
TEACHER CAPABILITY POLICY AND PROCEDURE

Fairfield High School follows the Herefordshire Council and Hoople provided Teacher Capability Policy and Procedure, as offered here.

Updates will be made as they become available from Herefordshire Council and Hoople.

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1. INTRODUCTION

The aim of the policy is to set out a clear and consistent process for when any teacher or Head teacher falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

The policy should serve as a means for those with performance issues to be supported back to a good level of performance. Through the early application of this procedure, it should be possible to provide remedial support and guidance.

It is most important that staff (this includes all teaching staff and Head teachers) should be advised as soon as possible of a concern regarding their performance. Staff should be given pro-active and positive assistance from colleagues within the school as well as external improvement partner (where applicable) at the early stages to identify, acknowledge and manage performance issues. It should also be acknowledged that staff performance may suffer as a result of health problems or family/home-related reasons. Consideration, in these circumstances, should be given to any practical support that the school can offer or the involvement of Occupational Health.

All parties should have due regard to maintain confidentiality during the procedure and, if in doubt, should seek advice on this from the Head teacher or Human Resources. However, this does not override the need for the Head teacher and Governing Body to quality assure the effectiveness of the procedure.

This policy is based on:

- [The School Staffing \(England\) Regulations 2009](#) (regulation 8)
- [The School Staffing \(England\) \(Amendment\) Regulations 2012](#)
- [The Education \(School Teachers' Appraisal\) \(England\) Regulations 2012 \(the Appraisal Regulations\)](#)
- [The DfE Appraisal and Capability Model Policy](#)

2. PROCESS

Under the Education (School Teachers' Appraisal) (England) Regulations 2012, teachers' performance will be assessed against:

- the relevant standards (national), against their performance targets;
- their job duties as detailed in the School Teachers' Pay and Conditions Document;
- against their role (including job description where available) in the school.

Where the appraisal process and any management meetings which have taken place have been unable to address professional capability or performance of the staff member which has given cause for concern, this document sets out the procedure to be followed. The aim of the procedure is to provide a structured framework for the improvement in the performance of staff.

3. DEFINITION OF CAPABILITY

Employee capability is the talent, aptitude, and ability in order to undertake and perform the job role to the required standard of performance.

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

4. SCOPE

This policy and procedure applies to all categories of schools and Pupil Referral Units. Early Career Teachers performance will be managed under the School's ECT Induction Policy.

Where Herefordshire Council is not the legal employer (Voluntary Aided Church Schools, Trust Schools or Academy Schools), schools may choose to adopt a different capability procedure but must have regard to the Education (School Teachers' Appraisal) (England) Regulations 2012.

5. PROCEDURE

Where the member of staff subject to the procedure is the Head teacher, the chair of governors will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the Head teacher, the Head teacher or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance. Confidentiality must be observed by all parties, and staff members should be sensitive to the particular circumstances of the employee involved.

5.1. INFORMAL CAPABILITY PROCEDURE

Performance is monitored on a day to day basis by school leaders, and governing bodies and through the Formal Appraisal process.

Capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

A reasonable period of informal period of support, should normally be put in place and monitored by the line manager, before formal capability procedures are triggered through the Appraisal Policy (HR009). Where appropriate the Performance Improvement and Support Plan template (APPENDIX 3: PERFORMANCE IMPROVEMENT & SUPPORT PLAN TEMPLATE) can be used to structure the support provided.

5.2. FORMAL CAPABILITY PROCEDURE

Where the expected performance of a teacher/Head teacher has fallen below the required level and the informal appraisal process and any management meetings which have taken place have been unable to address the professional capability or performance, the following formal process should be commenced.

This meeting is intended to establish the facts. Normally, it will be conducted by the Chair of Governors (for Head teacher capability meetings) or Head teacher (for other teachers). At least five working days' notice will be given of formal capability meetings including details of the time and place of the meeting. The notification will also contain sufficient information about the concerns about performance, along with any evidence to be considered, to enable the teacher or headteacher to prepare to answer the case at a formal capability meeting. Any written evidence must also be provided to the individual including (not an exhaustive list):

- lesson observations

- substantiated concerns/complaints received
- drop-in observations with written feedback
- performance reviews
- student progress data
- and any data produced by the school's monitoring and evaluation system(s)

The employee has the right to be accompanied at all stages of the capability procedure by a trade union representative or work colleague. If the employee and/or their trade union representative or work colleague cannot attend the date proposed, they can suggest one other date within five working days of the original. The five day limit may be extended by mutual agreement. Where appropriate, representative support may be provided remotely using Teams or equivalent. In such instances where a meeting is held virtually, all parties must agree before the meeting commences whether the meeting will be recorded.

The monitoring and review period is a maximum of 14 working weeks with the duration of each period being agreed (maximum of 14 weeks' in total).

5.2.1. Stage 1 & Stage 2: Formal Capability Meeting

This meeting is intended to establish the facts. It will be conducted by the Head teacher for teachers or by the Chair of Governors for Head teacher capability meetings. The meeting allows the employee to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The Head teacher or Chair of Governors may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process and any appropriate management meetings. In such cases, the capability procedure will come to an end and the individual should be advised formally in writing. The Head teacher or Chair of Governors (or equivalent) may also adjourn the meeting to seek further information and/or evidence before reaching a decision.

Where there are sufficient grounds to pursue the capability issue, the Head teacher or Chair of Governors will issue a Capability formal warning or in very serious cases a Capability final warning, that failure to improve within the set period could lead to dismissal;

- Confirm the professional shortcomings, eg the standards expected of the teacher which are not being met
- Give clear guidance on the improved standard of performance needed to ensure that the teacher or Head teacher can be removed from formal capability procedures, eg confirming objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made
- Explain any support that will be available to help the teacher or Head teacher improve their performance and mutually agree a performance improvement & support plan, with support from their Trade Union representative, where appropriate.
- Set out the timescale for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be between four to ten working weeks. It is for the school to determine the set period. It should be reasonable and proportionate but not excessively long and should provide sufficient opportunity for an improvement to take place taking into account normal working patterns.

When a warning is issued, the employee will be informed of the outcome in writing within five working days of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure.

A first written warning will remain live for a period of 12 months and a final written warning for 24 months. Performance monitoring and a review period will follow Stage 1 and Stage 2 formal capability meetings.

Regular review meetings should be held throughout the monitoring period to offer support and progress feedback to the employee. If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period instead of issuing a warning. It is for the School to determine the period of the extension but this will be **no more than a total of fourteen working weeks** including the initial monitoring and review period.

The monitoring and review period is a maximum of 14 weeks with the duration of each period being agreed at the meeting and will last for between 4 and 10 weeks (maximum of 14 weeks' in total). The timescales for monitoring should take into consideration:

- how much needs to improve
- how long it would take to put support measures/training in place
- how much time has been available to judge the success of support measures/training, and for the employee to demonstrate the improvements they have made
- how many previous opportunities for improvement have been given
- the impact of the alleged underperformance on pupils, colleagues and the school
- the employee's willingness to improve and accept support.

Where a warning is issued the member of staff will be informed of the outcome in writing within five working days that failure to achieve an acceptable standard of performance within a set timescale determined by the School may result in dismissal. They will also be given information about expectations during the further monitoring and review period, the procedure and time limits. This information will be clearly identified with the individual and set out in writing.

5.2.2. Stage 3: Final Decision Meeting

Where an individual has been issued with a final written warning at a Formal Review Meeting, if their performance does not sufficiently improve during the determined timescale, the Head teacher or Chair of Governors (where it relates to a Head teacher) will convene a Final Decision Meeting.

At least five working days' notice will be given of the Final Decision meeting and the notification will give details of the time and place of the meeting.

The employee has the right to be accompanied to the Final Decision meeting by a trade union representative or work colleague. If the employee and/or their trade union representative or work colleague cannot attend the date proposed, they can suggest one other date within five working days of the original. The five day limit may be extended by mutual agreement. The Head teacher or Chair of Governors can be supported by a HR representative.

If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start, and this will be confirmed in writing.

In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period. It is for the School to determine the period of the extension but this will be normally **no more than a total of fourteen working weeks** including the initial monitoring and review period.
- If no, or insufficient improvement has been made during the monitoring and review period, the Head teacher or Chair of Governors will make a recommendation to the Governing Body that the teacher or Head teacher should be dismissed. Where the Local Authority is the legal employer, the school will also discuss the matter with the Director of Children and Families or their nominated representative.

5.2.3. Right of Appeal

If an individual wishes to appeal against the outcome at a Formal Review Meeting, they should outline their points of appeal which may include:

- The procedure was not followed, and/or
- The support plan was inadequate, and/or
- The finding of the hearing was unreasonable, and/or
- The management decision was inappropriate, and/or
- New or additional information has come to light which was not available at the time of the hearing.

The individual should write to the Clerk to Governors, within five working days of receipt of the written warning, to request a hearing before a Governing Body Panel using Form C9(SCH) – Capability Appeal Form explaining their grounds for appeal. A copy of this form should also be sent to the Head teacher where it relates to a teacher or to the Chair of Governors where it relates to a Head teacher.

The Clerk to Governors will arrange the hearing for a date that is reasonably practicable, but no more than ten working days following receipt of Form C9(SCH) – Capability Appeal Form.

The employee and the Head teacher/ Chair of Governors must provide copies of any documentation they wish to refer to, to the Clerk of Governors for the appeal panel, at least two working days prior to the hearing. The employee has the right to be accompanied by a work colleague or their trade union representative.

The appeal hearing will normally be conducted as follows with the Chair of the Hearing having the discretion to adapt the process to meet the circumstances of the case and dependent upon whether or not the appeal is a full rehearing:

- The Chair of the Hearing will introduce the participants and their roles, check that everyone has the correct documentation and explain what is going to happen.
- The employee (and/or their representative) will present their case/summary submission to the Chair/Panel. The Head teacher/chair of Governors, the Panel (including the HR representative) will have the opportunity to ask any questions. The employee, rather than the representative, must answer questions relating to matters of fact.
- The Head teacher/Chair of Governors will put their case/summary submission to the Panel. The employee (and/or their representative) and the Panel (including the HR representative) will have the opportunity to ask any questions.
- Both sides will sum up their cases (no new information can be introduced at this stage).
- Both sides will adjourn whilst the Panel (and their Advisor) consider the information and make their decision (normally this would be expected on the same day).
- The Panel will ask both sides to return and inform the employee of their decision.

The Governing Body Panel will consider all the circumstances before making a decision. The possible outcomes at this stage are:

- a) Overturn the decision and refer back to appraisal system
- b) Uphold the decision to issue a formal warning
- c) Uphold recommendation for dismissal and refer to Final Decision Meeting

A written copy of the decision of the hearing will be sent to the employee concerned within five working days of the meeting with a copy to the Head teacher or Chair of Governors and the employee's professional representative.

There is no further right of appeal.

5.2.4. Decision to Dismiss

The power to decide that members of staff should no longer work at this school rests with the Governing Body. However, where the Local Authority is the legal employer the decision to dismiss must be ratified by the Director for Children and Families or their nominated representative.

Once the Governing Body has decided that the teacher or Head teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where the teacher or Head teacher works solely at this school, the Local Authority will dismiss the teacher or Head teacher within fourteen days of the date of notification. Where the teacher or Head teacher works in more than one school, the Local Authority will require them to cease to work at this school where the Local Authority is the legal employer. However, the Head teacher or Chair of Governors (of the other school(s)) can make a case to the Director for Children and Families or their nominated representative for the member of staff to remain in their school where it can be evidenced that they are performing satisfactorily.

Once the decision to dismiss has been taken, the Governing Body or Local Authority will dismiss the teacher or Head teacher with notice. In these circumstances the employee will not be required to work their notice.

6. SICKNESS ABSENCE

If long term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy (HR006 Managing Attendance & Absence Procedure) and will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

7. NOTES

If you need further assistance with this document please refer to your Head teacher or HR Services.

The timescales to complete the stages listed above will be adhered to wherever possible but are not binding on the school.

In applying this procedure the school will pay due regard to providing reasonable adjustments under employment legislation to an employee who has a disability.

Specialist advice and support may be given to the Head teacher or Governing Body at a formal review meeting and/or appeal hearing by a representative from HR Services.

Detailed notes will be taken of formal meetings and a signed copy sent to the member of staff, trade union representative and Human Resources Service. The member of staff will be able to make comments about the notes in the section provided which should be signed by the individual and sent to the Head teacher or chair of Governors, trade union representative and Human Resources Services.

The records of any meetings concerned with the capability are likely to be classified as sensitive data. The records must be relevant, accurate, confidential and secure, in line with the School's data protection policy and procedures.

If an individual goes off sick as a result of the procedure commencing or takes out a grievance, the process will not be suspended and the timescales will normally continue to run. In some cases the capability process may be temporarily suspended in order to deal with a grievance. Where both the grievance and capability issues are related it may be appropriate to deal with both issues concurrently. If an individual is absent from School which is unrelated to the capability procedure, eg bereavement, accident or diagnosed medical complaint, then the procedure will be suspended for this period of time.

8. UNION REPRESENTATION

Where a member of staff is notified that there are concerns related to their performance, it is recommended that they contact their union representative to help support them throughout the process.

9. COMPLIANCE

Failure to follow this procedure may impact on good employee relations and the reputation of the school and Governing Body as a good employer. In addition, it may result in the Governing Body breaching employment legislation, incurring financial penalties and / or damage to its reputation.

Head teachers who fail to manage in accordance with this policy will be investigated and this may lead to formal action under this policy or the Disciplinary Policy and Procedure. Chairs of Governors who fail to manage in accordance with this policy will be investigated and this may lead to formal action.

10. IMPACT ON THE SCHOOL'S KEY PRIORITIES

The policy provides clear statements about Head teacher and employee responsibilities to ensure that capability issues are raised and dealt with in a timely manner. This procedure supports schools in delivering excellent teaching and learning and enables the Governing Body to effectively meet its key school priorities.

11. TRAINING AND AWARENESS REQUIREMENTS

Head teachers and employees will be informed about this policy and procedure via communication channels such as school newsletters, schools online and the extranet.

12. MONITORING

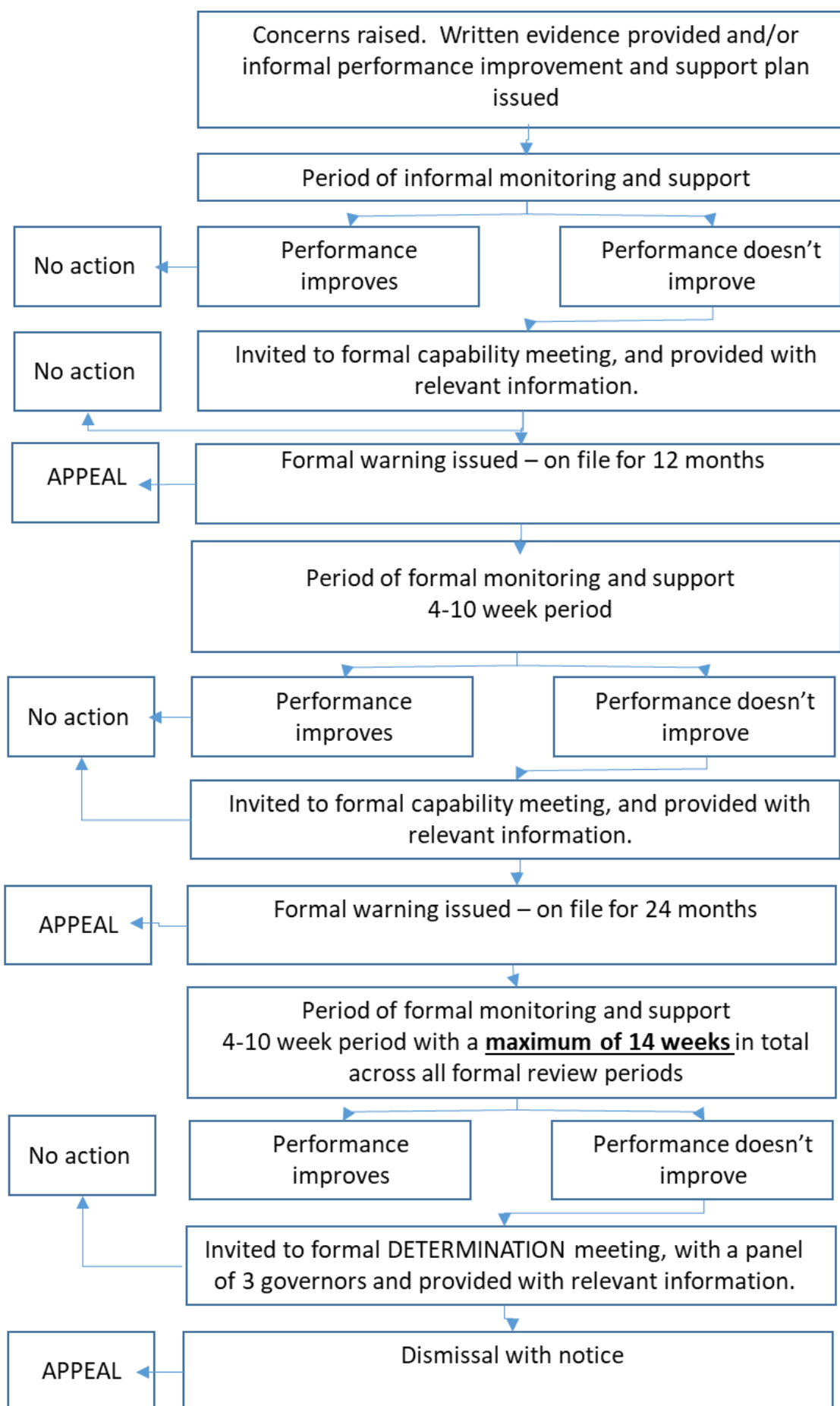
Human Resources Services is responsible for ensuring the review of this policy and procedure. The Governing Body is responsible for adopting and implementing this policy and procedure.

HR Services and the Learning & Achievement Team will be notified of any cases where it is concluded that the policy was breached. The notification will indicate whether there are any changes or improvements required to the policies, procedure, training, support or any other aspect of the school's approach to grievance matters.

13. VERSION LOG

| Version | Status | Date | Description of change | Reason for change | Pages affected | Consultees |
|---------|----------|---------------|---|-------------------|----------------|---|
| 1.0 | Archived | | | New Policy | | |
| 2.0 | Final | November 2021 | Addition of a performance improvement and support plan template. Paragraph taken from DFE regarding managing LTS through formal process. Removed duplication. Informal appraisal stage noted.. Added consideration regarding timescales for monitoring periods. | Regular review | All | Unison ASCL NEU NAUWST Voice GMB NAHT |

APPENDIX 1 TEACHER CAPABILITY PROCEDURE – FLOW CHART



APPENDIX 2 DEFINITIONS AND RESPONSIBILITIES

DEFINITIONS

The meaning of some key words and phrases, for the purposes of this policy, are explained below:

Work Colleague. A current employee from the individual's workplace or by mutual agreement, a current employee from another workplace.

Head teacher. The person responsible for leading and managing the school, and has delegated powers to ensure capability issues are appropriately managed. References to the Head teacher shall include any nominated Deputy Head teacher acting on his / her behalf.

Panel of Governors. This is a panel of three governors or a panel of the management committee who are used for capability appeal hearings or where the capability issue is against the Head teacher. Where governors or members of the management committee have been involved in previous capability discussions they are then precluded from being on the appeal panel.

Trade Union representative. A trade union representative ('rep') is a union member who represents and gives advice to colleagues when they have problems at work. A 'rep' may also discuss any concerns relating to the employer, accompany employees to formal hearings, represent employees in negotiations (pay/terms and conditions), development Health & Safety procedures with the employer and meet with the employer on behalf of the employee(s) to find workplace solutions.

Working days. Any designated term-time or Teacher Education Training Day or any other contractual working day, but excluding the day of any capability meeting and the day on which the notification of the meeting is sent to the employee.

RESPONSIBILITIES

Head teachers are responsible for making employees aware of this policy.

Head teachers and employees are both responsible for acting respectfully toward others in relation to the implementation of this procedure. All parties should have due regard for maintaining confidentiality and, if in doubt, should seek advice on this from Human Resources Services.

Human Resources Services is responsible for providing timely and appropriate advice and support to the Head teacher or Governing Body as required. They are not responsible for making decisions in relation to this procedure; these remain the responsibility of the Head teacher and Governing Body. Human Resources Services is accountable for the advice they give.

Learning & Achievement Team is responsible for providing support and guidance to Head teachers and governing bodies on identifying, monitoring and resolving teacher capability issues.

APPENDIX 3: PERFORMANCE IMPROVEMENT & SUPPORT PLAN TEMPLATE

This template can be used as part of the informal or formal process of supporting a teacher who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

| Name of staff member | Name of Appraiser | Date of meeting |
|----------------------|-------------------|-----------------|
| | | |

| Objective 1: | | |
|--|-------------------------|--|
| Professional standard(s) that the objective relates to | Success criteria | Evidence to be used to assess progress |
| | | |
| Support/resources to be provided | Monitoring arrangements | Review date |
| | | |

Objective 2:

**Professional standard(s)
that the objective relates to**

Success criteria

**Evidence to be used to
assess progress**

Support/resources to be provided

Monitoring arrangements

Review date

Objective 3:

**Professional standard(s)
that the objective relates to**

Success criteria

**Evidence to be used to
assess progress**

Support/resources to be provided

Monitoring arrangements

Review date

| | | |
|--|--|--|
| | | |
|--|--|--|

Other support provided

| | |
|--|---------------------------|
| Mentor/coach allocated | Yes/No (If yes give name) |
| Counselling to be provided | Yes/No |
| Occupational health referral to be made | Yes/No |
| [Insert any other support provided] | |
| Formal review date | |

| Signed by member of staff | Signed by appraiser | Date |
|----------------------------------|----------------------------|-------------|
| | | |

APPENDIX 4: C9 (SCH) TEACHER CAPABILITY PROCEDURE – APPEAL FORM

THIS FORM WILL BE PHOTOCOPIED SO PLEASE FILL IT IN CLEARLY, AND MAKE SURE THAT YOU SIGN IT.

Important: You *should* use this form:

- ✓ Only after you have received the letter from your Head teacher/Chair of Governors confirming that you have been issued with a formal warning, final written warning or that you are to be dismissed.
Within 5 working days of your receipt of that letter.

I am appealing against:

- Capability formal warning
- Capability final written warning
- Capability dismissal

Send this appeal form to the Clerk to Governors

My name is: _____ Job Title: _____

School: _____

Work Location: _____ Tel. No. _____

Contact tel no: _____

My representative is: _____

Their contact address and telephone number is: _____

I am appealing on the grounds that (please tick the box[es] that apply):

- This procedure was not followed; and/or
- The finding of the capability hearing was unreasonable; and/or
- The management decision was inappropriate; and/or
- New or additional information has come to light which was not available the time of the hearing

Please explain the grounds of your appeal below:

(Please attach additional sheets as necessary)

Signed:

Date:

.....

Next steps:

1. Send this form along with a copy of the letter confirming the capability measure to the clerk to governors.
2. Send a copy of this form, and the letter confirming the capability measure to your representative.

The clerk to governors will invite you to attend an appeal hearing. A minimum of five working days' notice (Monday to Friday) will be given of the hearing.