



Teacher Capability Policy

Alwyn Infant School and Courthouse Junior School Federation

Approved by: The Governing Board

Review date: May 2024

Last reviewed on: 13/07/2022

Next review due by: Summer 2026

1. Aims

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

2. Legislation and guidance

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 \(the Appraisal Regulations\)](#)

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

3. Definitions

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

References to 'staff' include the headteacher, teachers and support staff, unless indicated otherwise.

4. Roles and responsibilities

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

Where the member of staff subject to the procedure is not the Executive Headteacher, they 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.

5. Capability procedure

Performance is monitored on a day-to-day basis by line managers. Line Management structures are in place for staff and a performance and appraisal process with regular review periods are in place for all staff.

5.1 Reducing the risk of Poor Performance

To minimise the risk of problems arising relating to capability, managers and supervisors should ensure that: - Job descriptions accurately describe the main purpose, scope, tasks and responsibilities of the job and should be current and relevant.

- Recruitment and selection is thorough to ensure that only those with the necessary skills and abilities to do the job are appointed.
- Standards of performance are set and explained with arrangements in place for training and supervision and that the employee understands what is expected of them.
- For support staff, performance must be carefully monitored during the probationary period to identify specific development needs and check that performance is developing as expected.
- Performance is discussed regularly with each employee so that they are aware of how they are doing. There should be no surprises at any performance review meeting as any concerns in performance should be discussed with the employee at the earliest opportunity. It must be noted that performance reviews carried out as part of the performance appraisal/management process should not be considered as a formal stage of this procedure.
- Consequences of not meeting the required standard are fully explained to the employee.
- Where standards change because of a management decision, such as the introduction of new technology or new methodologies etc., the employee is informed, trained as required and made fully aware of their new obligations and the required standards.
- Workloads are manageable and resources sufficient.

- The needs of an employee with a disability are discussed with them in relation to possible impact on performance. Advice may be sought from Occupational Health/ HR to consider any reasonable adjustments that may overcome potential difficulties.
- Special attention is given to ensuring that employees, for whom English may not be their first language, understand instructions and expected standards and targets.

Formal 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.

An informal period of support, put in place and monitored by the line manager, will have been in place before formal capability procedures are triggered. Evidence of this will be available before the process begins.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

5.2 Formal capability meeting

At least 5 working days' notice will be given of the formal capability meeting, and will explain:

- The concerns about performance and possible consequences
- Any written evidence
- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

It will be conducted by the chair of governors for the Executive Headteacher, and the Executive Headteacher for other teachers and staff. It may be delegated to a member of the senior management team for other teachers and staff in the absence of the Executive Headteacher

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

5.2.1 Possible outcomes

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through the appraisal process.

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met (based on the Teachers' Standards or other relevant standards, career stage expectations and/or job description)
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed
- Warn the staff member that failure to improve within this timetable could lead to dismissal

The Executive Headteacher can issue the following warnings at a Formal Capability Meeting/Formal Review Meeting, where performance remains unsatisfactory:

- Written warning to remain on record for a period of twelve months
- Final written warning to remain on record for a period of two years

5.2.2 After the meeting

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the warning

5.3 Monitoring and review periods

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting and formal review meeting. If performance is unsatisfactory a written warning will normally be issued at a Formal Capability Meeting and will invoke a review period not exceeding 30 working days. However, in cases of particularly serious concerns, where the education of the children is in jeopardy, it would be reasonable to move directly to a final written warning and possibly invoking a shorter review period of no less than 20 working days.

The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see 5.5 below).

Targets and review periods must be realistic and reasonable taking account of the nature of the job, extent of the failure to achieve the required performance standards and available training and support.

5.4 Formal review meeting

At least 5 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

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
- If no or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final written warning

Notes will be taken of formal meetings and a copy sent to the member of staff.

The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. The staff member will be invited to a decision meeting.

5.5 Decision meeting

At least 5 working days' notice will be given of the decision meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

It will advise that others present could include but it is recommended that only 2-3 as a maximum will attend the meeting:

- · Any advisers supporting the school.
- · Anyone monitoring progress against targets.
- · HR representative.

If an acceptable standard of performance has now been achieved, the capability procedure will end and the appraisal process will re-start.

If the staff member's performance does not improve to a sufficient standard, a decision, or recommendation to the governing board, may be made that the staff member should be dismissed or required to cease working at the school.

The staff member will be informed as soon as possible of:

- The reasons for the dismissal
- The date on which the employment contract will end
- The appropriate period of notice
- Their right of appeal

At this, or any meeting throughout the process, a representative of the school's Human Resources (HR) service may be present.

5.6 Dismissal

The power to decide that members of staff should no longer work at this school has been delegated to one or more governors acting with the Executive Headteacher.

Once the decision that the staff member should no longer work at the school has been taken, person/people to whom the power has been delegated will notify the local authority of its decision and the reasons for it. Where staff work solely at this school, the local authority must dismiss them within 14 days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

This will not be a dismissal hearing: the Decision meeting, referred to in section 5.4 and 5.5, is the forum at which a decision to dismiss will be taken. Where a decision has been taken that the senior leader (including Executive Headteacher and Head of School) or teacher will no longer work in the federation, a decision on any notice arrangements will need to be considered since it is unlikely that the teacher should remain in the classroom or the headteacher undertake his or her duties at the federation school.

6. Right to appeal

If a staff member feels that a decision to dismiss them is wrong or unjust, they may appeal in writing within 5 working days of the decision, setting out the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and by senior leaders or governors who have not previously been involved in the case.

The staff member will be informed in writing of the results of the appeal hearing within 5 working days.

7. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to quality assure the operation and effectiveness of the system.

8. Consistency of treatment and fairness

The governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The governing board is aware of the guidance and provisions of the Equality Act 2010.

9. Monitoring arrangements

The effectiveness of this policy will be monitored by the headteacher and governing board.

This policy will be reviewed every 2 years but can be revised as needed.

This policy will be approved by the full governing board.

10. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Teachers' appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives
- Early career teacher induction

Appendix 1: capability action plan template

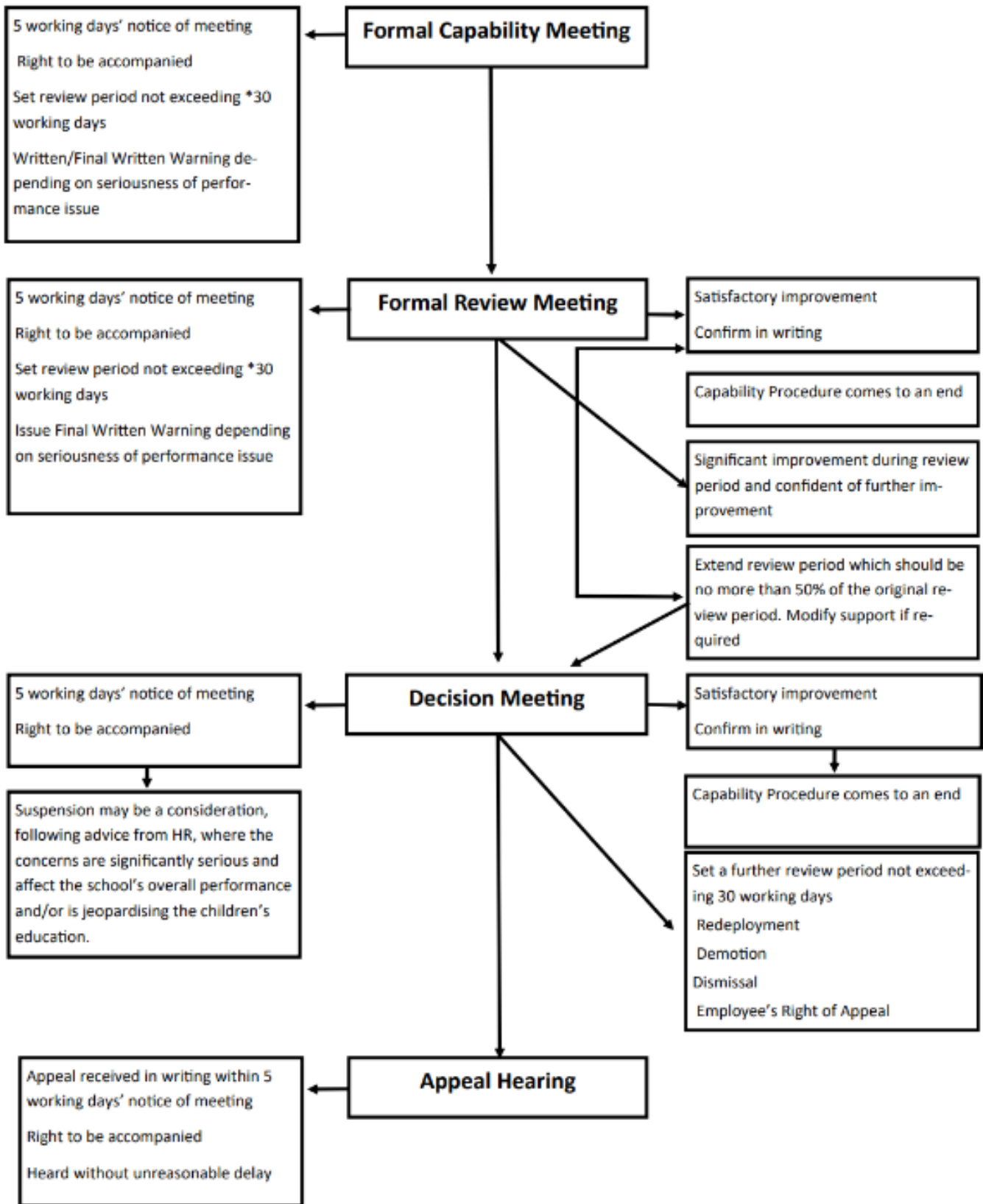
This template can be used as part of the process of supporting a teacher who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

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

Staff Capability Procedure Flowchart



**The review period following a Final Written Warning can be reduced to 20 working days where the concerns are significantly serious and that the work of the employee is having a serious effect on the school's overall performance and/or is seriously jeopardising the children's education*

Appendix 3 Model Letter: Notification of Formal Capability Meeting

Dear

RE: Formal Capability Meeting

In accordance with the school's Capability Procedure, I would like you to attend a meeting with me on (date) at (time) in (place) to discuss the concerns about your performance which are detailed below and explore ways in which the school may be able to support you in reaching the required standard in the areas identified.

State clearly the areas of concern here

- 1.
- 2.
- 3.
- 4.

I attach copies of evidence from the Feedback stage of the Performance Appraisal/Management Procedure which will be considered at the meeting. These include (list what is being attached e.g., the objectives and support plan agreed for the Feedback stage, notes from review meetings, observations, details of support provided etc.).

At the meeting you will have the opportunity to present your case and any acceptable reasons in response to the allegation of poor performance.

If during the meeting there is evidence that the poor performance is due to wilful carelessness or negligence on your part, the meeting will be adjourned and the matter will be dealt with in accordance with the school's Disciplinary Procedure.

You have the right to be accompanied to the meeting by a trade union representative or a work colleague. It is your responsibility to arrange for a representative to accompany you to the meeting and to arrange for them to have a copy of the paperwork.

I enclose a copy of the Capability Procedure for your information.

I appreciate that this may be an anxious time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on (insert contact details) and/or I enclose a leaflet....

Please inform me directly if you require any clarification about the process.

Yours sincerely,

Executive Headteacher/Head of School

Appendix 4 Model Letter: Notification of Outcome of Formal Capability Meeting

Dear

RE: Outcome of Formal Capability Meeting

I refer to the Formal Capability Meeting held on (date) and write to confirm the outcome.

We discussed the areas of concern in your performance which are as below:

- 1.
- 2.
- 3.
- 4.

You explained that (insert any explanation that the employee gave about their perception of their own performance and any reasons given for the performance issues raised).

After full consideration of the points raised, it was agreed that the following action will be taken in an attempt to resolve these difficulties/assist you to reach the required standard: -

(insert details of constructive action to be taken by the manager and/or employee to address the performance issues i.e., details of performance standard to be achieved, type of support which will be provided by the school and the areas in which this support will be provided, frequency of review meetings during the review period etc.)

A review period of **(enter number of working day for review period)** is being set from **(date of meeting)** and your performance will be reviewed at a Formal Review Meeting on (date). In view of the poor performance, it is my decision that you should receive a written warning to remain on your record for 12 months.

I must inform you that if you fail to achieve the required standard and the matter was to progress to the Capability Review Hearing stage consideration will be given to your dismissal on the grounds of capability. I attach a copy of the notes of the meeting for your information.

You have the right to appeal against the written warning in accordance with the School's Capability Procedure. If you wish to appeal, you must submit a written statement of appeal to me within 10 working days of receipt of this letter.

The letter should clearly state the grounds of the appeal, which should be based on any or all the following:

- The severity of the action and/or
- The finding of the Formal Capability Meeting on a point of fact and/or
- A failure to adhere to agreed procedure Any appeal will be heard by an Appeal Panel of three Governors/trustees.

Yours sincerely

Executive Headteacher/Head of School

Appendix 5 Model Letter: Notification of Formal Review Meeting

Dear

RE: Formal Review Meeting

I would like you to attend a Formal Review Meeting on **(date)** at **(time)** in **(Venue)**.

The purpose of this meeting is to review your performance over the 30-working day review period agreed at the Formal Capability Meeting on **(date)**.

I attach written evidence obtained during the review period for consideration at the meeting and this includes:

(List supporting evidence to be considered at the meeting).

You have the right to be accompanied to the meeting by a trade union representative or a work colleague. It is your responsibility to arrange for a representative to accompany you to the meeting and for them to have a copy of the paperwork.

I appreciate that this may be an anxious time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time.

You can contact them on **(insert contact details)** and/or I enclose a leaflet.

Please inform me directly if you require any clarification about the process.

Yours sincerely

Executive Headteacher/Head of School

Appendix 6 Model Letter: Notification of Outcome of Formal Review Meeting (insufficient improvement)

Dear

RE: Outcome of Formal Review Meeting

I refer to the Formal Review Meeting on **(date)** and write to confirm the outcome.

Following the meeting and review of the evidence obtained during the set review period I must inform you that there has been no/insufficient improvement in your performance.

(Points discussed should be entered here around how the previous review period has gone)

In view of no/insufficient improvement achieved, it is my decision that you should receive a final written warning to remain on your record for 2 years. This invokes a further review period of 30 working days to be set and your performance will be reviewed at a Decision Meeting to be held on **(date)**.

During the review period *(insert details of constructive action taken by the manager and/or employee to address the performance issues i.e., details of performance standard achieved, type of support provided by the school.)*

I must inform you that the issue will progress to a Decision Meeting where consideration will be given to your dismissal on the grounds of capability.

I attach a copy of the notes of the meeting for your information. You have the right to appeal against the final written warning in accordance with the School's Capability Procedure.

Yours sincerely

Executive Headteacher/Head of School

Appendix 7 Model Letter: Notification of Decision Meeting (insufficient improvement)

Dear

RE: Decision Meeting

I would like you to attend a Decision Meeting on **(date)** at **(time)** in **(Venue)**.

The purpose of this meeting is to review your performance over the 30-working day review period agreed at the Formal Review Meeting on **(date)**. It is also to review your employment with the school as **(enter job title)** following unsatisfactory assessments of your capability for the post.

The following areas have been identified where you have failed to reach the required standard.

- (i)
- (ii)
- (iii)

The purpose of the Decision meeting is also to confirm that all the appropriate procedures have been followed and that any proposed action is reasonable in all the circumstances. This will include that you have previously been advised that there will be consideration given to your dismissal if you do not meet the standards required for the post which you are employed to.

The Decision meeting will consist of: - List the names of the 3 governors/trustees

You have the right to be accompanied to the Hearing by a trade union representative or a work colleague. It is your responsibility to arrange for a representative to accompany you to the Decision Meeting.

I enclose the 'relevant documentation', which includes a copy of the school's Capability Procedure, for consideration at the Decision Meeting. It is your responsibility to arrange for your representative to have a copy of the paperwork. I would be grateful if you could confirm your attendance as soon as possible. If you wish to submit any documentation to be considered at the meeting please forward this no later than 3 working days before the meeting.

I appreciate that this may be an anxious time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on (insert contact details) and/or I enclose a leaflet....

Yours sincerely

Chair of Governors/Executive Headteacher/Head of School

Dear

RE: Outcome of Decision Meeting

I refer to the Decision Meeting on **(date)** and write to inform you of the decision on behalf of the panel.

Following the meeting and review of the evidence obtained during the set review period I must inform you that the panel has found that there has been no/insufficient improvement in your performance.

The panel considered all the information presented which included: - (enter information considered which can include the following)

- Nature and level of the job Level of incapability and the impact on the job
- Likely level of improvement and whether this is sufficient
- Actions taken to date to resolve the difficulties, whether these are sufficient and further possible actions
- A pattern where capability remains satisfactory throughout the review period only to lapse soon afterwards. Any other relevant factors (these need to be specified)

The panel are of the view that you have been given sufficient opportunity and assistance to improve your performance to the required standard but you have failed to reach this standard.

Consequently, I have no alternative but to dismiss you on the grounds of capability.

You are entitled to weeks' notice with pay. You are not required to work your period of notice. A copy of the notes of the hearing are attached for your information.

You have the right to appeal against your dismissal.

If you wish to appeal, please let me know in writing within **(enter time)** working days of receiving this letter stating your grounds for appeal which can be: -

- The severity of the action and/or
- The finding of the Decision meeting on a point of fact and/or
- A failure to adhere to agreed procedure

In the meantime, if you should have any queries please contact me.

Yours sincerely

Chair of Governors/Executive Headteacher/Head of School

Appendix 9 Model Letter: Notification of Suspension

Dear

RE: Notification of suspension

I am writing to confirm the decision taken under the Schools' Capability Procedure to suspend you from work with effect from until further notice.

Your suspension is without prejudice and on full pay. The reason for your suspension is to facilitate a full investigation into the allegation of poor performance (state details of poor performance)/is that your poor performance at work is considered to jeopardise the education of pupils and will be until a Decision Meeting is convened to consider your continued employment at the school.

It is expected that the investigation will be concluded by (enter date)/ It is expected that the Decision Meeting will be convened by (enter date).

However, if due to unforeseen circumstances, it has not been possible to complete the investigation / convene the Decision meeting by the given date, you will be informed of any extension to your suspension.

Please do not return to the school unless it is with my express agreement.

The decision to suspend will be reviewed regularly and may be reconsidered at any time in the light of new evidence during the investigation. As suspension can be lifted at any time, during this time you are regarded as being available for work or to attend for any other reason.

Following the investigation, if it is considered that you have a case to answer, the School's Disciplinary Procedure/School's Capability Procedure will be followed and you will be notified accordingly. (Name of designated person) will be your designated point of contact at the school during the period that you are away from the school. He/she will keep you informed of general activities and news at the school.

If you wish to contact the school for any reason please telephone (name of designated person) on (insert telephone number). I must ask you not to contact any other member of staff, pupil at the school or any member of the Federation whilst the suspension is in force.

If you wish to collect any personal belongings at the school, please contact (name of designated person) who will make the appropriate arrangements. I appreciate that this will be a difficult time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time.

You can contact them on (insert contact details) and/or I enclose a leaflet....

Yours sincerely Executive Headteacher/Head of School/Chair of Governors

Appendix 10 Model Letter: Notification of Confirmation of Improvement in Performance

Dear

Following the Formal Capability/Formal Review/Decision meeting on (date) to review your performance I am pleased to inform you that your performance has improved to the required standard and, consequently, I do not intend to take any further action under the Capability Procedure.

Your performance will revert to being managed under the school's Performance Appraisal/Management Procedure.

I must inform you that should any further problems in your work performance arise further action under the Capability procedure may be necessary.

I would like to congratulate you on the effort you have put in to improve the standard of your work in the areas specified.

I hope that you will be able to sustain this improvement and would encourage you to seek help immediately should you experience any problems with your work in the future.

I attach a copy of the notes of the meeting for your information.

Yours sincerely

Executive Headteacher/Head of School