



Capability Policy and Procedure Version 4.4

<p>Important: 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>Name and Title of Author:</p>	<p>Lisa Longstaff</p>
<p>Name of Responsible Committee/Individual:</p>	<p>Board of Trustees</p>
<p>Implementation Date:</p>	<p>July 2021</p>
<p>Review Date:</p>	<p>July 2023</p>
<p>Monitoring:</p>	<p>This policy will be monitored and reviewed via the Trust's Trade Union Forum.</p>
<p>Target Audience:</p>	<p>All staff</p>
<p>Related Documents: All Trust policies and procedures referred to are located on the trust website, www.theeducationalliance.org.uk.</p> <p>If English is not your first language, and you require assistance/translation, please contact the HR Department.</p> <p>This policy has been equality impact assessed.</p>	<p>ACAS Code of Practice - Disciplinary and Grievance Procedures Performance Development Policy and Procedure Induction Policy and Procedure Substance and Alcohol Misuse and Smoking Policy Data Protection Policy Equality and Diversity Policy Health and Wellbeing Policy and Procedure Redeployment Procedure Disciplinary Policy and Procedure</p>

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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 who are members of a trade union to seek the support of their trade union representative 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, induction, 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 should 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.

When staff fail to meet required standards of performance, they will be supported to meet those standards. When informal, supportive interventions fail to result in a significant, sustainable improvement, the Capability Policy and Procedure will normally 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 Policy

and 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. This policy does not apply to staff who are in a statutory induction period (e.g. early career teachers).

2. ROLES AND RESPONSIBILITIES

The **Board of Trustees** is responsible for ensuring this policy is reviewed and approved. Trustees may also be involved in the latter stages of this procedure, should a situation progress to a potential dismissal.

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 and procedure regarding decision-making and the issuing of sanctions.

The **Local Governing Bodies and Headteachers** 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. Governors may also be involved in the latter stages of this procedure, should a situation progress to a potential dismissal.

The **HR Department** is responsible for overseeing the introduction, implementation, monitoring and review of this policy and procedure, 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 HR 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 HR 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 HR Department even when dealing with matters of inadequate performance informally.

As a high performing organisation, 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, details of which are advertised internally in all schools and 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 performance development reviews and performance discussions 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 HR 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 HR Department will accompany the manager.

5. REDEPLOYMENT

If an employee believes 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 in 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 senior leaders who are responsible for teaching and learning when considering the capability of teachers, and the HR 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 performance development 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 Headteacher, who will meet with HR and undertake a review the evidence. The Headteacher 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.

Where it is deemed appropriate, the Headteacher and HR will meet with the employee to undertake a pre-capability meeting. The employee may bring a trade union representative or work colleague with them to the meeting. The purpose of the pre-capability meeting is to allow a two-way, professional and respectful discussion to take place and will cover several 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, several outcomes may be possible such as:

- The formal capability procedure being invoked
- The informal support plan being extended
- The informal support plan being re-designed
- Counselling, support and/or modifications may be offered

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 10 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). Appendix 3 is a template that managers can use to capture the key points of discussions, detailing any gaps in performance, actions to improve performance and support the individual, and appropriate timescales. It is a working document and should be reviewed by the manager and employee each week, to ensure progress against the plan and impact of development activities are monitored. This allows for the plan to be changed where required and in reviewing it together, it also allows for professional dialogue to take place regarding changes/improvements in performance, access to and impact of development activities and ensures agreed actions are undertaken. It provides both the manager and employee to acknowledge where improvements are being made. In using and updating the template, it also allows for employees to share information and review this with their trade union representative.

The employee must be informed that they will be supported with the aim of improving their performance to a satisfactory and 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. When

considering an appropriate timescale, managers should consider the circumstances of each case and ensure the timescale is reasonable and proportionate, and that it provides sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of support, training and development required and should allow sufficient time to establish whether performance has improved. The manager chairing the meeting will review the previous meeting's 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 HR 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 verbally and in writing 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 in the usual way. 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. They should contact their trade union representative to arrange a meeting and at least 10 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. When considering an appropriate timescale, managers should consider the circumstances of each case and ensure the timescale is reasonable and proportionate, and that it provides sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of support, training and development required and should allow sufficient time to establish whether performance has improved. 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 HR 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 verbally and in writing 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 in the usual way. 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, providing at least 10 working days' notice. 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 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. When considering an appropriate timescale, managers should consider the circumstances of each case and ensure the timescale is reasonable and proportionate, and that it provides sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of support, training and development required and should allow sufficient time to establish whether performance has improved. The line manager would monitor the individual's performance and if it did not result in a satisfactory and sustainable improvement, the case may be referred 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 HR and Governance 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 appeal panel whether 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 appeal 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 above is not an exhaustive list. 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 appeal panel decision is final, and the employee will have exhausted internal processes at that point.

12. MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE POLICY

The HR Department will monitor effectiveness and compliance of this policy and procedure.

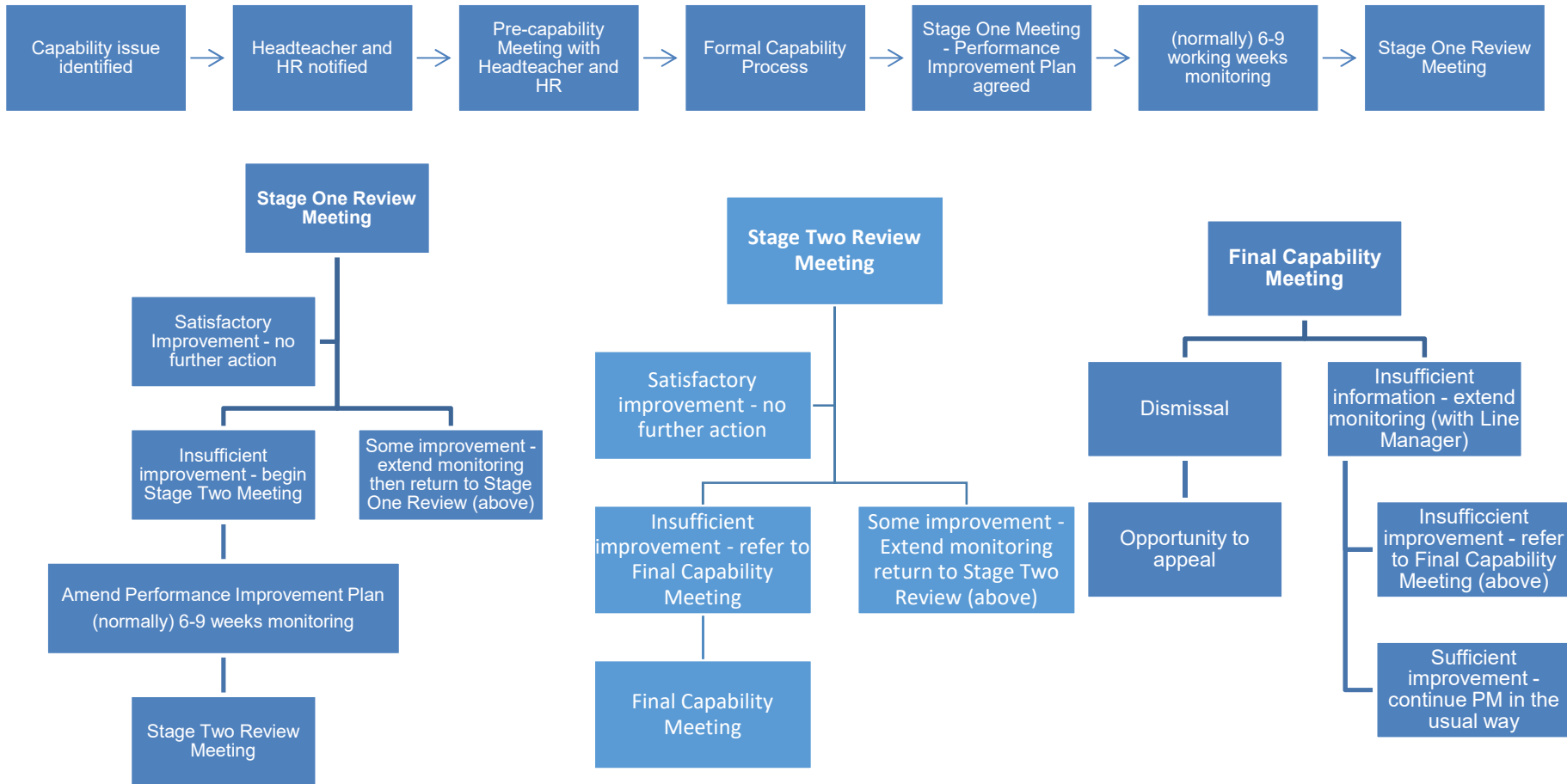
13. REVIEW

This Policy and Procedure will be reviewed within two years of the date of implementation via the trust's JCNC.

Authority to Take Action

Action	Authority
Stage One Formal Meeting	Appropriate Manager
Stage One Review Meeting	Appropriate Manager
Stage Two Formal Meeting	Appropriate Manager
Stage Two Review Meeting	If the appropriate manager is not a senior leader, they should attend the meeting with a senior leader
Final Capability Meeting / Dismissal/Appeal	As per the Scheme of Delegation

Appendix 2 – Capability Flowchart



Appendix 3 – Template Performance Improvement Plan

Performance Improvement Plan – to be jointly reviewed and updated on a weekly basis by the employee and their manager

Name:

Expectation	Areas of concern (examples)	Action taken & plans for support	Expected improvement	Timescale & Deadlines	Support Person
<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>	
	•	•	•	•	•

Weekly joint review comments/revisions/updates:

Date	Key aspects of professional dialogue, including updates, changes to the plan, additions and completion of activities.