



# **BSF Disciplinary Policy**

## **(Incorporating the ACAS Code of Practice)**

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## **1. Introduction**

This policy and procedure is designed to help employees and managers deal with disciplinary situations at work that occur through misconduct. Performance issues will be dealt with through the separate Capability Procedure. Both procedures follow the ACAS Code of Practice.

The British Softball Federation] recommends that wherever possible, minor discipline issues should be resolved informally. Managers should have a quiet word about the improvement in conduct or performance that is required. In some cases, additional training, coaching and advice may be what is needed.

There will be situations where matters are more serious or where an informal approach has been taken and not achieved the required results. In these cases, if informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, then Managers will should consider taking formal action.

If the incident is considered to be of a criminal nature, then it should be referred to the appropriate police force. If the incident occurs outside of the jurisdiction of the UK and it is not dealt with under the jurisdiction of the relevant country, then it is to be dealt with under this procedure.

## **2. Purpose and Scope**

The purpose of this procedure is to ensure consistent and fair treatment of disciplinary situations and to help encourage employees to achieve and maintain appropriate standards of conduct.

Fairness and transparency are ensured by using the rules and procedures that are set down within this policy. Managers and employees should ensure their understanding of the rules and procedures.

This policy applies to all permanent employees who have completed their probationary period. It does not confer contractual rights on individuals and will be reviewed in line with any legislative changes. The policy may be changed or amended at the British Softball Federation's discretion.

The British Softball Federation may at its discretion appoint external parties to conduct investigations and disciplinary/appeal hearings. This may be because of: conflicts of interest; availability of resources; complexity; or specialist knowledge of the issues The British Softball Federation's discretion is not limited by these examples.

## **3. Standards**

The British Softball Federation has clear standards of conduct, which are reflected in the British Softball Federation's Values. They are explained to employees when they join The British Softball Federation, are available on the HR System and are reinforced through regular updates. The rules cover such areas as:

- The requirement for being responsible and accountable for your conduct.
- Attendance and timekeeping.
- Behaviour towards customers and colleagues.
- Health and Safety regulations.
- The appropriate use of company facilities (vehicles, property, email and communication equipment).
- Claiming expenses.

- Personal appearance.

Employees are responsible for representing the British Softball Federation brand – this includes, for example, maintaining high standards of behaviour; excellent internal and external presentation of a company car and smart appropriate branded clothing is worn where applicable.

## **4. Principles**

The principles governing the policy and its application are:

- We will be consistent and fair, with all employees treated with respect and dignity.
- Individuals' rights and responsibilities are respected.
- We will be open and transparent.
- Minor instances of misconduct will initially be addressed by means of informal counselling, guidance and instruction. However, if problems continue or the British Softball Federation regards matters to be sufficiently serious, the disciplinary procedure shall apply.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when employees may be dismissed without any notice or payment in lieu of notice.

In order to ensure that matters are dealt with fairly the following shall apply:

- Both managers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Managers should carry out any necessary investigations, to establish the facts of the case.
- Managers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Managers should allow employees to be accompanied at any formal disciplinary meeting.
- Employees have the right to appeal against any formal action taken against them under this procedure.

It is recommended that for any serious disciplinary issues arise and/or disciplinary appeals, consideration should be given as to whether or not the investigation is conducted by an independent investigator, to prevent any potential conflict of interest.

All warning letters issued under this procedure will be approved by the HR Advisor to ensure consistency and to ensure that appropriate records are maintained.

## **5. Gross Misconduct**

The following are examples of gross misconduct which would normally result in dismissal without notice or payment in lieu of notice:

- Actual or attempted theft, fraud or dishonesty.
- Betting, Corrupt Conduct, Inside Information and Match Fixing.
- Falsification of records.
- Fighting, physical or sexual assault, violence, threatening behaviour or damage to people or property.
- Gross insubordination, including failure to comply with reasonable management requests/instructions.
- Repeated rudeness or rudeness that results in a complaint from a member, athlete, customers or suppliers.

- Consumption and/or possession of alcohol or non-prescribed drugs on site or incapacity for work due to alcohol or illegal drugs.
- Serious breaches of company values, trust and/or confidence.
- Refusing a reasonable, lawful and safe management instruction.
- Actions or omissions that bring the British Softball Federation's name into serious disrepute.
- Sleeping whilst at work.
- Wilful/deliberate damage or misuse of British Softball Federation property or the property of employees/members of the general public.
- Gross negligence or incompetence which causes or might cause unacceptable loss, damage or injury.
- Serious breaches of British Softball Federation rules relating to Health & Safety (and hygiene).
- Serious breaches of the British Softball Federation's Vehicle Handbook, Communications Policy or Mobile Phones and Driving Policy.
- Bullying or harassment on the grounds of sex, race, disability, age, sexual orientation, religion or belief or any other protected characteristic of another employee, agency or contract worker, customer, visitor or any other third party to whom the British Softball Federation has a duty to prevent such discrimination.
- Indecent, offensive or immoral behaviour.
- Disclosure of confidential information pertaining to the British Softball Federation.
- Telephone, computer and e-mail misuse, including personal usage, hacking and/or the access, downloading or transmission of any pornographic or discriminatory or otherwise offensive material.
- Violation of the rules outlined in the Code of Conduct.
- Encouraging or supporting a Paralympic athlete to intentionally mis-represent themselves to a classification panel.

The above list is **NOT** exhaustive but simply illustrates the type of transgression that will normally result in summary dismissal.

## 6. Informal Resolution

Where conduct and behaviour falls short of the standards expected by the British Softball Federation, Managers should conduct an interview with the employee, find out if there are any problems, reiterate the required standards/improvements with timescales (usually immediate and sustained) and provide any help and support that may be needed. This will take the form of informal counselling, guidance and instruction and is NOT part of the formal procedure.

Managers should take notes of any such discussions and these will be retained by the HR Advisor for 12 months.

In some cases, the problem may be more serious at the outset, or the counselling, guidance and instruction has not led to acceptable standards. If this is the case, the formal disciplinary procedure will apply. Likewise, in cases of serious or gross misconduct it is unlikely that the process will be preceded by informal action.

## **7. Disciplinary Practice**

### **7.1 Establishing the facts of each case**

It is important to carry out an investigation without unreasonable delay to establish the facts of the case. (There is no requirement to write to or give notice to attend an investigation). In some cases, the investigation will require holding a meeting (fact-finding) with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing. Different people **MUST** carry out the investigation and disciplinary hearing.

An investigation or investigatory meeting will not always result in a disciplinary hearing or disciplinary action being taken. It may be concluded following investigation that no further action is required.

There is no legal obligation for an employee to be accompanied at a formal investigatory meeting (unless for example the British Softball Federation is making an adjustment in respect of a disabled employee in order to comply with its obligations under the Equality Act 2010). However, Managers may allow an employee to bring a companion if it helps them to overcome any disability, or any difficulty in understanding English. It should not be a reason to delay an investigation.

Where the investigation reveals allegations of criminal conduct, the investigation will be handed over to the police and will stay until the conclusion of any such process. The British Softball Federation discipline case would only normally be restarted if the police declines to investigate the case.

### **7.2 Informing the employee of the problem**

If it is decided there is a disciplinary case to answer, the employee should be notified of this in writing. All the information about the alleged misconduct and its possible consequences should be provided to the employee, to allow them to answer the case at a meeting: this includes providing them with copies of any written evidence, such as witness statements. The employee must be informed of the possible outcomes of the meeting.

The employee must be given the details of the time and venue for the meeting and be advised of the right to be accompanied. The British Softball Federation will seek to ensure that the time, place and location of any disciplinary hearing are reasonable. The meeting will take place as soon as is reasonably practicable.

Where the employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the company will make a decision in the employee's absence on the basis of the evidence available. Refusal to attend a disciplinary meeting without good reason will be treated as a disciplinary offence of itself.

### **7.3 Hold a meeting to discuss the problem**

The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. (What is judged to be reasonable will depend on the complexity of the case but will not be less than 5 days). Where the employee and their companion have been invited to attend a disciplinary hearing or an appeal they must take all reasonable steps to attend and failure to do so may be misconduct itself.

At the meeting, the Manager will explain the role of all those attending and the allegation(s) against the employee, and then will go through the evidence that has been gathered.

The employee should be allowed to set out their case and answer any allegations that have been made. They should also be given a reasonable opportunity to:

- ask questions;
- present evidence;
- call relevant witnesses; and
- raise points about any information provided by witnesses.

Where the British Softball Federation or the employee intend to call relevant witnesses they should give advance notice that they intend to do this. Any written statements of case, witness statements or other documentary evidence should be exchanged at least 5 days in advance of the meeting.

The main points of the discussion will be summarised and the employee will be asked if they have anything further to say.

#### **7.4 Allow the employee to be accompanied**

Employees have the right to be accompanied by a work colleague, trade union representative or an official employed by a Trade Union where the disciplinary meeting could result in a disciplinary action, which includes a formal warning.

Employees must make a reasonable request to be accompanied, and what is reasonable will depend on the circumstances of each individual case. Employees may not request a companion whose presence would prejudice the hearing, or a companion from a remote geographical location if there was someone suitable either on site or close by.

If the chosen companion cannot attend the original date, an alternative date will be offered within the following five working days.

The companion may address the hearing to put and sum up the employee's case, respond on their behalf to any views expressed at the meeting and confer with them during the hearing. They do not have the right to answer questions on the employee's behalf, address the hearing if the employee does not want them to or prevent anyone, including the employee, from explaining their case.

The Manager conducting the disciplinary hearing (see below) will normally be accompanied by either another member of management or the HR Advisor.

#### **7.5 Decide on the appropriate action**

The meeting will ordinarily be adjourned before a decision is taken.

The British Softball Federation must decide whether or not disciplinary action (or any other action) is justified and proportionate, and inform the employee accordingly in writing.

Where misconduct is confirmed it is usual to give a **written warning** and a further act of misconduct within a given period would normally result in a **final written warning**.

However, if the misconduct is sufficiently serious, it may be appropriate to give a **final written warning or termination of employment with notice**. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

A first or final written warning should set out:

- the nature of the misconduct and the change in behaviour required (with timescale);
- how long the warning will remain current; and
- the consequences of further misconduct within the set period (that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority).

A record of the warning will be kept on the employee's personal file.

Where the employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the British Softball Federation may decide the case in their absence based on the evidence available.

## **7.6 Dismissal**

Some acts termed gross misconduct are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. However, the disciplinary process should still be followed.

A decision to dismiss can only be taken by a Manager who has the delegated authority from the CEO. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

**No action to dismiss may be taken without the authority of the CEO.**

## **7.7 Provide the opportunity to appeal**

Where the employee feels that the disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an agreed time and place. The employee should let the company know in writing the basis for the appeal: this should be sent to the HR Department within five working days of receiving written confirmation of the disciplinary warning or dismissal. An appeal hearing will then be arranged as quickly as possible.

The appeal should be dealt with by a Manager who has not previously been involved in the case.

It is recommended that for appeals against serious disciplinary sanctions, consideration should be given to including an independent member on the panel, to prevent any potential conflict of interest.

The employee has the right to be accompanied at appeal hearings and should be informed in writing of the results of the appeal hearing as soon as possible.

An appeal against a warning or dismissal is final and concludes British Softball Federation procedure.

## **8. Additional Information**

### **8.1 Suspension**

The British Softball Federation reserves the right to suspend or temporarily redeploy any employee who is suspected of serious misconduct, if it is considered in the interests of the individual and/or the British Softball Federation to do so. Suspension in these circumstances is for the purpose of allowing an unhindered investigation to take place and does not constitute disciplinary action or sanction. Suspension will be for as short a time as possible and will be on full pay. Any suspension should not be considered without advice from the HR Department.

If serious misconduct is not initially suspected or believed to have occurred, but during the course of an investigation the manager conducting it reasonably forms the opinion that a serious breach of discipline may have occurred, the employee who is the subject of the investigation may then be suspended.

An employee on suspension is paid their full basic pay although we reserve the right to suspend without pay if an employee is subject to a criminal investigation or is in potential breach of Health and Safety regulations.

Any decision to suspend will be confirmed in writing within five working days and such written confirmation will state that the nature of the suspension is precautionary, not disciplinary, pending the outcome of the investigation and any subsequent disciplinary proceedings.

### **8.2 Criminal Offences**

If an employee is charged with or convicted of a criminal offence, this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the British Softball Federation, colleagues, customers and suppliers.

Where allegations are made that may be of a criminal nature the British Softball Federation will co-operate fully with any police investigations. Where these issues are related to the potential conduct of an employee whilst overseas, employees should note that the legal jurisdiction of England and Wales does not cover overseas training events and competitions therefore will be subject to the legislation and legal proceedings of the country in which the offence occurred.

The criminal convictions listed below are deemed incompatible with employment with the British Softball Federation, and will result in dismissal:

- A custodial sentence of more than 6 months.
- Assault occasioning Actual or Grievance Bodily Harm.
- Sexual assault.
- Serious dishonesty, including fraud.
- Drug offences cover everything from possession to possession with an intent to supply
- Enlisted on the Sexual Offenders' Register.

### **8.3 Confidentiality**

Employees should not discuss any disciplinary matter with employees other than the HR Advisor, Managers involved in the process and the employee's own companion. Failure to maintain confidentiality may result in further disciplinary action being taken.

### **8.4 Further Disciplinary Action**

The outcome of a disciplinary hearing will remain confidential between the parties involved. Disclosure may be made in accordance with the Employer's legal, contractual or regulatory obligations. Where the employee is part of a UK Sport-funded programme, the British Softball Federation is obliged<sup>1</sup> to inform the UK Sport Eligibility Sub-Committee of the outcome of the hearing. The Eligibility Sub-Committee will then determine whether that employee is eligible to remain part of a funded programme.

An employee subject to a disciplinary warning for any reason will be liable to further disciplinary action at the next stage of this procedure irrespective of the nature of the subsequent disciplinary offence.

### **8.5 Time Limits and Resignations**

In cases where it is not practical to implement the procedure fully and expeditiously, for example in the absence of a key Manager, employees will be dealt with as closely as possible in accordance with this procedure.

Under normal circumstances the discipline process should be concluded in no more than 2 months; however, it is recognised that more complex cases could take up to 6 months. When any discipline process takes more than 20 working days, the manager conducting the process is to provide a written update to all parties at the 20 day point, and every 20 working days thereafter until it is concluded. A copy of the update is to be sent to the HR Department. Where the employee is part of a UK Sport-funded programme, Head of Sport Integrity at UK Sport is also to be included on the distribution.

When an employee who is the subject of a disciplinary process resigns before the process has been completed, the process will be completed using all the available evidence. The employee will be invited to attend any hearings (or appeal hearings) or submit further evidence if they choose, but will not be compelled to do so. A conclusion may be reached in their absence and the British Softball Federation will record the actions that it takes<sup>2</sup>. The outcome shall be disclosed to UK Sport where the employee was part of a funded programme for endorsement by the Eligibility Sub-Committee. It may also be disclosed to future prospective employers in the event that a reference request is received.

### **8.6 Note-Taking & Records**

The British Softball Federation has introduced a standardised methodology for recording all meeting notes and recording and retaining all evidence and actions taken during an investigation in an electronic format. Should an investigation lead to a criminal investigation (or be drawn upon as part of any HR appeal procedures), all material obtained in the course of an investigation should be considered relevant and be made available.

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<sup>1</sup> s19.3 of the Grant Funding Agreement.

<sup>2</sup> This can include a ban from the NGB for a period of time and nullifying qualifications.

It is not the policy of the British Softball Federation to make an audio recording of any investigations or meetings. The Employee is not permitted to record disciplinary interviews, meetings or hearings without prior consent.

Interview and meeting notes will record the details of those present as well as the start and finish times of the discussion; however, they do not need to be a verbatim recording of what had been said although they should ensure the clarity and essence of what was discussed.

The employee will be sent a copy of the interview or meeting notes produced, which will constitute the employer's record of proceedings.

All records detailing the nature of any sort of misconduct, the employee's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments will be kept confidentially on the employee's file. Likewise, the Manager may also keep records relating to the ongoing management of the employee's performance, the implementation of corrective actions and progression of learning.

## 9. Process Flow Chart

