

# Capability Policy and Procedure

## Version 4.1

<p><b>Important:</b> This document can only be considered valid when viewed on the Trust website. If this document has been printed or saved to another location, you must check that the version number on your copy matches that of the document online.</p> <p><b>Name and Title of Author:</b></p>	<p>Charlene Hadfield, Trust HR Manager</p>
<p><b>Name of Responsible Committee/Individual:</b></p>	<p>Board of Trustees</p>
<p><b>Implementation Date:</b></p>	<p>February 2019</p>
<p><b>Review Date:</b></p>	<p>February 2021</p>
<p><b>Monitoring:</b></p>	<p>This policy will be monitored and reviewed by the relevant body in conjunction with local trade union secretaries.</p>
<p><b>Target Audience:</b></p>	<p>All staff</p>
<p><b>Related Documents:</b></p>	<p>ACAS Code of Practice - Disciplinary and Grievance Procedures            Performance Management/Appraisal Policies for Teachers and Associate staff            Probationary Procedure            Alcohol and Substance Misuse Policy            Health and Wellbeing Policy and Procedure            Redeployment Procedure            Disciplinary Policy and Procedure</p>

## Contents

<b>Section</b>	<b>Page</b>
Policy Statement	3
1. Purpose and Scope	3
2. Roles and Responsibilities	4
3. Equality and Diversity	5
4. Principles	5
5. Redeployment	6
6. Authority to Take Action	6
7. Informal Support Plan Review and Pre-Capability Meeting	6
8. Formal Capability Process – Stage One	7
9. Stage Two	8
10. Final Capability Meeting	9
11. Appeal	9
12. Un-sustained Improvement	10
13. Monitoring Compliance with and Effectiveness of this Policy	10
14. Associated Documentation	10
15. Review	10
<u>Appendices</u>	
Appendix 1 – Authority to Take Action	11
Appendix 2 – Capability Flowchart	12
Appendix 3 – Template Performance Improvement Plan	13

## **POLICY STATEMENT**

We are here to make great schools and happier, stronger communities so that people have better lives. We do this by:

- Always doing what is right
- Trusting in each other and standing shoulder to shoulder
- Doing what we know makes the difference

Doing what is right means always acting with integrity, in the interests of others and being honest, open and transparent.

The success of The Education Alliance (the Trust) relies on the performance of all its employees and members of its communities. The Trust is committed to providing staff with satisfying roles; appropriate learning and development opportunities; support; clarity of role and objectives and; meaningful feedback. Where staff experience problems in attaining the appropriate standards of work the Trust will endeavour to support them to reach the required standards.

The Trust welcomes the support of the recognised Trade Unions in seeking to implement this policy in a fair and consistent manner and actively encourages employees to seek the support of their trade union representative (as appropriate) at the earliest opportunity.

The Employment Rights Act 1996 defines capability as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'. Careful recruitment and selection, clarity of role and learning and development opportunities minimise the risk of poor performance. Employees should be clear of the standards and expectations at the Trust and the potential consequences of failing to meet them. Staff have a contractual responsibility to perform to a satisfactory level and they should be given guidance, support and encouragement to do so, alongside honest and constructive feedback. Managers have a responsibility for setting realistic and measurable standards of performance and for explaining those standards carefully to employees.

### **1. PURPOSE AND SCOPE**

This policy and procedure must be followed when an employee's ability to perform the duties of their post is giving cause for concern. Lack of capability is highlighted when an employee consistently fails to perform their duties to an acceptable standard.

The performance management processes for teachers and associate staff are designed to enable the Trust to effectively drive forward school improvement fairly, consistently and supportively.

When staff fail to meet required standards of performance they will be supported initially via the relevant performance management processes. When the performance management framework fails to result in a significant, sustainable improvement it will cease to apply and the Capability Policy and Procedure will be triggered.

The purpose of the Capability Policy and Procedure is to provide a fair and consistent framework to enable managers and staff to:

- Identify constructive agreed support with the aim of improving performance
- Enable staff to achieve and maintain an acceptable standard of work through constructive support
- Follow a fair and consistent process in managing and improving poor performance

This policy may also be used to enable and encourage staff to raise concerns regarding their ability to adapt to changes affecting their roles. This policy must not be used where inadequate performance is the result of wilful misconduct or negligence. In such circumstances, the Trust's Disciplinary Procedure must be used. In accordance with the ACAS Code of Practice for Disciplinary and Grievance Procedures, before any action is taken against an employee who is a trade union representative, except for initial concerns, the matter should be discussed with a full-time official of their trade union, after obtaining the employee's agreement.

This policy is designed to be used for staff who are not achieving the required standards of performance either because they lack the skills and/or aptitude or because their performance has deteriorated.

## **2. ROLES AND RESPONSIBILITIES**

The **Board of Trustees** is responsible for ensuring this policy is applied fairly and consistently across the Trust alongside holding specific responsibilities relating to the potential dismissal of employees under this policy.

The **CEO** is responsible for ensuring employees are treated fairly and consistently across the Trust. The **CEO** also has specific responsibilities detailed within this policy regarding decision-making and the issuing of sanctions.

The **Local Governing Bodies and Heads of School** are responsible for monitoring the application of this policy within their respective schools, ensuring capability issues are managed effectively and other related policies are shared, understood and adhered to by all employees. They are also responsible for ensuring managers, leaders and supervisors have access to appropriate training and development to enable them to apply this policy fairly, consistently and professionally.

The **HR Department** is responsible for overseeing the introduction, implementation, monitoring and review of this policy and will report to the CEO, the Board and Local Governing Bodies as required. The Human Resources Department will provide advice, guidance and support in the implementation of this policy and procedure, acting as a point of contact for managers. The Human Resources Department will ensure that this policy is implemented fairly and consistently, whilst also ensuring that relevant employment legislation and statutory guidance is adhered to.

**Managers** must operate within this policy in a fair, consistent and reasonable way; ensuring confidentiality is protected where possible. It is a manager's responsibility to manage performance issues. Managers must ensure that employees are supported throughout performance management and capability processes appropriately and they must not take any formal action without speaking to the Human Resources Department.

Managers are encouraged to deal with performance issues promptly, professionally and discreetly, ensuring staff dignity is maintained wherever possible. Managers are encouraged to seek advice from the Human Resources Department even when dealing with matters of inadequate performance informally.

As a high performing Trust it is vital that staff perform to a high standard, striving to continuously learn, develop and improve their performance. Where staff experience

difficulties in their ability to perform to the required standards and expectations it is vital that they access the appropriate support, advice, guidance, learning and development opportunities and that they actively seek the support of both their line manager and their trade union representative, or work colleague, at an early stage. The Trust provides employees with access to an independent employee assistance programme (which is reviewed annually), details of which are advertised internally in all schools or are available from the HR Department. **Staff** are expected to ensure they comply with their statutory, mandatory and other identified learning and development requirements and that standards and expectations highlighted within their appraisals are met within appropriate timescales.

### **3. EQUALITY AND DIVERSITY**

The Education Alliance is committed to:

- Promoting equality and diversity in its policies, procedures and guidelines
- Ensuring staff are protected from unlawful direct or indirect discrimination resulting from a protected characteristic (e.g. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation)
- Delivering high quality teaching and services that meet the diverse needs of its student population and its workforce, ensuring that no individual or group is disadvantaged

### **4. PRINCIPLES**

Staff experiencing difficulties in achieving the appropriate standards of performance will be given help and support by their manager.

Managers have a duty to continuously monitor the performance of staff they are responsible for, advising, guiding and encouraging staff to attain high levels of performance. Performance should be reviewed formally through the relevant process. Managers are encouraged to deal with inadequate performance on an informal basis initially, wherever possible, at the earliest opportunity. In addressing issues of poor performance, they should be clear, honest, supportive and encouraging, highlighting any learning and development options and seeking advice from the HR Department or the Deputy/Assistant Headteacher responsible for Teaching and Learning. Managers should ensure employees are aware of the range of support options available to them.

Dismissal (with notice) on the grounds of capability will only happen where improvement plans and assistance have been implemented and the outcome is that of inadequate improvement within a reasonable timescale. Staff will have the right of appeal against any decision to dismiss for poor performance. Confidentiality will be maintained and information relating to poor performance will be shared on a 'need to know' basis.

The Human Resources Department must be consulted before any action is taken under this policy.

At every stage of the capability process, the employee will have a right to be accompanied by a trade union representative or work colleague. A member of the Human Resources Department will accompany the manager.

## **5. REDEPLOYMENT**

If employees feel they are unable to carry out their role, duties and responsibilities and a satisfactory improvement is genuinely beyond their ability, the Redeployment Procedure should be initiated to support the employee in preparing for their future in a different type of role, potentially in a different organisation (where suitable alternative employment is not available at the Trust). The Redeployment Procedure should run alongside this policy in those circumstances, providing the employee with additional support wherever possible.

## **6. AUTHORITY TO TAKE ACTION**

Authority to deal with capability issues is delegated in accordance with Appendix 1. Managers must seek advice from the Deputy/Assistant Headteacher responsible for Teaching and Learning when considering the capability of teachers, and the Human Resources Department at all stages of this policy.

## **7. INFORMAL SUPPORT PLAN REVIEW AND PRE-CAPABILITY MEETING.**

When an employee's performance at work is giving rise to concern and the support, learning and development offered through the appraisal/performance management processes has not resulted in the required improvements, a pre-capability meeting will be arranged to determine whether it is appropriate to invoke the formal capability procedure.

Before the pre-capability meeting takes place, any concerns relating to an employee's lack of skill, aptitude or ability must be brought to the attention of the Head of School. The Head of School will then review the evidence and will determine whether it is appropriate to meet with the employee to undertake a pre-capability meeting. Where they have not already done so, employees are encouraged to discuss this with their Trade Union Representative (as appropriate).

Where it is deemed appropriate, The Head of School will meet with the employee to undertake a pre-capability meeting, the purpose of which is to allow a two-way, professional and respectful discussion to take place and will cover a number of issues such as:

- Current and previous performance
- Suitability and impact of support provided to date
- Any mitigation and/or external causes brought to the employer's attention

Employees are encouraged to disclose information that may be affecting their performance, and any sensitive, personal information will be managed discreetly, respectfully and confidentially, on a need to know basis.

As a result of this meeting, a number of outcomes may be possible such as:

- The formal Capability Policy and Procedure being invoked
- The informal support plan being extended
- The informal support plan being re-designed
- Counselling, support and/or modifications

If the reason for unsatisfactory performance is identified as being attributed wholly or partly to a potential medical issue, the HR Department will refer the employee to the Trust's health

provider for further assessment, guidance and support that can be considered when structuring the improvement plan.

## **8. FORMAL CAPABILITY PROCESS – STAGE ONE**

Where it has been deemed necessary, the employee will be asked to attend a first stage capability meeting to discuss concerns regarding their performance. The employee has the right to trade union representation and five working days' notice of the meeting will be given in writing. The notification will include details of the unsatisfactory performance, the nature of the proposed discussion and their right to be accompanied at the meeting by a trade union representative or work colleague.

The areas of concern must be discussed in a constructive way. The manager must reiterate their concerns in clear and unambiguous terms, providing recent examples of the areas of poor performance and providing examples of the arrangements put in place to support the employee in striving to improve their performance. The employee must be given the opportunity to share their point of view and to raise matters that may have a bearing on their performance. The meeting should be conducted in a constructive, honest, respectful and supportive atmosphere and employees will be encouraged to share their views, ideas and solutions.

The manager should seek to ensure that the employee understands the gap between their current level of performance and the required standard. The manager should then seek to understand from the employee the reasons for their poor performance and they should encourage and support the employee in considering ways in which their performance may be improved (e.g. further learning or development; mentoring; feedback). The manager should work with the employee in developing a mutually agreed improvement plan wherever possible (which may include options such as further learning and development; mentoring; shadowing; adjustments; increased support/supervision arrangements; increased observations).

The employee must be informed that they will be supported with the aim of improving their performance to a satisfactory sustainable level, but that if their performance does not improve to a satisfactory level they may eventually be dismissed. The impact of their poor performance must be shared with them. The outcome of the meeting must be recorded in writing and provided to the employee within 5 working days of the date of the meeting. It must include:

- Clear, concise details of the areas of performance that are deemed as unsatisfactory
- The standards expected and the associated timescales
- Details of the improvement plan (including actions, timescales and monitoring arrangements)
- Consequences if the employee fails to achieve the required standards of performance (e.g. potential dismissal, further training etc.)
- Date and time for a review meeting
- Details of support that will be offered

Appendix 1 details the process and timeframes in a flow-chart. The stage one review meeting would normally take place between 6-9 working weeks after the first formal meeting, although the period may be longer where circumstances determine a longer review period to be acceptable. The manager chairing the meeting will review the previous meetings discussion, improvement plan and outcomes. Performance over the review period will be discussed, alongside achievement of the improvement plan and impact (e.g. has progress against the improvement plan resulted in a satisfactory/improved standard of performance). A member of the Human Resources Department should attend the review meeting.

If the employee has achieved their improvement plan and their performance has reached a satisfactory level, they will be advised that as long as they sustain their improved level of performance, no further action will be taken under this policy and their performance will be managed via the performance management process. If there is doubt that they will be able to sustain their improved performance, or the improvement is borderline satisfactory, the improvement plan and review period may be extended for an additional 4-6 week period. The decision and the rationale for the decision will be detailed in a letter that must be sent to the employee within 5 working days of the date of the meeting.

## **9. STAGE TWO**

In the event that there is no/insufficient improvement in their performance following stage one of this process, the employee will be asked to attend a second stage capability meeting. The relevant trade union will be contacted to arrange a meeting and five working days' notice of the meeting will be given in writing to the employee. The letter will include details of the unsatisfactory performance, the nature of the proposed discussion and their right to be accompanied at the meeting.

At the meeting, the manager will discuss with the employee the gap between their current standard of performance at work and the required level. The employee will be encouraged to explain why their standard of performance remains at an unsatisfactory level and to consider the support they require to enable them to achieve the required standard.

The original improvement plan will be reviewed and amended and the employee will be informed of the expectations and the potential consequences of not reaching the required standard of performance within the revised timescale.

A further review period of 6-9 working weeks will be set alongside the revised improvement plan and a letter will be sent to the employee within five working days of the meeting confirming:

- Clear, concise details of the areas of performance that are deemed as unsatisfactory
- The standards expected
- Details of the improvement plan (including actions, timescales and monitoring arrangements)
- Consequences if the employee fails to achieve the required standards of performance
- Date and time for a review meeting
- Details of support that will be offered

The review meeting should take place within 6-9 working weeks after the stage two capability meeting. The Chair of the meeting will review the previous meetings discussion, improvement plan and outcomes. Performance over the review period will be discussed, alongside achievement of the improvement plan and impact (e.g. has progress against the improvement plan resulted in a satisfactory/improved standard of performance). A member of the Human Resources Department should attend the review meeting.

If the employee has achieved their improvement plan and their performance has reached a satisfactory level, they will be advised that as long as they sustain their improved level of performance, no further action will be taken under this policy and their performance will be managed via the performance management process. If there is doubt that they will be able to



sustain their improved performance, or the improvement is borderline satisfactory, the improvement plan and review period may be extended for an additional 4 week period. The decision and the rationale for the decision will be detailed in a letter that must be sent to the employee within 5 working days of the date of the meeting.

If there is no/insufficient improvement, in their performance the meeting will close and a final capability meeting will be arranged, with the potential for the employee to be dismissed.

## **10. FINAL CAPABILITY MEETING**

Wherever possible, the meeting should be arranged at a mutually convenient date, time and place. The arrangements must be confirmed in writing with the capability issues clearly stated and the evidence to be presented by the line manager enclosed. The relevant information should be circulated at least 5 working days in advance of the meeting and the employee's response should be submitted at least 1 working day before the meeting.

The line manager will present to the panel (appendix 1) the gap between the employee's current standard of performance at work and the required level. The panel will review the action taken under this policy and procedure to date and the implementation and impact of the improvement plan. The employee will be encouraged to explain why their standard of performance remains at an unsatisfactory level and to consider the support they require to enable them to achieve the required standard.

If the panel view the support to date to be unsatisfactory or the level of expectation to be unreasonable, the panel may recommend an extended period of support (between 6-8 working weeks) with a revised improvement plan. Their line manager would monitor the individual's capability and if it did not result in a satisfactory and sustainable improvement, the case may be referred back to a final capability meeting.

If the employee's performance is deemed to be unsatisfactory and it is recognised that the additional support and clarity provided both informally and as detailed in improvement plans has been appropriate and yet has failed to result in a sufficient and sustainable improvement, the outcome of the final capability meeting may be dismissal. Dismissal would be on the grounds of capability and this would be confirmed in writing within 5 working days of the meeting. The written confirmation would remind the employee of their right of appeal and their right to be accompanied at an appeal hearing. If the employee is dismissed, appropriate payment in lieu of notice will be paid.

## **11. APPEAL**

The employee has the right of appeal against dismissal. Appeals must be made in writing to the Director of Human Resources within 10 working days of receipt of the letter.

An appeal hearing will be arranged and the purpose of the hearing will be for an independent panel to review the decision to dismiss and the rationale for the decision, not to re-hear the case. However, the appeals panel will receive copies of the submissions made at the final capability meeting (from both the manager and the individual and/or their representative). It is the decision of the appeals panel whether or not new information can be introduced at the appeal hearing, and the panel will consider the reasons for the information not being submitted at an earlier stage. The appeals panel will consider the specific factors that the employee expresses have been dealt with unfairly, such as:

- An inconsistent, inappropriate or excessively harsh decision
- Extenuating circumstances

- Bias of the Chair of the final capability meeting
- Unfairness in the conduct of the hearing
- New evidence subsequently becoming known
- Failure to follow the capability process

The outcome of an appeal can be either an upholding of the original decision or a new decision with a lesser sanction. Where an appeal against dismissal fails, the effective date of termination will be the date on which the employee was originally dismissed. The appeals panel decision is final and the employee will have exhausted internal processes at that point.

## **12. UNSUSTAINED IMPROVEMENT**

If an employee's performance improves, but is not sustained for a period of 12 months the employee will be invited to a review meeting at the same stage of the process they had reached when formal capability processes ceased. (This will be a documented meeting). For example, if the improvement occurred at stage one, but then deteriorated within a 12-month period (from the date of the letter confirming the outcome of the capability meeting) the employee would be invited to a stage one review meeting.

## **13. MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE POLICY**

The HR Department will monitor effectiveness and compliance of this Policy.

## **14. ASSOCIATED DOCUMENTATION**

- Disciplinary Procedure
- Appraisal and Performance Management Policies for Teachers and Associate Staff
- Alcohol and Substance Misuse Policy
- Governance handbook
- Health and Wellbeing Policy and Procedure
- Redeployment Procedure

## **15. REVIEW**

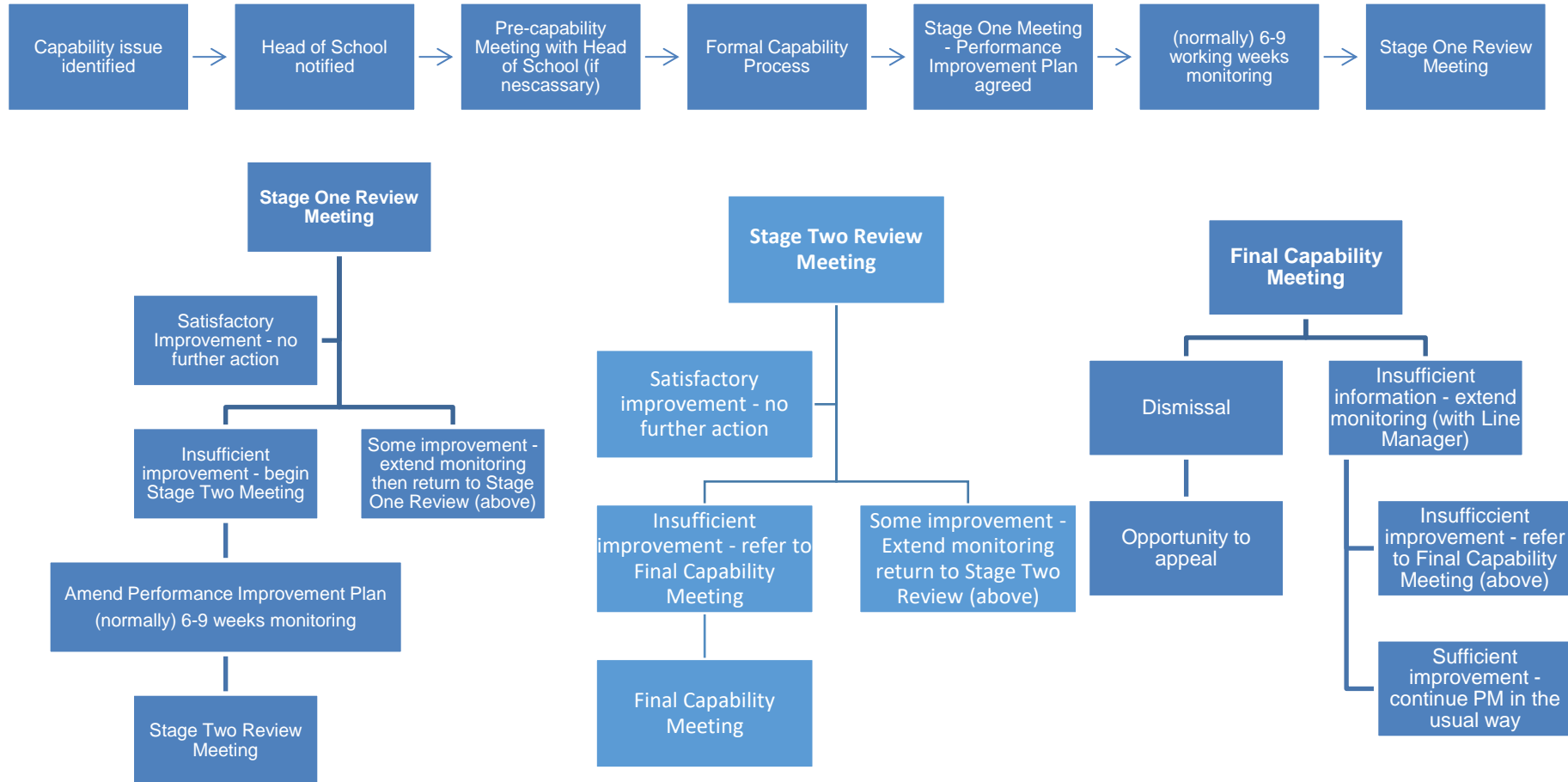
This Policy and Procedure will be reviewed within two years of the date of implementation.

Appendix 1 – Delegation of Authority

**Authority to Take Action**

<b>Action</b>	<b>Authority</b>	<b>Appeal</b>
Stage One Formal Meeting	Manager with delegated authority	As per the Scheme of Delegation
Stage One Review Meeting	Manager with delegated authority	As per the Scheme of Delegation
Stage Two Formal Meeting	Manager with delegated authority	As per the Scheme of Delegation
Stage Two Review Meeting	SLT/Executive Board member	As per the Scheme of Delegation
Final Capability Meeting / Dismissal	As per the Scheme of Delegation	As per the Scheme of Delegation

## Appendix 2 – Capability Flowchart



Appendix 3 – Template Performance Improvement Plan

Performance Improvement Plan

Name:

Expectation	Areas of concern (examples)	Action taken & plans for support	Expected improvement	Timescale & Deadlines	Who
<p><i>e.g. High level of Classroom Teaching ability</i></p> <p><i>Well-prepared and well organised for lessons.</i></p> <p><i>High level of ability to communicate with students, colleagues and parents.</i></p>	<p><i>Relating to skill, aptitude or ability</i></p>	<p><i>Actions taken already through the appraisal / performance management process</i></p> <p><i>Detail support / training / guidance to be put in place during the monitoring period</i></p>	<p><i>Detail specifically what action and improvement is expected</i></p> <p><i>What does 'good' look like?</i></p>	<p><i>When should actions be completed by?</i></p>	
	•	•	•	•	•