



BSF Capability Policy

(Incorporating the ACAS Code of Practice)

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1. Introduction

Effective management of employee performance is crucial to the success of the British Softball Federation and Managers are expected to monitor team members' performance regularly.

The British Softball Federation recommends that wherever possible cases of unsatisfactory performance are best dealt with informally. In some cases, additional training, coaching and advice may be what is needed.

'Capability' refers to an employee's skills, ability, aptitude and knowledge in relation to the job that they are employed to do, and this Capability Policy is relevant when an employee is not performing their job to an acceptable standard, and informal counselling and support has not produced the required improvement in standards.

If informal action does not bring about an improvement, or there are situations where the unsatisfactory performance is considered too serious to be classed as minor, Managers will ensure that employees understand:

- why their performance is considered to be deficient;
- what is expected of them in order to improve; and
- the need to take formal action using this procedure.

2. Purpose and Scope

The purpose of this policy is to maintain appropriate standards of conduct and performance in a consistent and fair manner. It applies to all permanent employees who have completed their probationary period. The policy 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.

Concerns about performance may arise for a number of different reasons, including:

- lack of ability, skill or experience;
- change in job;
- re-organisation or re-definition of role; or
- personal/family difficulties (including an underlying health condition).

This policy runs parallel with, but is not part of the Disciplinary Policy. The British Softball Federation recognises that poor job performance through lack of capability cannot be treated as a 'disciplinary offence', unless it is as a result of carelessness, negligence or lack of effort. In these circumstances it will be treated under the Disciplinary Procedure as misconduct.

If the unsatisfactory performance is sufficiently serious and it is having, or is likely to have, a serious or harmful impact on the business, it may be justifiable to move directly to a Final Written Warning (Performance).

Managers should always consider whether an employee's poor performance is being caused by an underlying health condition (which may be a physical or mental impairment) and if so, whether that condition amounts to a disability within the meaning of the Equality Act 2010. The British Softball Federation will consider making reasonable adjustments to a disabled employee's role in order to avoid any disadvantage caused by their disability. Managers should

seek specific advice from the HR Advisor if they suspect that an underlying health condition is the cause of the employee's underperformance.

3. Performance Standards

The British Softball Federation sets clear standards of performance so that all employees know what is expected of them. This is achieved through role profiles and as part of our Performance Management process, which involves agreeing targets/objectives, standards and reviewing performance regularly.

Where a reasonable request to perform a duty is clearly refused (and where the requested duty is legal, reasonable and in line with contractual role requirements) then please refer to the Disciplinary Procedure for further action.

4. Principles

The principles governing the policy and application of this are:

- we will be consistent and fair, with all employees treated with respect and dignity;
- individual's rights and responsibilities will be respected; and
- we will be open and transparent.

In order to ensure that matters are dealt with fairly:

- Both Line Managers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Line Managers and employees should act consistently.
- Line 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.
- Line Managers should allow employees to be accompanied at any formal meeting under this procedure (see below for who may accompany an employee to meetings/hearings).
- Employees have the right to appeal against any formal action taken against them under this procedure.

5. Identifying performance issues and informal discussions

If a Manager has concerns about an employee's performance, there will be an assessment to decide if there are grounds for taking action under this procedure. The assessment will depend on the circumstances but may involve reviewing the employee's personnel file (including any appraisal records) gathering any relevant documents, monitoring their work and, if appropriate, interviewing the employee and/or other individuals confidentially regarding their work.

In the first instance, performance issues should be dealt with informally between the employee and their Line Manager as part of day-to-day management. Where appropriate, a note of any such discussions may be placed on the employee's personnel file. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement.

Informal discussions may help to:

- clarify the required standards;
- identify areas of concern;
- establish the likely causes of poor performance and identify any training needs or additional support required; and/or
- set targets for improvement and a time-scale for review.

An employee will not normally be dismissed for performance reasons without written warnings having been issued. However, in serious cases or where poor performance is considered to amount to gross misconduct and/or negligence¹, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate in accordance with Stage 3 of this Policy.

6. The Formal Capability Procedure

Formal action is applicable where the employee's performance has failed to reach the required standard and informal counselling has not worked; or where the concerns about performance are sufficiently serious such that an informal approach is not appropriate.

6.1 Establish the facts

It is important to manage underperformance quickly. Managers should review the employee's performance and gather all the necessary facts/data/results.

6.2 Inform the Employee of the problem and notification of a Capability Hearing

If, having gathered the relevant information, it is considered that the employee's performance is deficient and should be addressed via the formal Capability Procedure, the employee will be invited to a Capability Hearing.

Prior to a Capability Hearing being held, the employee should receive a written notification outlining the reason for the Hearing, which should contain:

- A summary of the underperformance including:
 - relevant information gathered as part of any investigation; and
 - documents which will be used at the Capability Hearing.
- the areas where improvement is needed;
- proposals for targets and training needs; and
- suggested timescales for the targets and training.

The employee should also be advised of the possible consequences of the Capability Hearing if it is determined that their performance has not met the required standard.

The notification will also give details of the time and place for the meeting and advise of the right to be accompanied (see below for details of who may accompany the employee). The British Softball Federation will seek to ensure that the time, place and location of any meeting is reasonable.

¹ Which is set out in the [Insert NGB name] Disciplinary Policy.

6.3 Right 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 to meetings that could result in:

- a Formal Written Warning (Performance) being issued;
- the taking of some other action such as dismissal, demotion or loss of seniority; or
- the confirmation of a warning or some other action (appeal hearings).

The person accompanying the employee (the 'companion') must not prejudice the process or cause unreasonable delay. To be accompanied, the employee must make a reasonable request, and what is reasonable will depend on the circumstances of each individual case. It would not be reasonable for the employee to insist on being accompanied by a companion who cannot attend the hearing without causing unreasonable delay, when there is someone suitable and willing either on site or close by.

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

At the hearing the companion may, on the employee's behalf:

- explain and sum up the employee's case;
- respond on the employee's behalf to any views expressed during the meeting; and
- confer with the employee during the hearing.

7 Capability Hearings - General

Capability Hearings should be held without unreasonable delay and the timescale must allow reasonable time for the employee to prepare. What is judged to be reasonable will depend on the complexity of the case.

Having been invited to attend a Capability Hearing the employee (and their companion) must take all reasonable steps to attend and failure to attend without good reason may be treated as misconduct itself. If the employee fails to attend without good reason, or they are persistently unable to attend (for example, for health reasons), the employer may take a decision in their absence, based on the available evidence.

At each stage of the Capability Procedure the Line Manager conducting the Hearing may wish a colleague to be present to take notes.

All Capability Hearings that may result in a Written Warning (Performance) must have the HR Advisor in attendance. The purpose of this is to act as Company witness and to act as note taker.

At the start of a Capability Hearing the Line Manager will explain: the role of all those attending; the nature and extent of the shortfall in performance; and will go through the evidence that has been gathered.

The employee will be invited to say whether or not they accept that there is a shortfall. If they do not accept that there is a shortfall or dispute the extent of the shortfall, then they will be invited to explain their reasons and produce evidence in support. If the employee accepts the shortfall, then they will be asked to explain the reasons behind it.

The Line Manager and the employee should then try to establish the causes of poor performance including why measures taken so far have not led to the required improvement.

A hearing may be adjourned if Line Manager needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given reasonable opportunity to consider any new information obtained before the hearing is reconvened.

If appropriate in the circumstances, the British Softball Federation may at its discretion refer an employee to any stage of the Capability Policy, without having progressed through the previous stages.

7.1 Capability Hearing - Stage 1

If having considered everything that has been discussed during a Stage 1 Capability Hearing it is concluded that the employee's performance is unsatisfactory, management will issue the employee with a First Written Warning (Performance). This contains the details of a Performance Improvement Plan which sets out:

- the areas in which the employee has not met the required performance standards;
- targets for improvement;
- measures, such as additional training or supervision, which will be taken with a view to improving the employee's performance;
- a timescale for review ('the Review Period'); and
- the consequences of failing to improve within the Review Period, or of further unsatisfactory performance beyond this time.

The Employee's performance will be monitored during the Review Period and at the end of this time the employee will be informed in writing whether the Line Manager:

- is satisfied with the employee's performance, in which case, no further action will be taken;
- is not satisfied with the employee's performance, in which case the matter may be progressed to a Stage 2 Capability Hearing; or
- feels that there has been an improvement, but the improvement is not sufficient, in which case the Review Period may be extended.

Following a Stage 1 Capability Hearing, the employee will be sent a record of what was discussed and the outcome, including any Performance Improvement Plan and/or written warning. A copy of this documentation will be kept on the employee's file.

The First Written Warning (Performance) may remain active for up to 12 months after the end of the Review Period. Further poor performance during the life of the warning may result in the employee being progressed to stage 2 or 3 of this Policy depending on the circumstances. A copy of the written warning will remain permanently on the employee's personnel file.

7. Capability Hearing - Stage 2

If the employee's performance does not improve to the required standard during the Review Period (as set out in the First Written Warning under stage 1 of this Policy), or if there is further evidence of poor performance within the 12 months after the Review Period has come to an end, the British Softball Federation may decide to hold a Stage 2 Capability Hearing.

The requirements for notifying the employee of the Stage 2 Hearing and the process relating to the conduct of the hearing itself are the same as for Stage 1 Hearings, as set out above.

Following a Stage 2 Capability Hearing, if it is concluded that the employee's performance is unsatisfactory, they will be issued with a Final Written Warning (Performance), detailing a Performance Improvement Plan setting out:

- the areas in which they have not met the required performance standards;
- targets for improvement;
- any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- a period for review (the 'Review Period'); and
- the consequences of failing to improve within the Review Period, or of further unsatisfactory performance.

A Final Written Warning (Performance) has to be authorised by the HR Advisor/CEO.

The Employee's performance will be monitored during the Review Period and at the end of this period the employee will be informed in writing whether the Line Manager:

- is satisfied with the employee's performance, in which case, no further action will be taken);
- is not satisfied with the employee's performance, in which case the matter may be progressed to a Stage 3 Capability Hearing; or
- feels that there has been an improvement, but the improvement is not sufficient, in which case the Review Period may be extended.

Following the Capability Hearing, the employee will be sent a record of what was discussed, and the outcome, including any Performance Improvement Plan and/or written warning. A copy of this documentation will be kept on the employee's file.

A Final Written Warning (Performance) may remain active for up to 12 months from the end of the Review Period after which a copy will remain permanently on the employee's personnel file. Further poor performance during the life of the Final Written Warning may result in a referral to Stage 3 of the Policy.

8. Capability Hearing Stage 3 - Hearing: Dismissal or Redeployment

The British Softball Federation may decide to hold a Stage 3 Capability Hearing if the employee's performance:

- has not improved sufficiently within the Review Period set out in a previous Written Warning (performance);
- is unsatisfactory whilst a previous Written Warning (Performance) is still active;
- has been grossly negligent or is so deficient such that dismissal may be appropriate without the need for previous written warnings to have been issued.

The requirements for notifying the employee of the Stage 3 Hearing and the process relating to the conduct of the hearing itself are the same as for Stages 1 and 2 above. The employee must be warned in advance of the possible outcomes of the Stage 3 Hearing.

Following the Stage 3 Hearing, if it is concluded the employee's performance is unsatisfactory, the British Softball Federation may consider:

- dismissal;
- redeploying the employee into another suitable job at the same or a lower grade;
- extending an active Final Written Warning (Performance) and setting a further Review Period (in exceptional cases where we believe a substantial improvement is likely within the Review Period); or
- giving a Final Written Warning (Performance) where there is currently not one active.

Before making a decision to dismiss an employee for poor performance, the British Softball Federation will always consider whether an alternative action short of dismissal, such as demotion or re-deployment, is appropriate.

A decision to dismiss, demote or re-deploy can only be taken by the CEO or an authorised member of the management, following consultation with the HR Advisor. Dismissal will normally be with full notice or payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross misconduct, in which case they may be dismissed without notice or any pay in lieu of notice.

Following the Capability Hearing, the employee will be sent a record of what was discussed, and the outcome. A copy of this documentation will be kept on the employee's file.

9. Provide the opportunity to appeal

Where an employee feels that the action taken against them is wrong or unjust, they may appeal against the decision. Appeals should be heard without unreasonable delay. The employee should let The British Softball Federation know in writing the basis for the appeal and this should be sent to the HR Dept/HR Advisor within five working days of receiving written confirmation of any written warning or dismissal. An appeal hearing will then be arranged as soon as reasonable possible following receipt of the appeal.

The appeal should be dealt with impartially and by a Manager who has not previously been involved in the case and is more senior than the Manager who made the decision. Where this cannot occur owing to the structure of the NGB, consideration should be given to the appeal being heard by a person who is independent of the British Softball Federation. The appeal is to determine:

- Whether or not the decision was reasonable given the evidence available when that decision was made.
- Whether or not there is any new evidence that may materially alter the decision. If such evidence appears to be available, then the matter may be referred back to the original decision-making manager to decide if the new evidence alters the decision **or** the Appeals manager may make a decision based upon the new evidence.
- Whether the Capability Procedure has been fairly followed and if not, whether any such failure materially affects the decision.

The employee has the right to be accompanied at an appeal hearing 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 the British Softball Federation procedure.

10. Other Information

10.1 Length of time the warning will remain 'live'

In the case of poor performance through lack of capability, First and Final Written Warnings (Performance) will remain live for a limit of twelve months although a copy will remain permanently on an employee's file.

There may be occasions where employee's performance is satisfactory throughout the life of the written warning, but then deteriorates below acceptable standards very soon after the warning has expired. In these circumstances, The British Softball Federation may at its discretion refer the employee to the appropriate stage of the Capability Policy without the need to revert back to Stage 1.

Where a pattern emerges and/or there is evidence of abuse, an employee's record may be borne in mind in deciding how long any warning should last and in deciding the outcome of any future capability proceedings.

The British Softball Federation reserves the right to extend the time period in appropriate circumstances.

10.2 Loss of Qualification for the role (including holding a current driving licence)

Where an employee no longer has the correct qualifications to continue to perform their duties, the British Softball Federation will consider whether adjustments can be made to their existing duties so that they can continue. Where the qualification in question is fundamental to the role and the employee cannot continue without them, the British Softball Federation will consider whether they can be moved to another position. The British Softball Federation will also give consideration to whether the employee can be returned to their original role, once the qualifications have been regained.

Once the British Softball Federation has exhausted all attempts to amend an employee's existing duties or to find alternative duties within the organisation, it may become necessary to dismiss them. Before any decision to dismiss is taken, the British Softball Federation will:

- advise the employee in writing as soon as it is established that termination of employment has become a possibility;
- meet with the employee to discuss the options and consider the employee's views on continuing employment;
- allow a right of appeal against any decision to dismiss the employee;
- arrange a further meeting with the employee to determine any appeal; and
- inform the employee of its final decision and confirm in writing after the meeting.

10.3 Exceptional Circumstances

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

The British Softball Federation reserves the right to commission an external professional to undertake any investigation, hearing or appeal should it believe the case requires it.

10.4 Note-Taking & Records

The British Softball Federation has introduced a standardised methodology for recording all meeting notes, 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.

It is not the policy for the British Softball Federation to make an audio recording of any investigations or meetings. The Employee is not permitted to record 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.

11. Process Flow Chart





