



## Capability Policy

|  |                     |
|--|---------------------|
| Next review:   | <b>January 2018</b> |
| Policy adopted by Academy Transformation Trust on  | March 2016          |
| Policy agreed by trade unions on   | January 2016        |
| This policy links to:  | <b>Located</b>      |
| <ul style="list-style-type: none"><li>• Appraisal Policy</li><li>• Attendance (Sickness Absence) Policy</li><li>• Equal Opportunities Policy</li></ul> |                     |

## **Our Mission**

To provide the very best education for all pupils and the highest level of support for our staff to ensure every child leaves our academies with everything they need to reach their full potential.

We promise to do everything we can to give children the very best education that gives them the best opportunity to succeed in life. All of our academies have it in them to be outstanding and achieving this comes down to our commitment to our pupils, staff and academies.

## **Introduction**

Academy Transformation Trust (ATT) is committed to providing high quality teaching and learning in our academies and for our pupils. Our aim is that every ATT academy is the centre of excellent teaching and learning, providing opportunities for every pupil whatever their ability. Our workforce is at the heart of delivering this which means we want all of our employees to be given every support to develop to fulfil their potential in their job, thereby improving outcomes for our young people.

Our aim is to continually develop and improve performance, guiding employees through their careers with ATT. Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise. This involves effective day-to-day supervision, carrying out appraisals, providing development opportunities and operating a fair and reasonable capability process. As an academy with ATT, we understand that managing and improving performance not only helps the employee but also the pupils and ultimately ATT's academy community as a whole.

This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and serious concerns have been raised which the Appraisal Policy has been unable to address.

This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

The purpose of this policy is to provide a framework within which [name of Academy/Trust] can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised. Consideration will be given to any known mitigating factors (including health conditions) which might explain a temporary dip in performance and similar consideration should continue to be given to such circumstances in relation to this procedure.

This policy will be applied when informal support as set out in the Appraisal Policy has been provided and the required improvement has not been made. If the required improvement has not been made then the employee will be notified in writing that they will transition to capability in line with paragraph 3.23 in the Appraisal Policy.

This policy applies to all employees of the [Academy/Trust], including teachers and support staff, excluding those who are in the probationary period. It does not apply to agency workers.

It is expected that transition from appraisal to this policy will only apply when the appraisal process has failed to secure improvements in performance where concerns are raised.

## **Review of policy**

This policy is reviewed annually by Academy Transformation Trust in consultation with the recognised trade unions. We will monitor the application and outcomes of this policy to ensure it is working effectively. The Governing Body takes seriously its responsibilities in respect of equality monitoring and will monitor the equality impact of this policy in respect of all protected characteristics as defined under the Equality Act 2010.

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## 1. Notification and procedure for formal meetings

- 1.1 Ten working days' written notice will be given of any formal meetings under this procedure.
- 1.2 The written notification will also contain:
  - Sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee to prepare to answer the case
  - Copies of any written evidence
  - Copies of any witness statements and details of witnesses attending (if appropriate)
  - Details of the time and place of the meeting
  - The names of proposed attendees
  - Right to be accompanied (see 1.4)
- 1.3 Formal meetings will be conducted by the [Principal/Director] or other senior employee delegated this responsibility by the [Principal/Director].
- 1.4 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative.
- 1.5 Relevant witnesses may be called by the person conducting the meeting and an employee may request that relevant witnesses are called to any formal meeting.
- 1.6 A formal meeting under this procedure will:
  - Identify performance shortcomings
  - Allow an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected
  - Identify what action (including support provided) has been taken to date and what the outcome was
  - Where appropriate, identify and explain a support plan of action that will be available to help the employee improve performance. The employee will be given the opportunity to make an input to this support plan of action.
  - Provide the employee with the support plan of action (example in Appendix 1) listing those responsible for ensuring support is provided, targets for improvement, support to be provided and when, and measures of success. It should also detail dates and times for informal review meetings with mentors, observations or other form of intervention activity
  - Where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal
  - Confirm the timescale for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 1.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required. The employee may adjourn the meeting to attain further information to assist them in responding to the concerns raised. Following an adjournment, the meeting must be reconvened within 5 working days.
- 1.8 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

- 1.9 Following a formal meeting, the matters covered in 1.6 and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning.
- 1.10 Minutes will be taken of all formal meetings and the employee will be sent a copy following the meeting.
- 1.11 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

## **2. Formal capability meeting (Stage 1)**

- 2.1 This meeting is intended to establish the facts. At the meeting the concerns regarding performance will be put to the employee and the employee will be able to respond to those concerns and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected. The procedures are to be implemented with the intention of supporting the staff in achieving the required standards.
- 2.2 There are four options at Stage 1, either:
1. No further action\* or
  2. Arrange additional informal support\* or
  3. First written warning or
  4. In exceptional circumstances for very serious cases a final written warning could be issued

\*1 & 2 are only relevant where new information, evidence, a different perspective on the information collected, or further investigation suggests that the matter is not as serious as it first seemed or there is no case to answer.

- 2.3 If performance is unsatisfactory a first written warning will normally be issued and will invoke the first monitoring and review period.
- 2.4 In cases of particularly serious concern, it is possible to move directly to a final written warning. This will invoke the second monitoring and review period immediately.

## **3. Monitoring and review period (1)**

- 3.1 A performance monitoring and review period will follow the formal capability meeting (stage 1).
- 3.2 It is important that a timescale for improvement is set in line with the agreed support plan (see paragraph 3.6). This will vary according to the level and nature of improvement needed, however in this academy, the standard set review period is normally eight weeks. In exceptional circumstances it could be appropriate for the review period to fall within the range of four to ten weeks, following discussion and seeking to agree with the staff member.
- 3.3 Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the performance monitoring and review period (1), the employee will be invited to a formal review meeting (stage 2), unless they were issued with a final written warning, in which case they will be invited to a decision meeting (stage 3) (see below).

3.4 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be put in place. There will be a further formal meeting at the end of that extended monitoring and review period.

#### **4. Formal review meeting (Stage 2)**

4.1 Where, following the formal capability meeting (stage 1), the employee's performance has improved to a satisfactory level, this should be formally recognised and confirmed in writing within five working days of the meeting. Explanation should be given to the employee of the importance of sustaining this level of performance.

4.2 There are two options at Stage 2, either:

- No further action because the employee's performance has improved sufficiently
- Final written warning

4.3 Where, following the formal capability meeting and despite appropriate support mechanisms having been put in place, the employee's performance remains unsatisfactory, a final written warning may be issued. At this point the employee will be advised that if there is insufficient improvement in performance it could lead to their dismissal.

4.4 Again, the main focus of the meeting should be to explore ways of supporting the employee to improve their performance to an acceptable level.

#### **5. Monitoring and review period (2)**

5.1 A performance monitoring and review period will follow the formal review meeting (stage 2).

5.2 It is important that a timescale for improvement is set in line with the agreed support plan (see paragraph 1.6). This will vary according to the level and nature of improvement needed, however in this academy, the standard set review period is normally eight weeks. In exceptional circumstances it could be appropriate for the review period to fall within the range of four to ten weeks, following discussion and seeking to agree with the staff member.

5.3 Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the further monitoring and review period (2), the employee will be invited to a final formal review meeting (stage 3).

5.4 If performance is deemed to have improved but not reached the required standard, a further monitoring and review period can be put in place. There will be a further formal meeting at the end of that extended monitoring and review period.

#### **6. Final formal review meeting (Stage 3)**

6.1 Where, following the formal review meeting (stage 2), the employee's performance has improved to a satisfactory level, this should be formally recognised and confirmed in writing within five working days of the meeting. Explanation should be given to the employee of the importance of sustaining this level of performance.

6.2 There are two options at Stage 2, either:

- No further action because the employee's performance has improved sufficiently
- Proceed to a Decision Meeting

6.3 Where, following the formal review meeting (stage 2) and despite appropriate support mechanisms having been put in place, the employee's performance remains unsatisfactory, a

Decision Meeting will take place, during which the employees ongoing employment with the Trust will be considered. At this point the employee should be aware that if there is insufficient improvement in performance, it could lead to their dismissal.

- 6.4 Again, the main focus of the meeting should be to explore ways of supporting the employee to improve their performance to an acceptable level.
- 6.5 The Trust must be informed of any circumstance which, if they lead to a Decision Meeting, might lead to the dismissal of the employee.

## **7. Decision meeting**

- 7.1 The Decision Meeting will usually be conducted by a Panel of governors not previously involved in the case, which could include the Principal and or a representative from the Trust.
- 7.2 The employee will receive notification of the meeting in line with paragraph 1.2. The employee and their representative will be provided with relevant documentation to enable them to prepare for the meeting. The employee should be reminded to provide any documentation on which he or she wishes to rely at least 5 five working days' before the Decision Meeting taking place. Neither party will be able to use any evidence not previously provided at the Decision Meeting.
- 7.3 Names of any witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for inclusion with the documents to be used at the Decision Meeting.
- 7.4 There are three options at the Decision Meeting, either:
- No further action because the employee's performance has improved sufficiently
  - Redeployment to an alternative role
  - Dismissal
- 7.5 If performance remains unsatisfactory, a decision will be made that the employee should be dismissed, or redeployment will be considered. Normal delegation rules apply to the power of dismissal.
- 7.6 By agreement with the employee, it may be appropriate to consider whether there is a vacant post and if so whether this may be more suited to the employee's capabilities. If there is a vacant post which we agree with the employee is suitable for them to redeploy to, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the appraisal process would re-start.
- 7.7 The employee will be informed in writing as soon as possible of the decision. If the decision is to dismiss, the employee will receive in writing the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and the right to appeal.

## **8. Appeal**

- 8.1 If an employee feels that a decision to dismiss them, or other action taken against them including warnings (as set out above), is wrong or unjust, they may appeal in writing against the decision within ten working days' of the decision, setting out at the same time the grounds for appeal. Minutes of the meeting will be provided at the earliest date to facilitate the process.

- 8.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a work colleague or a trade union representative will apply as set out in section 1.
- 8.3 The appeal will be dealt with impartially by a panel of two governors and a representative from the Trust who have not previously been involved in the case in line with the academy's arrangements.
- 8.4 The employee will be informed in writing of the results of the appeal hearing as soon as possible and within 5 working days.
- 8.5 There is no further right of appeal against the sanction or dismissal within the academy.

## **9. Sickness**

- 9.1 If at any stage long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the [Academy/Trust]'s Attendance (Sickness Absence) Policy. In these circumstances the capability procedure may be postponed until the employee returns to work.
- 9.2 The employee will be referred immediately to the occupational health service to assess their health and fitness.
- 9.3 If at any stage an employee is absent for a short term during this procedure, occupational health may be asked to assess the employee's fitness to return to work and or attend meetings. The capability procedure may be extended for a period of up to four weeks with agreement with the employee.

## **10. General Principles underlying this policy**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The capability process will be treated confidentially. However, the desire for confidentiality does not override the need for the Principal and Local Governing Body (LGB) to quality-assure the operation and effectiveness of the performance management system.

### **Consistency of Treatment and Fairness**

Academy Transformation Trust (ATT) and the LGB are committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The LGB is aware of the guidance on the Equality Act issued by the Department of Education (DfE).

### **Delegation**

Normal rules apply in respect of the delegation of functions by the LGB and Principals.

### **Grievances**

Where an employee raises a grievance during the capability procedure the procedure may be temporarily suspended in order to deal with the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### **Monitoring and Evaluation**

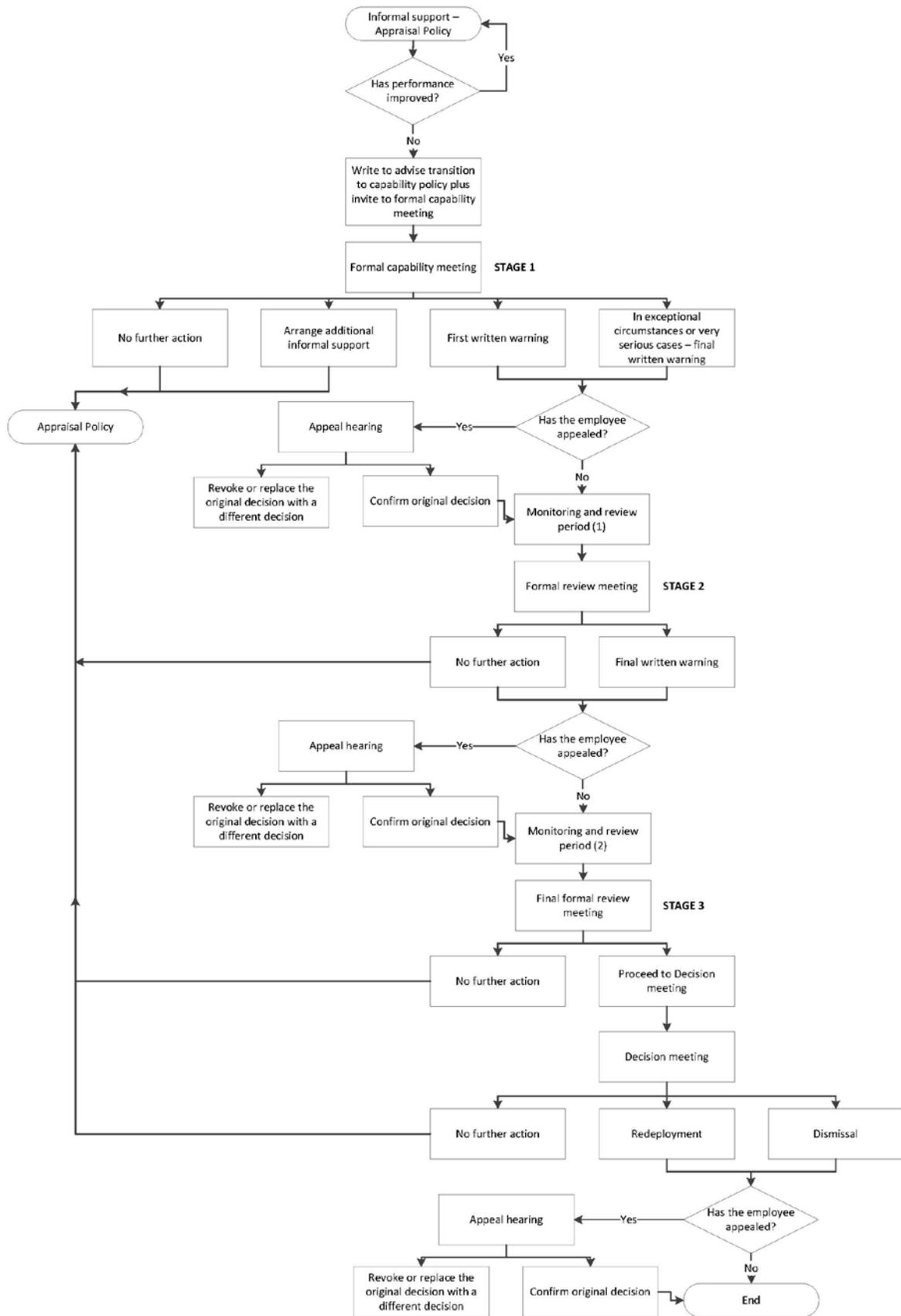
The LGB and Principal will monitor the operation and effectiveness of the academy's performance management arrangements and report to ATT as required. In developing, applying and evaluating this

policy we will monitor the impact on different groups of people with protected characteristics in line with the academy's Equal Opportunities Policy. This will ensure that what we do is done fairly.

**Retention**

The LGB and Principal will ensure that all written capability records are retained in a secure place. It is the manager's responsibility to ensure HR has a copy of all relevant documents. All records will be kept no longer than is necessary in accordance with the Data Protection Act 1998.

### Capability Procedure



## Appendix 1 - Format for capability hearings

*Hearings may be conducted by the [Principal/Director] or other senior employee delegated this responsibility by the [Principal/Director] this person will act as the hearing chair. (The Decision Meeting will usually be conducted by a Panel of governors not previously involved in the case, which could include the Principal and or a representative from the Trust.)*

During any capability hearing conducted by the [academy / trust], the following will take place:

### **Introduction**

The hearing chair will introduce the hearing, and explain its purpose and how it will be conducted:

- **PURPOSE:** to consider the information collated in relation to performance, identify what support has been provided, including informal action, to give the employee the opportunity to comment on this information and to make a decision on what action to take (including the issuing of a formal warning or dismissal as appropriate).

The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing. The employee will be reminded that they are entitled to be accompanied, if they wish, by a fellow worker or trade union representative of their choice.

### **Confirmation of policy**

The hearing chair will state that the hearing is being conducted in line with academy's / trust's] Capability Procedure, and confirm that a written record of the hearing will be made.

If any witnesses are to be called at the hearing, the hearing chair will confirm who will be attending.

### **Summary of case**

The hearing chair will go through the information that has been collated. In addition they will summarise the process followed to date and the steps that have been taken to assist the employee in improving his/her performance.

### **Presentation of management case (or this could be conducted by the hearing chair)**

The line manager will be asked to summarise the concerns regarding performance making reference to the employee's job description and performance against objectives/targets set. Reference to any relevant standards or policies should also be made. They will be asked to explain the process followed, any improvement during the process and why a hearing has been called. Evidence should be presented to support the management case.

Any witnesses for the management case are called at this point and will be asked questions by the hearing chair and the employee.

### **Employee responds to the information or witnesses**

The employee will be given full opportunity to respond to the information presented and to present any evidence that indicates that performance is to the required standard [and to raise points about any information provided by witnesses.]

The employee can refer to any information they have provided in their defence.

Any witnesses for the employee are called at this point and will be asked questions by the hearing chair and line manager.

The line manager or hearing chair may ask questions of the employee based on the information they have presented.

### **Summing up**

The line manager sums up the management case.

The employee sums up their case.

### **Adjournment**

The meeting will be adjourned in order for the hearing chair to make a decision.

### **Decision is delivered**

The hearing chair will reconvene the hearing and inform the employee of the outcome. The hearing chair may choose to convey the decision in an alternative way to the employee and if this is the case should inform the employee of this prior to adjourning the hearing to make the decision. The hearing chair will inform the employee that the outcome of the hearing will be confirmed in writing.

*Possible outcomes include:*

- No further action as it is determined based on the evidence that the employee is working to the required standard. Performance to be managed through the appraisal process.

*Or*

- Where performance is not to the required standard, issue a warning with a review period and revised objectives [at the decision meeting, dismissal with notice is a possible option]

The hearing chair will inform the employee that they will have the right to appeal against any warning issued or dismissal and this must be made within 10 working days of the decision.

**The hearing chair will close the meeting.**

***Appeal hearings will follow a similar format as set out but the employee will set out the grounds for appeal first. There would be no further right of appeal***

## Appendix 2 - Capability monitoring and review programme pro-forma (Electronic copy is available separately)

This pro-forma should be completed following a capability hearing where a warning has been issued. The pro-forma sets out the monitoring and review programme to be followed prior to a decision on whether to go to the next stage of the process.

| <b>Name of employee</b>  |   |  |  |                                    |                               |
|--|---|--|--|------------------------------------|-------------------------------|
| <b>Job Role</b>  |   |  |  |                                    |                               |
| <b>Name of line manager</b><br>(who has responsibility for oversight of process and providing support)   |   |  |  |                                    |                               |
| <b>Line manager's Job Role</b>   |   |  |  |                                    |                               |
| <b>Date of start of monitoring and review period</b>   |   |  |  |                                    |                               |
| <b>Date of end of monitoring and review period</b>   |   |  |  |                                    |                               |
| <b>Performance concerns - details of the concerns that were identified at the capability hearing and what will be put in place to support the required improvement</b> |   |  |  |                                    |                               |
| <b>Performance Concern</b>   | <b>Relevant Teachers' Standard to be targeted during support plan</b> | <b>Objective</b><br>(standard employee is expected to be at) | <b>Success criteria</b><br>(what will the employee need to do to improve performance to the required standard) | <b>How will this be evidenced?</b> | <b>Support to be provided</b> |
|  |   |  |  |                                    |                               |

|  |  |  |                                 |  |  |
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|  |  |  |                                 |  |  |
|  |  |  |                                 |  |  |
| <b>Date set for meeting at the end of the monitoring and review period [minimum 4 weeks, maximum 10 weeks]</b> |  |  |                                 |  |  |
| <b>Summary and next steps</b>  |  |  |                                 |  |  |
| <b>Employee comments</b>   |  |  | <b>Employee's signature</b>     |  |  |
|  |  |  | <b>Date</b>                     |  |  |
| <b>Line manager's comments</b>   |  |  | <b>Line manager's signature</b> |  |  |

|  |  |      |  |
|--|--|------|--|
|  |  | Date |  |
| State the implications of failure to meet targets.<br><br>(including moving to next stage of capability procedure) |  |      |  |

**FOLLOW UP [6] WEEK REVIEW**

| <b>Name of employee</b>        |   |   |   |                                    |                                    |   |
|--------------------------------|---|---|---|------------------------------------|------------------------------------|---|
| <b>Job Role</b>                |   |   |   |                                    |                                    |   |
| <b>Name of Line manager</b>    |   |   |   |                                    |                                    |   |
| <b>Line manager's Job Role</b> |   |   |   |                                    |                                    |   |
| <b>Date of review meeting</b>  |   |   |   |                                    |                                    |   |
| <b>Performance concerns</b>    |   |   |   |                                    |                                    |   |
| <b>Performance Concern</b>     | <b>Relevant Teachers' Standard to be targeted during support plan</b> | <b>Objective<br/>(standard employee is expected to be at)</b> | <b>Success criteria<br/>(what will the employee need to do to improve performance to the required standard)</b> | <b>How will this be evidenced?</b> | <b>Summary of support provided</b> | <b>Update on progress since start of monitoring and review period</b> |
|                                |   |   |   |                                    |                                    |   |

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| <b>Summary and next steps</b>  |  |  |  |  |  |  |
| <b>Confirm next steps – options:</b> <ul style="list-style-type: none"> <li>1 Performance to the required standard – refer back to performance management under appraisal process</li> <li>2 Performance shows some improvement - extend monitoring and review period programme</li> <li>3 Performance not to the required standard – move to next stage of capability procedures – inform employee</li> </ul> <p><b>You should inform the employee of what will happen next based on what option is selected.</b></p> |  |  |  | <b>Please tick as appropriate</b> <ul style="list-style-type: none"> <li><input type="checkbox"/></li> <li><input type="checkbox"/></li> <li><input type="checkbox"/></li> </ul> |  |  |
| <b>Employee's comments</b>   |  |  |  | <b>Employee's signature</b>  |  |  |
|  |  |  |  | <b>Date</b>  |  |  |
| <b>Line manager's comments</b>   |  |  |  | <b>Line manager's signature</b>  |  |  |
|  |  |  |  | <b>Date</b>  |  |  |