



DISCIPLINARY POLICY

Disciplinary Policy

1. POLICY PURPOSE

This policy and outlined procedure aims to encourage all employees of West Lothian Housing Partnership ('WLHP') to achieve and maintain expected standards of conduct and attendance and provide a framework with which managers can work with employees to maintain satisfactory standards of conduct and attendance and encourage improvement where necessary.

It is WLHP's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish facts and to give employees the opportunity to respond before taking any formal action.

2. POLICY SCOPE

This policy applies to all WLHP employees. It does not apply to agency workers or self-employed contractors.

Where any disciplinary matter concerns standards of attendance this will normally be dealt with under WLHP's policy on Sickness and Absence Management, but may be addressed under this policy where appropriate.

This policy does not form part of any employee's contract of employment and it may be amended at any time in consultation with our recognised Trade Unions.

3. RIGHT TO BE ACCOMPANIED

At all stages of this procedure, employees have the right to be accompanied by a certified trade union representative or an existing WLHP employee of their choice. Employees are required to inform WLHP of their chosen companion in good time before any meeting or hearing, where possible. All information/documentation, where relevant and appropriate to the issue, will be made available to an employee's representative on the request of the employee. WLHP will facilitate the release of any representative chosen who is an employee of WLHP. This will include time off with pay to represent the employee. If an employee's companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, we may ask them to choose someone else.

4 RECORD OF DISCUSSION

This action is typically taken to correct minor problems or to advise employees of required improvements to performance or behaviour. A record of discussion will involve the manager simply speaking to the employee and making them aware of what is required. The manager will make a note for reference that will be kept in the employee's local file for 6 months. Formal steps will be taken under this policy if the matter is not resolved, or if informal discussion is not appropriate (for example, due to the severity of the allegation).

As these discussions are informal it should not be necessary for a note taker to be present or for the employee to be accompanied. If, however the employee wishes to be accompanied at the discussion, he, or she, may be accompanied by a certified trade union representative or an existing WLHP employee of their choice.

5. FORMAL COUNSELLING

Formal counselling is appropriate when, following a formal investigation into more serious conduct/behaviour, the designated officer feels that disciplinary action is not appropriate but that the employee needs to be made aware of a requirement to improve. It may also be required when an employee has failed to modify their conduct/behaviour after receiving informal counselling. In these situations the manager will arrange a meeting to talk matters over with the employee and, where appropriate, put supportive and/or corrective measures in place. Such meetings must take place in private and the employee must be given the right to

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be accompanied. Following the meeting the manager will confirm what was discussed in a follow up letter. A copy of this letter will be kept in the employee's file for a period 6 months.

6. ALCOHOL/DRUGS COUNSELLING

In accordance with the terms of WLHP's Policies on Alcohol and Drug Addiction and Gambling Addiction, an employee with such a problem may be given the opportunity of accepting referral to the counselling services arranged by WLHP. If the counselling services provider and the employee agree that an alcohol, drug or gambling problem exists and, providing the employee undertakes to co-operate and successfully undertakes the recovery programme, disciplinary action may be suspended in respect of the offence, which led to the referral. Offences, which are either not related to the reason for referral or offences that are considered to be of a serious nature will be dealt with in the normal way. If an employee is not accepted by the counselling service as having an alcohol, drug or gambling problem and therefore cannot be considered for the recovery programme, the appropriate disciplinary action will be taken as normal. If an employee is accepted for counselling but does not complete the recovery programme, any suspension of disciplinary action which came into effect on referral will be removed and consideration of the original breach of discipline will be re-opened and any appropriate disciplinary action taken.

7. CRIMINAL OFFENCES

Employees have a duty to report any criminal investigation, charge or conviction concerning them to WLHP. Failure to do so may be considered as gross misconduct.

Where an employee's conduct is the subject of a criminal investigation, charge or conviction, WLHP will investigate the facts before deciding whether to take formal disciplinary action.

WLHP will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where an employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if WLHP considers that it is relevant to an employee's employment.

8. PERFORMANCE ISSUES

It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at an informal meeting before any decision to take formal action is made.

The aim of this approach is to improve the performance of employees that have been identified as under performing. The emphasis is on encouraging improvement and supporting the individual to enable him/her to achieve the required standard of performance.

In many cases early intervention by a line manager can prevent an issue escalating to a situation that has to be dealt with formally and the informal route is therefore strongly recommended. Managers should use My Contribution meetings to highlight areas causing concern and to identify training which address the areas in which the employee is under performing.

Formal disciplinary action (up to and including dismissal) is a potential outcome of an employee failing to achieve and maintain a satisfactory level of performance. Disciplinary decisions should only be taken as a last resort and only when it is clear that all appropriate learning and development opportunities (whether training courses or on-the-job coaching) have been put in place and that the employee has been given reasonable time in which to improve.

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Further information can be found in Management Guidelines – Performance Improvement Process.

9. CONFIDENTIALITY

Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of individuals involved. All employees must therefore treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

Unless agreed in advance by all parties and only in exceptional circumstances, employees, or anyone accompanying them, must not make electronic recordings of any meetings or hearings conducted under this policy. Doing so may result in further disciplinary action being taken against an employee or their representative.

Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless we believe a witness's identity should remain confidential. If a witness's identity is kept confidential, WLHP will endeavour to give the employee as much information as possible whilst maintaining confidentiality

10. FORMAL PROCEDURE

When a disciplinary matter arises and it is considered that action beyond informal counselling may be called for, the following procedure will apply:

10.1 Investigations

Where disciplinary allegations are raised in relation to an employee, an Investigating Officer will be appointed to carry out an investigation with support from Employee Relations. Employees must cooperate fully and promptly in any investigation.

The purpose of an investigation is for WLHP to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee before deciding whether to proceed with a disciplinary hearing. The amount of investigation involved will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses and/or reviewing any relevant documents. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

An employee will usually be made aware of disciplinary allegations against them within 5 days following the discovery of the alleged offence. They will be invited to an investigation meeting and given the opportunity to state their case.

Investigations will be completed as quickly as is reasonably practicable. WLHP aims to complete investigations within 5 working days although this may not always be possible. Where the disciplinary allegations involve possible misappropriation, fraud, embezzlement, or any other criminal activity, there may be a requirement to notify the police.

Once the investigation is complete, the Investigating Officer will refer this to the nominated officer with delegated authority for disciplinary action. If the nominated officer considers that there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The employee will be given written notice of the date, time and place of the disciplinary hearing. This will be held as soon as reasonably practicable and the employee will be given a reasonable amount of time to prepare their case. WLHP will inform the employee in writing of the allegation(s) against them and the basis for those, what the likely range of consequences will be if WLHP decides after the hearing that the allegations are true and of the right to be accompanied at the hearing. Copies of any relevant reports, documentation, witness statements etc. relied on will also be enclosed. The employee will be asked to inform WLHP of any witnesses they intend to call at the disciplinary hearing and WLHP will inform the employee in advance of the hearing of any witnesses it may intend to

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call. Employees will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.

10.2 Precautionary Suspension

It may be necessary to place an employee on suspension from work until the allegations are investigated. Suspension will be notified to the employee in writing and will be for no longer than is necessary to investigate any allegations of misconduct against an employee, or so long as is otherwise reasonable while any disciplinary procedure against an employee is outstanding. Suspension is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. During such a suspension the employee will be paid at a rate equivalent to his/her contractual earnings (including allowances). Suspension without pay will only take place where an employee is not available for work e.g. Due to being held in custody. This is at the discretion of the manager with advice from Employee Relations.

10.3 Disciplinary Hearing

The appropriate designated officer shall convene and Chair the Disciplinary Hearing without unreasonable delay at which the allegations will be considered. The employee and their representative should make every effort to attend. Where an employee fails to attend without good cause, WLHP may proceed in their absence and make a decision on the evidence available.

An Employee Relations representative will always be in attendance. A record of the meeting shall be made. The procedure to be adopted will normally be as follows:

- The investigating officer state the case and the allegation(s) against the employee, supporting this with witnesses/statements and policy/procedural guidelines where appropriate.
- The employee and his/her representative will respond to the allegations and call witnesses or give statements as appropriate.
- Both parties will have the opportunity to question each other's case and the Chair will have the opportunity to ask questions of either party.
- The Chair will usually inform the employee of their decision and the reasons for it at the end of the hearing. If more time is needed to consider the matter or further investigations are necessary, the hearing may be adjourned and reconvened. The employee will always be informed of the Chair's decision and their reasons for it in writing as soon as possible after the hearing.

10.4 Disciplinary Action

Where it is decided that disciplinary action is appropriate, the usual disciplinary penalties are set out below with the level of penalty being dependent on the severity of the offence. Each case will be assessed on its own merits. Consideration may be given to an employee's disciplinary record, their length of service and penalties imposed on other employees for similar misconduct in deciding what level of sanction to impose.

Written warnings will detail the nature of the misconduct, state the standard of conduct which is expected, how long the warning will remain current, confirm the likely consequences of further misconduct and inform of the right to appeal.

10.4.1 Written Warning

A written warning may be issued for a first act of misconduct where there are no active written warnings on an employee's disciplinary record. A written warning will remain active on an

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employee's record for 6 months. For further information on retention of documents, please refer to the relevant retention policy

10.4.2 Final Written Warning

In cases of further misconduct where an employee has an active warning or in cases of serious misconduct where there is no active warning, a final written warning may be issued. A final written warning will remain active on an employee's record for 12 months and may be extended beyond 12 months should a further breach of discipline occur. For further information on retention of documents, please refer to the relevant retention policy

10.4.3 Dismissal

Dismissal may be appropriate for further misconduct where there is an active final written warning on an employee's file or for gross misconduct regardless of whether there are active warnings on an employee's record. Examples of gross misconduct are detailed at the end of this policy. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice.

10.4.4 Alternative Disciplinary Action (Punitive Action)

In addition to issuing warnings, the appropriate nominated officer may consider disciplinary action short of dismissal, including redeployment, downgrading or other appropriate measures and suspension without pay.

11. APPEALS

Employees have the right of appeal against any disciplinary action, including dismissal. The employee will be advised of the right of appeal and how and when to exercise this right of appeal at the time of confirmation of the relevant disciplinary action. All appeals should be lodged in writing, providing grounds for the appeal, with the Employee Relations Leader within 2 weeks of notification of the disciplinary decision.

Appeal hearings will be convened as soon as possible, normally within 2 weeks of lodging of the appeal (these timescales may be varied by mutual agreement).

No person involved in the original disciplinary decision should participate in a decision-making capacity in an appeal hearing. Appeal hearings against both disciplinary warnings and against dismissal will be held by a senior manager (or an appropriate designated officer) (the 'Senior Officer'). A representative from Employee Relations will attend all Appeal Hearings.

Following an appeal hearing, WLHP may reject the appeal, uphold the appeal or uphold the appeal in part and substitute the decision with a level of warning and/or other action as appropriate. The decision at an appeal hearing will be final.

The Procedure at an appeal hearing will normally be as follows:-

- The employee (or his/her Trade Union representative) will open the proceedings by stating the grounds of appeal.
- The disciplining officer (or appropriate officer) will explain the circumstances leading to the decision.
- The Senior Officer may question both parties as appropriate. The employee and their representative will have the opportunity to ask questions of the management representative and vice versa.
- The Senior Officer may, at his/her discretion, adjourn the hearing, to allow for further evidence to be produced by either party or for any other reason.

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- Following the hearing, both parties, including representatives, shall withdraw to allow the Senior Officer 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 even if only one party is concerned with the point giving rise to doubt.
- If practicable, the Senior Officer shall announce the decision to both parties at the conclusion of the hearing. In any event, the decision shall be confirmed in writing to the employee as soon as possible after the appeal hearing.

12. RECORDS

WLHP will keep a record of disciplinary hearings, including all notes and documents from the investigation, all letters sent to or by us in relation to the disciplinary process and written statements and notes of meetings and hearings. These records will be maintained in accordance with our obligations in terms of data protection requirements. For further information on retention of documents, please refer to the relevant retention policy.

13. EXAMPLES OF TYPES OF MISCONDUCT

The following are examples of misconduct and gross misconduct offences. The lists are not exhaustive, are indicative only and do not prejudice the outcome of any disciplinary hearing or any subsequent grounds of appeal.

13.1 Unsatisfactory Conduct

- poor timekeeping (repeated lateness or early leaving)
- failure to notify timeously reasons for absences
- abuse of flexitime system
- failure to respond satisfactorily to informal action
- deliberate damage or misuse of WLHP's property (including computer facilities e.g. e-mail and internet)
- unauthorised absence
- unsafe working practices
- wilful and persistent refusal to obey reasonable instruction
- an act of professional incompetence
- unacceptable attendance level

13.2 Gross Misconduct

Gross misconduct is a serious breach of contract and includes misconduct which, in WLHP's opinion, is likely to prejudice WLHP's business or reputation or irreparably damage the working relationship and trust between us. It will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal). The following will normally be regarded as gross misconduct:-

- theft from WLHP, its employees or clients, or members of the public
- bullying or actual or threatened violence, or behaviour which provokes violence
- incapacity, while on duty, due to the effects of alcohol or drugs
- possession, use, supply or attempted supply of illegal drugs
- fraud, forgery or other dishonesty including fraudulent wage claims or falsification of records/expenses
- serious wilful damage or misuse of WLHP's property or the property of a colleague, contractor, client or member of the public
- serious misuse of WLHP's name, serious insubordination or serious neglect of duties
- causing loss, damage or injury through serious negligence
- unlawful harassment, discrimination or victimisation
- serious infringement of health and safety rules or any other policies, operating procedures or workplace rules operated by WLHP

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- acts of gross professional incompetence
- bringing WLHP into serious disrepute
- serious breaches of security or confidentiality, including misuse or disclosure of confidential information
- acceptance of bribes or other secret payments
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- being charged with or convicted of a criminal offence that in our opinion may affect our reputation or our relationships with our staff, clients or the public, or otherwise affects an employee's suitability to continue to work for us
- malicious or untruthful claims against others
- making a disclosure of false or misleading information maliciously, for personal gain, or otherwise in bad faith
- knowing breach of statutory rules affecting an employee's work
- refusing to disclose any of the information required by an employee's employment or any other information that may have a bearing on the performance of their duties
- giving false information as to qualifications or entitlement to work (including immigration status)
- serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet)
- undertaking unauthorised paid or unpaid employment during working hours.