

Scope: Staff/Users	Effective Date: 24/07/2023	Responsible: Trustees
Last updated by/date: Trustees/Sept 21	Next Review Date: 01/07/2025	Jackie Evans



**Capability Policy & Procedure**

**Policy Statement**

The Tang Hall Community Centre is committed to ensuring that staff are given the support necessary and guidance to encourage and enable them to perform to the best of their ability. Through the recruitment and onboarding process every effort is made to ensure that new staff have the appropriate skills and abilities or show a clear, demonstrated potential to achieve these. At the start of their employment staff should be clearly informed of their responsibilities and the standards of work performance required.

These expectations and behaviours should be reinforced through the induction, training and at regular feedback meetings where both positive and constructive feedback is given about work performance. The appraisal process provides a way for managers to discuss a staff member’s role and contribution and to set objectives. Managers are responsible for ensuring that performance issues are addressed promptly and fairly, and that staff receive appropriate training.

The Tang Hall Community Centre accepts that it has a responsibility to make clear to its staff what is required of them and to provide guidance and/or training. Equally a member of staff who feels uncertain at any stage about the standard of work or expected behaviours required has a responsibility to bring this uncertainty to the attention of their line manager. If appropriate informal advice and guidance should be given and sought to identify the nature of any problem and action taken to resolve the problem.

**Aim and Scope**

The Capability Procedure applies to all staff and should be applied in accordance with the Equality, Diversity and Inclusion Policy.

This procedure addresses the ability to carry out a job to the required standard (the can’t) as opposed to issues of wilful inadequacy or misconduct (I won’t), which are handled through the disciplinary procedure.

Managers should seek advice from the Chair of Trustees or their representative if a member of staff’s performance is causing concern, before they instigate stages of this procedure.

This procedure should only be used when the appraisal process and normal management monitoring are insufficient or inappropriate to deal with the level of concern about capability and informal guidance and encouragement has not improved performance. The procedure is intended to ensure that the Tang Hall Community Centre can act to uphold high standards of work and services.

The procedure is designed to assist and encourage all staff to achieve and maintain acceptable standards of job performance. The aim is to ensure consistent and fair treatment for all and to assist any staff member who is experiencing difficulties in achieving satisfactorily performance of their duties. It is designed to provide managers and staff with an opportunity to work effectively to improve their contribution to the Tang Hall Community Centre’s activities, to enjoy job satisfaction and to achieve their full potential.

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The following are examples of performance concerns which may be addressed via this procedure:

- lack of proficiency and poor overall organisation.
- inability to deal with changes in the nature of the work, or allocation.
- inability to deal with changes in technology.
- lack of aptitude, skill or experience.
- personal/family difficulties which are impacting on work performance.
- short-term health problems which are impacting on work performance.
- poor attendance at work, related to genuine ill health, disability or persistent and repetitive short-term absence.
- inability to work co-operatively with colleagues.
- inability to demonstrate behaviours expected by the Tang Hall Community Centre

Where performance has improved satisfactorily, the capability process will be concluded, and the staff member informed. If further concerns about performance arise within 12 months, the procedure can be re-opened at the same stage at which it was previously closed. If more than 12 months have passed, then the procedure must be started again, and any review of performance regarded as a new process.

Staff with disabilities are not exempt from this procedure, however, in line with the requirements of the Equality Act 2010, managers should ensure that every attempt has been made to make reasonable adjustments that will retain the staff member in their job or redeploy them to a suitable alternative post before the Capability Procedure is implemented. The Capability Procedure will only be triggered where, despite reasonable adjustments having been made/ considered, performance continues to be below the standard expected.

### General Principles

The procedure is based on the following principles:

- No formal action will be taken until reasonable support and guidance has been given and the informal procedure exhausted.
- At every stage in the procedure the staff member will be advised in writing of the performance/capability concerns and will be given the opportunity to respond before any decision is made.
- Allegations relating to poor performance will be supported by evidence.
- At all formal stages the member of staff will have the right to be accompanied by a work colleague or trade union representative.
- Except where the potential consequences of poor performance are, or could be serious, the procedure will be taken sequentially through the stages set out below. In circumstances where the actual or potential consequences of poor performance are, or could be, serious then the procedure may be implemented at any stage.
- The focus of the manager when using the procedure will be on securing improved and sustained satisfactory performance, thus allowing the formal monitoring process to be brought to an end at the earliest possible opportunity.
- In individual cases, by mutual consent (such consent shall not be unreasonably withheld) the parties to a capability matter may agree to vary the time limits referred to in this procedure.
- Realistic and measurable standards of performance will be identified.

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- Support mechanisms will be set up to ensure that staff members are helped and encouraged to perform satisfactorily.
- No staff member shall be dismissed without a prior warning and/or guidance and support being given.
- Staff will be dealt with fairly and with the minimum of delay so concerns regarding capability will be dealt with by the staff members line manager as soon as the concern is identified and at the lowest appropriate level in the procedure.
- Confidentiality will be observed throughout all stages of the procedure.

The procedure does not apply to and should be separated from:

a) Probationary staff members

This procedure does not apply to capability concerns when a staff member is in their probationary period. Reference should be made to the Probationary Procedures.

b) Cases of misconduct

These should be handled under the Disciplinary Procedure. Managers should liaise with a HR specialist for assistance as to whether a case is one of misconduct or incapability.

Disability or medical issues

If during the Capability Policy and Procedure, a staff member highlights that they have a medical issue or disability which may impact on their capability, or the manager is otherwise already aware of a relevant medical issue or disability, the procedure should be paused for consideration of the next steps, which may include a referral to an Occupational Health Practitioner.

Staff members with disabilities are not exempt from this procedure, however, in line with the requirements of the Equality Act 2010, managers should ensure that every attempt has been made to make reasonable adjustments that will retain the staff member in their job or redeploy them to a suitable alternative post before the Capability Procedure is implemented. The Capability Procedure will only be triggered where, despite reasonable adjustments having been made/ considered, capability continues to be below the standard expected.

Informal procedure

It is important to recognise that many issues of capability can be, and should be, resolved without recourse to the formal capability procedure.

As soon as a capability concern is identified, the issue should be discussed between the line manager and staff member. In these circumstances, both parties will have every opportunity to contribute to discussions and to make notes.

The staff member will be given an opportunity to express their opinion and for the line manager to determine whether there are any external factors which may be contributing to the poor performance.

Expected levels of performance and a monitoring period will be agreed.

It is anticipated that in most cases no further action, other than normal follow-up, will be necessary. At the end of the monitoring period a meeting will be held between the staff member and their line

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manager and if progress has been satisfactory the staff member will be informed, and the monitoring period will end.

A record of the discussion and actions fulfilled should be documented and kept by the line manager, but not be placed in the staff members' personal file.

Where insufficient progress or no improvement is apparent, then the line manager should refer the matter to the formal stages of this procedure.

First formal meeting

Where the agreed levels of improvement set out during the informal discussions are not met, then a formal meeting should take place to discuss performance. This meeting is the start of the formal procedure and should be carried out in a structured manner.

The member of staff will be provided with 5 working days' written notice of the meeting and be advised of their right to be accompanied by a trade union representative or workplace colleague. The notice will include details of why performance is unsatisfactory, and action taken to date.

If the chosen representative of the staff member is unavailable on the date of the meeting, the staff member may postpone it once by up to 10 working days to enable the chosen representative to attend.

The meeting will be led by the line manager, supported by an HR specialist if required, provided by THCC, to provide procedural advice.

At the first formal meeting, the staff member should be reminded of the previous informal discussions and advised of the shortfall in performance. The staff member should be given an opportunity to give their explanation before deciding what action should be taken. It is possible that circumstances outside the individual's control may have caused or contributed to a reduction in their performance over the period monitored. Should evidence arise at this stage that the staff member is disabled and that reasonable adjustments have not yet been considered then the capability procedure should be put on hold to allow for adjustments to be considered and implemented, as appropriate.

An action plan will be produced following the discussion at the meeting and should include:

- a) a summary of the improvements required.
- b) any targets.
- c) training, development and support offered to help improvement
- d) methods for monitoring standards of performance
- e) a timescale over which improvements are expected.

The plan will be agreed with the staff member. All targets should be SMART (i.e., Specific, Measurable, Achievable, Realistic and Timebound).

The timescale over which improvements are expected will depend on the performance concerns being addressed. In general, it should be no less than one month and no more than six months.

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The nature of the under-performance will determine the type and range of support to be provided but it could include:

- monitoring, review and variance of workload and responsibilities.
- monitoring standards of performance against agreed objectives and the requirements of the job.
- review of the availability of suitable resources or materials.
- the identification of a mentor.
- training or coaching specifically aimed at achieving an improvement in performance.

The staff member may be issued with a written warning that makes it clear that their job is at risk if improvement is not achieved. Monitoring and assessment needs to continue for a period of between one and six months, depending on the individual situation and in proportion to the level of seriousness of the performance difficulty.

The line manager should ensure that any staff who may be involved in monitoring performance or supporting the individual are appropriately briefed and that confidentiality is maintained.

It is hoped that in most cases improvement in the review period will be demonstrated satisfactorily and there will be no need to take further formal steps in the Capability Procedure. Where improvement has been demonstrated and performance is satisfactory, the staff member will be informed in writing and the monitoring period will end. Where improvement has occurred but is limited then the monitoring period may be extended by between one and three months.

Where insufficient progress or no improvement is apparent, then the line manager should refer the matter to the second stage of the formal procedure.

#### Second formal meeting

Failure to improve after the review period (as referred to above) should be followed by a second formal meeting. The procedure for such a meeting and follow up should be the same as with the first formal meeting.

The line manager and their line manager/trustee will be present at the meeting. This meeting will also be supported by HR specialist who will be in attendance to provide procedural advice.

At this meeting, the staff member should be reminded of the previous warning under stage 1 of the procedure and advised of the continuing shortfall in performance and outline the support already provided. The staff member should be given an opportunity to give their explanation before adjourning the meeting to decide what action should be taken.

A further action plan should be drawn up by the line manager to include:

- a) a summary of the improvements required.
- b) targets.
- c) training, development and support, specifically directed to facilitate improvement.
- d) methods of monitoring of standards of performance.

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e) a timescale over which improvements are expected.

After the meeting, the staff member may be issued with a final written warning. The caution should include formal notification that should performance standards not be improved; their job is at risk.

Monitoring and assessment needs to continue for a further period of between one and three months, depending on the individual situation and in proportion to the level of seriousness of the performance difficulty.

It is hoped that improvement in the review period will be demonstrated satisfactorily and there will be no need to take further formal steps in the Capability Procedure. Where improvement has been demonstrated and performance is satisfactory, the staff member will be informed in writing and the monitoring period will end. Where improvement has occurred but is limited then the monitoring period may be extended by between one and three months.

If improvement is insufficient either following or during the review period, the manager should consider whether redeployment with agreement could be considered to a suitable vacancy within the Organisation. The post does not have to be on the same grade. If it can be considered then an offer should be made in writing, explaining why it is being made. The staff member should be given time to consider the offer and be advised to discuss it with their representative or work colleague. If the staff member does not wish to accept the offer, then the capability process will continue.

#### Third formal/ dismissal meeting

Where insufficient improvement has been made and if no offer of voluntary redeployment has been made, or accepted, a final formal meeting should be arranged with the staff member and his/her representative or work colleague. The staff member will be given 5 working days' notice of the meeting in writing and the staff member advised of their right to be accompanied by a trade union representative or workplace colleague.

If the chosen representative of the staff member is unavailable on the date of the initial dismissal hearing, the staff member may delay the date of that hearing once by up to 10 working days to enable the chosen representative to attend.

The panel will be made up of two members, who have not previously been involved in the case. At least one of the panel will be a member of the Board of Trustees, and they will chair the meeting. An HR specialist will be present at the meeting to provide procedural advice. The Line Manager will also attend to provide evidence of the performance issues, and any support measures put in place.

After hearing the evidence and any explanations, the meeting will be adjourned, and a decision will be taken as to whether to dismiss. Consideration should be given to:

- a) the level of under-performance
- b) the consequences of the under-performance on the quality of service and effect on colleagues
- c) whether the capability procedure has been followed
- d) whether the support set out in the action plan has been provided in full

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The meeting should be reconvened, and the individual informed of the decision. This will be either:

a) to dismiss

b) to extend the monitoring period which should include a further action plan with specified outcomes and developmental support, as appropriate. This may also include re-visiting the possibility of re-deployment.

The decision should be confirmed in writing within 5 working days. The written confirmation will detail the cause of the concern, the reason for the decision and the date of the dismissal (where applicable). Where the staff member has been dismissed, the letter will include the notice period which may be paid in lieu. The staff member should also be informed of their right to appeal against the decision.

### Appeals

There is no right of appeal against the outcome of the informal stage of this procedure. A member of staff may appeal against outcomes of the formal stages on the grounds of:

- perceived unfairness of the outcome
- severity of the outcomes
- procedural irregularities

The staff member should put their appeal in writing detailing the reason for appeal, together with the relevant supporting papers. This should be submitted to the Trustee responsible for HR within 10 working days of the written confirmation of the outcome.

The Trustee responsible for the dismissal decision will be notified and asked to prepare a written response setting out the action that has been taken to date, enclosing all supporting documentation.

The papers should be passed promptly to the Appeal Manager, who will normally be the Chair of Trustees.

For appeals against dismissal, the Appeal Panel will consist of the Chair of Trustees, and a member of the Trustees. The members of the Appeal Panel should not have had any previous involvement in the case.

The meeting should be scheduled as soon as possible. The staff member shall be given 5 working days' notice of the meeting, along with any additional papers which will be presented. The staff member should be reminded of their right to be accompanied by a trade union or work colleague at the meeting.

The meeting will be supported by an HR Specialist who will be in attendance to provide procedural advice. The manager/trustee responsible for the decision will also be in attendance to provide evidence to the Appeal Manager/Panel.

The staff member should inform the Appeal Manager/Panel at least five working days before the hearing of any witnesses they want to call. The panel may also wish to call witnesses, for example, the staff member's line manager to clarify the areas of concern and actions taken to date.

At the meeting, the staff member will be invited to outline their reasons for appeal, and the Appeal Manager/Panel may ask questions of all parties.

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Having considered the information presented, the meeting will then be adjourned and the Appeal Manager/Panel will decide whether to:

- uphold the appeal and draw the capability procedure to a close
- uphold the appeal, in part and extend the review period
- dismiss the appeal

10.11 The meeting will be reconvened, and the individual will be informed of the decision. Where the dismissal has been overturned, the staff member will be re-instated with effect from the original dismissal date.

10.12 The outcome of the appeal meeting will be final and confirmed in writing within 5 working days.