

# Preparing a Capability case

## Key things to consider when preparing for a meeting / representing a member at a meeting

### 1. What does the member want to achieve?

- This is essential!

### 2. Break the case down into smaller parts.

- For example if a member is being subject to a capability case for 3 allegations deal with them in turn rather than collectively responding to the case against them.
- Likewise it may be possible to break the management case down further – why do management say that a particular allegation amounts to our member not being capable of doing their job – look at their reasons and try to respond to each of them.
- This can be very helpful when considering the next stages...

### 3. Make sure you have the key facts:

- Who?
- What?
- When?
- Where?

### 4. Evidence

- Get relevant policy and procedure for the process that will be followed – eg capability policy (if no capability policy, check which policy the case will be considered under, most likely the disciplinary policy).
- Read through evidence against member
- Identify key evidence for each aspect of the case
- Try to find evidence to refute management evidence
- Try to find evidence to support your case
- Possible ways of finding evidence –
  - i. The member themselves
  - ii. Data protection request and / or FOI
  - iii. Check relevant policies and procedures – eg health and safety
  - iv. Ask colleagues
  - v. Other performance metrics

vi. Check members work duties against job description

## **5. Preparing for the meeting / hearing**

- Agree with the member how much a role they want you to take – this can range from saying nothing to presenting whole case
- Make notes of what you want to say – try to base this on what you have identified as the key issues involved
- Make notes of key documents to refer to and have them to hand / know where they are in the bundle
- Prepare questions that you want to ask – what information are you hoping to get from those questions?
- Try to keep any questioning simple – remember you are not Perry Mason!
- Do not feel obliged to question witnesses or to question management on their case – sometimes this can be counter-productive and it can be better to simply put forward your case
- Find out who you are meeting / who is on the panel and what they are like – ask fellow UCU reps who have dealt with them on other cases

## **6. The meeting / hearing**

- You can object if new evidence is presented to you on the day – refer to relevant policies as these will usually state that evidence should be provided to you in advance of the meeting
- Ask for adjournments if necessary – need to discuss something with member or if situation is getting too stressful
- Try to agree a signal with the member for them to stop talking! – This can be helpful if they are presenting their own case or giving evidence and they are shooting themselves in the foot!
- Try to stay calm and professional throughout – important not to take on member's anger!