



Capability for Staff (Policy & Procedure)

BY LAW of

CHESTER STUDENTS' UNION

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POLICY

Statement

The Chief Executive is responsible for the management of the organisation and for ensuring that all staff achieve a satisfactory standard of work performance and attendance as laid down within Chester Students' Union's policies and procedures, and that members of staff are given assistance and encouragement to reach such standards and attend work regularly.

This policy and the associated procedures have been written in accordance with the ACAS Code of Practice and comply with the Human Rights Act and Equalities Legislation.

Aims

- The Capability procedure will apply where an employee's work performance or attendance warrant action of a formal nature on the grounds of incapability
- To provide managers with a facility to ensure that matters relating to incapability are dealt with fairly and consistently.
- To assist members of staff who are performing below the standard expected of them and seek supportive mechanisms to aid improvement in competence and allow them to improve their confidence/attendance.

Objectives

- To ensure fairness and order and to encourage any necessary improvement in an employees' performance, behaviour and attendance.
- The procedure will also apply where an employee's behaviour, attendance or conduct appear to warrant disciplinary action.

Application and Scope

All staff must be aware of and are required to comply with all relevant policy and associated procedures.

Staff with less than 6 months' service will be managed under Chester Students' Union's probationary procedure outlined in their contract of employment.

This policy satisfies the legitimacy of its aims; the justification and proportionality of the actions intended by it; and it defines the need to document the relevant decision making processes and outcomes of action.

Introduction

The Capability procedure will only apply where an employee's work performance or attendance warrants action of a formal nature on the grounds of incapability. Capability for unsatisfactory behaviour can be invoked in situations where an employee's work performance/attendance and / or behaviour fall significantly below an acceptable standard as laid down within Chester Students' Union's relevant policies and procedures.

The appropriate line manager shall ensure that all the relevant information is gathered including a proper investigation of any alleged incapability. Any investigation shall in the first instance seek to include an explanation from the employee.

Formal action will only be used where the inadequate performance or poor attendance is significant and after alternative methods including Performance and Development Review Process have previously been used without success.

CAPABILITY - Unsatisfactory Performance

Informal Action

It is essential that before considering any formal action under this policy and procedure, informal action consisting of advice, support and an action plan as appropriate from a line manager will normally be appropriate for a first or isolated incident of poor work performance and should be linked to the Performance & Development Review of the individual.

A meeting must be arranged with the individual to discuss the issues. Discussion at the meeting should include:

- Identification of the problem;
- The reason(s) for the problem;
- Potential solution(s);
- A Performance Improvement Plan (PIP) where appropriate. This must be formulated in conjunction with the employee and agreement shall be reached as far as is practically possible. The line manager must keep a note of the meeting and provide a copy of the plan to the employee.

Unless the instance of unsatisfactory performance by an employee has had very serious consequences or there is strong evidence that the under performance is incapable of correction, informal and supportive action will normally be appropriate in the first instance.

Only where all informal supportive actions have failed, will formal action under this procedure be appropriate.

Gathering facts and information

The line manager shall consider the evidence, which indicates that the employee is not achieving an acceptable standard of performance, for example:

- Complaints or criticisms of the employee's work or work related behaviour from colleagues, students, members of the public, etc.;
- Information attained during the Performance and Development Review process.
- Direct experience or observation by the line manager of the employee's performance at work;
- Factual evidence or examples of inadequate performance.

In addition, information should also be gathered in respect of:

- Any instance where the employee had drawn attention to difficulties experienced;
- Any request for assistance by the employee to overcome problems;
- Any assistance, guidance or training given;
- Anything which establishes what a satisfactory level of performance would be and the extent to which the employee is aware of this. This would include average performance levels.

The line manager must then conduct an Investigative Interview.

Formal Recorded Action

Where a line manager, as a result of the investigation, believes that consideration of formal action under this procedure is appropriate. The line manager after discussion with the CEO shall conduct a Hearing personally or arrange for another appropriate Manager to conduct the Hearing.

The employee shall be given written notice of the date, time and place of a Formal Hearing and who will conduct it. The notice must include a statement of the allegation(s) to be considered at the Hearing and the potential outcomes.

The employee will be provided with copies of any statements or other documents which the line manager intends to present at the Hearing in support of the management case regarding the allegation(s) relating to their capability. Such notice and documents will be provided to the employee at least three days before the Hearing.

Any requests for adjournment from the employee and/or their representative must be made immediately after receipt of such documentation and where possible in writing outlining the reasons for such a request. Where such requests are considered justified then alternative arrangements will be made.

Dismissal - Unsatisfactory Performance

Dismissal will not normally be appropriate for the first instance of incapability unless its extent or its impact on the organisation is very significant. Where dismissal is a potential outcome, Hearings will usually be chaired by the CEO. Whenever the CEO is considering a decision to dismiss an employee they must be satisfied that all reasonable options for improving performance have been exhausted, such as reasonable adjustments, alternative roles, training & development needs etc, and the question of whether continued employment in another role is appropriate should be considered.

Prior to reaching a decision the CEO will adjourn the hearing to consider all of the information provided by both parties and the options available to the CEO in accordance with the Staff Capability Procedure. When reconvening the hearing the CEO will communicate their decision and it will be confirmed in writing as soon as practicable.

The employee will normally be entitled to their contractual or statutory period of notice (whichever is the longer) or to pay in lieu of notice at the discretion of the CEO conducting the Hearing. The employee will be entitled to any accrued holiday pay. The letter of dismissal will detail the nature of the incapability together with the employee's right to appeal against the decision.

CAPABILITY - Ill Health / Medical Grounds

Capability on ill health/medical grounds can be invoked where an employee is found to be permanently unfit for any kind of work.

The CEO will chair the hearing. Flexibility may be required in these matters to take account of the individual circumstances of each case and will require sympathetic and sensitive handling including consideration if appropriate to redeployment on medical grounds.

Gathering Facts and Information

A significant difference from instances of misconduct or under performance will usually be that the impact on the Organisation arises primarily from a failure to attend regularly in order to fulfil the employee's obligations under their Contract of Employment.

In all cases of apparent incapability on medical grounds, Managers will have due regard for the provisions of Equalities Legislation and take advice from the University HR department.

There are two distinct circumstances where capability on ill health/medical grounds may have to be considered, these are:

- Persistent Short Term Sickness Absence where an underlying medical condition is identified
- Long Term Sickness Absence

Either set of circumstances must be managed in accordance with the Managing Attendance Policy. Proper management in accordance with that policy will normally ensure that all the necessary information including up to date medical advice is

available and that any appropriate informal action has been taken before formal action under this procedure is considered.

Informal Action

Line managers are responsible for the review of every individual's attendance in accordance with the Managing Attendance Policy.

Line management actions in respect of this will include:

- The maintenance and analysis of accurate records;
- The carrying out of return to work interviews, including keeping records of them;
- Where appropriate, making the employee aware of the services available in respect of Occupational Health and EAP.
- Where appropriate, the preparation and implementation of an Attendance Support Programme (ASP);
- Home visits during longer periods of absence;
- If consideration and, where practicable, implementation of the recommendation involves redeployment or a temporary variation in the Contract of Employment, the advice of the University HR Department via the CEO must be sought.

Where informal action has proved unsuccessful, the line manager will conduct an Investigative Interview prior to Formal Action.

Formal Action

In respect of long term sickness absence or persistent absence as a result of an underlying medical condition, formal action beyond the normal provisions of the Managing Attendance Policy shall be considered in any of the following circumstances:

- At any stage when the absence can be shown to be having an unacceptable impact on the service;
- At any stage when an Occupational Health Physician advises that the employee is permanently unfit for the duties of their post or for any kind of work;

In each case the advice of the CEO must be sought. Where a return to the full duties of their substantive post, within a reasonable period is unlikely and an agreed transfer to suitable alternative work cannot be achieved for any reason, any action taken under this procedure will be formal and include consideration of dismissal. In these circumstances it would clearly be inappropriate to issue the formal cautions suggested in respect of unsatisfactory performance.

Dismissal - Ill health / medical grounds

Dismissal due to incapability on medical grounds will normally be appropriate where either:

- An Occupational Health Physician or another medical practitioner appointed by Chester Students' Union has certified the employee as permanently unfit for any kind of work; or
- An Occupational Health Physician or another medical practitioner appointed by Chester Students' Union has advised that the employee is unfit for the duties of their post and is unlikely to be able to resume the full duties of the post in a reasonable period.

In the latter case, dismissal will normally be appropriate only after the following alternatives have been considered and rejected for good reason:

- Allowing the employee further time to make an anticipated recovery;
- Allowing the employee to return to work on reduced hours or light duties as a short- term temporary measure prior to a return to full duties;
- Making reasonable adjustments in accordance with the provisions of the relevant Equalities Legislation, in order that the postholder may carry out the duties of the post.
- Employment in an alternative post.

Where continued employment in an alternative post is an option to be considered, it may be necessary to defer confirmation of the decision until that role has been identified. This course of action will only be adopted where dismissal from the current post is justified and a suitable alternative post is available.

Prior to reaching a decision the CEO will adjourn the hearing to consider all of the information provided by both parties and the options available to the CEO in accordance with the Capability Procedure. When reconvening the hearing the CEO will communicate their decision and it will be confirmed in writing as soon as practicable.

The employee in these circumstances will normally be entitled to their contractual or statutory period of notice (whichever is the longer) or to pay in lieu of notice at the discretion of the CEO. The employee will be entitled to any accrued holiday pay. The letter of dismissal will detail the nature of the incapability together with the employee's right to appeal against the decision.

Process

Conduct of Hearings

The Manager (or Chairperson) conducting the Capability Hearing may be accompanied by a member of the University HR Department.

At the Hearing the allegation(s) relating to the employee's capability and supporting evidence shall be presented to the Manager conducting the Hearing in the presence of the employee. The employee or their representative shall have an opportunity to question the person presenting the management case and any witnesses. The employee shall have an opportunity to present their response and to call witnesses. The Manager presenting the case shall have an opportunity to question the employee and any witnesses.

The Manager conducting the Hearing may ask questions of the employee, the Manager and/or Supervisor presenting the case and any witnesses. Each participant may ask further questions of any witnesses by way of re-examination to clarify any matter.

The Hearing will be conducted with such formality as is necessary to ensure fairness.

The Manager conducting the Hearing may permit additions to this procedure, to assist in ensuring that reasonable steps are taken to consider all the relevant information. The Manager conducting the Hearing may adjourn for a reasonable period of time to clarify any issue.

The Manager presenting the case followed by the employee or their representative shall have an opportunity to sum up.

The Manager conducting the Hearing shall ask those present with the exception of the member of the University HR department to withdraw while they consider their decision.

Should it be necessary to ask any person to return to clarify a point, both parties will be invited to return. In reaching the decision, the Manager conducting the Hearing shall consider all the information available taking account of any conflicting evidence.

The decision at the Hearing will normally be given orally at the end of the period of deliberation. If this is not possible, the decision will be communicated in writing as soon as practicable. In all cases the outcome will be confirmed in writing.

Representation

At all stages of this procedure the employee shall be entitled to be represented and/or accompanied by a representative of a Trade Union, or a fellow employee of Chester Students' Union. The attention of the employee shall be drawn to this facility in a written notice. The Trade Union Representative or colleague shall be given the opportunity to consult with the employee in private, prior to, or at any stage during the interview.

Types of Action on Grounds of Capability

The Manager conducting the Hearing may take one of the following actions:

- Written Caution;
- Final Written Caution;
- Dismissal from present post with offer of continued employment in a different post;
- Dismissal from Employment with Chester Students' Union.

Definition of Cautions Issued

A caution issued at the conclusion of a formal hearing conducted under this procedure is not a disciplinary warning but a clear statement to the employee that without a sustained improvement in performance and/or attendance it may become impossible to continue with their employment.

Written Caution - The terms of a Written Caution will normally be delivered orally to an employee at the conclusion of the Hearing and will be confirmed in writing as soon as practicable. The Line Manager will pass a copy of the documentation to the HR & Admin Coordinator be placed on the employee's personal file. The caution will include the nature of the incapability, the consequences of any failure to improve and, where appropriate, the standards to be achieved, together with the employee's right to appeal against the decision.

Final Written Caution - The terms of a final written caution will normally be delivered orally to an employee at the conclusion of the Hearing and will be confirmed in writing as soon as practicable. The Line Manager will pass a copy of the documentation to the HR & Admin Coordinator be placed on the employee's personal file. The caution will include the nature of the incapability, the consequences of any failure to improve and, where appropriate, the standards to be achieved, together with the employee's right to appeal against the decision.

Review of Action - All cautions will be subject to review after a period from their date of issue. Where the relevant period set out below has passed since the issue of a caution it will not be considered in any further Capability Hearing unless it relates to events during the currency of the caution:

- Written Caution - six months
- Final Written Caution – twelve months

Where the relevant period has passed, the caution must be expunged from the employee's personal file. The employee will be advised accordingly in order to comply with the provisions of the General Data Protection Regulation (GDPR) by the HR & Admin Coordinator.

Where an employee shows significant improvement in their attendance for the period of a caution but then attendance shows deterioration, consideration shall be given to the use of the disciplinary procedure for misconduct.

Recording of Decisions

When confirming the outcome of a Hearing the formal record will include the following:

- A record of the parties present identifying the person conducting the hearing.
- A brief record of the management case.
- A brief record of the employee's response and any mitigation put forward.
- The decision imposed and details of any conditions attached.
- Any period of time for improvement and the improvement expected.
- The likely consequences of failure to improve and reach the standards required.
- The timescale for lodging an appeal and how it should be made.

A diary entry for expunging the caution is required to comply with the GDPR.

Copies of the formal record shall be kept on the employee's personal file. Where the relevant period has passed then the warning will be expunged from the employee's personal file by the HR & Admin Coordinator and the employee will be advised accordingly in order to comply with the provisions of the GDPR.

Suspension from Duty

Suspension on the grounds of capability will only occur in exceptional circumstances relating to performance and is considered a neutral act, which does not imply that any sanction relating to capability has been or will be taken. It is not open to appeal. However, consideration will be given to requiring the employee to work in an alternative suitable role or location whilst an investigation is carried out into capability issues.

The CEO may suspend an employee. The suspension will normally be oral in the first instance and confirmed in writing as soon as practicable. Suspension may proceed without the presence of a Trade Union representative or colleague. During suspension or if temporarily transferred to another role or location an employee will receive their normal contractual pay and must remain available for interview or to return to work unless given written permission to do otherwise. (At any such interview the employee may be accompanied or represented as set out elsewhere in this procedure.) An employee may be suspended from duty where it is inappropriate for them to remain in the workplace whilst investigations are carried out into capability issues.

Appeals

An employee may appeal against any decision to take formal action under this procedure. Any appeal must be addressed in writing, stating clearly the grounds of appeal, to the Chief Executive and be received within seven days of the issue of a caution.

Appeals against Capability decisions

Meeting of Appeals

The Chief Executive will provide arrangements for meeting Appeals against Capability action for staff of Chester Students' Union.

The Appeal Hearing is to review the reasons for the appeal and the chairperson will determine any procedural matter that may arise during the course of the Hearing.

Prior to the Appeal Hearing

The employee shall give written notice of appeal in accordance with the arrangements set out in Capability Procedures and shall set out the grounds for Appeal.

The employee will provide their Statement of Case and supporting documentation to the Chief Executive. The employee's grounds of Appeal should reflect the reasons as detailed in the letter exercising their Right of Appeal. The Chief Executive will arrange a date for a Capability Appeal Hearing, within a reasonable timeframe.

The CEO will make the necessary arrangements for the Appeal Hearing to take place and shall give the employee three days notice in writing of the time and place of the Hearing.

The CEO shall provide copies of all documentation to all parties at least three working days in advance of the Capability Appeal Hearing.

Employees have at all stages of the Appeals Procedures a right to be accompanied or represented by either a Trade Union representative or a colleague who is an employee of Chester Students' Union.

Appeal Hearing

At the commencement of the Appeal Hearing the Chairperson will establish all persons who are present, ensure that they understand the purpose of the Appeal Hearing and the procedure to be followed and that they are in receipt of the relevant documents.

The purpose of the Appeal Hearing is to establish:

- a) Whether the individual was given a reasonable opportunity to put their point of view at the Capability Hearing and to be represented if they so wished.
- b) Whether the Capability Hearing was procedurally correct and the decision was properly confirmed.
- c) Whether the decision was a reasonable one in the light of all the information available to the Chairperson at the Capability Hearing.

- d) In exceptional circumstances, to consider new, relevant information that was not available at the Capability Hearing (and could not reasonably have been put forward by the employee at the time).

The Stages of the Capability Appeal Hearing are:

- a) The Employee or their Representative will state the grounds of Appeal based on a written Statement of Case previously circulated and introduce witnesses (if required).
- b) The Manager presenting the Management Case should be given an opportunity to put the case for Capability action, including rebuttal of any new information presented by the Employee.
- c) The Chairperson may ask questions at any time and must ensure that all issues are explored to their satisfaction.
- d) Once the Chairperson is satisfied that all of the issues have been explored they will provide an opportunity for the summing up phase for the Manager followed by the Employee or their representative.
- e) The Chairperson will withdraw with a member of the University HR department to reach a conclusion.

The decision will normally be given orally to both parties at the conclusion of the deliberation but will in any case be confirmed in writing by the Chairperson.