

DISCIPLINARY POLICY & PROCEDURE

Updated: 1st April 2011
Revision Date: 31st March 2012

POLICY STATEMENT

ELCAP follow the amended ACAS Codes of Practice for Disciplinary Procedures which came into effect on 6th April 2009 to ensure that employees have good standards of performance and behaviour. Employees should be fully aware of the standards of performance, action and behaviour expected to carry out their jobs as stated in ELCAP contracts, ELCAP competencies and the codes of practice relevant to the employee's job.

INFORMAL PROCEDURE

ELCAP may decide to talk to an employee if the misconduct or poor performance is minor. ELCAP will keep a note of these discussions. Minor misconduct or poor performance may be dealt with in the first instance through ELCAP's Work Practice Review Policy and Procedure, with the line manager. Notes of these discussions will be taken and retained on the employee's work practice file. The employee does not have a statutory right to bring someone to these informal meetings with them.

INVESTIGATION

Before any disciplinary action, ELCAP will fully investigate alleged misconduct or poor performance. An investigation will be started promptly after an allegation/complaint has been made in order to ascertain the facts accurately. In some cases this will require the holding of an investigatory meeting(s) with the employee(s). In others it will involve the collation of evidence. Notes will be taken of any interviews and meetings held in connection with the investigation. These notes will normally be made available to the employee before any disciplinary hearing.

You may wish to be accompanied by a work colleague or union representative at the investigatory meeting. It is not a statutory right but ELCAP supports this in principle as long as it does not delay the investigation meeting being carried out promptly.

DISCIPLINARY HEARING

If there is a disciplinary case to answer, the employee will be notified, in writing. The notification will contain sufficient information about the allegation(s) and the possible consequences to enable the employee to prepare to answer the case at the disciplinary hearing. Copies of any written evidence, which may include witness statements, will be enclosed with the notification.

The disciplinary hearing will be held without unreasonable delay. Employees will make every effort to attend the meeting. Where an employee fails to attend on two consecutive occasions without good cause, ELCAP will make a decision on the evidence available.

At the Hearing, the employee will be allowed to set out his/her case and answer any allegations that have been made. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. The employee will be given an opportunity to raise points about any information provided by witnesses. Where ELCAP or the employee wishes to call relevant witnesses they should give advance notice that they intend to do this.

The Disciplinary panel will decide what action is appropriate and inform the employee verbally and then in writing.

FORMAL DISCIPLINARY STAGES

Written Warning:

Where misconduct is confirmed or the employee is found to be performing unsatisfactorily a written warning will be issued.

A written warning will normally be removed from the record after 12 months. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.

Final Written Warning:

If the misconduct or poor performance is serious, ELCAP may give a final written warning. If the employee has a previous written warning, ELCAP may give a final written warning if poor performance continues. A final written warning will set out the nature of the misconduct or poor performance and the

improvement in performance required, with timescales. The final written warning will say that further misconduct or poor performance may result in an employee being dismissed or demoted.

A decision not to disregard a warning for disciplinary purposes may be taken in exceptional circumstances where an employee's persistent misconduct warrants such action.

Dismissal:

If the employee has a final written warning and further misconduct or poor performance happens, ELCAP may dismiss the employee. The employee may or may not be given notice.

If there is gross misconduct, ELCAP may dismiss the employee. Normally, no notice will be given or paid. Gross misconduct is generally seen as misconduct serious enough to overturn the employment contract between the employee and ELCAP thus justifying summary dismissal. Examples of gross misconduct can be found in Appendix 1 of these procedures.

ELCAP will decide at which stage the disciplinary procedure will start based on the seriousness of the misconduct or poor performance.

The decision to dismiss any employee can only be taken by a Registered Manager or a manager with at least the equivalent level of seniority.

SUSPENSION

Serious alleged misconduct may mean that ELCAP have to suspend the employee on full pay. This is to let the investigation take place. The period of the suspension will be kept to a minimum. It will not be viewed or treated as a punishment against the employee.

Where an employee is absent from work due to sickness during any period of suspension, the suspension stops and reverts to sick leave. The employee will be treated as sick and will receive his/her sick pay. If a disciplinary hearing is deemed necessary, the employee should make every effort to attend the hearing whilst on sick leave.

When an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, ELCAP will make a decision on the evidence available.

RIGHT TO BE ACCOMPANIED

The employee has the right to bring another employee or an appropriate trade union official (companion) to any formal disciplinary hearing or appeal.

The companion will be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. However the employee is expected to reply to direct questions.

The companion does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent ELCAP from explaining their case.

APPEAL

Employees have the right to appeal against any warning or dismissal. The appeal should be made within ten days of receiving the letter with the outcome of the disciplinary meeting. Appeals will normally be made to the Director. An appeal hearing will be arranged as soon as possible.

Employees have a statutory right to be accompanied at appeal hearings.

The outcome of an appeal decision will normally be given, in writing, within ten working days. There shall be no further right of appeal.

If as a result of an appeal, any disciplinary sanction is withdrawn or modified, any written information relating to the sanction will be expunged or appropriately amended from the employee's personnel file. A note will be kept in the employee's personnel file that a disciplinary sanction had been imposed, withdrawn or amended and explain why the decision was taken.

SPECIAL CASES

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed. ELCAP will contact a union official to discuss the matter, after obtaining the employee's agreement.

If an employee is charged with or convicted of a criminal offence, this in itself will not be a reason for disciplinary action. Consideration will be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with ELCAP and service users.

Overlapping Disciplinary and Grievance Cases.

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

EMPLOYEES WITH LESS THAN A YEAR'S SERVICE

ELCAP reserves the right not to follow this disciplinary procedure if an employee has less than one year's service.

GROSS MISCONDUCT

Under this disciplinary procedure an employee shall normally be given a final written warning regarding his/her conduct or performance before dismissal is contemplated. It is recognised however that an employee may be dismissed without previous warning where gross misconduct is deemed to have occurred.

The following sets out the type of behaviour that ELCAP considers as gross misconduct. A breach of any of the following rules may result in the employee's dismissal without notice. This list is not exhaustive.

- Theft
- Fraud
- Falsification of time-sheets or expense claims or other documentation relating to employment
- Violent conduct towards fellow employees, service users or parents, carers or others
- Threatening conduct or swearing at fellow employees, service users, parents, carers or others
- Gross insubordination or a repeated refusal to obey a reasonable management instruction
- Gross negligence
- Instances of sexual (including sexual orientation), religious or racial harassment
- Serious breach of ELCAP's e-mail or internet policy, including the downloading or sending of pornographic or sexually explicit material, and the sending of offensive or discriminatory jokes.
- The introduction of viruses into ELCAP's computer system
- Attending work whilst unfit as a result of alcohol or illegal drugs, including any instances where alcohol is consumed or illegal drugs used during working hours or before attending work. This includes smelling of alcohol while at work.
- Serious breach of ELCAP's Health and Safety Policy
- Breaching Adult Support and Protection Legislation and Guidelines
- Leaving a service user unsupported whilst contracted to provide support
- Inappropriate comments on social networking sites

CRIMINAL OFFENCES

An employee shall not be disciplined solely because he/she has been charged with or convicted of a criminal offence. In all such cases consideration shall be given to whether the alleged or proven offence is of a serious nature and the relevance of the offence to the employment relationship between ELCAP and the employee.

In all cases where disciplinary action is contemplated due to an alleged or proven criminal offence, the matter shall be investigated by a senior ELCAP employee as thoroughly as the circumstances permit.

In cases of suspected irregularities relating to the finances of ELCAP, or to any other funds managed by ELCAP, the Assistant Director (Corporate Services) / Director/Board Member shall be informed and, if appropriate, an audit investigation shall be carried out. While there may or may not be a police investigation commenced at the same time, ELCAP will under most circumstances request police officers to conduct the investigation. The appropriate line manager or another nominated manager may suspend the employee on full pay as described above.

Depending on circumstances following investigations, the line manager or another nominated manager may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.

If it is discovered that an employee has failed to disclose a criminal conviction where such disclosure is required, the matter may be dealt with under the terms of this disciplinary procedure.

SOCIAL NETWORKING SITES

More and more employees use social networking sites such as Facebook and Twitter.

Employees need to be aware of the risks involved in using these sites whether at work or outside of work and what could be classed as 'inappropriate behaviour' whilst using these types of sites.

Employees should not access social networking sites at work and should be mindful of their conduct when using the sites outside of work. Employees should not accept an offer to be a service user/family member's 'friend' on Facebook. This would breach the SSSC Codes of Practice.

For example, comments can be posted on Facebook where millions of people can potentially view them if security settings are not altered so that 'friends' only can see their profiles. Employees may not have fully considered the implications. Many employees will have Facebook friends who are also colleagues.

Examples would be: where a breach of confidentiality about a service user is posted on the site; inappropriate comments damaging ELCAP's reputation as a care provider or discriminatory or abusive remarks are made about service users/colleagues.

Social networking sites are considered public and inappropriate postings will be dealt with under the terms of this Disciplinary Procedure.

WHO WILL NORMALLY CARRY OUT WHAT PART OF THE INVESTIGATION PROCESS?

Allegation Made Against	Investigation	Heard By Panel	Appeals
Support Worker	Manager	Assistant Director HR Manager	Director
Admin/IT/HR/ Finance Team and Cleaners	Manager	Assistant Director HR Manager	Director
Manager	Other Manager	Assistant Director HR Manager	Director
HR Manager Accountant	Assistant Director (Service Delivery/ Development)	Director and Assistant Director (Corporate Services)	Board Member
Assistant Director	Board Members	Board Member and Director	Board Members
Director	Board	Board Members	Chair and Board Member