



## **HR8 Disciplinary Policy and Procedure**

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# HR8 Disciplinary Policy and Procedure

## Policy Statement

*ELHAP takes pride in the quality of service it provides to its service users and the high standards of conduct and performance met by its employees.*

*From time-to-time an employee's performance or conduct may fall below the standards required by ELHAP. It is, of course, important that employees know what standards of performance and conduct are expected of them. ELHAP seeks to promote good employer relations and practices and this policy and procedure is to clarify the rights and responsibilities of management and staff in respect of matters relating to staff discipline. The policy and procedure ensures that all disciplinary matters within ELHAP are dealt with fairly and consistently and follow guidelines as detailed in the ELHAP Equal Opportunities in Employment Policy.*

## 1. Purpose and Scope of Policy

- 1.1 The policy and procedure applies to all staff employed by ELHAP (including staff on Sessional contracts).
- 1.2 This policy and procedure sets out ELHAP principles of disciplinary action, in order to comply with legal requirements and best practice, and to ensure that a consistent and equal approach to the disciplinary process within ELHAP as detailed in the Equal Opportunities in Employment Policy.
- 1.3 The purpose of the policy and procedure is to promote fairness and consistency in the treatment of individuals by giving the employer the opportunity to draw the attention of the employee to an unsatisfactory situation and the employee an opportunity to improve that situation.
- 1.4 The process is not intended to be primarily punitive in nature and therefore the procedure describes the steps to be taken to deal with each situation reasonably and whenever possible to help the person concerned to improve their performance or behaviour.

- 1.5 Key areas covered in this policy are:
  - 1.5.1 Procedures as to when to apply the informal process, e.g. to a minor case of misconduct
  - 1.5.2 Procedures as to when to apply the formal process, e.g. to a serious case of misconduct
  - 1.5.3 Procedures for dealing with persistent poor performance
  - 1.5.4 Procedures for dealing with persistent absence
  - 1.5.5 Guidance as to the types of conduct and the relevant disciplinary action
  - 1.5.6 Guidance as to the various roles and responsibilities in the disciplinary process, including the roles of Investigating Officer, Hearing Officer and representative.
  - 1.5.7 Process to be applied during a Disciplinary Hearing and an Appeal Hearing.
- 1.6 This policy should be referred to at the earliest opportunity, once it becomes clear that:
  - 1.6.1 An incident has occurred or a complaint has been received involving a member of staff.
  - 1.6.2 The performance of a member of staff begins to cause concern and has been addressed through the supervision 1:1 process.
  - 1.6.3 A member of staff's absence is in excess of that specified in the Managing Attendance policy and reasons for this absence is cause for concern (e.g. uncertified, several separate occasions in a 12 month period).

## **2. Roles and Responsibilities**

- 2.1 ELHAP believes that it is essential to have a clear, consistent and fair procedure for managing staffing issues that may require disciplinary action.
- 2.2 In order to have in place a set of such procedures, ELHAP recognises that all the parties involved in the disciplinary process (either informal or formal), have a responsibility to ensure that this process is carried out according to ELHAP policy and in line with legal requirements. These roles and responsibilities are as follows:

**2.2.1 Board of Trustees have a responsibility to ensure that:**

- There is a fair and equitable approach to the managing of disciplinary issues within ELHAP.
- The Board of Trustees may, in exceptional circumstances, authorise suspension without pay following legal advice if considered appropriate.
- A Board of Trustees member will chair any Dismissal Appeals, who has not been involved in the original hearing
- A member of the Board of Trustees (not previously involved in the process) will be present at Appeal Hearings.

**2.2.2 Human Resource Sub-Committee Members have a responsibility to ensure that:**

- A member of the Human Resource Sub-Committee will inform and obtain appropriate authorisations (as detailed above) on implementing the disciplinary process.
- A member of the Human Resource Sub-Committee will be present at Dismissal Appeal hearings as part of the Appeal panel.
- Where it is considered necessary to suspend a member of staff, every effort is taken to assure the individual concerned that this arrangement is not a form of disciplinary action but a measure to enable an investigation to take place and/or remove them from a sensitive/difficult or unsafe situation. A member of the Human Resource Sub-Committee must also confirm any suspension in writing to the employee concerned.
- An appropriate Investigating Officer is identified and agreed by the Board of Trustees and the Human Resource Sub-Committee member. Where it is a Centre Manager who is being investigated a member of the Human Resource-Sub Committee will carry out the investigations. Otherwise, the Investigating Officer will be chosen according to the level and area (in terms of type of Area/department) of the post.
- For disciplinary hearings where dismissal is a possible outcome, a Human Resource Sub-Committee member should either conduct the disciplinary hearing or explicitly delegate authority to an appropriate person to act as the Hearing Officer.
- A member of the Human Resource Sub-Committee will support the disciplinary hearing
- The role of the Human Resources Sub-Committee is to advise managers and employees on the application of the procedure, and provide advice on any legal requirements relating to employment matters.
- Where practicable, a member of the Human Resources Sub-Committee will be present at all suspensions to advise upon process.

- The Human Resource Sub-Committee will provide support to the Investigating Officer.
- The support given to the Investigating Officer includes guidance on the structure of the investigation ensuring that the terms of reference are adhered to, that the Investigating Officer's report is formally produced and directly relates to the aims of the investigation given in the terms of reference and that the report is robust in that there is sufficient evidence to support the recommendations made by the Investigating Officer to the Hearing Officer.
- The Human Resource Sub-Committee support to the Investigating Officer will also ensure that they are present at all interviews with the parties involved, record the notes of the interviews and word process them, ready for verification by the interviewee.
- Before submitting the Investigating Officer's report to the Hearing Officer/Commissioning Manager, the Human Resource Sub-Committee member will check that it is complete with the necessary evidence being attached, and that all aims of the terms of reference have been fulfilled. Where the Human Resource Sub-Committee member concludes that there are gaps in the investigation or weaknesses within the report in terms of evidence, they will advise the Investigating Officer to re-visit these aspects before the report can be passed to the Hearing Officer.
- Where a disciplinary hearing is to take place, the Human Resources Sub-Committee member support will then pass to the person appointed to act as secretary to the Hearing panel. They will make the necessary arrangements for the Employee, Investigating Officer, Witnesses (both Management and Employee), Hearing Officer/Commissioning Manager and the Human Resources Sub-Committee Representative to attend the hearing giving a minimum of 10 days notice. This will include ensuring that the employee receives copies of the Investigating Officer's case report and instructions regarding what is required from them prior to the hearing, such as a statement of case. They will also distribute copies of the employee's Statement of Case once it is received, ensuring that it is sent to all parties at least 3 days prior to the hearing.
- A member of the Human Resources Sub-Committee who, where practicable, has not previously been involved in the investigation) will attend the disciplinary hearing to take notes and to give advice to the disciplinary panel members.
- Where a disciplinary action goes to appeal the Human Resources Sub-Committee member will make arrangements as in 2.3.2 to 2.3.5.
- A member of the Human Resources Sub-Committee who has not previously been involved in the process will be present at every Appeal hearing, acting in an advisory capacity and as Appeal Secretary.

### **2.2.3 Centre Manager(s) have a responsibility to ensure that:**

- they have attended the internal disciplinary skills training course within the last 3 years and attend updates as required.
- they address each potential disciplinary issue fairly and in accordance with this policy and procedure.
- they seek advice from a Human Resource Sub-Committee member following an incident or complaint and before considering suspending the member/s of staff involved.
- they seek advice from the Human Resource Sub-Committee when considering implementing the disciplinary process (either informal or formal)
- every effort is made to resolve issues of minor misconduct at the informal stage and that they are followed up through the supervision/1:1 process.
- their staff are made aware of their rights within the disciplinary procedure (particularly if a member of staff is suspended (see paragraph 8.1) and the location of this policy and procedure.
- they undertake a thorough investigation (only when it is considered appropriate for them to be the Investigating Officer involving an incident/staff within their Area/department) and in accordance with the guidance given in this policy and procedure (see paragraph 8.2).

#### **2.2.4 An Individual member of staff has a responsibility to ensure that:**

- they make every effort to maintain the required levels of performance and attendance in order to avoid disciplinary action being taken towards them in accordance with this policy and procedure.
- they behave towards clients, other members of staff and people who come into contact with ELHAP in a manner that complies with the values and standards of the organisation as well as the Equal Opportunities Policy.
- they consult this and other relevant policies and procedures (Equal Opportunities and Grievance procedure) once they are made aware that the disciplinary procedure is to be evoked (either informally or formally).
- similarly, should they feel unhappy about the application of any of the informal/formal stages of the disciplinary process (for example, informal discussion about perceived poor performance) they should consult both the Equal Opportunities and Grievance policy and procedure which entitles them to make a formal complaint regarding the process applied.
- Employees also have the right to be represented or accompanied at all stages of the formal disciplinary procedure, by a Staff representative or colleague, a Trade Union Representative or by another person not acting in an official capacity. Staff should be aware that it may not be appropriate for their direct Line Manager to act as their representative.

- they comply with the requirements of this policy and procedure should they be suspended whilst an investigation takes place. This may mean they will not be able to attend their place of work or any other ELHAP property for the duration of the suspension unless a member of the Human Resource Sub-Committee gives prior permission.
- given that suspension is not a form of disciplinary action, they ensure they are available for work whilst suspended from duty, although they will not be required to attend work for the duration of the suspension unless notified otherwise by the appointed member of the Human Resources Sub-Committee.
- they notify the appointed Human Resources Sub Committee-Member of their intention to contact their representative directly.
- they make the necessary arrangements for their representative to receive relevant paperwork/statements from the appointed Human Resources Sub-Committee member.
- They check they have all the necessary documentation to enable them to compile a Statement of Case. In this respect, they are to confirm in writing they have received this information.
- they submit their statement of case to the Human Resource Sub-Cub Committee member no later than midday 5 days before a disciplinary hearing is due to take place. The Statement of Case should either be hand-delivered, or sent by Recorded Delivery.
- they notify the appointed Human Resource Sub-Committee member if they intend to be away from their normal place of residence, giving dates for return and where possible temporary contact details.
- Employees have the right to appeal against any instance of formal disciplinary action.

### **2.2.5 The Hearing Officer/Commissioning Manager has a responsibility to ensure that**

- they appoint an appropriate Investigating Officer, preferably outside of the working environment where the alleged misconduct has taken place, at the earliest opportunity.
- a clear set of Terms of Reference for the investigation are drawn up in good time and that these are passed to the Investigating Officer at the earliest opportunity to enable the investigation to commence as soon after the alleged misconduct has occurred.
- the employee and their representative are given full details of the allegations, including copies of all statements which form part of the investigating officer's concerns, at the time of notification that disciplinary action is to be taken.
- the employee concerned is notified in writing the outcome of the investigation, and where the allegations are considered to be serious or gross misconduct, they are warned that the disciplinary hearing may result in disciplinary action being taken against them such as a Final Written Warning or their Dismissal.
- arrangements for the hearing to take place are undertaken allowing sufficient notice to enable witnesses to be organised, a statement of case to be prepared and an appropriate venue to be booked (i.e. sufficient privacy and a separate room).
- They are fully prepared for the hearing, checking that they have all necessary documentation (Investigating Officer's report and employee's Statement of Case) and if necessary, meeting with the secretary to the panel (HR support) at least two days prior to the hearing to check that all arrangements are in place and that the proper process has been followed.
- they chair the disciplinary hearing and ensure the proper process is followed as laid out in paragraph 8.3 and Work Instruction HR8/W3 (paras 3 & 4) and HR/W8.
- The Hearing Officer/Commissioning Manager must be prepared to defend the decision at an appeal hearing, if necessary.

### 2.2.6 Investigating Officer has a responsibility to ensure that:

- they have attended the internal disciplinary skills training in the last 3 years before undertaking an investigation.
- they obtain and read ELHAP Disciplinary Policy and Procedure.
- they obtain the Terms of Reference for the investigation from the Hearing Officer/Commissioning Manager.
- they carry out a thorough investigation that directly relates to the aims of the terms of reference, interview witnesses using, where possible, a standard set of questions and obtain signed statements accordingly that explicitly give permission for their use at a hearing.
- all statements obtained during the investigation process are verified (including continuation pages) by the originator of the statement with written permission being given for these statements to be used as part of the disciplinary process.
- they will involve other agencies/departments (e.g. Police, Audit etc.) as appropriate and upon the advice of the Hearing Officer and/or Human Resources Sub-Committee.
- they maintain confidentiality at all times and marking documents related to an investigation accordingly.
- following an investigation, they can establish whether there is sufficient evidence to warrant a disciplinary hearing being held and make recommendations in a formally written report to the Hearing Officer/Commissioning Manager accordingly (the evidence uncovered must be sufficient to support these recommendations and demonstrate a direct link between the allegations and the individual staff member concerned).
- The written report should be formal and structured and produced using a word processor. The structure of the report should follow these guidelines:
  - o A clear table of contents at the beginning
  - o Paragraphs are to be numbered (1.1) as are the pages e.g. 1 of 2.
  - o The report should be clearly marked Confidential
  - o The report should be structured to address the terms of reference as well as including sections on the following information:
    - Background information/Introduction,
    - Methodology, Findings (pure facts supported by evidence),
    - Conclusions (Investigating Officers opinions derived from the findings)
    - Recommendations (directly relating to the findings and conclusions) as well as an overriding recommendation as to whether a disciplinary hearing should be held, towards whom and on what basis – *what breach has occurred?*

- Appendices can only be attached if referred to in the report. They should also be clearly marked.
- they are available to present their case at a disciplinary hearing and organise witnesses to attend accordingly.
- they are prepared to defend the investigation should any decision go to an appeal hearing

### **2.2.7 Representatives**

Under the Employment Relations Act, workers are entitled to be accompanied at all stages of the formal disciplinary process. However, at ELHAP and in accordance with best practice, staff can be accompanied at any stage of either the informal or formal disciplinary process. Although their representative cannot be any one who is acting in an official capacity Bearing this in mind, the role and rights of a representative are as follows:

- An employee asked to represent/accompany a colleague at a hearing as part of the disciplinary process will be entitled to time off with pay to fulfil these duties.
- An employee acting, in an unofficial capacity, as representative to a colleague will be entitled to claim any travel expenses incurred when attending a hearing.
- Representatives will be able to accompany the employee at Investigatory Interview(s), Disciplinary Hearing and Appeal Hearing.
- The Representative will be able to ask questions on behalf of the employee.
- The representative will not be able to answer questions on behalf of the employee.
- Neither will the representative be able to take on an adversarial role for the employee. Their purpose is to offer support and act as an observer to the process, ensuring fair play on behalf of the employee. Should they have any concerns about the process being followed, it is for them to advise the employee of their concerns but for the employee himself or herself to take these concerns to the appropriate person, i.e. in writing to the Human Resources Sub-Committee. They also have the right at any time throughout the process to make a complaint through the formal Grievance Procedure.

### **3 Legislation**

- 3.1 ELHAP recognises the importance of complying with current legislation whilst ensuring that a fair and equitable approach is taken in the disciplining of staff throughout the organisation. In this respect it is considered necessary within ELHAP to take account of the following pieces of legislation. Particularly in relation to applying equal opportunity to each case relating to suspected unsatisfactory behaviour or performance.
- 3.1.2 Employment Relations Act 1999
  - 3.1.3 Employment Rights Act 1996
  - 3.1.3 Sex Discrimination Act
  - 3.1.5 Race Discrimination Act
  - 3.1.6 Disability Discrimination Act 1995
  - 3.1.7 Trade Union and Labour Relations (Consolidation) Act 1992
  - 3.1.7 Data Protection Act 1998
  - 3.1.9 Health and Safety at Work Act

### **4. Assessment of Risk**

- 4.1 As part of the continuous quality audit process and the impact of the concept of Professional Accountability, ELHAP consider it is of paramount importance to assess the risks involved if the law and current best practice is not adhered to. With regard to the failure to comply with the legislation given at paragraph 3, either wholly or partly, in the execution of the disciplinary process within ELHAP, these risks are assessed to be as follows:
- 4.1.1 Discrimination Claims – an employee who feels they have been unfairly treated in the disciplinary process may make a claim to an Employment Tribunal on the grounds of sex, race, disability, religious belief, sexual orientation, and do not have to be employed for a qualifying period to be eligible. Successful claims currently provide for unlimited sums of compensation, and in recent years, nationally reported successful claims have been awarded in excess of £50,000.
  - 4.1.2 Unfair Dismissal – an employee who has been continuously employed for one year or more has the right not to be unfairly dismissed by his/her employer and if the employee is dismissed he/she can complain to an employment tribunal. A tribunal may award up to £50,000 to a successful claimant.
  - 4.1.3 If at any time during the process, confidentiality is breached or assumptions made publicly about the outcome of a disciplinary hearing,

the organisation runs the risk of a member of staff resigning on the grounds of a breach of Trust and Confidence and make a claim to an Employment Tribunal for Constructive Dismissal. Once again, constructive dismissal claims can result in organisations being instructed to award compensatory payments to former employees on the grounds of loss of earnings, etc.

- 4.1.4 There are also risks to the continuance of a safe and quality service if potential disciplinary matters such as poor performance are not addressed at the earliest opportunity.
- 4.1.5 Similarly, there is the risk to staff morale and motivation, as well as retention, if staff feel their complaints are not addressed properly and in accordance with this and the Grievance policy and procedure.

## **5. Definition of Terms**

- 5.1 The key terms used throughout this policy and procedure are considered to be and are defined as follows:

### **5.1.1 Appeal**

A process to address the dissatisfaction of an employee who has been subject to disciplinary action.

### **5.1.2 Appeal Hearing**

A meeting requested by an employee who is not happy with the outcome of disciplinary action whereby an appeal panel has the opportunity to reconsider the case and make a judgement as to whether the outcome was appropriate.

### **5.1.3 Best Practice**

When all stages of disciplinary comply with legislation and company procedure is fair and equal.

### **5.1.4 Constructive dismissal**

When a member of staff feels they have been treated unfairly by a representative of the organisation and feel so aggrieved that they have no choice but to resign, they can make a claim to an industrial tribunal (within 13 weeks of resigning) on the grounds of constructive dismissal which is a form of unfair dismissal. Generally, such unfairness is based upon an act of discrimination of some kind (e.g. sexual, racial, disability, etc.) but can also be due to harassment, victimisation, a breach of trust and confidence, and so on. For a claim to be successful at a tribunal, a member of staff would normally be expected to have sought redress through the internal grievance procedure unless the breach of contract was so severe that it would be unreasonable for the member of staff to

remain working whilst the matter is investigated.

#### **5.1.5 Counselling interview**

This is a meeting organised by the line manager outside of the supervision process to discuss with a member of staff areas of concern in an effort to resolve the issues before having to evoke the formal disciplinary process. A counselling interview is part of the informal process and is only an appropriate method for improving performance where the allegations are of a minor nature.

#### **5.1.6 Disciplinary**

A process used to address problems of conduct or capability, which have been identified by the employer through various sources such as the monitoring of performance or the occurrence of an alleged incident or receipt of a complaint

#### **5.1.7 Disciplinary Hearing**

A meeting to determine the outcome of presented evidence, and if the allegations are found, recommend appropriate disciplinary action.

#### **5.1.8 Dismissal**

Termination of employment with notice.

#### **5.1.9 First Written Warning**

The first level of disciplinary action in the formal disciplinary procedure.

#### **5.1.10 Final Written Warning**

The second level of disciplinary action in the formal disciplinary procedure with dismissal being the final disciplinary action should a further offence be committed and found.

#### **5.1.11 Gross Misconduct**

When a breach in discipline could result in dismissal without notice.

#### **5.1.12 Hearing Officer/Commissioning Manager**

A Manager who commissions the report and subsequently hears a disciplinary case and determine the outcome of the evidence presented.

#### **5.1.13 Informal Discussion**

A meeting to address a minor breach in conduct or capability and to set the standards expected without the intention of formal disciplinary action.

#### **5.1.14 Investigating Officer**

A Manager appointed to investigate alleged breach in conduct or capability.

#### **5.1.15 Investigation**

A process of collecting evidence and statements, compiling a report and making recommendations.

#### **5.1.16 Minor Misconduct**

A fall in acceptable standards or conduct that does not put the individual, other staff members, clients or the public at risk

#### **5.1.17 Oral Warning**

A record of a discussion to address poor performance and to set the standards required.

#### **5.1.18 The Panel**

A group of no more than 3 people who will hear the evidence presented, determine whether the allegations are found and if so, issue the appropriate disciplinary action.

#### **5.1.19 Professional accountability**

Professional accountability is an approach whereby all levels of staff involved in delivering services, from unqualified staff up to members of the Board of Trustees are responsible for ensuring a safe service, similar to the responsibility all staff for health and safety issues.

Within this type of environment, staff are encouraged to report mistakes or suggestions for improvements in working practices without fear of recrimination (Whistle blowing). Regular risk assessments are undertaken as well as quality audits to identify areas for improvement in the service.

#### **5.1.20 Representative**

A person selected by the employee to support them throughout the disciplinary procedure.

#### **5.1.21 Repudiation of contract**

An act that in effect relinquishes the contract.

#### **5.1.22 Serious Misconduct**

A deliberate disregard for known acceptable standards, which could result in dismissal.

#### **5.1.23 Summary Dismissal**

Termination of employment without notice.

#### 5.1.24 Suspension

When an employee is requested to refrain from attending work during an investigation. Generally a member of staff will remain on full pay whilst suspended unless exceptional circumstances prevail and the Board of Trustees considers a position of no pay more appropriate.

#### 5.1.25 Terms of Reference

This is a document drawn up by the Manager commissioning the investigation (normally the Line Manager of the employee) and will also act as the Hearing Officer should the matter be referred to a disciplinary hearing).

This document will provide background information to the incident being investigated, the allegations to be investigated and by whom. It will also establish the aims of the investigation and clarify when the investigation is to take place.

Any terms of Reference should be considered a Confidential document, only to be shared between the Commissioning Manager, the Investigating Officer and the Human Resources appointed Sub-Committee member for the investigation.

The content of the document is only to be shared with a particular employee/s once it is confirmed that allegations are to be made towards them personally. They are not to be shared as part of a general investigation until individual employees have been identified as potentially liable for the incident/complaint being investigated and a case has been put forward and agreed that a disciplinary hearing is to be held.

## 6. Associated Documents

- HR8/1 Procedure to be Followed When an Incident and/or Complaint of Alleged Misconduct Occurs
- HR8/W2 Procedure to be Applied at the Informal Stages of The Disciplinary Process
- HR8/W3 Procedure to be Applied at the Formal Stages of the Disciplinary Process
- HR8/W4 Procedure to be Applied When Making an Appeal
- HR8/W5 Procedure for Dealing with Ongoing Poor Performance
- HR8/W6 Procedure for Dealing with Persistent Absence (including Sickness Absence)
- HR8/W7 Procedure to be Followed Regarding Misconduct Outside of the Working Environment
- HR8/W8 Procedure to be Followed at a Disciplinary

Appendices

- Hearing
- HR8/W9 Examples of Minor, Serious and Gross Misconduct
  - HR8/W10 Disciplinary Flow Chart
  - HR8/W11 Procedure to be Followed at an Appeal Hearing

## 7. **Associated Forms**

- HR8/F1 Disciplinary Appeal Form

Appendices

# HR8/F1 Disciplinary Appeal Form

**Important**

You are required to complete this form and return it within 10 days of the date of the letter confirming formal disciplinary action.

Name: ..... Date of Disciplinary Hearing: .....

1. Please state the formal disciplinary action taken and the grounds of your appeal, giving full particulars.

Continue on a separate sheet if necessary

Number of attached sheets (if none enter 'none')

2. Please state your name, address and telephone number (BLOCK CAPITALS)

Name: .....

Address: .....

.....

Tel No (Work): ..... (Home): .....

3. Please state your job title, and work location (BLOCK CAPITALS)

Job Title: .....

Location: .....

4. If a representative has agreed to act for you in this case, please give his or her name and address below (BLOCK CAPITALS)

Name of representative: .....

Address: .....

.....

Telephone Number: .....

**You are advised to consult your representative before submitting this completed form.**

Signed: ..... Date: .....

Date received by Human Resources Sub-Committee: .....

Signed: .....

**Note:** Once you have formally lodged your appeal, and if it is within the time limit, it will be acknowledged in writing. Every effort will be made to arrange an appeal hearing within four weeks of your lodging this appeal.

# HR8/W1

## Procedure to be Followed When an Incident and/or Complaint Of Alleged Misconduct Occurs

1. When an incident takes place or a complaint is received, the response by the senior person in charge/manager will depend upon the seriousness of the situation. It is likely that the matter can be determined to be either minor or serious (including gross misconduct). For guidance purposes, examples of each are given in HR8/W9 Examples of minor, serious and gross misconduct.
2. Similarly there is a flow chart given in HR8/W10 that lays out the disciplinary process in simple terms.
3. The response for both types of misconduct is given below in paragraphs 3.1 and 3.2

### 3.1 **Minor Misconduct**

When an allegation of minor misconduct occurs, such as a member of staff repeatedly reporting late for work, it is usual practice to deal with this type of situation in an informal way, through either the supervision process or a counselling interview.

For matters of minor misconduct, it is important that every effort is made to resolve the matter at the informal stage and that the formal disciplinary process (as described in HR8/W3 Procedure to be Applied at the Formal Stages of the Disciplinary Process paragraph 2). This is only applied once all other options have been explored and the misconduct continues without improvement.

The informal process is explained in more detail in HR8/W2 Procedure to be Applied at the Informal Stages of The Disciplinary Process

### 3.2 **Serious/Gross Misconduct**

All matters of serious or Gross Misconduct must be dealt with according to the formal process (as detailed in HR8/W3 Procedure to be Applied at the Formal Stages of the Disciplinary Process). However, due to the serious nature of the allegation, such as abusive or racist behaviour, the senior person in charge/manager must first take the following action immediately following an incident before the formal process is fully applied:

- Notify the manager/Human Resource Sub-Committee member and seek advice on the incident.
- Where appropriate the Board of Trustees may advise that the police are called, especially if there is any risk to service users or other members of staff.
- immediate action should be taken to preserve any relevant evidence at or as close to the time of the incident/alleged misconduct including the taking of photographs where considered appropriate.
- take statements from any witnesses to the incident whilst the event is still fresh in their minds.
- take any necessary steps, as advised by the on-call manager, to reduce further risk to service users and other members of staff.
- if advised by the manager/HR Sub-Committee member, send the member of staff concerned home. This may not necessarily be a formal suspension at this stage (see paragraph 8.1) but may be used as a mechanism to cool the situation down and give everyone concerned some breathing space.
- complete an incident report form if considered appropriate.

If the allegations have come in the form of a letter from a relative or through supervision (for example) from another member of staff, then the manager concerned, first needs to consult with a member of the Human Resource Sub-Committee as to the appropriate action to be taken, e.g. suspension. Although the formal process will still apply following any initial action taken.

## **HR8/W2**

# **Procedure to be applied at the Informal Stages of The Disciplinary Process**

1. The following principles are to be applied during application of the informal Disciplinary Procedure.
  - 1.1 Dialogue, advice and discussion without disciplinary overtones will be the most commonly adopted means of correcting and improving behaviour. It should be regarded as an important aspect of the Centre manager or supervisor's role since it may assist in preventing the need for future disciplinary action, or highlight at an early stage the need for training or other assistance e.g. temporary change to hours of work.
  - 1.2 Therefore, if the next supervision session is not due or it is considered more appropriate to hold a separate meeting, then a counselling interview will take place to identify reasons for the changes in performance. These will normally be between the Line Manger and the member of staff concerned although if requested, a member of the Human Resources Sub-Committee can also be present to advise upon process.
  - 1.3 The counselling session will give both parties the opportunity to explore the reasons for the lapse in performance and agree upon solutions to enable a return to the required standard.
  - 1.4 Similarly, the counselling interview will help identify any training needs and a follow-up session (or through supervision) will ensure that this is carried out as well as evaluating the benefits gained and any improvements made.
  - 1.5 An informal record should be kept of any discussions (for example, supervision record or a diary or personal file note). If there are any conditions or standards expected by an employee, these should be confirmed in writing to them.
2. Future performance will be monitored on a regular basis at 1:1/Supervision meetings. If there is no or little improvement in performance then an oral warning will be issued and recorded on their personal file. The process to be applied in respect of an informal warning is as follows:
  - 2.1 The manager will make it clear to the employee that further misconduct or continuing poor performance may evoke the formal disciplinary procedure, the outcome of which may be formal disciplinary action. Managers are advised to make a brief note (supervision record, diary or personal file) of the discussion, which could prove invaluable should a repetition of the misconduct occur.

- 2.2 Informal warnings will be retained on file for up to twelve calendar months. However, dependent upon the issue under consideration, it will be for the manager to decide a time-scale for removal, of between six and twelve calendar months.
  - 2.3 Where the informal warning is given in cases of poor attendance, then the manager may set a review date for three months time (see Managing Attendance policy). If there is no improvement in the attendance record in that time, then the manager should consider dealing with the matter under the formal disciplinary process.
  - 2.4 Natural justice and good practice require that employees are very clear about what is expected of them and, therefore, for the employees benefit, the details of any informal warning issued should be in writing, be specific and give timescales for improvement whenever possible.
  - 2.5 Informal warnings do not carry a right of appeal.
3. If despite every attempt to encourage improvement in performance has failed then the Manager must consider using the formal disciplinary procedure as detailed in HR8/W3 'Procedure to be Applied at the Formal Stages of the Disciplinary Process'. For example, where there has been no improvement following informal discussions/counselling, or the problem/incident is of a more serious nature, then the employee should be instructed to attend a meeting with the Centre manager to be notified that the formal disciplinary process is to be applied.

# HR8/W3

## Procedure to be Applied at the Formal Stages of the Disciplinary Process

### 1. Suspension

- 1.1 Suspension from duty is a precautionary measure and it shall not be regarded as a disciplinary action. It is appropriate to mention it in this Policy and Procedure as it may preclude subsequent disciplinary action.
- 1.2 It is appropriate to suspend in cases of alleged misconduct where:
  - it is considered unsafe or inappropriate, or not in the best interest of the employee, to continue working during the Investigation.
  - the employee appears to be incapable of undertaking their duties when required to do so, e.g. due to intoxication or experiencing high levels of stress.
  - an employee's trustworthiness is brought into question, e.g. concerning confidentiality of information.
  - the presence of the employee constitutes a serious risk to service users, staff or ELHAP property or themselves (for example, severe aggression or alleged drunkenness)
  - the conduct of an employee is subject to criminal charges and alleged offences, which are connected with or may affect the employee's duties to suitability for duties.
- 1.3 As an alternative to suspension, staff may be temporarily re-deployed to suitable alternative employment, following discussion with the employee and their representative and the Human Resource Sub-Committee member, where appropriate.
- 1.4 The manager who has authority to issue a formal warning may suspend, but only a member of the Human Resource Sub-Committee may confirm the suspension.
- 1.5 Suspension should normally be undertaken within ELHAP premises. Although if the member of staff lives locally and is due to report for duty, it may be considered appropriate for the suspending manager to visit the employee at their home (with prior notice) or contact them by telephone and inform them of the need to suspend at that time.

- 1.6 Where practicable, suspension should take place with another person present and/or a member of the Human Resource Sub-Committee to ensure that a witness is present and the appropriate process has been applied.
- 1.7 Similarly, if practicable, the member of staff being suspended should be offered the right to be accompanied whilst the suspension takes place.
- 1.8 During the suspension, the manager should clarify for the employee the following issues:
  - the reasons for the suspension and the allegations of misconduct that are to be investigated
  - that it is not necessary for them to make a statement at the point of suspension as this may not be the most appropriate time to best present their account of events. They will have the opportunity to do so as part of the Investigation process (see paragraph 2).
  - that they will remain on full pay (unless later considered by the Board of Trustees that this not appropriate and that notice will be given as to the withdrawal of pay)
  - that while suspended from duty, employees must not contact any ELHAP staff or services users, or enter ELHAP premises without prior authorisation from a member of the Human Resource Sub-Committee.
  - although every effort should be made to ensure that the member of staff does not feel isolated when suspended from duty. In this respect, they should be advised to contact a Human Resource Sub-Committee member with a view to organising some support during their suspension.
  - that while suspended from duty, they are to return any ELHAP property such as keys, which will be returned to them once they return to duty.
  - that suspension is not in itself, an indication of future disciplinary action.
- 1.9 Unless revoked, the suspension will be confirmed promptly in writing by a member of the Human Resource Sub-Committee Team with details of the continuing investigatory process and any conditions that apply.
- 1.10 Suspension will normally be on full pay but may be withheld in exceptional circumstances and only with the agreement of the Board of

Trustees. If no disciplinary action is taken, any withheld monies will be repaid to the employee.

- 1.11 Suspension will be of the shortest duration necessary in the circumstances. If, following the investigation, disciplinary action is not taken, all reference to the suspension/allegation will be removed from the employee's file and the employee notified accordingly.
- 1.12 Following the suspension of a member of staff, the Centre manager should discuss with the Human Resource Sub-Committee member as to the other parties that should be informed of the suspension, e.g. relatives, commissioners, etc. and who is the most appropriate person to make contact and the extent of information that is to be made available.

## **2. Undertaking an investigation**

- 2.1 Where the allegations made warrants formal disciplinary action, then an investigation should be undertaken at the earliest opportunity.
- 2.2 The Board of Trustees will initially decide who will be taking on the role of Hearing Officer.
- 2.3 The Human Resource Sub-Committee will decide the most appropriate person to take on the role of Investigating Officer.
- 2.4 The person identified as the Hearing Officer may commission the investigation and determine the terms of reference, which should be in a written format, detailing the allegations to be investigated and the role of the Investigating Officer.
- 2.5 The employee concerned should also be given clear information about the allegations (such as a copy of the terms of reference) at the start of the investigation, the name of the Investigating Officer, the process that is to be followed, and be kept fully informed of any issues arising from the investigation.
- 2.6 If the allegations are considered to be gross misconduct, then the employee must be informed in writing that the possible outcome following a disciplinary hearing may be their dismissal from ELHAP.
- 2.7 The Investigating Officer who conducts the investigation will not be the Hearing Officer in the event of any disciplinary hearing.
- 2.8 Any member of the Human Resources Sub-Committee, acting in an advisory capacity to the investigation process, should not be part of any resulting disciplinary hearing.

- 2.9 The Investigating Officer will need to establish the facts including obtaining information and/or statements from:
- Any person who either witnessed the alleged offence or can offer relevant information
  - The employee against whom allegations have been made
  - Any relevant area paperwork such as supervision notes, care plans, etc. which may only be accessed subject to current confidentiality arrangements.
- 2.10 Persons presenting information to the Investigating Officer will be advised of their rights of representation prior to any investigating interview taking place.
- 2.11 They will also be advised that any statement supplied may be used in any resulting disciplinary hearing, and may be given to the individual against whom the allegations have been made.
- 2.12 All written statements will be verified by the originator (including the employee whose actions are being investigated) and signed to this effect. Under the Data Protection Act, they will also be required to give their written permission for the information to be shared with other parties involved in the disciplinary hearing.
- 2.13 Following completion of the investigation, the Investigating Officer shall put together a statement of case that includes the following:
- Background information
  - Terms of reference for investigation
  - Methodology
  - Findings – factual directly linked to evidence
  - Conclusions
  - Recommendations – these should either be in respect of recommending a hearing (with evidence to support this) or that there is insufficient evidence of a case to answer. If the latter is the case, then it is for the Commissioning Manager to decide whether a second investigation is required or that the allegations are not substantiated and the matter closed. The investigating Officer may also make recommendations regarding improvements to the management of staff, a scheme or department, the systems currently in place etc., if the investigation has demonstrated that such weaknesses currently exist and played a part in the

subsequent complaint/incident.

- 2.13 Such a statement should be robust and be fully supported by documented evidence, as it will form the basis of questioning and cross-examination at any subsequent disciplinary hearing. In this respect, a formal report that directly relates to the terms of reference with clearly marked paragraphs and cross-referencing to evidence/Appendices is required.
- 2.14 The completed statement, once agreed by the Human Resource Sub-Committee member that it is complete, is to be submitted to the Commissioning Manager for consideration. However, if the Commissioning Manager is implicated in any way in the incident under investigation, then the Human Resource Sub-Committee member would first consult the Board of Trustees, to agree the most appropriate senior to read the report and make a decision about the holding of a hearing. This may be the same manager that is later appointed as the Hearing Officer.
- 2.15 After consideration of all the facts and evidence, the Commissioning Manager will decide whether a disciplinary hearing is to be held to consider the evidence and decide upon whether disciplinary action is appropriate. Disciplinary action (if any) should not be decided until the investigation is complete and a hearing carried out according to this policy and procedure, regardless of how straightforward the alleged offence appears.
- 2.16 If a disciplinary hearing is to be held, the employee should be notified in writing, informing them of the date of the hearing, the panel who will hear the case, venue and time, etc. as well as giving them a date by which their statement of case needs to be received by a member of the Human Resource Sub-Committee, i.e. 5 days prior to the hearing. They should also be made aware of the process to be followed and a copy of HR8/W8 being sent to them
- 2.17 If it is decided that there are insufficient grounds to hold a disciplinary hearing, the employee will be informed by the Commissioning Manager and all documentation relating to the incident will be destroyed.

### **3. Organising a disciplinary hearing**

- 3.1 Generally, a member of the Human Resource Sub-Committee will coordinate the arrangements for organising a disciplinary hearing. They will also need to liaise closely with the Hearing Officer when making the necessary arrangements.
- 3.2 The Hearing Officer must be in direct line authority over the individual being disciplined, or be a member of ELHAP Board of Trustees.

- 3.3 For disciplinary hearings where dismissal is a possible outcome, the relevant Board of Trustees member should either conduct the disciplinary hearing or explicitly delegate authority to the Hearing Officer.
- 3.4 A member of the Human Resource Sub-Committee must be present at any disciplinary hearing where a written warning or dismissal is a potential outcome. This person should not be the same Human Resource Sub-Committee member who acted in an advisory capacity to the Investigating Officer.
- 3.5 A disciplinary hearing will not be held until the case has been fully investigated.
- 3.6 Arrangements will be made for investigations and hearings as quickly as is consistent with thoroughness.
- 3.7 Adequate notice of at least ten working days of a hearing where formal disciplinary action is a possible outcome will be given in writing, with the allegations outlined and a copy of the Investigating Officer's case is enclosed.
- 3.8 The Investigating Officer will be requested by the Hearing Officer to attend the disciplinary hearing in order to present the management case for the taking of disciplinary action. Although both sides will be able to ask the Investigating Officer questions. (The procedure to be followed at the hearing is as outlined in HR8/W11 Procedure to be Followed at an Appeal hearing)
- 3.9 The employee is also required to submit a written statement, which must be received by the member of the Human Resource Sub-Committee a minimum of five days prior to the hearing taking place.
- 3.10 If a possible outcome of the hearing is dismissal, the employee will be told of this possibility in advance, to emphasise the seriousness of the hearing.
- 3.11 Witnesses for either party may be called to support the case. The responsibility for arranging the attendance of witnesses will fall upon the party concerned, in the event of difficulties the matter should be referred to the Human Resource Sub-Committee member.
- 3.12 Employees of ELHAP called upon as witnesses will be allowed paid time off to attend.
- 3.13 Employees who are suspended from duty must contact the Human Resource Sub-Committee member to arrange for witnesses to attend.
- 3.14 Employees should be advised that if they fail to attend the hearing after agreeing a mutually acceptable date, the hearing may continue in the absence of the employee and their representative. The Hearing Officer will make his/her decision in discussion with other panel members based

on the evidence provided at that hearing.

- 3.15 Disciplinary hearings may be adjourned if proceedings give rise for the need for further evidence, investigation, or testimony.
- 3.16 The employee will be advised of his/her right of appeal following the issuing of a formal warning (see HR8/W4, HR8/W11 and HR8/F1).
- 3.17 If the issue giving rise to the need for a disciplinary hearing is of a nature which may require professional or specialist advice, the manager hearing the disciplinary or appeal may request the attendance of such a specialist who would act in solely an advisory capacity.

## 4. Formal disciplinary action

- 4.1 Formal disciplinary action can only be determined once the matter has been fully investigated, and where appropriate for serious and gross misconduct cases, a disciplinary hearing has been held and recommendations made as to the level of formal disciplinary action.
- 4.2 A guide as to the appropriate levels of disciplinary action relevant to each type of misconduct is given in HR/W9 Examples of minor, serious and gross misconduct.
- 4.3 However, the following paragraphs give some guidance as to what is meant by each type of formal disciplinary action.

### 4.4 First Written Warning

A First Written Warning may be issued by the authorised manager where:

- an employee's conduct or performance has not improved following an oral warning issued in the preceding twelve months.
- minor misconduct is demonstrated (See HR8/W9).

This warning will be current for up to twelve months from the date of issue. The employee has the right of appeal to the manager to whom the issuing manager is accountable. This should be submitted in writing within 10 days of the date of the First Written Warning letter using the Appeal Form (HR8/F1), outlining the grounds upon which the employee feels the warning was inappropriate.

### 4.5 Final Written Warning

A Final Written Warning may be issued by the authorised manager where:

- there is a further incidence of misconduct or where performance has not improved following the issue of a First Written Warning, which is current.
- serious misconduct or serious negligence is demonstrated (see HR8/W9).

This warning will be current for twelve months from the date of issue. The employee has the right of appeal to the manager to whom the issuing manager is accountable. This should be submitted in writing within 10 days of the date of the First Written Warning letter using the Appeal Form (HR8/F1), outlining the grounds upon which the employee feels the

warning was inappropriate.

#### 4.6 **Dismissal**

Dismissal may be issued by the authorised manager where:

- there is a further incidence of misconduct or if performance has not improved following the issue of a Final Written Warning, which remains current.
- gross misconduct or gross negligence is demonstrated (see HR8/W9)

Dismissal will be issued with contractual notice or payment in lieu of contractual notice, except where gross misconduct or gross negligence is tantamount to repudiation of contract, in which case notice payment will be withheld.

Similarly, if a member of staff is summarily dismissed, then notice pay will be withheld.

The dismissed employee has the right of appeal (see HR8/W4 and HR8/W4) to a sub-committee of the Board of Trustees. This should be submitted in writing, using the Appeal Form at HR8/F1 to a member of the Human Resource Sub-Committee within 10 days of the date the date of the Dismissal letter, outlining the grounds upon which the recipient feels the dismissal to be inappropriate.

## HR8/W4

### Procedure to be Applied When Making an Appeal

1. Every employee has the right to appeal against the decision to take disciplinary action at a disciplinary hearing.
2. Appeals against disciplinary action must be received no later than 10 days from the date of the letter confirming formal disciplinary action, using the Appeal Form as detailed on Form HR8/F1 Appeal Request Form
3. Appeal requests should be addressed to the Human Resource Sub-Committee and will be conducted by at least two members of the Board of Trustees and one member of the Human Resource Sub-Committee, acting in an advisory capacity and as Appeal Secretary.
4. Both parties to the appeal (i.e. management and the appellant or his/her representative) will be required to submit a Statement of Case to the Human Resources Sub-Committee no later than five working days before the date of the appeal hearing.
5. The Statement of Case must set out a full explanation of the facts of the case, and the argument of the individual party and, where appropriate, refer to mitigating circumstances as to why they do not agree with the outcome of the disciplinary hearing.
6. The Statements of Case will be exchanged by the Appeal Secretary (Human Resources Sub-Committee) and copies provided to both parties at least three working days prior to the actual hearing.
7. The members of the Appeal Panel shall ideally not include anyone who has been directly involved in the circumstances leading to disciplinary action.
8. The procedure to be followed at an Appeal hearing is outlined in HR8/W11.
9. If either party fails to produce their Statement of Case by the required time-limit they will forfeit their right to continue with the Appeal, unless an extension of time has been formally granted by the Appeal Secretary.
10. The Appeal Panel may decide to reduce or remove the disciplinary action issued at the disciplinary hearing. They may also consider the previous action to be insufficient and recommend an increase in the disciplinary penalty, although such action may be in contravention of Article 7 of the Human Rights Act.
11. Should the Appeal Panel decide to demote an employee who was previously dismissed to a lower grade, then they will be entitled to receive payment at that grade for the period since their dismissal until the date of the Appeal Hearing, If the employee subsequently choose not to take up this position, then it will be considered that they have resigned their position with ELHAP as of the date of

the Appeal Hearing and any future references are to be reflect this outcome.

12. Further guidance on the use of this Procedure is available from the Human Resources Sub-Committee.

## **HR8/W5**

# **Procedure for Dealing with Ongoing Poor Performance**

1. The line manager concerned should gather evidence of on-going poor performance using files notes made at Supervision/1:1 meetings.
2. They should then interview the employee giving specific examples from previous Supervision/1:1 meetings.
3. Every opportunity should be given to the employee to explain why they feel their performance has not been to the required standard. It may be that the necessary resources are not available or there is a training need that has not been addressed or exceptional circumstances have occurred.
4. By the end of the interview, the Line Manager will set the required standards of performance, agree resources and/or training to be made available and ensure the employee has a written copy of this discussion.
5. The Line Manager will also ensure that a review date is planned to assess the progress made.
6. Following the review, if the standards of performance have improved, no further action should be required.
7. If the standards of performance have not improved following the review meeting, then consideration must be given to moving on to the formal disciplinary procedure as detailed in HR8/W3 Procedure to be applied at the Formal Stages of the Disciplinary Process.

## **HR8/W6**

# **Procedure for Dealing with Persistent Absence (including Sickness Absence)**

1. Where an employee's absence record gives rise for concern, the Line Manager concerned should first consult the Managing Attendance Policy and Procedure.
2. If, after following the steps advised in the Sickness Absence procedure, an employee continues to demonstrate a poor attendance record then the matter should be treated as a capability case and dealt with according to the Managing Attendance policy and procedure.
3. Where the absence is due to a medically certificated illness the issue becomes one of capability. In such cases, managers need to take a sympathetic and considerate approach to dealing with these types of absences. In deciding what action to take, managers will need to take into account the following issues:
  - likelihood of an improvement in health and subsequent attendance (based where appropriate on professional medical advice)
  - the availability of suitable alternative work
  - the effect of past and likely future absences on the organisation
  - how similar situations have been handled in the past; and
  - whether the illness is a result of a disability as defined in the Disability Discrimination Act 1995.
4. Once these issues have been addressed and it is found that the employee does not have the capability to fulfil their contractual obligations, then dismissal on the grounds of capability should be considered (See Managing Attendance Policy & Procedure). For example, a medical report should be sought, the individual written to and notified that their poor attendance is severely disrupting the ongoing delivery of the service and subsequently require them to attend a hearing (not a disciplinary hearing but a formal hearing organised procedurally similar to a disciplinary hearing) where evidence will be presented by their Line Manger/supervisor that demonstrates the level of attendance. The Hearing panel will then decide on the basis of the evidence (including a medical report if available) as to the action that should be taken, e.g. Final Written Warning or Dismissal depending on whether previous warnings have been given.

5. Where the issue is one of a breach of the sickness reporting procedure, then the matter should be dealt with as misconduct and pursued under this Disciplinary Policy and Procedure (see HR8/W1).
6. Staff need to be made aware that persistent absence without sufficient cause or supported by medical certifications can result in their dismissal.

## **HR8/W7**

# **Procedure to be Followed Regarding Misconduct Outside of the Working Environment**

1. Misconduct outside work may also be subject to formal disciplinary action, where misconduct has implications for employment responsibilities or where the actions of an employee bring the organisation's name into disrepute.
2. Therefore, the Line Manager concerned should follow the procedures given in HR8/W3 and implement the formal stages of the disciplinary process.

## **HR8/W8**

# **Procedure to be Followed at a Disciplinary Hearing**

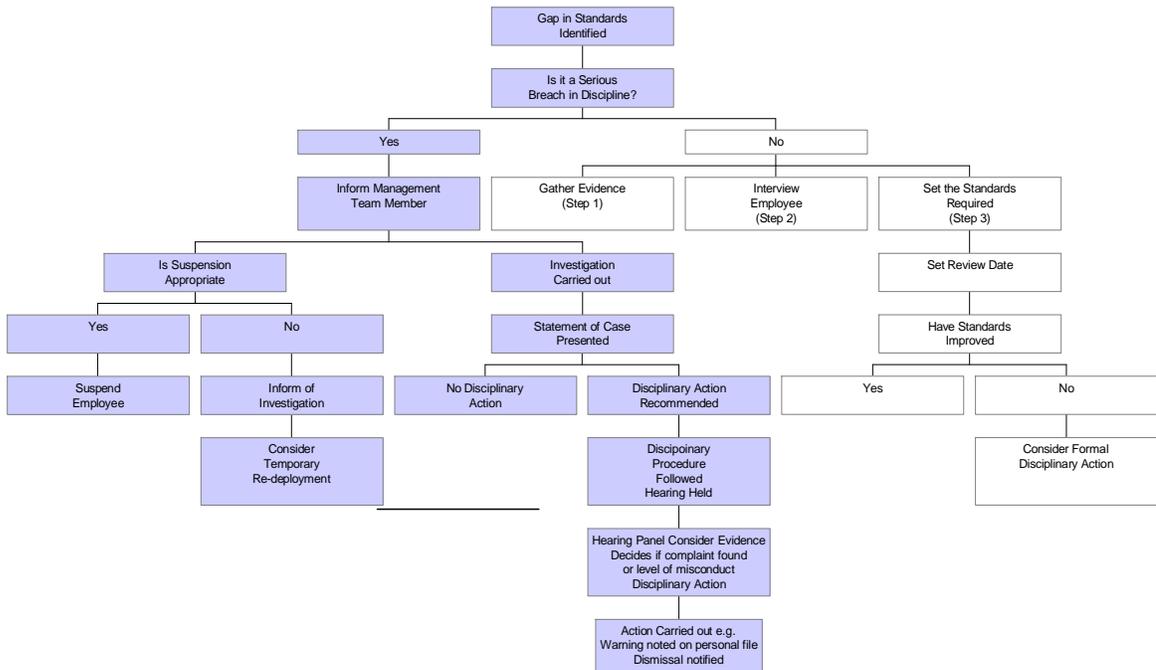
1. The Hearing Officer will make an opening statement giving reason for the disciplinary hearing, outline the allegations investigated and indicate possible outcomes (without prejudging the outcome).
2. The Hearing Officer will also explain the process to be applied throughout the hearing and introduce the members of the panel (likely to be a fellow Board of Trustees if considered appropriate, and a member of the Human Resources Sub-Committee acting in an advisory capacity).
3. The Investigating Officer shall first state his/her case in the presence of the employee and their representative, he/she may also call witnesses.
4. The employee or his/her representative shall have the opportunity to ask questions of the investigating officer and witnesses.
5. The panel shall have the opportunity to ask questions of the Investigating Officer and witnesses.
6. The Investigating Officer shall have the opportunity to re-examine his/her witnesses on any matter referred to in the examination by the employee or their representative and the panel.
7. The employee or his/her representative shall put his/her case in the presence of the investigating officer and may call witnesses.
8. The Investigating Officer shall have the opportunity to ask questions of the employee, his/her representative and witnesses.
9. The panel shall have the opportunity to ask questions of the employee, his/her representative and witnesses.
10. The employee or his/her representative shall have the opportunity to re-examine his/her witnesses on any matters referred to in the examination by the Investigating Officer and the panel.
11. The Investigating Officer and the employee or his/her representative shall have the opportunity to sum up their case, if they so wish. The employee or his/her representative shall have the right to speak last. In summing up, neither party may introduce any new matter.
12. The panel may at its discretion adjourn the hearing in order that further evidence may be produced by either party or for any other reason.

13. The Investigating Officer, the employee and his/her representative shall withdraw leaving the panel to deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point, which needs clarification.
14. Whilst deliberating their decision, the Hearing Officer may allow mitigating factors to be raised, examine any current disciplinary warnings, and where necessary adjourn the hearing to take further advise.
15. The final decision shall be notified to the employee, his/her representative and the Investigating Officer at the end of the deliberations wherever possible, and will be confirmed in writing.
16. The Hearing Officer will also advise the employee of their right to appeal against the decision and/or take out a formal grievance should they feel they have been treated unfairly at any stage of the process.



# HR8/W10

## Disciplinary Procedure Flow Chart



## HR8/W11

### Procedure to be Followed at an Appeal Hearing

1. The Appeal Hearing Officer will make an opening statement giving reasons for the request for an appeal hearing, referring to the appeal document received. He/she will also remind those present of the original decision of the disciplinary hearing and indicate possible outcomes (without prejudging the outcome) such as the action remaining unchanged, be removed and a lesser action decided instead or be removed but with a more severe action imposed if the appeal panel decided the Disciplinary Hearing officer had been too lenient.
2. The Appeal Hearing Officer will also explain the process to be applied throughout the appeal hearing and introduce the members of the panel (likely to be a fellow Board of Trustees and a member of the Human Resource Sub-Committee acting in an advisory capacity).
3. The employee and their representative shall state his/her case in the presence of the Appeal Hearing Officer and may call witnesses.
4. The Disciplining Officer shall have the opportunity to ask questions of the employee and witnesses.
5. The panel shall have the opportunity to ask questions of the Disciplining Officer and witnesses.
6. The employee shall have the opportunity to re-examine his/her witnesses on any matter referred to in the examination by the Disciplining Officer and the panel.
7. The Disciplining Officer shall put his/her case in the presence of the employee and their representative and may call witnesses.
8. The employee and their representative shall have the opportunity to ask questions of the Disciplining Officer and witnesses.
9. The panel shall have the opportunity to ask questions of the Disciplining Officer and witnesses.
10. The Disciplining Officer shall have the opportunity to re-examine his/her witnesses on any matters referred to in the examination by the Employee and their representative and the panel.
11. The employee or his/her representative and the Disciplining Officer shall have the opportunity to sum up their case, if they so wish. The employee or his/her representative shall have the right to speak last. In summing up, neither party may introduce any new matter.

12. The panel may at its discretion adjourn the hearing in order that further evidence may be produced by either party or for any other reason.
13. The employee and his/her representative and the Disciplining Officer shall withdraw.
14. The panel shall deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point, giving rise to doubt.
15. The final decision shall be notified to the employee, his/her representative and the Disciplining Officer at the end of the deliberations wherever possible, and will be confirmed in writing.

**Implemented by the ELHAP Board of Trustees  
18<sup>th</sup> April 2007**