

Capability Procedure

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| Date of issue: | November 2019 |
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This procedure does not form part of the employee's contract of employment.

1. Purpose and Scope

This procedure is designed to encourage improvement in job performance or attendance caused by sickness, employees' lack of knowledge, skill or aptitude which results in performance which does not meet the standard required by Maestros. Examples of where it may be invoked could be where:

- you try hard but do not have the ability to undertake the required duties; or
- you fail to adapt to new technology in the workplace following training and counselling.
etc

Maestros accept that where an employee is incapable of performing the duties required under the contract of employment, the application of the disciplinary procedure is inappropriate. This capability procedure will be used in all such cases to ensure fairness and consistency in dealing with employees in this position.

2. Employees covered by this Procedure

This procedure is applicable to all employees of Maestros. Maestros will not usually apply all stages of this procedure to employees with less than two years' service. The Procedures also apply to the Chief Executive Officer (CEO) except any procedure on this policy will be conducted by the Chair of Trustees.

3. Principles

The employee will have the right to be accompanied by a trade union representative or work colleague at any formal meeting to discuss the employee's capability. This is set out in further detail below.

Where an employee is required to attend a meeting under this procedure there will be advance notice to the employee of the grounds for that hearing.

A formal request by the employee or representative for a deferment where further time is required to prepare for stage under the procedure will not be unreasonably refused, but such deferment will not normally exceed five working days.

Employees will be supported at all stages of this procedure to assist them in meeting the required standards of performance. Management will explore options for supporting the employee and will consider informal and formal approaches including training.

4. Minor issues

Your standard of performance will be monitored and reviewed on an informal basis by your line manager. You may be asked to meet with your line manager and/or members of the management team to discuss any issues relating to your capability and performance.

Any discussions regarding your performance or capability will be discussed with you and without undue delay whenever there is cause for concern. Management will consider all relevant facts and consider matters fairly. Where appropriate, a note of any informal discussions will be placed on your personnel file. In some cases an informal verbal warning may be given.

Management will take formal steps under this procedure if the performance concerns are not resolved, or if informal discussion is not appropriate.

You must co-operate fully and promptly with any request to deal with the matters of the management concern(s). This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending meetings as required. Any employee's failure to cooperate in a capability investigation, without good reason, may be treated as an act of misconduct in itself.

5. Formal process

Following any informal discussions, if we consider there are grounds for formal action, you will be required to attend a capability hearing. Prior to any formal hearings you will be advised in writing of the unsatisfactory nature of your performance.

In the majority of cases, Maestros will provide you with copies of the evidence and any relevant witness statements which has been obtained as part of any fact finding prior to the capability hearing. Maestros reserves the right to anonymise statements or, if necessary, to provide a summary of the evidence obtained where it considers such action is necessary to protect the witnesses or where it has only been possible to obtain evidence on a confidential basis.

The formal sanctions available to Maestros in respect of poor performance are set out in this procedure. In addition Maestros may, in any event, advise you of the likely consequences if we decide after the hearing that your performance or capability does not meet the required standards.

If Maestros intends to call any witnesses at the hearing, it will inform you in advance. Equally, if you wish to call any witnesses at the hearing, you should inform the manager conducting the capability hearing in advance as to the identity of your proposed witnesses and the relevance of their evidence, so that it can be considered if their attendance will be appropriate. You must ensure that any allowed witnesses are available to attend the hearing or Maestros is given sufficient advance notice to arrange their attendance.

You will usually be given at least three working days' notice of the time, date and location of the hearing.

You will have a right to have a companion with you at a capability hearing. The right to be accompanied is limited to work colleagues and trade union representatives. Maestros is not obliged to allow you to be accompanied by any other person. If you wish to exercise your right to be accompanied you should tell Maestros in good time before the meeting who you have chosen as a companion and their status.

6. Capability hearing

You must take all reasonable steps to attend a hearing to which you have been invited under this procedure. If you fail to attend for a legitimate reason, the hearing will be postponed once. If you fail to attend without reasonable explanation, or you do not attend a rearranged hearing, Maestros may, if appropriate, proceed with the hearing and issue you with a warning or notice of dismissal in your absence. Maestros may also treat any failure to attend without good reason as misconduct under its Disciplinary Procedure.

The hearing will be chaired by your line manager or a middle / senior leader. Additional members of staff may be present to provide HR support and/or to take a note of the proceedings. The person who has conducted the review of your performance may attend to present their findings at the formal sanctions.

Maestros will arrange for notes of each capability hearing to be taken. You will usually be given a copy of Maestros notes of the hearing. You and your companion are entitled to take your own notes.

At the capability hearing your performance levels will be discussed and you will be advised of the impact that your level of performance is having on Maestros business. You will be given the opportunity to state your case, ask questions, present evidence and, where appropriate, call witnesses or submit witness statements. Management will consider the matters fairly and provide you with further opportunities for improvement with timescales should this be deemed appropriate prior to imposing any sanctions under this procedure.

Under no circumstances must an investigation or Capability hearing be recorded by the investigated employee.

7. Formal sanctions

The usual sanctions relating to poor performance are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar poor performance will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

Stage 1 - First written warning. It will usually be appropriate for poor performance where there are no other active written warnings on your personnel file.

Stage 2 - Final written warning. It will usually be appropriate for:

- poor performance where there is already an active written warning on your record; or
- poor performance that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

Stage 3: Dismissal

Dismissal will only be appropriate for poor performance during your probationary period or further poor performance where there is an active final warning on your record.

Managers who have been involved in taking action under stage 1 will not be able to impose further sanctions under this procedure.

Consideration for alternative employment

If there has not been a satisfactory improvement at the end of the specified period (or before this time where it becomes obvious that the employee is incapable of carrying out the required duties) consideration will, in consultation with the employee, be given to the possibility of suitable alternative employment, having regard to the skills and attributes of the individual and the vacancies available within Maestros. The ability to offer alternative employment however, is likely to be very limited. Other alternatives could include loss of seniority, reduction in pay or loss of future pay increment.

8. Duration of warnings

A first written warning will usually remain active for 6 months.

A final written warning will usually remain active for 12 months. In exceptional cases, a final written warning may state that it will remain active indefinitely.

If, during the relevant period, there has been no cause for further action under this procedure, the warning will normally expire. However, if a pattern of poor performance emerges while there is an active written warning, it may be appropriate to extend the period for which the current warning remains active and/or restart the Capability Procedure at the next stage. Your performance may also be reviewed at the end of a warning's active period and if it has not improved sufficiently we may decide to extend the active period.

After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of any future performance proceedings.

9. Appeals

The employee may register an appeal with the CEO or Human Resources Representative within seven calendar days of the notification of the decision. The appeal must be in writing and set out the grounds for appeal. The CEO or authorised Deputy who has not previously been involved in the case, will be appointed to hear the appeal.

Any person who has been involved in the original dismissal decision shall not be permitted to hear the appeal and shall only take part in appeal proceedings as a respondent to the appeal or as a witness.

10. Chief Executive Officer

Any process under this policy pertaining to the CEO, will be managed by the Board of Trustees.