

# New Somerset Council

## Capability

Somerset Council is committed to ensuring that all employees have the appropriate skills, knowledge, competencies and aptitude to undertake their role effectively. The council seeks to support and encourage all employees to achieve and maintain high standards of job performance. However, there may be occasions when an employee is having difficulty fulfilling the requirements of their post. Managers are expected to discuss with employees when they have not met the required standards, setting targets for improvement.

This policy applies to all employees other than the following exempt groups:

- Employees who are in their probationary period
- Employees who are bound by Teachers Terms and Conditions for whom a separate procedure applies based on national guidelines (schools are encouraged to adopt this policy for support staff)

Section 98(3) of the Employment Rights Act defines capability as the assessment of an employee 'by reference to skills, aptitude, physical or mental health, other qualities or characteristics as required by the post'. The term 'capability' as used within this procedure is based on this definition.

This policy aims to ensure that capability issues will be managed in a fair and consistent way. The Council will ensure that all appropriate support is offered to the employee to enable them to improve their performance.

If there is mutual agreement that the employee is unsuited to their current post, the manager may seek opportunities to retain the services of the employee, with appropriate support, in a capacity more suited to their abilities.

If an employee develops a disability during their employment which has an impact on their performance, managers should consider reasonable adjustments or redeployment opportunities. Refer to the Employment of People with a Disability Policy ([add link](#)).

It is important to clarify what is causing the employee's inability to perform to the required standard. Poor work performance may be due to a range of factors such as a lack of skills and knowledge, a training or development need, inadequate supervision, changes to their role, their health, or changes in personal circumstances.

Alternatively, an employee may have the skills necessary to undertake the duties of the post but fails to apply them due to lack of effort or interest. If it is established

that there is a behavioural or conduct issue, this should be dealt with through the Disciplinary Procedure ([add link](#)).

This policy does not form part of the Somerset Council Terms and Conditions and may be subject to change.

## Process

### The Informal Process

This informal stage provides the opportunity for the line manager and employee to explore the specific aspects of their performance that are causing concern and to discuss how this affects the work of colleagues, the department, and the service provided to clients and members of the public. At this stage, the line manager provides support to assist the employee in meeting the desired targets.

Many capability concerns are dealt with at this informal stage with no need to begin a formal process. The opportunity to rectify any capability concerns at this stage should be exhausted before a formal process is considered. Refer to the Capability Guidance Document for further information including a template Performance Improvement Plan ([add link](#)).

In the most serious situations, the informal process may be bypassed, before doing so please liaise with [HR Advisory](#) for guidance.

### The Formal Process

Before a formal hearing is arranged the manager should seek advice from the [HR Advisory Team](#) to review the informal action taken to date.

A nominated Officer, usually the line manager who has been managing the employee's performance is required to gather all the documentary evidence of the unsatisfactory performance to present at the hearing. The evidence may include:

- A short report on the informal action taken and any advice received
- Performance Improvement Plan
- Notes from supervision/one to one meetings
- Examples of the employee's work – letters, reports etc
- Letters of complaint

### The Formal Hearing

Where a decision to progress to the formal procedure is made, the employee must be invited in writing, with a minimum of 5 working days' notice of the date of the hearing, providing details of the unsatisfactory performance, a copy of this procedure, the supporting documentary evidence as above, whether any witnesses will be present to give evidence, and notification of the right to representation.

The hearing should be chaired by a **manager with the appropriate authority** as set out below. The manager should be accompanied by an Officer from the **HR Advisory Service**.

During a hearing, adjournments may be called at any time by either party.

The employee has the right to be accompanied. This may be by a trade union representative or a Somerset Council work colleague of the employee's choice. The representative will be allowed to address the hearing to:

- Put forward the employee's case and ask questions on behalf of the employee
- Sum up the employee's case
- Respond on the employee's behalf to any view expressed at the hearing

The representative has no right to answer questions on the employee's behalf, to address the hearing if the employee does not wish it, or to prevent the employee from explaining their case.

If an employee (and/or their representative) cannot attend a meeting, they must inform the Council in advance. If there is a justifiable reason for a hearing to be re-arranged, this will normally take place within 5 working days of the original date. If an employee fails to attend a hearing without good cause, then a decision may be taken in their absence.

### Formal Warnings

Depending on the level and impact of the employee's unsatisfactory performance, the manager chairing the hearing may decide to award any level of warning from a first written warning to dismissal. Any warning will include an improvement note setting out:

- The performance problem
- The improvement required
- The support the employer will provide to assist the employee
- An appropriate timescale for achieving the improvement
- The review date
- The right to appeal

The continuance of an employee's underperformance will result in the cumulative application of this procedure. If an employee's unsatisfactory performance – or its continuance – is sufficiently serious it may be justifiable to omit a stage of the warnings or reduce the timeframe of the improvement periods.

The employee will be required to acknowledge receipt of the warning letter and improvement note confirming that its implications are understood. Warnings will be placed on the employee's file for the duration of the time limit of the warning after

which they will be disregarded. If it is evident that the employee has made little or no improvement before the agreed review date the review date may be brought forward, and a further hearing arranged.

### Stage 1 - Written Warning

If the issue is a more serious one, or if there is a continuance of underperformance, a formal disciplinary warning letter will be given to the employee following the formal disciplinary hearing. This will provide details of the complaint, the improvement required and the timescale, as well as the period for which the warning will remain valid. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the employee's right to appeal. A copy of this written warning will be placed in the employee's file and kept by the line manager. The warning will normally be spent after a minimum of six months and a maximum of twelve months.

**Recommended management level: Team Manager/Service Manager**

### Stage 2 - Final Written Warning

If there is still a failure to improve, and performance is still unsatisfactory, or the case is sufficiently serious, a final disciplinary warning letter will be given to the employee following a formal disciplinary hearing. This will provide details of the complaint, and the period for which the warning will remain valid. It will warn that dismissal will result if there is no satisfactory improvement. The employee must be advised of their right to appeal. A copy of the final written warning will be placed in the employee's file and kept by the line manager. The warning will normally be spent after a minimum of twelve months and a maximum of eighteen months. In exceptional cases the period may be longer.

**Recommended management level: Service Manager/ Strategic Manager**

### Stage 3 - Dismissal

When dismissal is a possible outcome, the **Director of HR and Organisational Development** must be informed before the formal disciplinary hearing.

If, at a further formal hearing, performance is still unsatisfactory and the employee continues to fail to reach the prescribed standards, dismissal with notice or payment in lieu of notice, will normally result. The employee will be provided with written reasons for dismissal, the date of termination and the right of appeal, including details of to whom any appeal should be made and the timeframe for submission.

**Recommended Management Level: Strategic Manager/ Senior Leadership Team Manager/ Director**

Appeals

Employees must be informed that they have the right to appeal against any formal disciplinary penalty imposed by informing the appropriate level of management in writing within 10 working days. For further information please consult the Appeals Policy ([add link](#)).

Version	1
Date	
Relevant Legislation	Employment Rights Act 1996

Process Map

