. I told Roger what he needed to assemble in preparation for the formal meeting. The school is all women and he had lost confidence. I waded through the paperwork before we met with the LEA at the formal meeting. It was an appropriate outcome. If they were all like that, there would be no problem. In retrospect, they should have made him aware when the informal process was going on. As soon as he showed me the letter, I recognised the words and knew that it was going to the formal stage. Roger tried very hard, but he wasn't management material, and he was

never going to be a head. I was amazed in this case by the amount of support put in, and the school wasn't charged.

(e) Governor

I wasn't Chair of Governors and I wasn't really involved. He was teaching my son, so I didn't feel that I could be involved closely. I had no information about the case, except second hand. I did feel that he was let down and not given enough support. There should have been more coaching and input from more experienced staff. Roger was a scapegoat for the school; there were other failings in the school, but they were all laid at his feet. He was undermined by the Head and was a handy excuse. However, now that he's gone the school is getting better, so maybe the Head was right.

The advisers were in a lot, and this made all of the teachers pull their socks up. He was undermined and he was the only male on staff. The Head is a tough and assertive lady and she wouldn't listen to other's opinions. He was a gentle giant and couldn't stand up to her. I feel as though the school let Year 6 down - it was not just Roger. I don't know what was done to help him. It was the right thing for him to go.

We gave him the job because he was the only male in the school. Two of the governors on the appointment panel said that they were looking for a man, they said that "we need a man in the school". I didn't agree, but I wasn't on the panel. He was a smashing person. I think that he did struggle with discipline, and he would have been better with a lower age range. His will went in the end. The Head has some part of the blame because she blamed him for everything and even said so at a meeting with some parents, which wasn't very professional.

7B 'Rob, Holly, Geoff and Jenny'

1. School and Headteacher Profile

The school is a large secondary school with 106 teachers and 1700 pupils. The Head has been in post for six and a half years. It is his second headship and he has a total of 15 years' experience as a Head.

2. Monitoring

Responsibility for monitoring is in all the management job descriptions, for example if you are responsible for Key Stage 3 Maths, you are responsible for the monitoring of the teachers who deliver it. Monitoring is also brought about as a result of critical incidents, for example parental enquiry. Monitoring is part and parcel of what teachers do and it is part of the performance management framework. The Head defined an incapable teacher as someone who has demonstrated that they are not able to undertake the duties and responsibilities of a teacher, given appropriate target -setting and review.

3. The Cases

Rob was a long-standing member of staff: he was the kind of character that staff saw as a maverick. No one expected him to meet deadlines and the culture in the school at that

time allowed him to do that. Staff would say, 'that's just how he is'. There was a thick file on him documenting how the school had unsuccessfully tried to take disciplinary action before the present Head came. The school did not know how to go about it and the school environment was allowing him to carry on in this way. Rob would discipline pupils in a post-16 class by using obscene language and they complained to the Head saying that it made them feel uncomfortable. Rob argued that he was trying to shock them into learning. The Head ran through the disciplinary procedure and he was given a warning. Then there were issues about Rob's preparation; he could be very energetic in the classroom and had some ardent followers but there was a lack of planning, consistency and marking. He prepared by looking at the newspapers and the syllabus (he was an economics teacher), but there were no building blocks of teaching. Rob argued that he had always done it this way and that he was an inspirational teacher.

When Rob realised that the Head was making serious demands he joined the NASUWT. He had targets and supervision from the Head of Faculty. The Head went back to the disciplinary procedure and Rob was given a final written warning as he wasn't doing his preparation or marking and the Head took the view that he wouldn't do it rather than that he couldn't do it. Rob then went off sick and produced medical certificates citing stress. After 12 months he applied for premature retirement which was eventually granted.

Holly joined at the beginning of the academic year 1999/2000. She was a qualified teacher with one to two years' experience. She came to teach French and German but the Head found out that her German was not very strong. Significant issues emerged about planning and preparation. She was in a very effective department and there was good induction and monitoring and experienced teaching. It was clear that she was not pulling her weight. There were some complaints from parents, especially a governor who is a native French speaker, about the standard of teaching. There was some monitoring which highlighted serious concerns and following a meeting with a regional NUT official, targets and classroom observations were set up. After two or three monitoring meetings it was clear that there was no improvement. The Head was supportive but wanted to maintain a standard. Holly wanted to resign and the discussion then centred on the reference which the Head would write. The Head made it clear that he would have to state the truth, but would explain that she left before there had been any formal conclusions about her capability. Holly resigned and although the Head did provide references for her, he did not know if she had found a job.

Geoff was a long-standing member of staff, who was a manager within the Science Department. There were problems in Geoff's style of management and treatment of female colleagues. He was perceived by others to be over-bearing and bullying, but Geoff himself felt the Head bullied him in particular. Geoff went off sick in 2000 at the point when after few issues had been dealt with informally the Head decided that a subsequent issue had to be dealt with formally. He resigned at the end of April 2001 and has been granted an ill health retirement.

Jenny had been showing signs of not being on top of her job; she had a period of sickness and in the Easter term of 1999 the Head stepped in for the final six weeks of her

GCSE class. Monitoring was indecisive. The Assistant Head observed her teaching and although it had been reasonable, there were worrying signs that she was finding the whole thing stressful. At the time the Head was doing the arrangements for performance management and Jenny went off sick with stress. Systematic monitoring concerned her as it would reveal the normal state of her lessons and she was also dealing with personal issues in her life. Jenny then developed cancer and made a successful application for premature retirement on ill health grounds. She resigned as of 18th July 2001.

4. The Head's Comments

(a) On the cases:

None of the ill health retirement teachers 'got away with it'. They were temperamentally not suited and it is how you act out your anxiety- people could react against their colleagues or the kids or they could react against themselves. It is a job in which you are required to relate to 200-250 individuals a week- 30% of them are going through adolescence, 30% have just got through adolescence and 30% are approaching adolescence. If you ask a parent what is the most difficult time when bringing up a child, they will say it is adolescence, but this is why I have to be tough in maintaining the standard. In almost all the cases staff have understood why it was necessary for me to act and they have seen the member of staff in difficulty. Colleagues see a teacher struggling in class and in some circumstances, for example with Rob, they thought it was about time someone got a grip of him. Once I am taking action then it clarifies the position. If an individual is mangled in ill-thought-out procedures then sympathy is with the colleague, but if appropriate action is taken then nine out of ten colleagues are content with it. Immediate colleagues bear the weight of the person, dealing with parental complaints. If I get the judgement right and the point of intervention then I tap into colleagues' professionalism.

Parents have a muted reaction. One parent supported Rob, because he had taught his son and he thought he was wonderful. However, the majority of parents are aware if teachers are effective, as if teachers with capability problems are sick then supply teachers can do a better job.

I think the outcomes for these teachers were appropriate- the older teachers were too far-gone and were very difficult to change. I couldn't really understand it with Holly. I felt she had the potential but not the linguistic ability in the end. We thought we were pointing out simple things but they were new to her and she didn't have the will to do it. In retrospect I would have moved more quickly with Rob but you have to remember that they are human beings in unique circumstances and if they are going to crash out on their careers then this is a massive issue. I feel it has to move quicker but it needs to take the time it takes because they are human too. For Rob and Geoff much earlier intervention might have stopped them in their tracks at a time when they could have been turned around- especially Geoff, but you never know.

At certain points it is stressful for the Head to get it right for the students and other members of staff. It is the Head who makes the decision. Personnel and colleagues can only advise. Some of the meetings can be quite stressful. Challenging members of staff

about their behaviour, can mean they feel they are being got at and are being victimised and bullied. If you get it right then you get a reasonable response from the union but if you make errors the union reps will exploit your weaknesses. I am not sure whether one is able, or whether it is appropriate, to make operating the procedures less stressful. Intrinsically it is very stressful if you believe teachers are failing at their job.

(b) On procedures:

There are not really any barriers to using the procedures initially; it is about being clear that there are procedures which you can use. There is a kind of pressure not to have to admit that you need to use procedures because you don't want to see a teacher failing. Once you decide there is an issue then procedures are helpful. They keep things on track and help you to decide whether the member of staff is making progress or not. Before I came the procedures were not clearly applied and people were back at square one time and time again. The procedures are straightforward and easy to operate if you think about them. You do have to recognise where you are on the procedures because you are approaching it from a particular angle. You must be rigorous and not have already made judgements which monitoring will bring about. You must apply the discipline of collecting the information properly, otherwise it is hearsay, opinion and assumption. The procedures are effective depending on how you apply them. They are about securing improved professionalism. If the intention is to get teachers out then you will fall foul of the procedures; if you are trying to improve them then you either will or you won't. It is about avoiding prejudice.

If procedures are going to be fair they need a certain amount of time to establish the evidence but ill health often kicks in. The logic is that if there is a stress issue it provides you with six months on full pay and six months on half pay and another year on your pension. If you are not in work you can't proceed so it is a good way to get out on ill health. I think the stress is genuine- the member of staff can't cope with the pressures of teaching. There are very few bloody-mindedly incompetent teachers, although I came close to it with Rob. It is a stressful job : some can't do it, and some can but lose it, or the world changes around them and they are no longer equipped to deal with it.

(c) On the role of :

(i) the LEA

The personnel and advisers provide a useful service.

(ii) Occupational Health

Their involvement is that they simply write to the relevant GP and ask for permission to see records; they never interview the member of staff. They then send a minimal report. I have to pay £25 for them to repeat what the doctor is prepared to tell them.

(iii) the governing body

Governors are kept informed of the outline approach and have accepted it. Governors see it as my job to deal with it. When I was appointed to the job, governors knew there were issues to grab hold of.

(iv) the union

In general the unions are very good at supporting their member but also at seeing clearly and assessing the position. They have a bit of fun and games over gaining people their pensions but if they have the evidence and it is clear then I have rarely been in a situation where I have dealt with a union rep who will defend their member at all costs. They are prepared to get to the truth and then talk about it. It helps if you are open and informal in your ways of dealing with it.

(d) On the four week fast track:

The procedures are there to gather information and make a decision. All of these situations are complex and the more you rush the more likely you are to make a wrong decision. If you get it right then there is no problem with morale; if you get it wrong then there is a problem with morale. Most teachers think, 'there but for the grace of God, go I'.

5. Comments of Other Key Players

Personnel

I advised on the case with Rob and Holly. There is a tendency in personnel only to hear about issues when they are fairly serious. Schools try to manage the procedure at the informal stage. Ill health is difficult because they go off with stress, related to work. We get an Occupational Health medical report but it is difficult for the medical people to give a prediction. Often the teacher has decided that they are struggling but know they have one year's sick pay and notice.

7C 'Barry'

1. School and Headteacher Profile

The school is a primary Church of England controlled school. It has six teachers and about 120 pupils. The Head has been in post for 23 years. It was her first headship.

2. Monitoring

The Head monitors teacher capability by monitoring lessons and through LEA advisers who make regular monitoring visits and governors who make class visits. She also looks at planning. She defined an incapable teacher as one where there was poor discipline, poor organisation of the class and a low standard of work being produced.

3. The Case

Barry had over 20 years of teaching experience and came into teaching late after being a quantity surveyor. He had been at the school for eight years and although he was the Deputy he had a full time teaching commitment. Problems with him were identified by OFSTED during 1995. The Head had picked up on the problems prior to that but she hadn't realised how bad it was. She knew there were behavioural problems because there were parent governors who were not happy with what their kids were saying to them. During the first OFSTED teachers were not given grades but it was clear that Barry

wasn't so good. He took lower juniors and there was an obvious blip there. The parent governors wanted to bring it out but the Head thought that she had to give him a chance.

An adviser rang the Head and suggested Barry took over a headship for a term. The Head thought perhaps he was stifled in the school and might be better in his own environment. Also in the past he had been satisfactory at management duties but had problems in reaching deadlines. The governors at the other school said they would like Barry to continue as Head for a further year as the original Headteacher had not resigned and they were not in a position to advertise the post. The Head saw it as a way of getting Barry out of the school and so she agreed. At the end of the year the position became vacant but Barry didn't get the job. When Barry came back to the school in September 1998, it didn't go down well with him or the staff. He requested Key Stage 1 not Key Stage 2 but it was a disaster.

There were various advisory visits and a second OFSTED in December 1998. Barry was back for a few weeks that term and the Link Adviser monitored him and was not happy. The adviser brought a colleague to monitor who was also concerned and they told him that he would not get through the OFSTED. Barry covered about 25% of the teaching as it was a small school, and if 25% of the staff were failing this would not look good. Barry then went off sick with stress and was absent during OFSTED which wasn't well received by his colleagues and the Head had to get a supply teacher at the last minute. The Head was amazed that a doctor signed him off. There were four or five advisory visits looking at literacy, numeracy and ICT and £5,000 of support was put in to help him. The Head was advised not to give him management responsibilities so that he could work on getting his teaching right. The Head said that management didn't come out well in the OFSTED but she had no Deputy to support her.

The Head then had several meetings with Barry and the adviser. In May 1999 the Head warned him that she would start formal procedures. The Head arranged a meeting in which she would present him with a letter which invited him to a meeting with the Chair of Governors, the Link Adviser and personnel. Barry was then off sick for six to seven months with depression. When he came back there was still the competency issue to address and he eventually resigned at Easter 2000. He is now supply teaching- he didn't get sickness retirement. He has also applied for several headships, including a school in Special Measures. Barry has stopped using the Head as a referee.

4. The Head's Comments

(a) On the case:

The situation couldn't continue- the children were not getting value for money. He went for one interview and when he was debriefed he was horrified. He had a blinkered view throughout the procedures. I would give him suggestions and he would say, thank you that is a good idea but he would never take it on board. He is still applying for headships- he is not able to accept the situation. I appointed him and in the early days he was great but the curriculum has changed so much and the pressures have increased. At the time he was appointed there wasn't all the short term, medium term and long term planning and reporting. It has become a totally different job and Barry couldn't adapt or cope.

The case had quite a big effect on the staff. Until Barry was tackled on capability procedures he was being paid as a Deputy for doing things which he wasn't doing. The staff felt, why should they do things when Barry wasn't. When I began to tackle it, then the other teachers offered to do things which they never had before, it brought them together. They took on Barry's co-ordinator's role quite willingly and they were not getting paid for it. The governors were quite relieved when Barry left. The parents' reaction was mixed; the parents who had kids in his class were relieved, whereas others were surprised and had no idea that there was an incompetency issue, they just thought he was ill.

He didn't improve because I don't think that he thought he needed to. He once said, 'I have been teaching for 20 years, I know how to teach.' He also didn't like a woman telling him he wasn't up to the mark although the adviser who is a man was also telling him this. In retrospect I think I should have done something earlier. It is not easy to tell people they are not performing especially as he is a nice chap- he is friendly. He lives opposite me and now he doesn't speak to me.

(b) On procedures:

The procedures are easy in so far as what to do is easy but if you are dealing with an incapable person then telling them that is not easy. He didn't improve but that is the fault of the procedures, it is the fault of the person. The procedures were effective in that we got rid of him. There had been a problem with Barry for three and a half years before I began the informal procedures but for a year and a term of that time he was away as a Headteacher. He was on informal procedures for 18 months to two years but he was ill for some of this. It does take too long. I think the process could be speeded up, it takes a long time and this adds to the stress. You have to wait so long before various things can happen.

c) On the role of:

(i) the LEA

The Link Adviser was especially useful and personnel were helpful on how to word letters. The Literacy Co-ordinator also supported him.

(ii) Occupation Health

Occupational Health was involved after the first absence because they had to give permission for him to be able to come back to work. I am not happy with their role; they simply rang up his GP. When he was off during the OFSTED, Occupational Health said he was so ill he had collapsed on the stairs, but after OFSTED was over he was fighting fit. I do not think that Occupational Health can tell whether a person is fit to go to work. The Occupational Health doctor should meet the teacher- it is simply done by a telephone conversation with the relevant GP.

(iii) the governing body

I spoke to the Chair of Governors who was useful.

(iv) the union

Personnel were in contact with his union rep when he was ill but I never met the rep.

(d) On the four-week fast track:

It seems a bit drastic. I think it should be half a term to be more realistic. I might use it if I had to but it is unlikely as I am retiring this year.

5. Comments of Other Key Players

(a) Teacher

For most teachers it should be possible to deal with capability issues in a more informal, less threatening way. Barry perhaps could have had more consistent support earlier. It seemed a bit judgmental, for example, do this by a certain date but in a small school no one has time. He needed someone else to work alongside him until the problems were sorted out. I am the literacy co-ordinator and I monitor someone once but then it is left several weeks before I see them again and then there is a crisis. If more time was put in earlier on like you would with a student teacher it might have been better. It made for an unpleasant atmosphere- you hear both sides and it is hard not to offend anyone, relationships are important and you don't want to take sides. It would have been more appropriate if he had transferred to another school but I know this is not easy with LMS. Morale improved when the situation was resolved.

(b) Personnel

The procedures never got properly started because he went off sick and then resigned so we didn't get into the process. The outcome was determined by the individual rather by the issues being addressed. I only become involved when I am notified by the Head and through the school adviser. It was similar to a lot of cases- they don't go through the procedures because they go off sick, it is a general problem.

(c) Chair of Governors

I have not had any official training in capability procedures but I have spent 30 years in the Health Service and 20 years in management. I was involved right from the start. I played it down for a while as I didn't know if the Head had exacerbated the situation. It took much longer that we would have liked- we would have liked to deal with it quicker but there were peculiar circumstances with the secondment and then the illness. It was also hard coming to a decision to make a move. It took three years instead of 12 months but it is always slow and usually for good reasons. Mr Blunkett encouraged use of the procedures as he thought there were 5% unsatisfactory teachers which you'd expect in any profession due to the normal distribution. It is good if it takes a long time.

7D 'Joan' (HT)

1. School and Headteacher Profile

The small Church of England school has 24 pupils and two teachers, including the Head. Joan's experience, prior to her appointment, was of working in a grant maintained school

in which she was co-ordinator of science. It would not be uncommon to appoint a head with this level of experience to a very small primary school.

2. Monitoring

The Authority listens to every small complaint about a head, from whatever source. Personnel and advisers work closely together and a “schools in difficulty” group meets twice per term to look at soft and hard data on schools. Schools are then categorised in strands. Strand 1 is normal, and strand 4 comprises schools in serious weakness or special measures. A weak head automatically becomes 3 or 4, with resources allocated accordingly. Capability of heads is measured against the job descriptions in the blue book which details teachers pay and conditions. Headings include: management of, and relationships with, staff; management of resources; relationships with parents and the governing body; monitoring of work in the school, including class performance and sampling students’ work; development and curriculum planning; appraisal of the professional development of staff as well as the head’s teaching competence.

3. The Case

The Headteacher was appointed by the Governors, against the advice of the LEA, who felt that she had insufficient relevant experience. Her references were excellent, so the Authority felt that it had been misled. Within three weeks of her appointment, a behaviour support teacher visited the school and was immediately aware that Joan’s class was not being taught. The teacher immediately alerted the Link Adviser who visited the school and confirmed that things were ‘disastrous’. The Adviser went in to talk to Joan, but Joan blamed the children whom she felt were not capable of learning. When the case went into procedures two advisers, both with recent experience as heads were used: one to support and one to monitor and set targets.

Joan was offered independent counselling, and a named officer gave support. At the beginning of the procedures, a “letter of concern” was sent to the Chair of Governors, with a copy to Joan. A meeting then took place with the Chair of Governors, a personnel officer, an adviser, and Joan to go through the action plan and analyse what was needed to meet the targets. She had a ‘good’ adviser (the Link Adviser) to offer support, and a ‘bad’ adviser who set targets and monitored progress.

At review, progress was measured according to the action plan. One target related to establishing rapport and pupil relationships. When this was introduced into the plan, it was agreed with Joan that monitoring might involve talking to the pupils. However, when it came to monitoring this target, Joan objected to the LEA personnel talking to pupils. Each meeting with Joan was very difficult and heated. The initial review period was three weeks (this is usually half a term). Joan was still not accepting what was said and was off with ill health for a short period before the first review. The hearing could have been delayed, but it went ahead as the evidence was available.

The case went formal and then to dismissal hearing and appeal. Joan had a hysterical fit in the car when coming to the appeal: her husband rang to say that she had then seen the doctor who had signed her off sick. The Union representative negotiated a resignation as

of that date with one month's pay in lieu of notice. Two weeks later, we heard that she was taking the case to an employment tribunal for constructive dismissal. Joan withdrew this after the LEA had done all of the work for it, just two days before the hearing.

4. The LEA (Personnel Officer and Chief Adviser) Comments:

(a) On the case:

This was a very clear-cut case; it went through the appropriate channels and Joan was picked up and dealt with quickly. The informal procedures were kept very short, which isn't common, but it is very useful where the person rejects all criticism. Throughout the case, Joan was in denial and blamed everybody else for her shortcomings, including the children. Her reaction to the advisers was typical of this: she maintained that they were no good and had a personal issue with her, and she questioned their ability - "what do they know?". She didn't improve because she wouldn't accept that she was incapable.

In retrospect, she shouldn't have been appointed. The outcome was entirely appropriate, but we are happy that we didn't have to sack her. It was a difficult case, because the morale of the other teacher was obviously affected: she offered to give evidence at the Tribunal. If Joan hadn't gone, this teacher would certainly have left. The parents were very happy with the outcome. Joan is now still applying for, and getting interviews for, headships outside this Authority. She left with an agreed reference, but we always give honest references.

(b) On procedures:

Our procedures were set up ten years ago and are entirely supportive and not disciplinary in nature. At review there is no appeal and we don't give any warnings because these are, by nature, disciplinary. The school could choose to use the diocesan procedures, which may be slightly different, but they are treated in the same way. We have a close relationship with the Diocese and they tend to be happy for us to support the school as long as they are kept informed. The Diocese recommends that schools listen to us when they are in procedures. The procedures were very easy to use in this case, as well as being effective. Our capability procedure is as low key and as supportive as they get. Nonetheless, it is a very threatening situation.

(c) On the role of:

(i) the LEA

Without the LEA, small schools would go under, and this case is a good example of this.

(ii) Occupational Health

This case didn't go to OHU, as Joan was not off for long enough.

(iii) the governing body

The governors were very helpful, especially the Chair of Governors. As the Head was a new appointment, she was not embedded with the governors. The role of governors in relation to their employment responsibilities is very tough, especially in small village schools. In this case all of the governors subsequently resigned because they found it so hard.

(iv) the union

NAHT were involved: the representative could see the problem. We have a good relationship with all of the regional representatives. However, he was deeply unhappy with the speed of this case. We wouldn't move on this; the kids can't, so we have to.

(d) On the four-week fast track:

This case was as fast as it gets. It was a special case, because Joan was so bad, and it was in your face, so we quickly got the evidence. An employment tribunal would never let a case go if the person was off sick and was dismissed on capability procedures: this makes fast track fairly impossible.

5. Comments of Other Key Players:

(a) the Behaviour Support Teacher (now the head of the school)

I was involved in this case and later I successfully applied for the post of Head. This tiny village is very pretty, and very rich, but the rich kids don't come to this school and there is hidden, rural poverty. The school had a decade of acting heads, followed by a head who watched the door for three years, waiting to retire. Over one four-year period they had seven acting heads. The Head who was waiting to retire only taught for two days per week and spent the entire budget on supply teachers.

In early October 1999, I visited the school to find that the children in Joan's class were up the walls with no learning going on at all. I wrote a report on what I found and sent it to my line manager and the link adviser, with a copy to Joan. Joan said that the children to be unable to be taught because of their behaviour. I knew that the children were well within the normal range of behaviour: and there was no problem when I took the class: the problem lay with Joan. She was very strange, it was as though she suffered *petit mal*, and she would be in a daze for long periods. She said it was tiredness. She would spend a lot of time at the school working until 9.30 or 10 p.m., yet she lived over an hour's drive away. It struck me that she avoided going home and there was no evidence that she worked during this time. When she was asked to do something, she would follow instructions, but on her interpretation, which would be different from what was wanted. She lied to me on one occasion about the timing of a meeting, which we had agreed, and she had school computers delivered to her home. There were several incidents which made me feel that I couldn't trust her.

If there hadn't been such fast action from the LEA, the school would have closed, as parents would have moved their children. The LEA were excellent, they genuinely worked for the community. Outside agencies only work for money, and this means that the quality of service suffers. I cannot praise the LEA highly enough in this case. The Governors ran the whole process, with help from LEA. Governors of the small village school were not really aware of their duties, powers, roles etc. Parent governors would have had concerns about her, but others were much more defensive because they appointed her. Of course, it all had to be confidential. All of the Governors resigned after the appeal; it was all too much for them. In their eyes they had failed as they had appointed her. It was a lot of heartache and worry for them.

The outcome was appropriate. There was relief from everybody when she resigned. In retrospect, the LEA should have insisted that she wasn't appointed. There were ways that stress could have been decreased by assigning a counsellor to her; there is a need to talk to someone outside of it all. The Diocese were weak, they could have offered support. I could see no way to improve the capability procedures: in this case the action plans were good and personnel involvement was excellent. It was breathtaking in speed, without it feeling panicked.

The four-week fast track is awful because you are at the mercy of authoritarian heads who victimise their staff. If the same process were used by a head against a teacher, you would want to ensure that governors were totally independent.

(b) Trade Union Representative

My first contact with Joan was in November. It all blew up very quickly. I attended all of the meetings with her and tried to help her to see what the issues were; and I tried to get them to see why she wasn't responding. This was a case in which she didn't feel that she could trust those who were assessing her. Joan believed that the behaviour of the children was off the wall as a result of circumstances in the history of the school. The school had got problems, because so many of the previous heads had been temporary appointments. She thought that the previous head had exerted control by draconian (almost physical) means and that the behaviour support teacher didn't believe that it was the children, because he didn't have a problem with them. Joan believed that her strategies were the best ones to adopt. I feel that she was not the most appropriate person to have been appointed to the school because she had been sheltered in her past posts, she had worked in GM schools, and she was too inexperienced to deal with a school which had serious problems. Joan may have coped in a good school, but she didn't have the skills, experience, and breadth of knowledge to turn this school round quickly, and the LEA wanted fast results. I think that the outcome in this case was appropriate, because I don't think that she could have got it right. However, the LEA inspectors had very high standards and were not prepared to compromise. I don't think that anyone could have done anything differently because of Joan's character: she couldn't accept that she had any failings and was blind to use of alternative strategies. She wrote to me saying that she had 25 years of professional development behind her, and that her previous teaching record was very good, as evidenced by OFSTED. In fact, I would refute this having read the report, and her previous school didn't want to take her back.

This case was unusually fast and didn't give Joan time to understand the process and there was no time to prove to her that she was getting it wrong. However, sometimes cases are fast when there is evidence from an independent source. At the moment, there is a shortage of teachers and heads and deputies, and there is pressure on Governors to appoint. This was such a case.

(c) Chair of Governors

I had no training on capability procedures. I didn't sit on the panel because I had been involved behind the scenes from an early stage. It was the most difficult time of my personal and professional life when we took the decision to suspend her because no progress was being made. All of the governors involved resigned after the case: they found it so very difficult. It is a terrible thing to ask governors to do this; it has to be remembered that governors are not professionals. The initiative has to come from the LEA, as it did in this case, with an appropriate outcome. The procedure was easy to operate and clear, although the actions within it can never be, because you are dealing with people's livelihoods. We got tremendous support from the LEA: they helped us and took us through each stage.

In retrospect, I would go back to the appointment process. We had a senior adviser there and we were unanimous at the time. It is not an easy transition to move from a GM school to a state school because of the different planning and supervision regimes. I would never again appoint anyone from a GM school. I think there should be cluster management of schools. One head could manage 3 or 4 small schools in an area with one governing body. Having Church schools might complicate things, but this would be the most efficient way of managing things.

7E 'Kim'

1. School and Headteacher Profile

The school is a primary, Church of England school. It has six teachers and one part-time teacher, and 112 pupils. The Headteacher has been in post for four years and it is his first headship: previously he was a Deputy in a secondary school.

2. Monitoring

The Head monitors the capability of his teaching staff through Adviser visits, lesson observations by himself, subject co-ordinators and governors who might make comments to the Head. He scrutinises books and looks at the standard of work, he looks at SAT scores and baseline assessments and optional year tests. He also listens to feedback from parents and OFSTED. There are several categories of an incapable teacher- they could be incapable because of their health, they could be incapable to carry out their job, they could be temporarily incapable because of family problems or stress or you could be worried about capability over the longer term.

3. The Case

Kim had 12 years' experience as a teacher and had a substantial break for children. She was in the school for nine years and was Acting Headteacher before the Head came. There were problems with Kim's role as a teacher and as a deputy. The Head thought she was withdrawing because she didn't get the Headteacher job, for example there were no trips for the class and no goodwill for the class. She was in at 8.45am and left at 3.45pm. The Head realised there was a problem from lesson observations and feedback from parents. The Head then began doing more class observations, some unannounced. The Link Adviser backed up his concerns. The school was coming up to an OFSTED so the

Head put out a questionnaire like the one used by OFSTED and it was fairly obvious from the parents that there was a problem in Kim's class. The Head passed on the comments to the governors. It was quite difficult because Kim had been Acting Headteacher but the comments on the questionnaires gave the Head more confidence to act. The Advisers were also made aware of the situation. The SATS in her class were appalling. When these came out, the Advisers took a more vigorous approach. Targets were set on planning and assessments which were not taking place. The targets also made reference to the pace of her lessons and making the objectives of the lesson clear.

Staff from the LEA tried to help her to improve; in May 1998 the literacy consultant did demonstration lessons and then the consultant planned the lesson and Kim delivered it and then they jointly planned a lesson. During the final lesson she would have planned it and delivered it. The same thing happened with numeracy but Kim disputed that the first lesson she watched was effective so the Head observed the second lesson. The numeracy consultant then planned a lesson for Kim but she did her own thing.

Kim had a foot injury the week before OFSTED in October 1999. She came back one morning after the Christmas break. The Head asked to see her planning which she didn't have and told her that it was a serious situation following the OFSTED report which was damning. The Head told Kim that she would be monitored by him and the Advisory service and that she would have to produce planning. Subsequently, Kim produced medical notes over a twelve-month period for fallen arches. After being operated on Kim repeatedly applied to go on ill health retirement but was turned down by the Pensions Agency even though County said she would be unable to come back to teaching. The basis for the decision was that she was only 48 and it could not be said that for twelve years she would be unable to teach.

When Kim had been absent for 18 months, personnel called a meeting with the Head and it was decided that they should think about dismissal. Kim was therefore invited to a hearing to consider dismissal on the grounds of ill health. Although Kim did not attend the meeting, or her union rep, three governors were present in addition to the Chair, LEA personnel and the Head. The Chair having stated the case, the Head and the Chair left the room whilst the governors and the LEA personnel talked it over. Kim was dismissed on ill health as from the 1st April 2001 and was entitled to three months' pay.

4. The Head's Comments

(a) On the case:

The procedures are quite lengthy but there were all sorts of circumstances. Kim could have been having bad time with her kids or her husband or looking after her sick mother. Maybe it was because she didn't get the Headteacher job. She was applying for Headships and had interviews when the literacy monitoring was happening. It is difficult to know whether the outcome was appropriate as it is down to circumstances. If she had got the Headship she might have been very good. During the last OFSTED she had been average. I feel sorry for Kim- she has been dismissed and she has not got her pension rights. We sent her a card and flowers because there had been no goodbyes and she lives locally.

To begin with the other staff felt sympathy for Kim and offered her lots of support. There was a feeling that the staff should pull together and help her plan. The longer it went on, the harder it became. It made a big difference when she didn't come in during OFSTED. Kim also began blaming other staff so things changed. The parents were told in the newsletter that Kim had been dismissed on ill health grounds. After the parents saw the OFSTED report it would not have been easy if Kim had returned. The governors wanted things to happen more quickly; they are professional people - doctors and barristers.

Kim didn't improve because she didn't want to change with the new strategies. She had never really planned and now the way you do things is a lot more formal. Kim found it difficult especially as she was a mentor of young teachers who were doing well. She was looking for Headteacher jobs with no teaching.

In a small school it is very difficult; it is a closed community and lots of parents are governors. It is difficult to keep perspective and it puts extra pressures on me and the Chair of Governors to show that something is being done. From our point of view it was better when Kim was off. In a big school there is more than one Key Stage 1 teacher, whereas here if it comes out that Key Stage 1 is unsatisfactory then the parents know who that is.

It was very stressful for Kim and me. I think her union rep should have been involved earlier as it would have been less stressful for her. She felt she had no one to talk to especially as she had been Acting Headteacher.

(b) On procedures:

The case began on informal capability procedures and then turned into ill health capability. It would have gone to formal capability if she had come back. The Advisory Service had set up a programme and put money aside for her. It was obvious that it would have been more pressure after Christmas. Personnel thought she should be given a chance to settle back in and then the monitoring should start but this didn't happen, as she didn't return. The fact that she had been Acting Headteacher did stop me from starting procedures immediately as it sounds like sour grapes. The capability procedures were easy to understand but it was difficult because of the ill health. The case lasted six months before procedures and then eighteen months on informal capability procedures (she was absent for twelve months).

(c) On the role of:

(i) the LEA

The LEA consultants were very helpful. I thought they would be heavy-handed but they said, 'this is what we expect and we will help you plan it, let's see if we can work through it.' Personnel were also very helpful, although the Chair of Governors might disagree; she actually went up to the next level of personnel to get another opinion.

(ii) Occupational Health

They were not involved.

(iii) the governing body

Information about the situation was kept to the Chair in case it went to dismissal. The majority of governors were parents and they mostly had kids in the class and were complaining. The Chair was useful; she is in business where it is very different- if people are not doing the job there is short shrift. She wanted to move on the situation immediately.

(iv) the union

I contacted my union (the NAHT) who were very helpful. I never met Kim's union rep but I spoke to him through LEA personnel.

(d) On the four-week fast track:

It depends on the circumstances. It doesn't take account of things like times when a person is under stress. It worries me that you could be really good but if someone decides that a particular person is a failing teacher then you could find loads of reasons to justify it. For example on a lesson observation, you could say- there were three pupils who were not paying attention, two who didn't work or you didn't have your lesson plan on the table and you had to ask a pupil to go and get it for you. Whereas others might judge the same lesson as successful. You have to be careful that there are not other agendas.

5. Comments of Other Key Players

(a) Personnel

Kim went off sick- there were problems with her capability which were known about and OFSTED were critical of her work. She had physical and psychological ailments. She was dismissed on ill health and because she never returned to work, it was not possible to get into the issues.

(b) Trade Union Representative

If there is a suggestion that the class management is not good, the Adviser will be in and the Headteacher, and they will be in and out for weeks. The kids notice and it is no wonder that the teachers are on edge. Some Advisers can be quite hostile, for example saying that they are satisfactory but then spending a page and a half on how they used a map. The teacher feels that everything they have tried to do is a waste of time. Negative points take up too much and cause a bad feeling. The teacher doesn't see it as a dialogue, they think 'I can never do it that way, so I am no good'.

I saw Kim a number of times and we talked things through mostly in connection with the ill health. She felt that she didn't want to go back to the school, she took it personally. I can't remember anything about the capability matters but she couldn't walk well and so couldn't establish control over the kids. Also psychologically her heart was not in it- she had given up which was rather sad. I told the LEA that she was not well enough to attend the hearing. She is the only person who has not got an ill health retirement on appeal. The majority get through provided you have the evidence. Her age was a problem in that

she is not yet 50: there is another teacher who is far less ill who couldn't stand it anymore but she was 59 and applied and got ill health retirement. The outcome was not what I wanted. I hoped she could answer the charges. It is a shame that experienced teachers become demoralised and disappear.

(c) Chair of Governors

In the beginning when Kim went off sick we got advisers in and were closely involved with personnel. Everything we did was discussed with them first. In view of the fact that she was sick, the final result was the best we could hope for. There are possibly a lot of teachers who are using sickness to cover other problems; you hear of it all the time, for example going off with stress. A lot of money is being wasted as they are pensioned off early. We had to wait too long (18 months) before we could take action. It was fairly obvious that she wouldn't come back and we are lucky that we had a supply teacher who could cover the whole of the time period. We couldn't dismiss sooner because we couldn't be sure that she wouldn't get better.

7F 'Amanda'

1. School and Headteacher Profile

The school is a primary, Church of England Controlled school. There are 76 pupils and the Headteacher plus 2.4 teachers. The Head had been there for four years, and this was her first headship although she had been an Acting Head previously.

2. Monitoring

The Head monitors teachers' capability half-termly and through the Link Adviser half-termly. Monitoring increased when she was aware that there was an issue. The Head considers that an incapable teacher is one who has a class where the children are not making any progress or where class control is a problem. The Head thought that the look of a class is also important- whether it looks organised, whether the children are encouraged to maintain routines for example in using the pencil sharpener or for changing books. She said that the most important things when judging competence are the teaching and progress and whether the kids are enthusiastic about what they are doing and how well the teacher is carrying out things discussed in staff meetings e.g. policies- is there lip service or action.

3. The Case

Amanda had eight years' teaching experience at the school, before which she had been on supply and had about 20 years' experience altogether. She was the ICT, SENCO and Science Co-ordinator. The problem was mostly with the teaching and children's progress. The Head became alerted to the problem in September 1997 when she arrived. Amanda was absent and they had a good supply teacher in and they got the feeling that the children were now enjoying themselves. The Head was then aware of the problem through her monitoring and the monitoring of the Adviser. The Head tried to support Amanda in the summer term of 1998. In September 1998 the informal procedures began. There were meetings where the Head talked about different ways of organising the class

and the Head began monitoring both the teachers in the school. There was also a meeting with Personnel where it was explained that if there was no improvement they would go to the formal procedures. The Link Adviser also gave support. During 1999-2000 literacy and numeracy consultants were brought in for everyone. There were then bouts of sickness absence due to glandular fever where Amanda would be away for twelve weeks and then six weeks, so the monitoring would stop and then start again. The Head gave Amanda targets for re-organising the class and for giving in her planning- the target dates always seemed to be extended. The Head began collecting evidence and signing all notes which she sent to Amanda.

The other member of staff tried to support Amanda but it was difficult because he had to put up with noise because she couldn't control the class and he complained about gaps in the children's education. The Head gained support from her own union and the governors' support unit which is part of the LEA, in addition to gathering articles from the TES and Personnel documents.

In autumn 1999 the Head became concerned that what was happening wasn't helping Amanda's health. She talked to Amanda about what could alleviate the health problem and asked if Amanda wanted to give up her SENCO and ICT role. Amanda agreed that this would help. In spring 2000 the Head also asked Amanda if she wanted to talk to a counsellor and suggested that Amanda go part-time during summer 2000. In September 2000 the formal procedures began. There had been five different reports gathered on Amanda. She resigned in October 2000 so the Head never had a meeting to begin the formal procedures. There was no compromise agreement but Amanda wanted to see the reference which the Head would write. Personnel advised the Head to write a factual reference. In March 2001 the Head was asked to change the wording of the reference to state that she had taught a cross key stage class and RE and was committed to the school. The Head found it difficult to comment on her commitment but she did state that Amanda had been involved in out-of-school activities. The reference did not refer to her resignation. The Head wrote on the reference that if more details were needed they should phone her but the union asked her to remove this.

4. The Head's Comments

(a) On the case:

Morale is more positive now she has left; the parents and kids have noticed the difference. The governors are relieved. Amanda didn't improve because she was burnt out- she had a history of ill health. She found the OFSTED in January 1997 very stressful and took the comments at the time very personally. The previous Head had been in the school for 22 years and the other teacher had been there 14 years so when they left, Amanda felt on her own. She got into a negative frame of mind and this coloured her view of the changes in teaching and she was unable to view them positively. She would say that she hadn't got the energy to do things.

I had sleepless nights about the situation wondering if I had given her enough support because at the end of the day it was her livelihood and it didn't sit easily. If you care enough about the situation then the stress is automatic. You can say things in a positive

way but if they are not taken on board then you have to be straight. Personnel were keen on re-training but the problems were key issues like control and organisation. You can't really train for this sort of thing.

(b) On procedures:

I began the procedures with great reluctance because especially in a small school you are aware of an atmosphere building, but there was no way in which I could continue with the softly, softly approach. There was parental concern- two letters were written to the Chair which were really the catalyst. I was clear over what I had to do. I was concerned over how using the procedures would tear the staff apart as a team but I had to do it for the sake of the school and the kids. I had a clear conscience; she had had a long time span, not just three months. The situation had to improve or go away. The time span is a problem especially because of sick leave but I don't know how to solve this.

Capability issues are extremely difficult in a school this size. In a larger school it is further removed and there are more people around who can support the Head. I had to deal with her as a Head and as a fellow teacher. Writing everything down took a huge amount of time; I have two huge files on it. You also lose the rapport and relationship with the person especially in a small school. It has made me think about recruitment more- we want to see people teach and if I am unsure I would rather get a supply teacher in. It is too important when the person represents a third of the staff. I would hate to go through it again.

(c) On the role of:

(i) the LEA

The LEA were excellent, both Personnel and the Adviser. I spoke to the Adviser at home and she came to governor meetings.

(ii) Occupational Health

They were not involved.

(iii) the governing body

In the early stages only the Chair was aware of the situation, the other governors were just informed that there was an issue. When it came to salary negotiations about Amanda it was very complicated because Amanda was the staff governor.

(iv) the union

I never had a meeting with the union rep but he did negotiate on her behalf with Personnel on the wording of her reference. The union rep made it more difficult as it was hard to write the reference which he requested.

(d) On the four week fast track:

You wouldn't have enough evidence in that time. I would be concerned about 'being done' at an Industrial Tribunal for unfair dismissal or constructive dismissal.

5. Comments of Other Key Players

(a) Teacher

I found it frustrating and had difficulty sleeping. I felt it was one step forward and two back. I supported as much as I could. Amanda seemed to have a blind eye to noise levels and she was teaching next door- the kids in my class couldn't hear and I couldn't hear. It was detrimental to them. I think the outcome was appropriate; I felt very sorry but I didn't think justice was being done to the kids and she was making my life harder and the Head's life harder. She is now doing an ICT course which is ironic, as she was ICT co-ordinator, and she did some work on the census. There is now a lot of extra work and paperwork in teaching; there has been an improvement in the quality of teaching but at the expense of people's lives- it is a 24-hour/day job. The extra work is to the detriment of the teacher- the teacher is tired and all the pieces of paper don't contribute to teaching. There is no quality with enthusiasm- there needs to be a balance but when there is overload it is sad.

(b) Personnel

There was a long informal period before it became a formal matter. Amanda did demonstrate some improvement but slipped back for a prolonged period; it then stopped and started and was mixed with ill health which may have been associated with the capability procedures. In retrospect I should have had a little more detailed involvement and more regular meetings with the Head and School Adviser.

(c) Chair of Governors

I had no training on capability procedures- the performance management governor was a separate governor. It is a small governing body; there are eleven so we could just about make up the two committees as two other governors and I couldn't sit on the committees. One withdrew because of personal knowledge as he had contact with County and the other was Amanda. Eight years ago we had difficult negotiations with her about a variable hours contract and as at the time we were approaching OFSTED we considered getting in a supply teacher instead of her; in the end we stayed with Amanda because the Head thought the upheaval would be too great. In actual fact we should have taken the plunge then. She has never been a brilliant teacher.

I would like to see the procedures changed in emphasis. I feel they are unfairly weighted on the member of staff's side. We bent over backwards and extended deadlines. At the end of each Adviser report the same issues kept coming up and there was no improvement. I felt, what else do we have to do? I also received two letters from parents and one child was withdrawn from the school.

7G 'Vince'

1. School and Headteacher Profile

The junior school is located on the outskirts of a large county town and has 241 pupils and nine teachers, including the Head. The Head had been in the school just over a year, and has been a head for a total of three years. This is his only experience of capability issues.

2. Monitoring

Monitoring takes place through the performance management system. An incapable teacher is defined as one who is not meeting standards.

3. The Case

Vince had taught for over sixteen years and had been in this school for nine years; he was in his mid-forties. He had a management point for maths. When the Head arrived at the school, OFSTED had recently visited (in June 1999) and judged that six of Vince's classes were unsatisfactory. In addition, there had been a number of complaints from parents who were worried about his manner and his effect on the children's minds. Vince was described as being very odd, and frequently used strange, inappropriate language. He was also seen as being over-dominant with the result that a number of pupils were scared of him. Vince was then off sick for two months and he came back on a phased return starting with half a day per week. Since the school was insured for ill-health absence, there were no financial implications. The capability procedures started informally on his return. The maths co-ordinator responsibilities were removed, but Vince kept the salary. At the first stage, Vince's teaching was observed. The Head watched a few lessons, which were satisfactory, but his behaviour was felt to be strange in that his subject choice and language were deemed inappropriate. He would talk about himself, his family, his feelings, and his view of right and wrong. There were problems with parents and with other staff members, and he refused to carry out the literacy and numeracy strategies. The Link Inspector came in to observe and her views confirmed those of the Head. The Deputy Head and Link Adviser gave intensive support on balance and teaching strategies. Vince team-taught with the literacy consultant and observed the delivery of literacy hours in the upper school. There was some progress, especially with the literacy and numeracy strategies. However, behaviour management remained a cause for concern. Vince tended to be inconsistent and his personal comments remained highly inappropriate, and his use of sanctions tended to be unfair. Vince was due to come back full time from September 2000. However, he spent much of the summer in the school, and his behaviour seemed increasingly unusual. One day, the Head caught him sitting cross-legged on a desk staring at a poster which portrayed good and evil and this ran alarm bells with him. The first day in September was a training day, and Vince was extremely jittery. The head rang LEA personnel who advised that Vince be sent a medical suspension letter with immediate effect. The County Medical Officer confirmed that Vince was not fit to teach. Vince agreed with this, although he was not aware of how permanent the prognosis was to be. The County Medical Officer referred Vince to a psychiatrist who declared that he was fine to return back to school and that he was not mentally ill. Vince had told the psychiatrist that he was a good teacher and that the current problems were temporary. Because Vince was still on medication for depression, he couldn't return to school immediately. Meantime, the Head heard that Vince had become paranoid about the school to such an extent that he dared not walk past. The Head decided to ask for a second medical opinion. This time, the psychiatrist wrote that Vince had a "rigid personality", a disorder that is not curable, and that he was not fit to teach. Vince immediately applied for sickness retirement, and this came through very quickly. Staff morale was not affected by the case; in fact, the Head's view

was that staff felt that they had been carrying him for more than long enough. Vince is not working and has been seen looking dishevelled and drunk. It was thought that there was an alcohol problem as he had recently lost his licence.

4. The Head's Comments

(a) On the case:

I needed to sort out the problem with Vince, as he could have been the trigger for an unsatisfactory OFSTED. The LEA had already identified that the school was a cause for concern because of Vince.

The staff was relieved when he went. One teacher had been encouraged by the previous management team to complain about his behaviour to the LEA, but this only led to a verbal warning. She felt that she had been set up, as everyone had hoped that the complaint would lead to his removal from the school. None of the staff contacted Vince while he was off. Morale in the school was low to begin with and there were many other issues to be dealt with. Morale has gone up since he has left.

The class was enormously damaged by the experience, and since Vince left, they have been eating supply teachers; the present one is only just coping. We will finally be able to appoint a new teacher from September 2001.

(b) On procedures:

The barriers to taking a case into procedures are knowing what you are going into, and the time and paperwork involved. If you slip up once, you have to go back to the start. You have to be very sure of your ground or the trade union will upset the process. It is a very long way to the other end. Capability procedures are neither easy nor effective. They are too laborious and lengthy, and there is lack of clarity between capability and disciplinary. In this case, it was likely that I couldn't have got him on capability or on disciplinary as he could pull it out of the bag and deliver satisfactory lessons. I was very lucky and, to some extent, the whole thing was a series of hard-calculated decisions and weighing of risks. My best decision was to suspend him, even though we had to find cover.

The procedures are stressful for everybody involved. Using an outside agency could reduce stress. Once a problem has been identified, someone else could take it up, either a government agency or the LEA.

(c) On the role of:

(i) the LEA

Personnel and advisers were excellent. LMS is a problem; in the past LEAs could move people around and do deals. This often worked as each school has a very different ethos and organisation. However, Vince could not have got a job elsewhere although he asked to be moved to another school.

(ii) Occupational Health

The County Medical Officer was very helpful. The medical suspension letter was the beginning of the end in this case.

(iii) the role of the governing body

The governing body was informed. They were very relieved by the outcome.

(iv) the union

The trade union was helpful. They discussed ill-health retirement before the first psychiatric referral. It would have been more helpful if they had briefed Vince properly before this interview.

(d) On the four-week fast track:

This is non-existent.

5. Comments of Other Key Players

(a) Teacher

I am very vague about capability procedures, however, I know that it was used. We had clear guidelines about what the aims were and what support has to be given. From my point of view, this wasn't an issue about under-performance, but about Vince's behaviour. The performance angle came from OFSTED. Many people in the school had complained about his behaviour, but I don't think that they were formally recorded. I was happy to help him improve his performance, and he wanted to work alongside me. I think that his helped with his insight. We were the same age and had seen the same changes in education. However, I don't think that he could change with the times. In retrospect, there was nothing that could have been done differently, and the outcome was entirely appropriate. It is very hard, because you don't want to see someone demoralised, or out of a job. However, particularly in a small school, everybody has to pull their weight. The Head was very supportive throughout the case and there was relief among the staff when he was tackled. He had a dragging-down effect on people and the school.

(b) LEA Personnel

I was involved, together with the link adviser, from an early stage. We looked at what the school had already done and advised at each stage of the procedures. There had been long-term concerns about his mental health and the outcome was appropriate. The trigger in this case was the change of headteacher, although I am not sure that the case could have been dealt with at an earlier stage. We worked closely with the union, and ill-health retirement was the best solution.

(c) Trade Union Representative (ATL)

I had been involved with Vince over a number of years. There had been several incidents because of his eccentric behaviour. He won't shut up and if he feels that there is something wrong, he keeps on about it. There have been incidents in the staffroom when he has shouted at staff and at the Head. On one occasion he rifled through the Head's filing cabinets and found the document which he felt proved his case and pinned copies of it all around the school. He got away with this because the (previous) Head had a nervous breakdown. On another occasion, he had taken the children out on a visit and

got into a row with a vicar, for which he got an oral warning. He can be very embarrassing and is something of a loose cannon. In the end there were parental complaints. When OFSTED came in, he said things that were inappropriate; this was noted, but his lessons were failing as well.

When I was involved with Vince, it was mainly damage limitation. He got support and advice. When things went wrong, he would send off weird letters in all directions. This was a symptom of his illness. I think that the outcome was appropriate. He had his own views on what a teacher should do, and he wouldn't listen to others. He became lonely, isolated, and was unpopular in the staffroom. He was a very difficult person for the Head and Deputy to handle and he was probably in the wrong job. The Head was very generous and gave him a good severance package. He was a nice man, and very bright. By the end, I think that he had been drinking heavily. He had lost his licence on several occasions, and had a four-year ban.

The LEA are very good, I have only had one case over which we crossed swords.

LEA 8

8A 'Sarah and Vicky'

1. School and Headteacher Profile

The school is a voluntary aided, Church of England primary school. It has six full time teachers and one part-time. There are 150 pupils. The Head has been there for seven terms; it is his first headship. He has dealt with three capability issues.

2. Monitoring

Capability is monitored through a very clear teaching and learning policy which sets out what people are supposed to do. Staff submit planning in advance and the LEA and Diocese are used to monitor capability. The Head described an incapable teacher as being someone who had severe behaviour issues in their class, persistent sickness, poor planning, lack of lesson preparation, unwillingness to implement advice and where children were not learning.

3. The Cases

Sarah had one year of teaching experience. She had been at the school for two terms, but during the first term she was a float teacher so issues did not emerge as much. Problems then emerged with her teaching and how she related to other staff. She also had a curriculum responsibility but was not moving it on, so the Head put her on the informal procedure in January 2000. Sarah thought she could get round the Head by batting her eyelids. She had good control of the class but the class became very apathetic. She had lots of personal problems and had not been wholly honest when she was appointed. She also had to travel a long distance- more than one and a half hours each way. Sarah didn't implement advice. There was a lethargy about her teaching. She had regular meetings with the Deputy and the Head, and targets and timescales were agreed. The sorts of timescales set were to ensure that she would e.g. put up a new display in the next three weeks, complete her marking, follow the literacy and numeracy strategy.

Sarah suffered from acute vertigo which was probably exacerbated by the stress at work and because of personal problems. On May 1st 2000 she was given six weeks to improve which she did, but then resigned in July because she could not cope. She has since had a one-term contract close to home and if she could improve her performance then she would be allowed to stay- by all accounts she is still at the school. The Head wrote an honest reference for her and gave an oral reference.

Vicky had two years of teaching experience and had been at the school for half a term. She was a class teacher with a curriculum responsibility but she was not doing anything with her curriculum area because she was struggling with the teaching. She was also confrontational with other staff and she too thought she could get round the Head by batting her eyelids. Vicky had problems with discipline and there were complaints from the support staff which the Head said was very rare. The process was quicker with Vicky because she accepted that she had problems and so the Head put her on the informal stage of the procedures in October 1999 and gave her an oral warning in January. Vicky also

had health problems which were exacerbated by the job- she had acute laryngitis and had 23 days of sick leave between 1st September 1999 and 31st January 2000. During Vicky's first term there was an informal follow up by OFSTED and all members of staff were inspected by OFSTED, the LEA, the Head and a Numeracy Adviser so Vicky had several observations and all those who observed her had concerns about her class management. The Head then listed the problem areas and looked at how the school could help and what should be the next steps. There were longer formal meetings with the Head on how to run a class and release time was given for her to organise her classroom in a more appropriate way. Vicky decided to resign and was released from her contract at Easter 2000 after the resignation date because she realised that she couldn't cope and wouldn't get better. She tried to get another teaching post and then got a job nannying which is what she had done originally.

4. The Head's Comments

(a) On the case:

Sarah and Vicky were supported by me, by the Deputy and a by Nursery Nurse. The London Diocesan Board for Schools (LDBS) was also helpful. I was sympathetic about Sarah and Vicky's ill health problems but both the Deputy and I felt they were 'taking the mick' and the ill health was being used as a get-out device. For the children it is a very long process. They did the pupils a disservice and it has taken a year for them to recover from it, especially Vicky's class. The process should be able to be done more quickly but you must be careful because there could be vindictive Headteachers. It does dramatically affect someone's life but my first interest is the pupils, my second is the staff. While Sarah and Vicky were on procedures staff morale was very low. A lot of staff picked up that there were goings on behind closed doors. The staff only get to hear the colleague's view which is very difficult for the Headteacher and Deputy but it was clear to the staff that Vicky and Sarah were under-performing.

The parents were relieved when Sarah and Vicky left because both teachers had been absent a lot (Sarah had been away for 31.5 days ill, 4.5 days on compassionate leave and 6.5 days on courses in the year; Vicky had had 37 days ill, 2.5 days on courses and 2.5 days on 'other' during two terms. Sarah was also terrified of the parents and so they were not sorry to see her going. The parents had complained to me about Sarah.

Sarah didn't improve because she couldn't accept that she wasn't good; she would say 'but they are working and quiet' but they were not happy and their attainment was low- the SAT results went up only ever so slightly. She had quite a big personality clash with the Deputy and she tried to play me off against the Deputy. She also felt it was a witch-hunt from the parents. In the end I persuaded Sarah that in a different school she might find it completely different. She went to a bigger school and I think she is still there. Vicky didn't improve because she was never in school long enough to implement anything. The pupils were literally climbing the furniture, they were becoming wild. They liked Vicky but knew they could do it to her - they were quiet as soon as I was in the class.

In retrospect I would have made it much, much clearer what I was saying- having someone minute it and saying, 'Do you understand what I am saying?' You don't have to shout but you do have to make sure they understand. The stress involved with using the procedures can be reduced by using external advisers. Then you can tell staff that someone external is in agreement. It takes it away from the personal. Getting external people in also gives you a greater evidence base. You need to catalogue everything and it is very arduous, you could spend all your time cataloguing everyone. With Sarah and Vicky I have the feeling that I didn't have enough paperwork to back a quick formal process. Running capability procedures is *exceedingly* time consuming, it was very difficult doing two cases at the same time (and I also had a redundancy). For half a term all I was doing was work on procedures. There is a vast amount of paperwork and angst associated with the procedures which has made it difficult for headteachers to start it. It makes you hesitant, for example, you know you will have two hour formal meetings but it is worth it if the teacher leaves or gets better.

(b) On procedures:

There was some conflict over procedures. Ultimately the governing body decided to use the Diocesan procedures as the teachers have LDBS contracts. Sarah and Vicky both had informal oral warnings and I had all the minutes of the other meetings. The procedures are fairly cut and dried - the difficulty is that in a small school when you start proceedings they do tell each other. It causes some animosity amongst the staff and a feeling that they should stick together so I think very carefully before using the procedure. It is much harder with very experienced teachers especially as at one point they were probably good teachers. The LDBS procedures are relatively easy to operate; they give you sample letters and suggestions as well as timescales and who to involve. Sometimes there are problems with the wording, for example, not knowing if you are in the informal or formal stage. For instance, I had written notes but I didn't know if they could be used for the formal stage (if the information is put on file then it is formal).

The procedures were effective from the school's point of view in that both Sarah and Vicky resigned but they were not effective in improving the person's practice. This is why I always give an honest reference.

(c) On the role of:

(i) the LEA

The Adviser made recommendations on how Sarah and Vicky could improve. The Adviser encouraged me to get the teachers out. Personnel were not involved.

(ii) Occupational Health

Sarah resigned just before Occupational Health were involved. Vicky went to see Occupational Health and I was advised to give her work that involved her voice less! I have a poor view of Occupational Health as do a number of my headteacher colleagues. I am not sure it works; the teacher says what they like and Occupational Health does not want a response from me. For example, if a teacher says 'I have a nightmare Head', there is no response asked for from the Head. Occupational Health do not understand what schools are about. I don't think they can tell whether a teacher is capable of going to

work or not. At the previous school I was at teachers were getting signed in and out and were using the system because they could.

(iii) the governing body

There is an employment lawyer on the governing body and I sought a lot of advice from him and my father who is an NAHT Regional Adviser. I mistakenly discussed the capability cases at a governor's meeting but I would then have had to exclude those six governors from any dismissal or appeals panels. The governors were aware of the situation by walking around the school; in addition, three of the governors are volunteer assistants and two of them had worked in Sarah's and Vicky's classes. The governors were not that helpful because they became panicky about the situation (with the exception of the employment lawyer who was ready to hang, draw and quarter them.) They were uneasy, partly because of the school's difficult past - it had had one Headteacher who had embezzled money, one had become an alcoholic, one member of staff who was not working and two who fought! The governors would have been happy to have very limited involvement, for example, with only the Chair knowing. I actually used the Vice Chair as he had a child in one of the classes so would have been discounted from a dismissal panel. The governors were pleased that I had managed to 'get rid' of the teachers at an appropriate time before the start of another academic year.

(iv) the union

There was no union involvement despite the fact that they were both told to contact their associations.

(d) On the four week fast track:

I would want to know what a really dire teacher was like- they would have to be spectacularly dire and no one should be allowed to get to that stage. I could inherit someone like that in a new school but I can't see myself using it with my existing staff.

5. Comments of Other Key Players

School Development Officer

My role is to challenge the Head to support and develop the teacher. I was an external monitor in these cases. We have criteria against which we look at lessons and these include a rubric which gives a context. I gave verbal and written feedback and suggestions. I also worked with the Head to sharpen the timescales and identify support.

8B 'Rachel'

1. School and Headteacher Profile

The school is a secondary Arts College and a Beacon School. It has about 70 teachers and 800 pupils. The Head has been in post since 1993. It is her first headship in this country. She has dealt with about 12 cases of teachers with capability issues.

2. Monitoring

The Head monitors the capability of her teaching staff by walking around- all the doors must be open. The school is very disciplined and the pupils let it be known the teachers are no good. If they say, 'I like X, he is a laugh', then the Head thinks, 'Oh no, here we go'. The parents will also let the Head know. Senior management and Heads of Department also monitor. The Head thought that the definition of an incompetent teacher is difficult as someone struggling at one school might be competent somewhere else. She made the point that at her school it is very easy to teach and there were no discipline problems and that if you didn't cope at that school you wouldn't cope anywhere else. The Head thinks that how you prove incompetence is very difficult- the staff will know who the good teachers are because if the pupils have been in a bad lesson they arrive giddy at the next lesson. It is also a nebulous concept; it is not that they have failed to do something mechanical. The Head preferred the term 'incompetent' which has a different nuance compared to 'incapable' which suggests you are a disaster.

3. The Case

The Head spent two and a half years getting 'psyched up' to take the case and getting Rachel to acknowledge there was a problem. The case took place during the academic year 1998-1999. Rachel was the Head of Maths and had about 25 years' teaching experience. She was at the school for four years. The Head felt that even though there were difficult people in her department, she was still not doing enough to manage it. There were also problems with her teaching. She did not write lesson plans and spent a lot of time getting books for the pupils; there was no clear start or end to the lesson or direction, it was just a vague muddle. The exam classes complained- they liked her but they could separate a nice person from a competent one. The Head got an Adviser in and she 'blew a gasket'. She was not capable of moving the department forward. The union rep would ask what was wrong with the lessons, whereas the Head knew she was not moving the pupils on given the baseline data.

However, Rachel said that she knew best and how could the school tell her- the Head was not a Maths teacher. The Head started monitoring and setting targets and brought in external consultants. Rachel did not acknowledge that the targets weren't reached or were met inadequately. She was a nice person- she made cakes for the staff on their birthdays and started a breakfast club and sponsored a child in Africa, but the Department was all over the place. The Head was concerned about the quality of the A' level classes, her form tutor role, the fact that she did not use her time effectively and she was not accountable with respect to her teaching and Head of Department role. Examples of the targets set were- requests for details of the programmes of work for years 7 and 8, show clearly lesson modules and objectives, show what you are doing for able children, tell the department when the meetings are and write minutes, give details of how you are building on prior attainment. The A' level results were terrible, but when the Head challenged her about these she said that the pupils were not very clever; however, they had done better in other subjects including Physics. The Head also had a letter from a parent about her. Other staff offered support but it was not accepted. Rachel would say, 'What do you know about it?'

The outcome was that she was promoted outside the school the following February. The Head at this school obviously did not read the reference properly- it was a factual reference which said what she was good at, for example presenting on a parents evening. Rachel subsequently applied back to the school for a mainstream teacher job as it went badly at the new school - although this may not have been her fault.

4. The Head's Comments

(a) On the case:

The problem was that you would support her in the targets and then have to prove to her that she hadn't met them. Even with fast capability procedures, you set the targets and the teachers can't meet them but the union argue that the targets are a bit stiff. It is really hard, for example here I am a teacher, I'm propping people up, I am the HR department, the judge and jury. What the authority needs is 12 employment lawyers well versed in it who would come to meetings. You also have to be able to document it and the unions can argue that I am being too hard or they will say, how do you know she is not encouraging the pupils'.

I don't think the procedures would have worked with Rachel although she was not unionised which would have made it easier. I mainly deal with capability problems by re-structuring which I am an ace at. For example I turned the Foreign Languages department into the Language and Learning department and made the incumbent Head of Department who was not performing well, redundant and gave the job to the SENCo. It works as long as you think it through and think of something entirely different.

In retrospect I wouldn't have employed her but she interviewed well and there were only two candidates and the man was not good. I might have re-structured so that the Head of Science took over the Head of Maths' job temporarily and kept advertising. The other teachers were very pleased that I dealt with Rachel but they would not say that openly. Teachers deep down know. The parents would have been pleased- I had had parental complaints about her. I'm from industry and I am very clear that the client is the child.

I think that Rachel didn't improve because she was too set in her ways. I suspect that she was not terribly clever and she ran herself ragged but didn't make good use of her time. The other activities were a smoke screen; she responded angrily to me because the complaints were true. If complaints are spurious then you don't worry. She should have retired and gone to work in a church. She hadn't moved with the National Curriculum- you can waste time being angry with it or you can use your energy being positive.

I think there should be an employment lawyer to assist you so that the Head ceases to be the centre of opprobrium. If you compare being a Head with a business, then I am running every single department and I am on the factory floor as it is. I can see why people back off from headships. I expect more here, and it is the general standard here- that is what competency is judged against. You need to get incompetent teachers out in a year and early enough so that you can replace them, you don't want to be left in July with a serious vacancy- you can't fill Maths or Science or Modern Languages at that stage.

(b) On procedures:

I think the procedures are too long. Another problem is that if I am observing lessons then once I am in the classroom the kids behave. There are no barriers getting onto informal procedures if you can define what is wrong and the teacher can accept it. The teacher can say, 'What's wrong with that? Give me an example'. If Rachel had stayed she would have argued that the targets were unfair and it would have been difficult. I used the Church of England, Diocesan Board procedures. I do not find the procedures easy to operate. You are propping them up to meet the targets which is daft- you are like a life support machine- without the support they will collapse. I am consequently tough on beginner teachers sent from the Institute of Education and don't pass them if they won't be any good- I failed four out of six of them this year.

I do not think that the procedures are effective; maybe they are in some places but I don't know anyone who has got rid of a teacher on competency. They eventually go on a compromise agreement or they resign. Usually as soon as you are on to informal procedures they apply for other jobs which is why I give open references.

I have no idea how the procedures could be improved but what about the kids? Why should they put up with inadequate teaching or no teaching? The big thing is to be an irritant so that they leave and then write a reference which others should be able to read between the lines of. Disciplinary situations are easier to deal with, for example, if someone is persistently late, it is easier to prove, it is objective but if it is bad teaching then to prove it a whole year of kids have to go through and get results to show that the teacher is no good.

(c) On the role of:

(i) the LEA

The Personnel department is very good.

(ii) Occupational Health

They were not involved.

(iii) the governing body

The Chair knew that I was operating procedures.

(iv) the union

The unions know all the techniques and procedures. You have to have employment lawyers to be with Heads when they have difficult cases. When is the government going to tackle the teacher unions in London? My union SHA is very good and will send a field worker if you are desperate.

(d) On the four week fast track:

The question is what do the unions think? If the unions will run with it, then fine.

5. Comments from Other Key Players

Consultant from the Head's Union

I was called in by the Head as a consultant to give an independent view on the Maths Department, which was my subject when I was a teacher and Head. I observed and had documents from the Department and OFSTED reports. I linked my findings to a lack of assistance from the Head of Department. I talked to other members of the department to triangulate my findings. I then did a written report and followed up on an individual level. I talked to Rachel and tried to work out a way forward but she was still contesting that there was a problem. I came away thinking that capability procedures would begin and am not surprised that it happened. There are three outcomes- the teacher changes, the Head gets rid of them or you put a square peg in a square hole- change their role. Talking to Rachel was like talking to a mirror, things came back and didn't seem to get through.

I think the Head had made her mind up and used me as an independent sounding board to make sure that she had got it right, which she had. I was working to a tight brief- to look at it objectively. Privately the Head had said - this is what I think and will be surprised if you find it to be different. Capability procedures are not effective at changing and improving because by the time you get to that you have tried everything.

LEA 9

9A 'Meena'

1. School and Headteacher Profile

The school is a large primary with 650 pupils and 31 teachers. It is located in a city area of low level housing with high occupancy rates. Quite a large proportion is temporary housing which leads to a turnover of approximately 20% of the pupils in one year. Thirty per cent of the children are eligible for a free school meal, although only 20% take this up. Ethnic minorities comprise 95% of the school population and 85% speak English as an additional language. The Head has been in post for 9 years, prior to which she had been Acting Head for two years, and this is her first headship. This is her only experience of capability proceedings.

2. Monitoring

The senior management team carries out an annual programme of monitoring in which each year group is observed and samples of work taken, feedback is immediate. It is at this point that concerns are raised, so that staff does not feel picked on. Lack of capability is evident from looking at the children's work. Analysis of results (SATs etc) is more and more important.

3. The Case

Meena was a mature entrant to the profession, aged 51 and had been teaching for nine years, all in this school. The Head had been aware of weaknesses from 1994 through regular monitoring and support had been given enabling Meena to improve slightly. However, Meena found it increasingly difficult to keep up with the quickening pace of change in teaching and her standards worsened. The school monitored and put in extra support, and then Meena improved temporarily. This became a cycle of events. Matters came to a head in 1997 when OFSTED visited the school and labelled Meena a failing teacher. After the OFSTED visit, the Head knew that she had to act, in part because she had an outside, independent view, and because at the next OFSTED visit she would be classified as a failing head if no action had been taken. In addition, the Head had a new, excellent deputy and relative stability. The informal stage of the procedures started in February 1998. The Deputy Head gave support and was her mentor, while the Head evaluated by observing lessons and giving written and verbal feedback. Meena was in denial, she didn't want to listen and she blamed other people; the children (especially black boys), the year co-ordinator and parents. The first review was in March 1998 when three further targets were set, with two additional ones to be added at the end of April. She went off with stress and high blood pressure from the end of March to the middle of May. The Head urged her not to come back to school until her GP signed her off sick but Meena refused to do this and came back. The Head let her settle back into school before resuming observations late June. The Head saw three lessons, maths, English, and science, all of which were unsatisfactory. Because the informal stage had gone on so long, the Head wanted to move to the formal stage and she gave Meena notice. The Head had not known that she had to give ten days' notice, as the procedures had not specified this. The union objected and the original notice was withdrawn and a further letter

outlining concerns was sent giving the ten days notice. The hearing to move into the formal stage was due to take place in mid-July 1998, but the union objected to the case going formal because they said that Meena had had insufficient support. The Head wrote to the union outlining the intensive support, including external courses, which Meena had been given. The union representative then objected on the basis that the Head was using old procedures, and that if she pushed ahead, the NUT would fight it.

By this stage, the holidays intervened and the next hearing had to be arranged for September. In the new academic year, Meena had been given the best class in a new year group where the Head felt that she could do least damage. Because the Head had not used the procedures before, she took advice and agreed to start the procedures over again from scratch, thereby losing a full year. The Head did not recommence straight away because she had “lost momentum, lost nerve”, and had become deflated. In addition, the governing body had not yet approved the new procedures. In January 1999, the case began again at the informal stage with the same targets, and the same amount of support. Meena was observed over the next four weeks and the first review took place in early February, with five days notice given. Concerns were put in writing to Meena, together with information about procedures, targets, support, the role of the Deputy Head, and dates of observations by the Head.

The union representative kept asking to observe, but the Head did not think that this was appropriate. He said that if he had evidence that Meena was incompetent, that he would negotiate an exit. Once again, the link inspector gave independent assessments of lessons, all of which were unsatisfactory. The union representative then started to threaten the Head with taking the case to an employment tribunal, and asked for someone from outside the Authority to observe. This was apparently because Meena had thought that the inspector had not liked her. The Head contacted the Director of Education who said that the Authority inspectors operated independently of schools and ruled out external inspection.

Meena was then absent again, so that the first review date was deferred from February to March. There was further absence in March and it was in May 1999 that the review finally took place with the appropriate ten days notice given.

At this stage, the union representative arranged to meet with staff in the school. The Head heard about this on the grapevine and wrote to ask for clarification of what the meeting was to be about, as she was concerned about confidentiality and wondered whether to allow the meeting to go ahead. The union representative said that he would discuss the case and that Meena had given her permission. The Head checked with another NUT representative on this who said that procedures generally could be discussed but that it was “neither proper, nor wise to discuss a case”. The union representative refused to let the Head have an agenda for the meeting and refused to discuss what he wanted to say, except that he wanted to check that she had followed procedures. He balked at the idea that the Head could vet any meetings. The Head felt that if she banned the meeting, the staff might think that she had something to hide and that censorship would lead them to think the worst. The meeting went ahead and the

union representative asked for the staff to support Meena by presenting the Head with a written petition saying that they felt that procedures should discontinue until Meena had been allowed to go on courses. The staff did not produce this petition, but the union representative gave the Head his scrawled notes which had not been signed. She refused to accept that it was a petition. The Head and the link inspector met, and agreed that Meena had received “substantial, high quality, professional support” and that they should move to the formal stage. The union representative came back with the objection that the staff at the school had unanimously resolved that the case should not proceed until Meena had attended appropriate courses and that if the Head proceeded, it was a “potentially serious, and possibly costly mistake”. There was a further exchange of letters between the Head and union representative. The meeting to move to formal took place in June 1999, with an appeal planned for July. The union representative had requested all notes relating to the case prior to the meeting. During the meeting, the union representative said that Meena was menopausal and stressed and emphasised that the Head had done nothing about this. The Head had not known about this issue, and responded by saying that it was not relevant to the capability procedure. After two and a half hours the union representative walked out of the meeting and appealed against the case going through to the formal stage. He sent the Head a newspaper cutting detailing a case of unfair dismissal which had been upheld at employment tribunal. Meena was off sick from the date of this meeting. The appeal was delayed until September because the union representative petitioned for still more evidence on standards. Over the summer, the headteacher spent two weeks putting together more details of support – about three inches of paperwork. When the appeal took place, the union representative asked if Meena could have another job in the school, e.g. teaching SEN, or AOL, posts which the head felt were also very demanding.

At this point, the authority solicitor became involved. The union was threatening to take the case to tribunal because of the stress which Meena had suffered. After the appeal, which the Head said had gone for the union representative, he involved his Regional Officer. The solicitor brought in ACAS and the end result was an agreed tax-free pay off (roughly equivalent to two months’ salary) “in full and final settlement of any claims” and an agreed reference. The case had been outside procedures from 1994, and within procedures from February 1998 to September 1999 with two starts.

4. The Head’s Comments

(a) On the case:

When I started with procedures, Meena denied that she was incompetent; she couldn’t hear feedback, although I tried lots of ways of doing it. I met with Meena many times, but she didn’t understand the points that I had been making and wasn’t going to the Deputy Head for support. She didn’t help herself, despite the fact that any of the staff would have helped her and she had endless support. The crux relates to skills of self-analysis but there was no way that Meena could analyse her own performance and she wouldn’t accept the judgements of others. I now always ask at interview “What do you think that you could improve?” I would rather accept someone who was over-critical than someone without self-analytical skills. I think that she didn’t believe that it would

happen. The trade union representative should make it clear to members that unless they get it together; they may lose their job, as she didn't believe me.

I continually had complaints from parents and because the union rep didn't believe me I started to copy them to Meena who always blamed pushy parents. One set of parents was middle class, black and articulate and they requested a meeting with Meena. I tried to arrange this several times, but each time, Meena was off sick, so I met them myself.

The union representative threw in obstacles all the way; he would send requests via the school rep and he sent me letter after letter, hassling for all manner of paperwork like a dog with a bone. It was incredibly gruelling and very unprofessional. I never met with him on my own as I didn't trust him. At the end, it was only when the NUT Regional Officer became involved, that everyone started to work together to find a solution which would benefit Meena and the school.

(b) On procedures:

Barriers to taking a case were the endless squabbling about the length of time spent at the informal stage and before entering procedures; the amount of support put in at the informal stage; the requests by the trade union rep to see Meena teach; the union not trusting the evaluations of the Head, the Deputy Head, and the link inspector. The procedures were very difficult because they didn't advise on each step: they didn't state that the legal notice for hearings had to be ten days, there were no standard letters, and no indication of what constituted a "reasonable amount of time"; no advice on what to do about ill-health and its effect on the capability procedures, and no agenda for appeal to the governing body. Because of this, the LEA has re-written the procedures and I have helped with this.

The procedures are not effective and the outcome was not appropriate, because after nearly two years in procedures, Meena could still get a teaching post, even though we know that she is incompetent. They take far too long, during which time there is an enormous amount of damage done to the children, the school, and to Meena. In addition, there is an enormous cost in terms of time and energy of the Head, the Deputy Head, staff offering support, the link inspector, personnel etc. During the peaks in the procedures, it was taking roughly two days a week of my time. My mind was not on the important, positive issues in the school, like raising standards and I didn't have time to run booster classes so the results worsened. It was also too long for Meena. It was cruel to prolong the procedures when we had the evidence and knew that she was not going to improve. By the end, she was a shadow of her former self. In retrospect I would have taken the case at a faster rate and not been diverted. I would have continued using the old procedures. It was partly me, because I hated doing it and I was unsure. It was a nightmare; I was very, very stressed by the whole thing and I swore that I would never do it again, or that I would do it by the back door. I would do it much, much more quickly to spare the misery on all sides. Stress could be reduced in the procedures by getting a professional response from all concerned and a desire to get things done quickly but fairly, but you would need a helpful union rep for this. Procedures could be improved by stating time limits clearly: the reverse of all the barriers.

As far as I know, there was no effect on staff morale. When Meena was off sick, I had to prompt the person who usually organises for flowers to be sent three times. I think that they felt very sorry for her, but there was relief that she had gone. The parents didn't know what had happened, but I no longer get complaints and the governors were pleased.

There needs to be a better system. I don't think that the government realises how very hard it is, especially for primary school heads. In primary schools, heads are not remote figures, they are involved in the health, welfare, and personal issues of staff and this makes it hard for them to see me in a different light. I think that we should monitor staff, but that problems should then be referred to an independent group (similar to OFSTED inspectors) who would be asked for an external view. If they watch two or three lessons and agree that the teacher is failing, targets should be agreed with the Head and the school then supports the teacher. After three months the external returns to monitor and decide on whether there has been improvement. If there has been no improvement, then the teacher should leave. External agencies have no emotional involvement, and it would be less expensive in the long run, and relatively painless for all concerned.

(c) On the role of:

(i) the LEA

The link inspector was very useful: she went through the procedures in minute detail. I was able to use her as a sounding board and check that I was reasonable. We buy in the personnel package and they were very useful, but they are over-burdened.

(ii) Occupational Health

Occupational health were not helpful, they listened to Meena and clearly thought that she had been picked on. They wrote to personnel and suggested that they meet with Meena and me. In the event, Meena was too ill to meet with us. I referred Meena to them and asked them to consider the menopause and if it would affect a teacher's performance.

(iii) the governing body

The governors were informed throughout and panels were involved at hearings and at appeal. At one point, they were derailed by the objections of the union representative. They were excellent; especially the three who took the appeal. At appeal the three governors were made up of a Muslim, an Asian woman and a Sikh: our governors are very representative of the ethnic mix within the school.

(iv) the union

I didn't find the NUT rep at all helpful. The way he operated was detrimental to the health of the teacher and didn't help us reach an appropriate professional solution.

(d) On the four-week fast track:

In serious cases, this could be very useful and good. If someone endangers health and safety of the children, they must be got out very quickly.

5. Comments of Other Key Players:

(a) LEA Personnel

The Head is very good at human resource management. I advised on procedures and talked through issues when I was not to be in the meeting. In this case, we were much too forbearing and allowed a lot of time. In retrospect, I should have urged the Head to keep moving, as the Head had been aware for several years that Meena was weak. The Head should have been more pro-active and not let the union run the case. Our capability procedure had too many stages, but we are now reviewing it. We have very high quality advisers in the authority. We have major problems with a maverick union representative who represents NUT, NASUWT, and ATL. ATL is the union which teachers join to escape radical types like him! Usually branch secretaries are very helpful, but this man is an exception. He wants his name in the papers; he wants a big personal injury case. In Meena's case there was a visible point at which the full time officials became involved and they took our side. Our rogue rep immediately lost interest in the case. It is useful when we can work together with the union and it is useful to involve ACAS.

(b) LEA Adviser

The school had been aware of problems following OFSTED in 1997 but the Head didn't act until September 1998. I tried to visit Meena on several occasions, but she was off ill each time. I finally saw her in April 1999 and agreed that she was not satisfactory. I advised the Head to use a consultant to act as clerk to governors as they could easily be railroaded and needed to be sure of their rights. The case was far too long in the informal stage. The outcome was appropriate. Personnel advise on the management of capability, and we offer support. It was a gruesome ride in this case, but the Head is very good and competent. She followed advice and double-checked on all of the paperwork and this takes a very long time. There was a bad impact on the health and well being of the Head and a great loss of professional development time to the other teachers in the school. All of the floating teachers were absorbed in giving support to Meena. The trade union representative wasn't behaving very well, making it all very difficult. She is a wonderful Head, but she should have taken more risks and a brisker approach. It was slow because she was so conscientious. She should have had braver advice when Meena wasn't given ten days' notice of a meeting; the governors were unsure what to do. It was at this stage I suggested that they buy in a clerk so that they could be clear and confident. Also the Head responded in full to every letter from the union rep. I advised her simple to reply saying "thank you for the contents of the letter, which I have noted". The trade union rep was bullying, but I suggested that the Head treat him in the same way as one of her bullies at school and this helped. The previous Director of Education banned the union rep from some of our schools.

(c) Trade Union Representative

I asked to see Meena teach, but they said no, so I had to fight the case as though she was competent. At the first meeting with the Head, I went through the list of reasons why the case shouldn't go into procedures, for example, the absence of a stress management policy in the school, no lowering of Meena's bureaucratic work load, no counselling etc. They went into procedures anyway. It went on a long time because there were procedural problems. The governors were using the old procedures, and the new procedures had not

been agreed with the unions. I contacted NUT regional office because they had acted improperly. We could have gone to tribunal on procedures. Meena was happy with the outcome; I'd have been happier if she got £6k. The Chair of Governors was outrageous; they need training in employment law. There were three advisers used by the LEA, two were good and one was useless. A lot depends on the adviser to the governors. Seeking compromise agreements should be part of procedures, and every avenue should be explored to save time and money. It should be the role of the profession to determine standards as opposed to OFSTED; it is the profession which should determine who can teach.

9B 'Sangita'

1. School and Headteacher Profile

The junior school is located in a run-down inner city area. It has 420 pupils, 13 teachers and three non-teachers. The school includes a speech and language unit which has 20 statemented children. The unit has one member of staff to ten pupils as well as a learning support assistant and a speech therapist.

The Head joined the staff as Deputy in 1998 when the school was in serious weakness. She took over as Acting Head in 1999 when the previous head went off sick and was subsequently appointed as Head in February 2000. Since taking over as Acting Head, she has dealt with four capability cases and thirteen teachers have left the school. The Deputy Head felt that they left because they could see that the Head had high expectations, which they couldn't rise to meet.

2. Monitoring

Because the school is in serious weakness, monitoring has been intense and carried out by the Head, the Deputy, external consultants, as well as the Link Adviser. HMIs have also visited the school five times. An incompetent teacher is seen as one whose lesson delivery and planning is unsatisfactory.

3. The Case

Sangita's case went into the informal stage of procedures in March 2000 and is still current. When the school was placed in special measures, it had clear guidelines on how to work with teachers who were causing concern and there was intensive support provided from the link inspector, curricular leaders, and phase co-ordinators. Since there were a large number of teachers in need of support, it was agreed that training should be given in-house, rather than using external training courses. Together, the staff developed a teaching and learning policy and agreed what constituted a good lesson, including planning. Teachers in the school were paired so that a good teacher worked with weaker ones. Emphasis was placed on self-evaluation.

Sangita had been in teaching for twenty-two years and had worked in this school for eight. She was a class teacher, although she was acting head for a period in 1996 and had management points. Of all of the weak teachers, Sangita failed most of the observations

during 1999-2000. On each of the five HMI visits, all of her observations were unsatisfactory, and they, unusually, gave her direct feedback. (HMI reports cannot be used in capability procedures, even though the union official asked for them. The Head refused to pass them on, but Sangita passed them on).

Sangita's planning was satisfactory, but she failed to deliver, a lot of her teaching went over the heads of the children, and there were no linkages from one part of the lesson to another. Sangita was relieved of her curricular responsibilities (although she still gets paid for them) to enable her to concentrate on her teaching. The Deputy meets with her weekly for support, and she has been asked to observe other teachers.

However, Sangita insists that other teachers are no better than she is and she denies that she is failing teacher. She blames the children, the systems, and refuses to look at her own practice. She has not addressed any of the specific teaching and learning targets which have been set and, when she is given written feedback, Sangita writes back to say that she doesn't care what anybody says, that she is a good teacher. She refuses to read the reports because she does not agree with them and she accuses the link inspector of getting at her. The Head employed an external consultant to ensure objectivity, with the same results.

In the end, Sangita was pinned down to work on one single target, and one child, with whom she had particular problems, was moved out of her class. Discipline in her class improved, but the children have become passive and there is limited learning. There is no excitement in the teaching and the children are bored, although they are now under control.

The formal stage of the procedures was due to start in mid-June 2001. The union representative had already indicated that there would be an appeal against this and formally wrote to the Head advising her not to proceed to the formal stage because of the absence of a stress management policy in the school. The case did not progress to the formal stage, as the legal support team now say that they want to defer the meeting in order to get in someone more senior to combat the continual diversions which the union rep is using to take the case away from the central issues.

4. The Head's Comments

(a) On the case:

The staff are divided on the case, I'm not sure if they know what's going on. Such cases create stress amongst the staff and compromise their loyalty. The staff are hyped up because of HMI visits and are keen to get the school out of special measures. Ninety per cent of the teaching is now satisfactory, and Sangita accounts for most of the remaining 10%. I think that staff know this. They feel sorry for her, but I don't think that they are supporting her any more. Sangita raised something at a recent staff meeting and none of them supported her, except one who colludes with her. Staff have a conflict of loyalty, because they are also concerned about the school and the children. Because the school is in special measures, the parents have seen the HMI reports and they are demanding to

know which teacher is not getting it right, and whether their children are in that teacher's class.

The teacher's family also needs support through this as Sangita is an important community member, and they will be shocked to learn that she is failing as a teacher. I feel very sorry for Sangita, and I have to focus on the children to relieve the guilt. It is very stressful for everyone. No school should be in this position; problems should be picked up earlier, in this case well before the HMI visit, but the school was in a time warp with many of the poor teachers joining the staff because they had a friend at the school. The case has an enormous impact on the school in terms of the amount of time devoted to it; the paperwork, putting in support, and the cost of consultants at £400 per day. You need preventative measures to stop cases arising. In particular, all staff must be aware of standards expected and what is required for a lesson to be satisfactory. Performance management is excellent for this, as appraisal is an integral part. We now have continuous staff training and continual evaluation of training needs.

(b) On procedures:

The LEA procedures were used; they were both easy and effective. However, the procedures are far too long; this case has dragged on because of the delaying tactics of the union rep, and this is very unfair for the teacher. There needs to be an alternative route which doesn't demean the teacher. Teachers with long service need help and financial rewards to be able to do something else. I am very worried about the appeal; I need to know if I can have someone to support the governors and me. The biggest barrier to getting a case into procedures is the union. The union representative wants to observe the teacher, but any more observations would be silly. He has called the link inspector racist because, in her feedback, she mentioned the way that Sangita said something. Yet phonetics are an important part of learning, this was not racist at all. Procedures are not effective, as teachers can leave and get jobs elsewhere, even though we know that they are failing and how much damage causes.

(c) On the role of:

(i) the LEA

The LEA was very helpful. I buy in personnel and they take me through each stage, and I have a linked headteacher who has experience of capability procedures.

(ii) Occupational Health

They have not been involved in this case, as there has been no ill health.

(iii) the governing body

They are very supportive

(iv) the union

The NUT representative makes the case very difficult. He bullies and harasses on every small point. I have been in regular contact with my NAHT rep, who has been very helpful. Having seen the paperwork he feels that it is watertight, and that I should go ahead. The NUT representative says that we shouldn't proceed because we don't have a stress policy and that he needs the HMI reports and a detailed analysis of progress in Sangita's class.

(d) On the four-week fast track:
I don't know it.

4. Comments of Other Key Players:

(a) LEA Adviser

I was involved with this case from an early stage. I saw Sangita teach on several occasions, and twice produced detailed reports as a result. I arranged for a maths inspector to see her maths, but she objected, so I arranged for an English inspector to go in and observe. I advised the Head on how to handle the teacher, and urged her to start procedures. It was hard for her to do, but HMIs would have been displeased if she hadn't, because the teacher is consistently unable to produce satisfactory lessons.

The previous Head shouldn't have appointed Sangita; she had been a language service teacher when she appointed her. She thought that Sangita was good and kept promoting her, so she is over-paid and unable to carry out any of her responsibilities. The previous Head brought the school into special measures, and if she hadn't gone off sick, she would have been on capability procedures.

The current Head was inexperienced and, because of the demands of capability procedures, I advised her to pay for additional support from one of our ex-heads who works as a consultant. This may seem odd, but the school had the money and I knew that I didn't have the time to offer the Head the detailed support that she needs. Heads need very intensive support when taking a case, and I have eleven link schools. Heads are very reluctant to go down the capability route because it is so hard for them. It is a poisonous process and, like lancing a boil, it is very painful and messy, but you have to do it.

Sangita was in denial throughout; everything was the children's fault. On one occasion, I said that the children couldn't understand her and the union rep created a major issue about racism. The Head and Deputy are black, but he said that there was racism: black against Asian. I criticise all teachers if the children can't understand them or if their grammar is incorrect, whether they are Geordies, Australian, or whatever.

We have a major problem with our union rep, and he represents all of the unions, so there is little choice for members.

(b) Trade Union Representative

Declined to comment, as the case is still current.

(c) Governor

I have had no training on capability procedures. I was involved in Sangita's case because the school was in special measures. This is the only case that has got this far through the procedures.

It is a very unfortunate case, because Sangita has been teaching for over fifteen years and nobody ever said anything about her incompetence. We have strong evidence that Sangita should not be teaching, but this fact has come out of the blue to her and this is

what makes it so upsetting. The capability procedure had to be triggered, but it is very difficult because no one has spoken to her about it before.

I find the procedures very hard. However, I follow the Head's lead as she has lots of advice. At the first appeal, the clerk talked to me and the other two governors involved and he was excellent. All the governors find it very hard but it is more traumatic for the other governors, since because I used to teach in the LEA, I have some understanding. There has been a great deal of delay in this case because Sangita's union representative couldn't make some of the meetings. The union representative is very difficult and I know that he is not interested in the teacher, or the children. There should have been much more support from the LEA, and I will raise this with them. We haven't got an outcome yet. Sangita needs a lot of training and support to change her practice, but she won't accept that she needs it. Using capability procedures is the only way to deal with it. I think that governors need a lot more information and support when they are dealing with a case.

9C 'Vanisha'

1. The Case

Vanisha taught at the same school as Sangita and they were friends. Vanisha had worked in this school for three years; she had no formal teacher training qualifications, but had done several courses to gain equivalence. She had not been in this country long before she started to work at the school. She was appointed as class teacher and ITC co-ordinator. The trigger for action was the bellowing and shouting that came from her classroom as well as parental complaints. The Link Adviser saw her and categorised her as a failing teacher. Vanisha was also off with ill health for a lot of the time; her sick notes cited chest infections, sore throats with loss of voice and weight loss. She was given high levels of support and a lot of non-contact time. The case went to the informal stage of proceedings, but after the first meeting she went off sick. She refused to tell the school and Occupational Health what the problem was. On a second visit to Occupational Health, they asked to see her GP notes and it was discovered that she had cancer. The procedures then became redundant and she resigned. The case lasted for one term from starting informal procedures to Vanisha's resignation.

2. The Head's Comments

(a) On the case:

Her medical condition naturally scared Vanisha; although she said that the children had given her cancer, she did smoke very heavily. This was the best outcome and I think that she is now teaching part-time elsewhere. There was no reaction from staff or parents; I think that they were all relieved for her. I think that the shouting in the classroom must have made her ill, and she was in a poor state of health.

(b) On procedures:

See notes on Sangita's case.

(c) On the role of:

(i) Occupational Health

Occupational Health was very helpful in this case.

(ii) The governing body

The governing body was informed.

(iii) The union

The union was not involved.

