

Disciplinary Policy

Introduction and Purpose

Elizabeth Finn Homes (EFH) aims to ensure that there will be a fair and consistent approach to the expectations of standards of conduct and/or behaviour throughout the organisation. This policy and procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance.

EFH prefers that discipline be voluntary and self-imposed and in the great majority of cases this is how it works. However, from time to time, it may be necessary to take action in respect of individuals whose behaviour or performance is unacceptable. The Policy applies to all employees within Elizabeth Finn Homes, and it also applies to Bank workers. It does not apply to agency workers or self-employed contractors.

This policy does not apply to:

- a) Termination during or at the end of a probationary period of service, whether or not extended beyond its original specified duration.
- b) Termination of employment by reason of redundancy.
- c) Resignation of the employee, or other termination by mutual consent.

Scope

This policy and procedure will apply to all colleagues employed by Elizabeth Finn Homes on a permanent contract of employment, either full or part time including those on fixed term contracts, and it also applies to bank workers. It does not currently apply to contractors or agency staff.

The HR function is responsible for reviewing all guidance, regulatory and legislation changes and updating policies, procedures, and training as appropriate.

The allocated investigation or disciplinary chair is responsible for the implementation of the policy and its principles and ensuring there is evidence to support the procedures in place.

Confidentiality

It is the aim of EFH for all disciplinary matters to be dealt with sensitively and with due respect for the privacy of any individuals involved. All employees must observe the need for confidentiality in relation to any information communicated to them in connection with an investigation or disciplinary matter.

EFH will co-operate with trades union representatives / companions as appropriate. However, information relating to the case will only be shared with the relevant employee. As such, it is the employee's responsibility to share information relating to the matter with their representative.

All attendees must note that they should not make electronic recordings (e.g. tape recording, recording through mobile telephone etc.) of any meetings conducted under this procedure unless express permission has been gained from all attendees. Formal recordings will be transcribed and shared with the investigations team.

Employees will normally be told the names of any witness(es) whose evidence is relevant to disciplinary proceedings against them, unless EFH and/or the witness(es) reasonably believes that a witness's identity should remain confidential. Evidence shared may be redacted to ensure the protection of a colleague's identity if deemed necessary, to ensure confidentiality of information relating to residents, their relatives / visitors or other personal data relating to employees.

Criminal Investigations, Charges and Convictions

A criminal investigation, charge or conviction for an offence may result in the disciplinary procedure being invoked where the Organisation has reasonable grounds to believe that the charge or conviction is such, as to affect, or be likely to affect, or undermine.

- An employee's suitability for the position in which they are employed.
- business or reputation; or
- the trust and confidence placed in all employees.

In these cases, EFH may not necessarily wait for the outcome of any police investigation or prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, EFH may have to take a decision based on the available evidence. In addition, if the organisation is unable to review evidence due to legal investigations or proceedings, and it is considered that the external investigation may be lengthy, EFH may proceed to dismissing an employee if it meets a concern.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if EFH considers that it is relevant to the person's employment and/or likely to affect either employee, customer or stakeholder relations or amount to a breach of trust and/or confidence.

Suspension

It is the responsibility of the Manager to discuss any suspension with Human Resources and the Head of Operations/Operations Director prior to any decision being made.

Where the breach of discipline is one of alleged gross misconduct the employee may be suspended on full pay while it is being investigated. Any decision to suspend an employee will be confirmed in writing. Where appropriate the Police will also be advised and if the allegations involve abuse towards a resident, then the procedure will be followed for notifying the relevant authorities.

Suspension is not regarded as a form of disciplinary action and will be for as short a period as possible. Suspension aids as purpose to ensure all parties are safeguarded, to mitigate further allegations taking place or that there is a clear concern that the employee or others may be placed at significant risk.

The organisation will always consider if an alternative to suspension can be implemented to retain the employee in the workplace whilst an investigation is completed. Alternative to suspension could include:

- A change in job role
- A change in working shift pattern
- A transfer to another location
- A removal of responsibility or specific task

If an alternative to suspension is implemented, a letter will be issued which will provide clear expectations for the employee. If the employee breaches the terms or refuses the terms, they may be placed on an unpaid suspension.

During suspension an employee may not enter any premises owned or operated by EFH, except in order to attend related meetings to the investigation, nor may they contact any other employee without the consent of the Head of Department. Managers should remember that they have a duty of care to the suspended employee and should remain in contact with them during the investigation.

Procedures

Informal Process

In cases of minor breaches of conduct or other concerns, the employee's line manager or Head of Department will make every effort to resolve the matter by informal discussion, counselling and re-training. It is preferable that the majority of concerns will be solved this way.

A documented conversations form detailing the discussion and any action taken should be kept on the employee's personnel file and a copy given to the employee where appropriate. A letter of concern may also be issued setting clear expectations for the future. This may be taken into account in the event of subsequent disciplinary procedures. Managers may take whatever fair and reasonable action they see fit to ensure the continued safe and efficient delivery of care to residents.

Formal Process

It is the responsibility of the Manager to inform the Human Resources team of the relevant circumstances and to follow the formal procedure set out below. Human Resources should be kept informed during all stages of the investigation and with any subsequent disciplinary hearing.

Investigation

Where a manager feels or has been informed that there has been a breach of discipline then the manager will investigate the matter fully in the first instance. The preliminary investigation to establish the facts must take place as soon as possible after the alleged breach has occurred. The employee's line Manager will usually carry out the investigation unless they are not impartial or are a possible witness. The person who carries out the investigation is called the Investigation Chair.

The Investigation Chair should carry out interviews with the employee concerned and third parties such as witnesses and other colleagues as well as analysing written records, statements and any other information.

Any interview questions should be asked to establish evidence and not opinion. Witness statements should be gathered using the template documents and notes should be legible and signed and dated. Employees do not normally have the right to bring a companion to an investigation meeting. However, this may be allowed if it helps overcome any disability or the colleague is under 18.

Outcome to Investigation

Once the investigation is finished and the Investigation report template completed the Investigation Chair will decide whether further action is needed. Actions may include informal procedures such as re-training or a letter of concern or arranging for the matter to be considered under the disciplinary procedure. Investigative

interviews are solely for the purpose of establishing the facts and no decision on disciplinary action will be taken until after the disciplinary hearing has been held by a 2nd impartial individual.

Following an investigation if the manager feels that there is a case to answer, the employee will be informed in writing of the alleged breach of discipline and invited to a disciplinary hearing. The letter will provide the detailed of the allegations, the time, date and location of the hearing and state any names of people attending the hearing. The employee would also be offered the right to be accompanied by a work colleague or recognised trade union official.

Within the invitation to disciplinary hearing letter, a copy of all relevant appendices related to the investigation must be provided to the employee including the investigation report. The only exception to this is if the documentation contained confidential and personal data pertaining to another individual. If this occurred, the documentation would be available prior to the start of the Disciplinary hearing in a controlled environment.

The meeting should be held without unreasonable delay. The meeting can be adjourned at any point if further investigation is required.

The employee must take all reasonable steps to attend the hearing. If it is not reasonably practical to attend the hearing, then a second disciplinary will be arranged. If the employee does not attend the scheduled hearing for no good cause and failed to make contact the hearing may take place in their absence.

Disciplinary Hearing

The purpose of the Disciplinary Hearing is for an impartial individual to review the evidence that has been presented, clarify any points they may consider relevant and decide if a sanction should be imposed and if so what sanction.

The person who chairs the disciplinary hearing will not have been involved in the disciplinary investigation. The person chairing the hearing will be called the Disciplinary Hearing Chair.

The Chair will start the meeting by introducing all present and confirm everyone knows the background and purpose of the hearing. The Chair is responsible for organising a competent note taker to be present at the hearing. At the end of the hearing the Chair will summarise what has happened and tell everyone what will happen next.

The hearing should always be adjourned, so the outcome can be considered. The adjournment should be taken for what the disciplinary chair feels is reasonable. An outcome where possible should be given on the same day however if further investigations are required in the light of any points raised at the hearing or the Disciplinary Hearing Chair feels they need additional time then a longer period maybe required.

Where further investigation is required, the employee that is subject to the hearing will be kept informed of the progress of the further investigation and by when it is hoped this further investigation will be concluded.

Disciplinary Hearing Outcomes

Following the hearing the Disciplinary Hearing Chair must decide what sanction, if any, is appropriate.

Where possible the decision will be given in person verbally and then the employee will be issued an outcome letter in writing without unreasonable delay.

In most cases, unless further investigation is required, the employee that is subject to the hearing, will be informed of the outcome within 5 working days.

The usual sanctions for misconduct are set out below. Elizabeth Finn Homes aims to treat all employees fairly and consistently, but an outcome imposed on another colleague for similar misconduct should not be treated as a precedent. Each case will be assessed on its own merits.

An informal outcome may be issued which could include no further action or a letter of concern if the Disciplinary Hearing Chair felt a formal sanction was not appropriate after consideration of the evidence available to them at the time of the hearing.

A first written warning may be issued and will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's record. In normal circumstances, a first written warning will remain live on file for 12 months. After such time, the warning will remain permanently on the employee's personnel file as a relevant part of their employment history but will not be taken into account when determining a future disciplinary sanction.

A final written warning may be issued and will usually be appropriate for misconduct where there is already an active written warning on the employee's record; or misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's record. In normal circumstances, a final written warning will remain live in the employee's file for 12 months. After such time, the warning will remain permanently on the employee's personnel file as a relevant part of their employment history but will not be taken into account when determining a future disciplinary sanction.

Dismissal with notice may be issued and will usually be appropriate for further misconduct where there is an active final written warning on the employee's record or for some other substantial reason. This will follow a review and / or an investigation into the allegations made.

Summary Dismissal (without notice or payment in lieu of notice) may be issued for any gross misconduct offence regardless of whether there are active warnings on the employee's record. A non-exhaustive list of examples of gross misconduct are set out further in the policy.

In some cases, the organisation may at its entire discretion consider alternatives to dismissal. Such decisions may be appropriate for matters which are not limited to acts of gross misconduct but will usually be accompanied by a final written warning. Examples may include (but are not limited to):

- Demotion/loss of seniority.
- Transfer to another division, department or job.
- Reduction in pay.
- Removal or reduction of any due contractual or non-contractual bonuses.
- The extension of an existing final written warning.

Any decision to dismiss will be taken only after careful consideration and in conjunction with the HR team and Head of Department. If the employee is found to have committed an act of gross misconduct, they may be dismissed without notice or payment in lieu of notice.

Appeal

The employee may appeal in writing against any formal disciplinary sanction without unreasonable delay and within 7 days of the date of the letter. The employee's written appeal should set out clearly the grounds of appeal. Example grounds of appeal could include:

- New evidence that has come to light that should be investigated
- The outcome is too severe or disproportionate to the misconduct e.g. if a similar occurrence previously had a different outcome
- The correct process or policy had not been followed

An Appeal Hearing Chair will be appointed who will hear the appeal and a competent note taker will document the meeting. At the appeal hearing, the appeal hearing chair should seek to clarify the ground in which the employee wishes to appeal against. No decision should be made during this hearing.

An appeal hearing will be convened ideally within two weeks from the date of the written letter of appeal. If the employee raises any new matters in their appeal, the organisation may need to carry out further investigations which may delay any outcome being issued.

The employee must take all reasonable steps to attend the appeal hearing. The person who hears the appeal should not have been involved in the earlier stages of the disciplinary procedure.

After the appeal hearing the employee will be informed of the decision which will be final ideally within 14 days of the hearing being held. No further right of appeal exists.

Following the appeal, the hearing chair may:

- confirm the original decision.
- revoke the original decision; or
- substitute a different sanction.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee may be reinstated with no loss of continuity of service or pay.

Sickness Absence During Disciplinary Process

The ill-health of an employee will not usually be grounds for delaying the disciplinary procedure. Any colleague who is certified as unfit for work during a period of suspension, will have their suspension ceased until such time as they are deemed fit for work. During any period where the employee reports or is deemed unfit to work, they will be paid at the sick pay rate applicable under their contract of employment until such time as they become fit for work.

Where the absence is likely to be short, EFH will ordinarily wait until the employee is deemed fit for work and able to participate fully in the process. Where it appears that the employee is likely to remain off sick for an extended period, EFH may seek to obtain medical and/or occupational health opinion to determine whether or not, and to what extent, the employee is able to take part in the disciplinary process. EFH will give due consideration to any such opinions prior to deciding the most appropriate manner in which to proceed.

Depending on the circumstances of the case, the following modifications may be made in order to allow the employee to take a fuller part in proceedings:

- allowing more frequent breaks during the course of any meetings.

- consideration of a more appropriate venue for the meeting.
- allowing a companion other than a work colleague or Trade Union representative, such as a support worker, to be present at the meeting.
- allowing the employee to make written representations to be considered by the investigation manager or the disciplinary hearing manager.

Resignation during Disciplinary Process

It should be noted that circumstances such as resignation during a disciplinary investigation or formal procedure may not discontinue the process underway. Therefore, it is the EFH's intention that all cases will reach a proper conclusion with as much investigation as is reasonably possible and findings that are based on that investigation.

Grievance during Disciplinary Process

If a grievance is raised during the course of the disciplinary procedure, the nature of the grievance will be carefully examined prior to a decision being made as to how to proceed. Therefore, a grievance may not prevent the disciplinary process from progressing.

A grievance should not be used as a means of further appeal against a disciplinary sanction already appealed under the terms of the disciplinary procedure.

Duty to Refer to Disclosure Baring Service and Nursing and Midwifery Council

EFH has a duty to refer employees where appropriate to the Disclosure Baring Service (DBS) and Nursing Midwifery Council (NMC), for consideration to prevent them from working with vulnerable adults / children and to respond to any requests made by the DBS or NMC for information.

The duty to refer remains intact, regardless of whether or not the individual has left the Organisation for reasons of conduct, capability, redundancy or resignation.

Definitions

Misconduct

The following are non-exhaustive examples of matters that will normally be regarded as misconduct:

- Minor breaches of policies, local rules or operating procedures.
- Minor breaches of an employment contract where the potential or actual damage or harm is deemed as negligible or low.
- Minor damage to, or unauthorised use of Company property.
- Poor timekeeping and/or frequent examples of time wasting.
- Inappropriate and/or excessive personal email or internet usage.
- Minor negligence in the performance of duties for example a repeated failure to follow a policy or process resulting in a minor loss to the business.
- Refusing a manager's reasonable request

Gross Misconduct

Gross Misconduct is a serious breach of contract and includes misconduct which, in the opinion of EFH, is likely to prejudice its business or reputation or irreparably damage the working relationship and trust between an employee and the organisation. Gross misconduct will be dealt with under the Disciplinary Procedure and may lead to dismissal without notice.

The following are non-exhaustive examples of matters that will normally be regarded as gross misconduct and may be dealt with under the Disciplinary Procedure:

- Ill treatment, neglect or abuse towards a resident, vulnerable adult or child.
- Failing to provide emergency treatment to a resident.
- Falsification of records.
- A serious breach of confidentiality (for example accessing personal records / resident records and disclosing this information to a third party without consent).
- Criminal conviction outside work which would be likely to affect employee / resident relations or amount to a breach of trust and/or confidence.
- Use of foul and/or abusive language (including discriminatory language).
- Failure to maintain appropriate professional registration.
- Theft, fraud or deception.
- Physical violence, threatened or attempted physical violence or behaviours that are perceived to be threatening, victimising or intimidating in nature.
- Accessing internet sites containing pornographic, offensive or obscene material including viewing, storing and/or distributing such inappropriate files or data.
- Harassment and/or discrimination against residents, employees, contractors, clients or members of the public.
- Bringing the organisation's reputation into serious disrepute, or actions that have serious potential risk to the reputation of the organisation.
- Gross negligence resulting in serious loss or damage to Company property, or injury to any party.
- Acceptance of bribes or other secret payments.
- Possession, use, abuse, supply or attempted supply of alcohol or illegal drugs.
- Attending work whilst under the influence of alcohol or illegal drugs, or serious incapability at work as a result the after-effects of such substance consumption/abuse.
- Giving false information as to qualifications or entitlement to work (including immigration status) or other employment matters.
- Undertaking unauthorised paid or unpaid employment during working hours.
- Serious breach of the Social Media & Networking Policy.
- Insubordination in respect of a failure to follow a reasonable request by a line manager which could be deemed detrimental to resident care, team safety or business reputation.
- Unauthorised absence for a period of time without reasonable explanation or contact with line manager.
- Sleeping on duty, which could be deemed as a period of neglect of duties without reasonable mitigating factors.

Review date	Next Review Date
October 2024	October 2027