

ADOPTION GUIDANCE AND POLICY CHANGE LOG

Capability Procedure

DRAFT FOR CONSULTATION AND HR / LEGAL REVIEW

PLEASE REMOVE THIS PAGE AFTER ADOPTION AND UPDATE THE TABLE OF CONTENTS.

General guidance for Headteachers and Local Governing Bodies (LGBs):

- This is a Trust-wide procedure for LDBS Academies Trust and LDBS Academies Trust 2 and applies to teachers, school leaders, support staff and central Trust employees.
- The procedure must be read alongside the current Scheme of Delegation. Decision-making authority must not be assumed from job title alone.
- Before formal capability action is started, the manager must normally obtain HR advice and ensure that informal support has been fair, documented and sufficiently resourced.

Main changes from the previous procedure:

- One procedure now covers teaching staff, school leaders, support staff and central Trust staff.
- The support-staff Performance Improvement Plan process has been incorporated into the informal support stage.
- The distinction between capability, conduct and ill-health capability has been clarified.
- Equality, disability, reasonable-adjustment and occupational-health safeguards have been expanded.
- Formal stages, evidence requirements, representation, warnings, dismissal and appeal arrangements have been rewritten.
- Governance terminology has been updated to Board of Directors, Local Governing Body and current delegated authority.
- Gross negligence has been removed from the capability route and redirected to the disciplinary procedure.
- The procedure accounts for the reduction in the ordinary unfair-dismissal qualifying period to six months from 1 January 2027.

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part of the



Capability Procedure 2026-27

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Trust Vision

“The kingdom of heaven is like a mustard seed, which a man took and planted in his field. Though it is the smallest of all seeds, yet when it grows, it is the largest of garden plants and becomes a tree, so that the birds come and perch in its branches.” (Matthew 13: 31-32)

In the parable of The Mustard Seed, Jesus reminds us that even the smallest of seeds has the potential to grow into the fullness of itself. We aim to provide the right environment for our children, and all whom we serve, to flourish into the fullness of themselves. He tells us these seeds grow into trees, capable of providing a home for a rich diversity of life; our work is to ensure all in our communities grow into people of compassion and wisdom with a deep spiritual understanding of how to support the needs of others.

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1 Purpose and principles

This procedure provides a fair, consistent and supportive framework for addressing serious or persistent concerns about an employee's ability to perform their role to the required standard.

The Trust's primary objective is improvement. Capability is not a disciplinary or punitive process. The Trust will seek to understand the reasons for the concern and provide appropriate support, training, supervision, resources and a reasonable opportunity to improve.

The following principles apply throughout:

- Expectations will be reasonable, clear and related to the employee's contract, job description, grade, duties and any applicable professional standards.
- Decisions will be based on objective and relevant evidence, not personality, protected characteristics, assumptions or isolated minor errors.
- The employee will be told what the concern is, the standard required, the evidence relied upon, the support available, the review period and the possible consequences.
- The employee will have a reasonable opportunity to respond, provide evidence and identify relevant circumstances or adjustments.
- Formal capability will normally follow a documented period of informal support, except where concerns are exceptionally serious.
- Dismissal will be considered only after reasonable support and opportunity to improve have not secured the required standard and reasonable alternatives have been considered.
- The procedure will be applied without unlawful discrimination and with due regard to the Equality Act 2010 and the Public Sector Equality Duty.
- No person will investigate, manage or decide a case where there is a material conflict of interest.

2 Scope

This procedure applies to employees of LDBS Academies Trust and LDBS Academies Trust 2, including:

- teachers and school leaders
- support staff employed in schools
- Headteachers

- central Trust staff
- full-time and part-time employees
- permanent and fixed-term employees

It does not normally apply to:

- agency workers, contractors, consultants or volunteers who are not Trust employees, although concerns may be referred to their employer or commissioning organisation;
- employees within a contractual probation period, where the probation procedure will normally apply;
- early career teachers where a concern is properly addressed through the statutory induction process, although formal capability may be used where appropriate and lawful;
- performance affected primarily by ill health, which will normally be managed under the Managing Sickness Absence Policy; or
- conduct, negligence, refusal or deliberate failure, which will normally be addressed under the Disciplinary Procedure.

No employee is excluded from a fair process solely because of length of service or fixed-term status. The non-renewal of a fixed-term contract is a dismissal in law. It must therefore be handled fairly and in accordance with the reason for non-renewal, taking account of the qualifying period for ordinary unfair-dismissal protection applying on the effective date of termination..

3 Legal and contractual framework

This procedure will be operated in accordance with applicable employment law and the ACAS Code of Practice on disciplinary and grievance procedures.

It operates alongside the employee's contract and any applicable national or local terms and conditions, including:

- School Teachers' Pay and Conditions Document, where applicable;
- Burgundy Book provisions incorporated into a teacher's contract;
- National Joint Council for Local Government Services Green Book provisions incorporated into a support employee's contract;
- Teachers' Standards and headteacher standards, where applicable;
- The Trust's Articles of Association, Funding Agreements and Scheme of Delegation; and
- any collective agreement or contractual policy applying to the employee.

The Burgundy Book and Green Book do not replace this procedure. Where a contractual term gives an employee a more favourable entitlement, that contractual term will apply.

From 1 January 2027, the qualifying period for ordinary unfair-dismissal protection is six months. Managers must therefore seek HR advice early and apply a fair procedure consistently irrespective of service length.

4 Definitions

Capability means an employee's ability to perform the duties of their role to the standard reasonably required. A capability concern may arise from a lack of knowledge, skill, aptitude, competence or sustained ability, after relevant expectations and support have been made clear.

Conduct concerns arise where the employee can meet the standard but appears unwilling to do so, deliberately refuses a reasonable instruction, acts negligently or breaches a rule. Conduct will normally be addressed under the Disciplinary Procedure.

Ill-health capability concerns arise where health or disability affects attendance or the ability to perform the role. These will normally be managed under the Managing Sickness Absence Policy, with occupational-health advice and consideration of reasonable adjustments.

Required standard means the standard reasonably arising from the employee's role, grade, job description, contractual duties, professional standards, relevant policies, training and reasonable management instructions.

Performance Improvement Plan (PIP) means a written plan setting out concerns, required standards, objectives, evidence, support, timescales and review arrangements.

5 Relationship with other procedures

Appraisal and routine management should identify and address emerging concerns early. Appraisal itself is not a substitute for capability, and capability must not be used merely because an appraisal objective has not been achieved.

Where the facts suggest that another procedure is more appropriate, the Trust may pause or end capability and use that procedure. The employee will be told the reason.

Procedures may run concurrently where this is fair and necessary. The Trust will avoid duplicate findings or sanctions for the same matter.

Safeguarding concerns, allegations against staff and low-level concerns must be handled under the Child Protection and Safeguarding Policy before or alongside any employment process, as appropriate.

6 Roles and delegated authority

6.1 Trust Board of Directors

The Board has overall responsibility for ensuring that appropriate employment procedures are in place and for approving this Trust-wide procedure. It retains or delegates appointment and dismissal powers through the current Scheme of Delegation.

6.2 CEO

The CEO is responsible for Trust-wide implementation, appropriate HR oversight and cases concerning Headteachers or central Trust staff where delegated. The CEO must act within the Scheme of Delegation.

6.3 Headteacher

The Headteacher is responsible for fair and consistent implementation in the school. The Headteacher may manage, commission or delegate stages to a suitably senior manager, but remains responsible for ensuring that the process is properly resourced and that HR advice is obtained.

6.4 Line manager / case manager

The case manager will identify concerns, gather evidence, hold meetings, provide support, keep records, review progress and make recommendations or decisions within their authority.

6.5 HR adviser

The Trust has a Service Level Agreement with Grow Education Partners for HR advice. The HR adviser supports procedural fairness and employment-law compliance. The adviser may attend meetings but does not replace the decision-maker.

6.6 Employee

The employee is expected to engage with support, attend meetings, work towards required standards, provide relevant information promptly and raise any need for support or adjustment.

6.7 Decision-makers and panels

The Stage 3 decision-maker and any appeal panel must have authority under the Scheme of Delegation. An appeal must be heard by a person or panel with no prior material involvement and, where practicable, greater authority than the original decision-maker.

The current Scheme of Delegation prevails over Annex IV. HR advice must be obtained if authority is unclear.

7 Equality, health and reasonable adjustments

Before and throughout the procedure, the manager will consider whether performance may be affected by disability, physical or mental health, neurodiversity, pregnancy or maternity, menopause-related symptoms, caring responsibilities, language or communication needs, workload, workplace systems, training, resources, management instruction, interpersonal conflict or another relevant factor.

The Trust will consider reasonable adjustments to the role, working arrangements, equipment, support, communication, meeting arrangements, objectives or timescales. Adjustments may change how or when the employee is expected to meet the standard, but do not normally require the Trust to remove an essential requirement of the role permanently.

An occupational-health referral may be made where medical advice would assist. The employee's informed consent will be sought where required. The Trust need not delay indefinitely where an employee does not consent, but will decide fairly on the information reasonably available.

No employee will be placed at a disadvantage because of authorised family leave, trade union activity, whistleblowing, a protected act, or another protected or legally recognised absence.

8 General procedural safeguards

At every formal stage the employee will receive in writing:

- the purpose, date, time and place of the meeting;
- the concerns and required standards;
- the evidence and documents to be considered;
- the possible outcomes and consequences;
- the right to be accompanied; and
- reasonable time to prepare.

Formal meetings will normally be notified at least five working days in advance. A shorter period may be agreed. A Stage 3 capability decision hearing will normally have at least ten working days' notice.

The employee may be accompanied at a formal meeting by an accredited trade union representative or workplace colleague. As a Trust policy entitlement, the same accompaniment will normally be allowed at a scheduled informal support meeting when requested in advance.

Where the chosen companion cannot attend, the meeting will normally be rearranged once to a reasonable alternative date, usually within five working days of the original date.

The employee may provide written evidence, identify relevant witnesses and make representations. The chair may decline evidence that is irrelevant, duplicative or unreasonable, giving reasons.

Notes will be taken. They are not normally a verbatim transcript. The employee will receive a copy and may submit factual corrections or comments.

A meeting may proceed in the employee's absence where they have been given reasonable opportunity to attend and no adequate reason for further postponement exists. HR advice must be taken first, and written representations will be considered.

Timescales are indicative. They may be adjusted for fairness, complexity, school closure periods, availability of representation, disability or other material circumstances. Changes and reasons will be recorded.

9 Informal performance support

9.1 Identifying concerns

Concerns should be addressed promptly through normal management. The manager will identify the precise duty or standard not being met and gather proportionate, objective evidence. Evidence may include work records, audits, deadlines, quality or accuracy checks,

lesson or work observations, pupil outcomes used with appropriate context, complaints, professional feedback and relevant correspondence.

A single source or isolated incident will not normally establish sustained incapability unless the impact is exceptionally serious.

9.2 Initial fact-finding

The manager will discuss the concern with the employee and explore possible causes. Before setting objectives, the manager must consider whether expectations were clear, training and resources adequate, workload reasonable and systems effective.

9.3 Informal support meeting

Where concerns require structured support, the employee will be invited to an informal performance support meeting. The manager will:

- explain that the meeting is supportive and not formal capability;
- share the concerns and evidence;
- invite the employee's response and relevant mitigating information;
- confirm the required standard and how it will be assessed;
- agree or set a manageable number of SMART objectives;
- identify support, training, coaching, mentoring, supervision, resources or temporary adjustments;
- prepare an informal PIP using Annex I; and
- warn that insufficient improvement may lead to formal capability.

9.4 Informal support period

The period will be reasonable in the circumstances and will normally be between six and twelve working weeks. It may be shorter only where the seriousness of the concern and the time reasonably needed to demonstrate improvement justify this. It may be extended where there is clear progress, absence, delayed support, a reasonable adjustment or another fair reason.

Check-ins will normally take place every one to three weeks. Brief notes and updated evidence will be shared with the employee.

9.5 End-of-support review

At the end of the period, the manager will assess each objective as met, partly met or not met using the agreed evidence. Possible outcomes are:

- Sufficient and sustained improvement: the informal process ends and performance returns to normal management or appraisal.
- Some improvement: informal support is extended where further improvement is realistically achievable within a reasonable period.

- Insufficient improvement: the case progresses to a formal capability meeting following HR advice.
- Alternative route: the matter is handled under another policy or further information is obtained.

Progression will not be automatic because one objective is unmet. The manager will consider the importance and impact of the objective, overall progress, support provided, mitigating factors and whether further improvement is realistic.

9.6 Exceptionally serious cases

Formal capability may begin without an informal support period where performance concerns are exceptionally serious and delay would create a substantial risk to pupils, staff, public funds, statutory compliance or service delivery. This does not remove the employee's right to evidence, response, support, reasonable adjustments or a fair opportunity to improve. HR advice and written reasons are required.

10 Formal capability procedure

The formal procedure may start where informal support has not secured sufficient improvement, or under section 9.6.

The formal procedure normally has three stages. A case may move directly to Stage 2 only where the seriousness of proven performance concerns reasonably justifies a final warning and the employee has had a fair opportunity to respond. A case must not move directly to dismissal merely because the performance concern is serious.

Formal review periods will be long enough to allow the employee a genuine opportunity to demonstrate sustained improvement. The appropriate period depends on the role, concern, support and frequency with which performance can be assessed. Review periods will not be shortened simply to secure an early outcome.

11 Stage 1: formal capability meeting

The meeting will normally be chaired by the Headteacher or an appropriately authorised senior manager. For a Headteacher or central Trust employee, the chair will be appointed under the Scheme of Delegation.

The chair will:

- set out the concerns, required standards and evidence;
- review the informal support and its outcome, where applicable;
- allow the employee and companion to respond and present evidence;
- consider causes, health, disability, adjustments and mitigation;
- consider whether further information or occupational-health advice is needed;
- consider support and the length of any review period; and
- adjourn before deciding the outcome.

Possible outcomes are:

- no further action;
- return to or extension of informal support;
- a defined period of formal performance monitoring and support without a written warning, where proportionate;
- a first written capability warning;
- referral to another procedure; or
- adjournment for further information.

Where formal performance monitoring is imposed without a written warning, the written outcome will confirm the objectives, support, monitoring arrangements, review period and possible next steps. This outcome is not an active capability warning.

A first written capability warning will state:

- the findings and evidence;
- the required standards and SMART objectives;
- support and reasonable adjustments;
- how performance will be monitored;
- the review period and review dates;
- the duration of the warning;
- the consequences of insufficient improvement; and
- the right and deadline to appeal.

A first written capability warning will normally remain active for twelve months from the date of issue. It will then be disregarded for sanction purposes, but a factual employment record may be retained in accordance with the records-retention schedule.

12 Stage 2: formal capability review meeting

A Stage 2 meeting may be held where the Stage 1 review shows insufficient improvement, or further relevant concerns arise while a first warning is active.

The employee will receive the monitoring evidence, review records and any proposed findings in advance. The meeting will follow the safeguards in section 8.

The chair will consider whether the objectives were reasonable, support delivered, adjustments effective, the review period sufficient and the evidence demonstrates sustained improvement.

Possible outcomes are:

- the required standard has been achieved and formal monitoring ends;
- the Stage 1 review period is extended;
- a final written capability warning is issued;
- the matter is referred to another procedure; or
- the meeting is adjourned for further information.

A final written capability warning will include the information specified in section 11 for a first written capability warning and will make clear that insufficient and sustained improvement may lead to a Stage 3 hearing and dismissal with notice.

A final warning will normally remain active for twelve months. Where improvement is achieved, the employee will return to normal management with reasonable arrangements to consolidate performance.

13 Stage 3: capability decision hearing

A Stage 3 hearing may be convened where performance has not improved sufficiently during the final-warning review period or material performance concerns recur while a final warning is active.

The hearing will be conducted by the person or panel authorised under the current Scheme of Delegation. The case manager will normally present the management case. The employee will receive the full management report and supporting evidence at least ten working days before the hearing.

The employee may provide a written response and documents, normally at least five working days before the hearing. Late material may be accepted where fair.

The hearing will consider:

- whether the required standards were reasonable, clear and relevant to the role;
- whether the evidence reliably establishes the shortfall;
- whether the employee had adequate training, support, supervision and resources;
- whether reasonable adjustments and relevant health advice were considered;
- whether a genuine and reasonable opportunity to improve was provided;
- whether the employee's explanations and mitigation were fairly considered;
- whether sufficient and sustained improvement is likely within a further reasonable period;
- whether suitable alternative employment is available; and
- whether dismissal would be reasonable and proportionate.

Possible outcomes are:

- no further action or return to normal management;
- a defined further support or monitoring period;
- extension of the final warning where improvement is substantial and further improvement is realistically achievable;
- redeployment by agreement to suitable alternative employment;
- an alternative proportionate outcome within contractual and delegated authority; or
- dismissal with appropriate notice or payment in lieu where contractually permitted.

The employee will normally be informed of the decision as soon as reasonably practicable and will receive written reasons, the effective date of any decision and appeal arrangements within five working days.

14 Dismissal, notice and alternative employment

Dismissal for capability is a dismissal with notice. The employee will receive contractual or statutory notice, whichever is greater, unless payment in lieu is lawful and permitted by the contract.

Summary dismissal is not an outcome under this procedure. Alleged gross negligence or gross misconduct must be considered under the Disciplinary Procedure.

Before dismissal, the Trust will consider whether there is suitable alternative employment. The Trust is not required to create a role, displace another employee or appoint an employee who does not meet essential requirements. Any redeployment will normally be by agreement and may involve different terms and pay.

For teachers, the Trust will consider any statutory or contractual reporting, reference or professional-regulation obligations arising from the circumstances. No referral will be made merely because a capability procedure has occurred; the applicable legal threshold must be met.

15 Appeals

An employee may appeal a formal warning or dismissal. The appeal must be submitted in writing within ten working days of the written decision and should state the grounds and remedy sought.

Grounds may include:

- a material procedural error;
- a finding not reasonably supported by the evidence;
- new evidence that could not reasonably have been provided earlier;
- failure to consider a relevant adjustment or mitigating factor; or
- an outcome that was unreasonable or disproportionate.

An appeal is a review of the decision, not automatically a complete rehearing. The appeal chair may permit further evidence or witnesses where necessary for fairness.

The appeal will be heard by an authorised person or panel with no prior material involvement. The employee will normally receive at least ten working days' notice and may be accompanied.

The appeal may:

- confirm the decision;
- revoke the decision;
- substitute a lesser outcome;
- require a further review or rehearing; or
- make another decision within the appeal body's authority.

The appeal outcome is final under this procedure and will normally be confirmed in writing within five working days.

16 Sickness absence during the procedure

Sickness absence will be handled sensitively and will not automatically stop the process. The Trust will consider medical evidence, occupational-health advice, adjustments and whether the employee can participate in writing, remotely or with other support.

Where ill health appears to be the principal reason for the performance concern, the case will normally transfer to the Managing Sickness Absence Policy.

If the employee remains unable to attend after reasonable postponement and support, the Trust may proceed in their absence on the available evidence, following HR advice.

17 Grievances and other complaints during the procedure

A grievance or workplace complaint will not automatically suspend capability. The Trust will decide whether the matter should be considered concurrently, separately, within the capability process or at appeal.

A pause or independent management should be considered where the complaint alleges discrimination, retaliation, a material conflict of interest, procedural manipulation or serious misconduct by the case manager or decision-maker.

The employee will be told how the complaint will be handled and why. The objective is to avoid delay while ensuring the concern is genuinely and fairly addressed.

18 Confidentiality, records and data protection

Information will be shared only with those who need it for legitimate management, HR, payroll, legal, governance, safeguarding or regulatory purposes.

Personal data will be processed under the UK GDPR, Data Protection Act 2018, Data (Use and Access) Act 2025, the Trust's Data Protection Policy, workforce privacy notice and records-retention schedule.

Records will distinguish fact, allegation, evidence, professional advice, the employee's response, analysis and decisions. Records will be accurate, proportionate and stored securely on the employee's confidential personnel file or approved HR system.

Meetings must not normally be audio or video recorded without prior agreement. A request to record as a reasonable adjustment will be considered on its merits. An unauthorised recording may be addressed separately where appropriate, but does not by itself determine whether the recording may be considered in legal proceedings.

Warnings that have expired will not normally be relied upon as active sanctions, although relevant factual history may be considered where lawful and fair, particularly where there is a genuine pattern. HR advice must be taken.

19 Monitoring and review

The CEO or delegated senior leader will monitor implementation, equality impact, consistency, timescales, outcomes and lessons learned. Individual cases will not be reported more widely than necessary.

The Board will review this procedure annually or sooner where legislation, national terms, guidance, the Scheme of Delegation or organisational arrangements change.

The Trust will consult recognised trade unions on material changes.

20 Links with other policies

- Appraisal / Performance Management
- Probation
- Managing Sickness Absence
- Disciplinary
- Grievance / Workplace Resolution
- Equality
- Data Protection and workforce privacy notice
- Records Retention
- Whistleblowing
- Staff Professionalism and Code of Conduct
- Child Protection and Safeguarding
- Pay
- Flexible Working
- Scheme of Delegation

Annex I – Informal Performance Improvement Plan

This template is for the supportive informal stage. It is not a formal warning.

Employee	Role / grade	School / team
Line manager	Start date	End date
Date of initial meeting	Review dates	Companion, if any

A. Summary of concerns and evidence

Job description duty / standard	Objective evidence	Impact

B. Contributory factors and adjustments considered

Factor considered	Employee's view	Action / adjustment
Health or disability		
Training / knowledge		
Workload / priorities		
Systems / resources		
Other		

C. SMART objectives and support

No.	Objective and required standard	Evidence / success measure	Support and adjustment	Deadline / review
1				
2				
3				
4				

D. Review record

Date	Evidence and progress	Employee comments	Action / support change

E. End-of-support outcome

- ☐ Sufficient and sustained improvement: return to normal management / appraisal
- ☐ Some improvement: extend informal support
- ☐ Insufficient improvement: consider formal capability with HR advice
- ☐ Refer to another procedure / obtain further advice

Manager name / signature	Date	Employee name / signature*	Date

*Signature confirms receipt, not necessarily agreement. Refusal to sign does not invalidate the record.

Annex II – Formal Capability Improvement Plan

Employee		Role / grade		Stage	
Case manager		Warning date		Review end date	
Concern and required standard		Evidence relied upon		Employee response / mitigation	
No.	SMART objective	Success evidence	Support / adjustment	Monitoring method	Deadline
1					
2					
3					

Possible consequence if insufficient improvement is achieved: [insert wording appropriate to the stage].

Manager	Date	Employee / receipt	Date

Annex III – Meeting and decision checklist

- ☐ Correct procedure and delegated authority confirmed
- ☐ HR advice obtained
- ☐ Capability / conduct / ill-health distinction considered
- ☐ Job description, grade and applicable professional standards checked
- ☐ Evidence disclosed in advance
- ☐ Reasonable notice and accompaniment offered
- ☐ Equality, disability, health and reasonable adjustments considered
- ☐ Training, resources, workload, systems and management instruction considered
- ☐ Employee response and evidence considered
- ☐ Support delivered and recorded
- ☐ Review period sufficient and genuinely capable of demonstrating improvement
- ☐ Alternatives to dismissal considered
- ☐ Reasons and decision recorded
- ☐ Appeal rights confirmed

Annex IV – Indicative delegated arrangements

This Annex is a practical guide only. The current Scheme of Delegation and any Board resolution prevail. HR and governance advice must be obtained where authority is unclear.

Employee group	Usual case manager	Stage 3 decision	Appeal
School employee other than Headteacher	Headteacher or authorised senior manager	Headteacher or authorised panel / decision-maker under the Scheme of Delegation	Person or panel not previously involved and authorised under the Scheme of Delegation
Deputy / Assistant Headteacher or other senior school leader	Headteacher, with Trust consultation where required	Authorised decision-maker under the Scheme of Delegation	Authorised independent appeal body
Headteacher	CEO or person / panel appointed under the Scheme of Delegation	Trust Board or authorised committee / panel	Directors not previously involved or other authorised independent panel
Central Trust employee	Line manager / CEO as appropriate	CEO or Board / panel according to delegated authority	Authorised person or panel not previously involved
CEO / COO	Board-appointed case manager or panel	Trust Board or authorised committee	Independent group of Directors or other lawful arrangement

Before commencing a Stage 3 hearing, the governance professional must confirm and record the applicable delegated authority by reference to the current Scheme of Delegation and any relevant Board resolution. HR and governance advice must be obtained where responsibility is unclear.