



# Carfield Primary School

## Capability Policy and Procedure for Teaching Staff

Date Reviewed	Reviewed by	Ratified by (Governor Committee)	Next Review
Reviewed 2024	Hannan Mohammed		September 2026

## CONTENTS

Section		Page
<b>1</b>	Preamble	3
	<b>Policy and Principles</b>	<b>4</b>
	1.1 Purpose	4
	1.2 Application of the Policy	4
	1.3 Representation	5
1.4 Appeal Rights	5	
<b>2</b>	<b>Performance Concerns</b>	<b>7</b>
2.1	Identification of Unsatisfactory Performance	<b>7</b>
2.2	Informing the Teacher	<b>7</b>
2.3	Capability Support Plan	<b>8</b>
<b>3</b>	<b>Capability Hearings</b>	9
3.1	Stage One Capability Hearing	9
3.2	Monitoring Timescales	11
3.3	Capability Support and Monitoring Period	11
3.4	Stage 2 Capability Review Meeting	11
3.5	Final Warning Review Meeting	13
<b>4</b>	<b>Stage 3 Dismissal Hearing</b>	14
4.1	Stage 3 Dismissal Hearing	14
4.2	Notice Periods	15
4.3	Reporting the Dismissal	16
4.4	References and Compromise Agreements	16
4.5	Suspension from duty	16
<b>5</b>	<b>Appeals</b>	18
5.1	Appeal against a recorded written or a final written warning	18
5.2	Appeal against Dismissal	18
5.3	Appeal Hearings	19
	<b>Appendices</b>	
	Appendix A: A framework for managing teacher performance management	20

## **PREAMBLE**

This model policy is a product of the Schools' HR Service, in partnership with representative Headteachers from Sheffield Schools. It is recommended for schools to adopt with reference to the 2012 guidance from the Department of Education regarding Schools Teacher's Appraisal and Capability and **should be read in conjunction with the Appraisal Policy/Procedure for Teachers in Schools.**

It is recognised that the vast majority of teachers and headteachers in schools make a valuable contribution to the education and progress of the pupils in the city. All teachers' and headteachers' performance is continually monitored under the appraisal policy, and support is given to them to help them further develop their skills and improve their performance. The capability procedure will only be used to manage the minority of teachers and headteachers whose performance in their job is causing concern and potentially jeopardising the education and progress of pupils.

This policy was written in line with The School Staffing (England) (Amendment) Regulations 2012, the 'Teachers' Standards' and other relevant guidance produced by the Department for Education, effective from 1st September 2012. The document adheres to the ACAS Code of Practice on disciplinary and grievance procedures.

The Governing Body of **Carfield Primary School** adopted this capability policy/procedure for teaching staff on **05/10/2016.**

It will be reviewed every two years.

## **SECTION 1      POLICY AND PRINCIPLES**

---

### **1.1      Purpose**

This policy sets out the formal stages of the capability process for teachers which could result in the teacher receiving formal warnings or ultimately being dismissed from their post where they are failing to reach the standard of performance required.

This policy is driven by the school's plan for improving educational provision and performance and the professional standards expected of teachers (i.e. a baseline standard of 'good' as per the Teachers' Standards document effective from 1<sup>st</sup> September 2012).

### **1.2      Application of the Policy**

The policy applies to the Headteacher and to all teachers employed by the school except those undergoing induction (i.e. Newly Qualified Teachers). A separate procedure applies where there are concerns about the performance of a newly qualified teacher.

The policy/procedure will be used:

- (a) In circumstances where necessary steps have been taken to try and address the under performance of a teacher (or Headteacher) through the Appraisal Procedure, but this has not resulted in the individual reaching the expected standard of performance.
  
- (b) Where concerns about performance are so serious that informal measures for managing capability are not felt to be appropriate and formal action is required. This could include moving straight to a dismissal hearing in severe cases, for example safeguarding issues.

The application of the capability procedure in this school will be supportive and guidance will be offered to improve performance. However, the seriousness of the situation will be stressed to the teacher along with the consequences of failing to make the necessary improvements within a defined timescale. Teachers are entitled to be

represented by a trade union representative or work colleague throughout this formal process.

In accordance with The School Staffing (England) (Amendment) Regulations 2012, a teacher who has been subject to capability procedures during the last two years of their employment with the school and applies for a teaching post at another school, the Governing body of this school will provide written details of their concerns which gave rise to this, the duration of their proceedings and the outcome.

The capability procedure does not deal with lack of capability due to ill health (Sickness Absence Procedure), nor with misconduct (Disciplinary Procedure), which may be defined as an act or omission by a teacher which is considered to be unacceptable professional behaviour. However, a teacher may be managed under more than one procedure at any one time.

Whenever a concern is raised regarding any aspect of the operation of the capability policy/procedure it should be dealt with as promptly as possible and within this procedure.

See appendix A: A flowchart to show the link between the appraisal and capability procedures.

*Note: The term teacher throughout this procedure can mean teacher, Headteacher, Deputy Headteacher, Assistant Headteacher or Teacher with management allowances.*

### **1.3 Representation**

Representation by teacher trade unions is encouraged. An employee has a legal right to be accompanied by their trade union representative or another employee of Sheffield City Council (or an employee of the school where the Governing Body is the employer) at every stage of this procedure.

## **1.4 Appeal Rights**

The school will give the employee the right of appeal against any formal warning issued under the procedure and the right of appeal against a decision to dismiss him/her at a stage three hearing. In order to register an appeal the teacher will need to write to the Headteacher or Chair of Governors as appropriate within five working days of the hearing and will need to specify the reasons for the appeal. Appeals should normally be restricted to:

- considering the reasonableness of the decision made;
- any relevant new evidence;
- Procedural irregularities.

## **SECTION 2      PERFORMANCE CONCERNS**

---

### **2.1      Identification of unsatisfactory performance**

Concerns over a teacher's job performance may arise from evidence through a variety of sources. The teacher's manager should refer to the Teacher Standards, the School's Code of Conduct and other relevant occupational standards along with the teacher's Job Description and Person Specification when assessing the gap in performance.

In the majority of cases, these concerns will be primarily addressed with the teacher on an informal basis during an Initial Performance Meeting under the Appraisal Procedure (See Appraisal Policy/Procedure). However, if concerns are of such a serious nature that they have a significant impact on service delivery, the manager may progress to the Capability Procedure immediately.

Managers must be clear that there are sufficient concerns regarding the teacher's performance, and there is a pattern of under performance sufficient to warrant dealing with the matter through the Schools' Capability Procedure.

### **2.2      Informing the Teacher**

Teachers will normally enter into this procedure following the informal support and monitoring process under the appraisal process. In other circumstances, where a manager believes it is appropriate to instigate the Capability Procedure they will:

- Speak confidentially on a one-to-one basis with the teacher
- Ask them to attend (in writing) a stage 1 formal capability hearing, giving a minimum of 5 working days notice
- Make them aware that the purpose of the meeting will be to discuss concerns regarding their performance
- Offer them the right of representation
- Provide them with a copy of the Capability Policy.

Where the issues have been considered informally under the Appraisal

Policy/Procedure but the required level of performance has not been achieved - the teacher will have been informed of this at the Initial Performance Review meeting and had opportunity to discuss this with the manager/Headteacher before it is confirmed in writing to them.

### **2.3 Capability Support Plan**

In preparation for the meeting, the manager will produce a draft Capability Support Plan (See Appendix) and give it to the teacher for consideration at the meeting. The Capability Support Plan should make reference to the relevant standards (e.g. Teacher standards, etc) and should be linked to the teacher's appraisal objectives, their Job Description and Person Specification. Where the capability procedure has commenced as a result of concerns raised during the appraisal procedure of the teacher, the Capability Support Plan should detail evidence of the concerns raised and support provided during the informal support and monitoring period.



## **SECTION 3      CAPABILITY HEARINGS**

---

### **3.1      Stage One Capability Hearing**

#### **In Attendance:**

The stage one capability will be heard by the Headteacher or a Governor where the issues relate to the Headteacher. They will be advised by an HR representative.

Teachers have the right to be accompanied to this hearing by a trade union representative or work colleague. The accompanying representative has a right to address the meeting but no right to answer questions on the teacher's behalf.

#### **Process:**

The purpose of this hearing is to establish the facts and determine whether a warning should be issued together with confirmation of the support and monitoring which will take place to help the teacher reach the standard of performance required.

At the meeting, the teacher will be given an overview of the entire process including all possible outcomes. The Headteacher (or Governor) will outline the performance concerns, by clearly identifying the nature of the problem(s) and providing supporting evidence (e.g. information collated during the support and monitoring period under the Appraisal Procedure or other evidence to demonstrate underperformance).

The teacher will be offered the opportunity to respond and outline their position. If the teacher wishes to appeal against being managed within the capability procedure, they should include this within their case for consideration at the hearing.

#### **Potential Outcomes:**

The Headteacher (or Governor) conducting the hearing 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 support and monitoring under the appraisal process.

The Headteacher (or Governor) conducting the hearing may also adjourn the meeting if they believe further investigation is required or more time is needed to consider any

additional information.

Following a full discussion of the issues raised, including the draft Capability Support Plan, the Headteacher (or Governor) will decide whether it is appropriate to issue a Stage One Written Warning. Where this is the case, a final version of the Capability Support Plan will be agreed and confirmed to the teacher in writing within 5 days of the hearing, covering the following:

- Key issues to be addressed from the Teaching Standards, Job Descriptions and Person Specifications
- Any weightings attached to the key issues
- The behaviours the teacher needs to demonstrate
- The actions that need to be taken.
- Any additional support and/or resources needed.
- The arrangements for monitoring and assessment and the timescales involved.
- The success criteria for each issue

The objectives set within the Capability Support Plan will be **S**pecific, **M**easurable, **A**chievable, **R**ealistic and **T**ime-bound and will be appropriate to the teacher's role and level of experience. In setting the objectives, the manager will have regard to what can reasonably be expected in the context of roles and responsibilities. Targets may be weighted in terms of importance. When this occurs the weighting arrangements and how these may affect the overall outcome of the process should be made clear to the teacher at this stage and noted on the Capability Support Plan.

The person conducting the hearing should make the teacher aware that failure to improve within the set period could lead to a final written warning. In addition to the Capability Support Plan, notes will be taken at all formal meetings summarising the key points and a copy sent to the teacher.

### **3.2 Monitoring Timescales**

The time allowed for the teacher to demonstrate a significant improvement depends on the seriousness of the consequences of under performance. Following the Stage One Formal Capability Meeting, the minimum timescale anticipated before a formal review meeting takes place is four weeks (as recommend by the Department for Education).

While the timescale will be determined on a case by case basis, evidence of a significant improvement will usually be required, within four to eight weeks. A significant deterioration in performance may bring forward the date of the review meeting. The timescale may also reflect the amount of time and support a teacher has already received. It will be for the Headteacher or Governor to determine if a longer timescale is justified.

### **3.3 Capability Support and Monitoring Period**

Support and monitoring functions should be delivered by different individuals, in line with the objectives that have been set. The manager should speak to all who are involved in monitoring and support to confirm their roles, the confidentiality and the timetable involved emphasising the confidentiality requirements. It is important that everyone follows the Capability Support Plan, including the timescale. If the plan is amended the reason will be discussed and agreed with the teacher as soon as possible.

If a teacher is absent due to sickness for a significant period during the process, managers should refer to the Sickness Absence Policy and consult with their HR provider. It may be necessary for an employee to be managed within both the sickness absence policy and capability policy at the same time. In these circumstances there may be one meeting where issues of both sickness and capability are discussed to avoid the teacher having to attend more than one meeting whilst ill.

### **3.4 Stage 2 Capability Review Meeting**

#### **In Attendance:**

The stage two capability review will be conducted by the Headteacher or Governor who issued the Stage 1 warning. They will be advised by an HR representative. Teachers

have the right to be accompanied to this meeting by a trade union representative or work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the teacher's behalf.

**Process:**

Following the period of support and monitoring a review meeting will be held in accordance with the timescale determined in the Capability Support Plan. Beforehand, the manager should ensure they have collated and reviewed any evidence which supports their concerns about performance. Any written evidence should be provided in advance of the meeting, with sufficient time for both parties to give due consideration to the content of the documents.

The teacher should receive a letter from the manager, a minimum of 5 working days before the meeting, confirming the date, time and venue and any written documentation.

At the meeting the manager will discuss progress against the Capability Support Plan using the evidence/feedback collected. The teacher will be invited to respond.

**Potential Outcomes:**

The manager will then decide which of the following outcomes is appropriate: -

**Outcome 1: Return to normal monitoring under the Appraisal Policy**

That the teacher has achieved and maintained the required standards of performance, as the Capability Support Plan has been successfully completed.

**Outcome 2: Extended monitoring**

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. This should be for a maximum of four weeks. It will be for the Headteacher or Governor to determine if a longer timescale is justified.

### **Outcome 3: Issue Final Written Warning**

If teacher has failed to show sufficient improvement towards achieving the targets to satisfy the manager that the individual is capable of achieving and maintaining the required standards of performance, it may be appropriate to issue a final warning. If this occurs, the teacher will receive an updated capability support plan and be subject to a further monitoring period.

There may be occasions where specific targets are given greater weighting, and that if they are not achieved, despite others having been met, a decision is made that the individual has been unsuccessful. In such situations, the individual will be made aware, before the plan has commenced, of the significance of certain targets, when applicable.

#### **3.5 Final Warning Review Meeting**

##### **In Attendance:**

The Headteacher or Governor who issued the Final Warning will be present. They will be advised by an HR representative. Teachers have the right to be accompanied by a trade union representative or work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the teacher's behalf.

##### **Process:**

Following the monitoring and support period, the Headteacher or Governor will meet with the teacher to review their progress and determine if sufficient improvement has been made. The teacher will be given the opportunity to outline their view of the progress made. The headteacher or Governor will either confirm progress and the teacher will return to normal appraisal process, or that insufficient progress has been made and confirm that a dismissal hearing will be held.

## **SECTION 4      STAGE 3 DISMISSAL HEARING**

---

### **4.1      Stage 3 Dismissal Hearing**

#### **In Attendance:**

In line with the Education Act 2002, Governing Bodies of maintained schools must appoint two separate sub-committees of not less than 3 Governors each to consider capability at work cases at the final stage when the dismissal of an employee is being considered. In a small school or schools experiencing Governor recruitment issues, it may be possible for sub-committees to have fewer Governors provided there are either equal numbers on both or a higher number on appeal. One panel will consider the case presented at Stage 3 and the second panel will consider any appeal against the outcome of the original hearing. The panels will be advised by a HR representative. Teachers have the right to be accompanied to this hearing by a trade union representative or work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the teacher's behalf. The presenting manager/Headteacher may be supported by an HR Representative. The Executive Director CYPF is entitled to be represented to offer advice to the Headteacher/Governors body in community schools.

#### **Process:**

A letter giving a minimum of 10 working days notice should be sent to the teacher, informing them of the date, time and venue of the hearing and of the right to be accompanied by a trade union representative or work colleague. Where the teacher and/or representative are unable to attend on this date, a request should be made to the Chair of the hearing to offer an alternative date. The Chair of the hearing will determine whether this is appropriate taking account of the circumstances of the case and a suitable alternative arranged as soon as possible.

### **Potential Outcomes:**

If the Panel decides there is insufficient evidence to demonstrate the teacher is incapable of performing their role they may:

- Extend the period for improvement and/or modify the targets, outline any further monitoring required and set dates for the appropriate review process.

Or

- Conclude that sufficient progress has been made, therefore the capability process ends and the appraisal process recommences.

If the Panel decide that the teacher is not capable of undertaking the duties and responsibilities of their post, it should consider: -

- Dismissal on the grounds of capability with an appropriate period of statutory notice and/or contractual notice.

For Local Authority maintained schools, in limited cases redeployment to a suitable post elsewhere in the Local Authority may be recommended, if available (For example, teachers who are not able to continue in leadership posts but are good classroom practitioners). Please refer to the Redeployment Policy and Procedure. This process will run concurrently with the teacher's notice period and Pay Protection does not apply in cases of redeployment for reasons of under performance.

### **4.2 Notice Periods**

An employee who is dismissed is entitled to contractual notice in accordance with their conditions of service.

Teachers' notice can only be effective from the end of each term i.e. 30 April, 31 August, and 31 December. The Conditions of Service for School Teachers states the final date each term when notice can be issued. It must also be ensured that a teacher is given statutory notice, which is 1 week's notice for every year of service, up to a maximum of 12 weeks

### **4.3 Reporting the Dismissal**

Following the appeal hearing, if the decision is to dismiss the employee, (or the employee chooses not to exercise their right to an appeal), the decision to dismiss will be notified to the Executive Director: Children, Young People and Families. The Executive Director: Children, Young People and Families will issue the dismissal notice within 14 days of receipt of this notification.

Please note that in Aided and Foundation Schools the letter notifying the employee of dismissal will come from the Governing Body and not the Executive Director: Children, Young People and Families.

Where the employee is to be dismissed, he/she will normally be dismissed from all employment with the City Council unless this is not justified by the circumstances of the case. Where the employee is employed in more than one school, governors at each school will be required to consider the case.

### **4.4 References and Compromise Agreements**

In accordance with The School Staffing (England) (Amendment) Regulations 2012, a teacher who has been subject to capability procedures during the last two years of their employment with the school and applies for a teaching post at another school, the Governing body of this school will provide written details of their concerns which gave rise to this, the duration of their proceedings and the outcome. These regulations also need to be considered for the purposes of compromise agreements.

### **4.5 Suspension from duty**

At any stage of the procedure, where the teacher's performance is such that their continuing attendance at work may put them or other people at risk or may seriously detriment service provision, it may be appropriate to suspend the teacher from work with pay. A temporary transfer to another suitable post or worksite may be an alternative. This precautionary action should be taken after consultation with your HR provider. An employee is entitled to be accompanied to a suspension meeting by a trade union representative or work colleague, however where a representative is not available the suspension meeting will not be unreasonably delayed. In these



circumstances it may be necessary to meet with the employee for the purposes of suspension and confirm arrangements in writing at a later date to both the employee and their representative.

## SECTION 5 APPEALS

---

### 5.1 Appeal against a recorded written or a final written warning

The employee's right of appeal against a written or final warning will be to the Headteacher, if the warning was issued by another member of the School Leadership Team/Manager. If the warning was issued by the Headteacher/Governor(s), the right of appeal would normally be as follows:-

Written warning	1 Governor
Final written warning	A panel of 3 Governors

The employee must write to either the Headteacher or Chair of Governors, as appropriate, within 5 clear working days of receiving a warning, requesting an appeal hearing. **The letter must specify the reasons for an appeal.** The Headteacher/Governor/Governor Panel will seek to hear the appeal within 10 clear working days of receiving the request.

The purpose of the appeal hearing will be to consider grounds upon which the employee is dissatisfied with the issuing of a warning under the Capability Policy and Procedure. The decision will be final and will be confirmed in writing to the employee within 3 clear working days of the appeal hearing.

### 5.2 Appeal against Dismissal

An appeal against dismissal will be a rehearing.

Schools are required to have a Governing Body Appeal Panel.

An employee may appeal against the decision to dismiss by writing to the Chair of Governors. The letter must specify the reasons for appeal. This request must be made within 5 clear working days of receipt of the decision of the Headteacher/Governing

Body Dismissal Panel. The Appeal Panel of the Governing Body will seek to hear the appeal within 10 clear working days of receiving the request.

The decision will be confirmed in writing by the Appeal Panel within 3 clear working days of the Appeal Hearing.

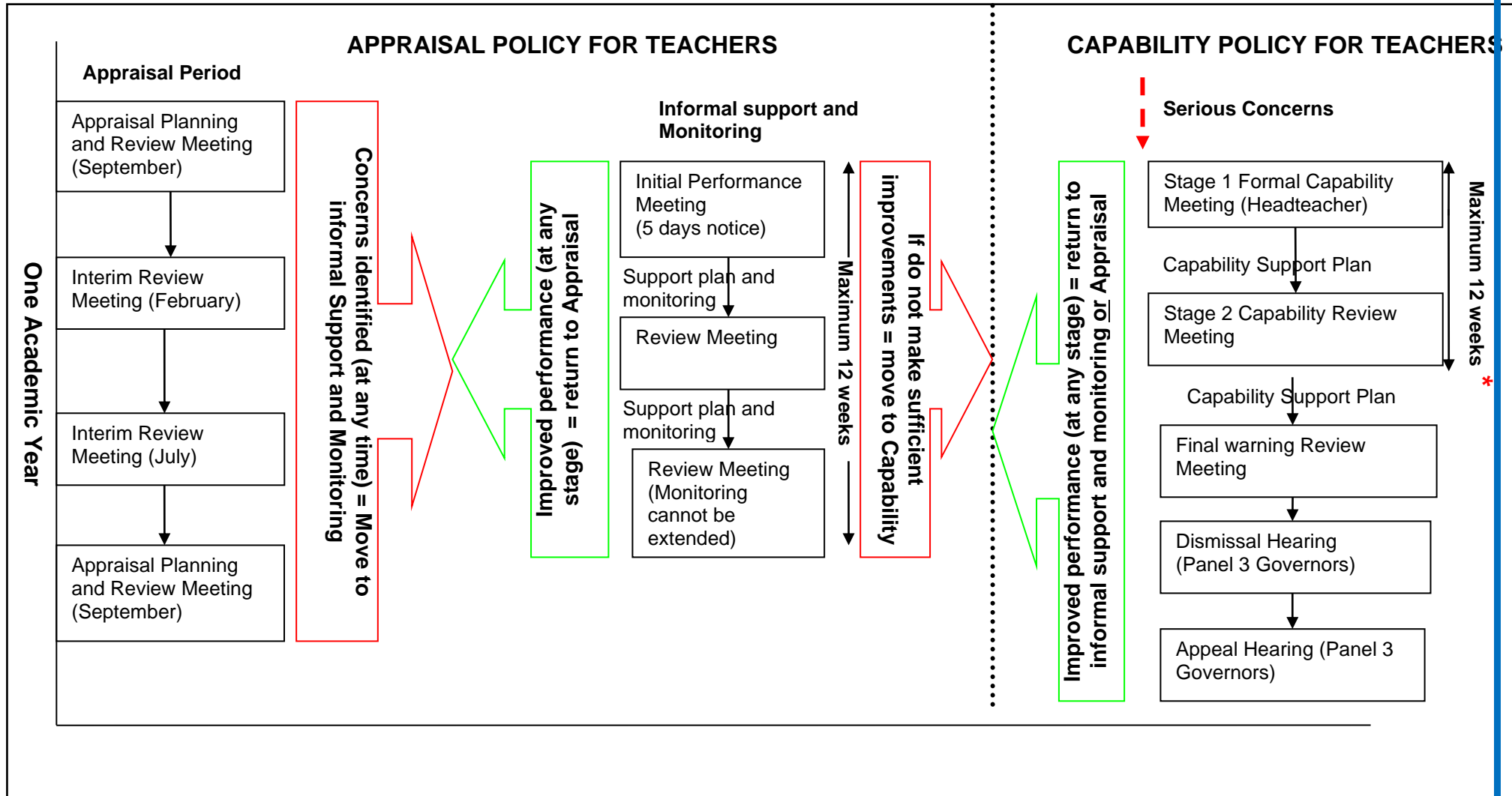
### **5.3 Appeal Hearings**

The original management statement of case, and any written statement submitted by the employee at the Hearing will be used at the appeal hearing. This should be available to the Headteacher/Manager/Governor(s) hearing the appeal wherever possible at least 5 clear working days before the appeal hearing. No new evidence will normally be submitted unless it can be demonstrated this was not available at the original hearing.

Policy Review Date: \_\_\_\_\_

Signed: \_\_\_\_\_ (Chair of Governors)

# APPENDIX A: A FRAMEWORK FOR MANAGING TEACHER PERFORMANCE MANAGEMENT



\* The maximum period of support following stage 1 of the capability procedure could be made up of one of the following combinations:

- a) 4 weeks + 4 weeks
- b) 8 weeks + 4 weeks
- c) 4 weeks + 8 weeks