

Disciplinary Policy and Procedure

This Policy Relates to the following Legislation

- Employment Rights Act 1996
- Equality Act 2010
- Employment Relations Act 1999
- Employment Act 2002
- Employment Act 2008
- Industrial Tribunals Act 1996
- The Protection of Freedoms Act 2012

This Policy Relates to the following Regulations

- The Education (Independent School Standards) Regulations 2014
- Children’s Homes (England) Regulations 2015

This Policy Relates to the following Guidance

- ACAS Code of Practice on Disciplinary and Grievance Procedures
- Employment Practices Data Protection Code
- Discipline and grievances at work - the ACAS guide
- Safeguarding children and young people and young vulnerable adults policy (2015)
- Guide to Children’s Home Standards Including Quality Standards (April 2015)
- Keeping Children Safe in Education (DfE 2016)
- Working Together to Safeguard Children (updated February 2017)

This Policy Applies To:

- a) All those directly employed by Lioncare Ltd and by Seafields Ltd operating under the name The Lioncare Group.

Responsibilities Associated with this Policy:

All employees, whether they are ‘front-line’ engaged directly in the task of caring for, educating, and supporting the children in our care, or ‘ancillary’ (e.g. House Keeper, Maintenance Worker, Administrator etc.), are personally responsible for managing their own conduct in relation to following this policy.

All employees whether they are ‘front-line’ or ‘ancillary’ are also responsible for supporting their colleagues and co-workers to follow this policy.

Members of the Management Teams (Senior Therapeutic Carer, Senior Learning Support Assistant, Deputy Manager, Assistant Head Teacher, Registered Manager, and Head Teacher) are responsible for ensuring all those employed directly by The Lioncare Group are made aware of this policy and guidance, and for monitoring their safe and proper conduct whilst interacting with or work alongside or around or in proximity to the children in our care and for taking such action as necessary to prevent children being at risk of harm because of an adult’s failure to follow this policy and guidance.

The Executive Team (Service Managers and Executive Director) are responsible for reviewing this policy and at least annually and more frequently if and when it is considered necessary to do so, and for ensuring this policy remains fit-for-purpose.

Monitoring and Review of this Policy:

The implementation of this policy and its corresponding guidance will be monitored continuously, and the policy itself will be reviewed at least annually in August of each year by the Executive Team and in consultation with relevant others including where possible and feasible those involved in caring for, educating, and supporting the children in our care, and relevant external and / or independent legal and professional consultants and organisations and agencies.

Policy Statement

Whilst The Lioncare Group does not intend to impose unreasonable rules of conduct on its employees, certain standards of conduct and performance are necessary to maintain good employment relations and discipline in the interest of all employees. The Lioncare Group prefers that discipline be voluntary and self-imposed and, in the vast majority of cases, this is how it works. However, from time to time, it may be necessary for The Lioncare Group to take action towards individuals whose level of conduct or performance is unacceptable. It will also occur where an employee knowingly breaks any legal requirement in connection with their employment.

With the exception of the section on alternatives to dismissal (which is contractual), this disciplinary procedure is **non-contractual** and does not form part of an employee's contract of employment.

Minor Faults and Allegations of Minor Misconduct

Minor faults will be dealt with informally through counselling and training or through informal reprimand.

More Serious Allegations of Misconduct or Serious Performance Issues

In cases where informal discussion with the employee does not lead to an improvement in conduct or performance or where the matter is considered to be too serious to be classed as minor, for example, unauthorised absences, persistent poor timekeeping, sub-standard work performance, etc. the following disciplinary procedure will be used.

Investigation

At all stages of the procedure, an investigation will be carried out. This can include, where necessary, an investigation of social media websites (social media websites are a public forum, even if account privacy settings are set at a restricted access level).

The Procedure

The Lioncare Group will notify the employee in writing of the allegations against him or her and will invite the employee to a disciplinary hearing to discuss the matter. The Lioncare Group will provide sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to answer the case. This will include the provision of copies of written evidence, including witness statements, where appropriate.

Having given the employee reasonable time to prepare their case, a formal disciplinary hearing will then take place, conducted by a senior manager, at which the employee will be given the chance to state his or her case, accompanied if requested by a trade union official or a fellow employee of his or her choice. The employee must make every effort to attend the hearing. At the hearing, the employee will be allowed to set out their case and answer any allegations and will also be given a reasonable opportunity to ask questions, present evidence, call relevant witnesses and raise points about any information provided by witnesses.

Please note that it is prohibited for employees to use any form of audio or visual recording device (whether covertly or otherwise) the proceedings at the disciplinary hearing, and at any appeal hearing, without the express permission of The Lioncare Group. If The Lioncare Group discovers that you have done this covertly, you could be subject to further disciplinary action.

Following the hearing, The Lioncare Group will decide whether or not disciplinary action is justified and, if so, the employee will be informed in writing of The Lioncare Group's decision in accordance with the stages set out below and notified of his or her right to appeal against that decision. It should be noted that an employee's behaviour is not looked at in isolation but each incident of misconduct is regarded cumulatively with any previous occurrences. Please note that The Lioncare Group will deal with all disciplinary matters within a reasonable timescale. However, it reserves the right to extend these wherever necessary and if appropriate.

Stage 1a: Improvement Note (in the case of a performance issue)

The employee will be issued a formal Improvement Note. He or she will be advised of the following;

- the improvements needed
- the timescale set for improvement to be achieved
- details of training or on-the-job coaching, or background reading the employee needs to undertake
- consequences of failing to improve.

The improvement note will be recorded but nullified after three months, subject to satisfactory conduct and performance.

Stage 1b: Written warning (in the case of a conduct issue or repeat / more serious performance issue)

The employee will be given a formal Written Warning. This will set out the following;

- the reason for the warning
- how the employee needs to improve their conduct or performance
- the timescale over which the improvement is to be achieved
- that the warning is the first stage of the formal disciplinary procedure
- the likely consequences if the terms of the warning are not complied with.

The written warning will be recorded but nullified after six months, subject to satisfactory conduct and performance.

Stage 2: Final written warning

Failure to improve performance in response to the procedure so far, a repeat of misconduct for which a warning has previously been issued, or a first instance of serious misconduct or serious poor performance, will result in a Final Written Warning being issued. This will set out the following;

- the nature of the misconduct or poor performance
- how the employee needs to improve their conduct or performance
- the timescale over which the improvement is to be achieved
- a warning that dismissal will probably result if the terms of the warning are not complied with.

This final written warning will be recorded but nullified after twelve months, subject to satisfactory conduct and performance. However, The Lioncare Group reserves the right to extend the validity of the final written warning to a maximum of three years in cases of very serious misconduct or where the employee has a history of misconduct issues.

Stage 3: Dismissal

Failure to meet the requirements set out in the final written warning will normally lead to Dismissal with appropriate notice. A decision of this kind will only be made after the fullest possible investigation. Dismissal can be authorised only by the Executive Director. The employee will be informed of the following;

- the reasons for dismissal
- the appropriate period of notice
- the date on which his or her employment will terminate
- how the employee can appeal against the dismissal decision.

Alternatives to dismissal

This section only of the disciplinary procedure is contractual and forms part of an employee's contract of employment.

In some cases The Lioncare Group may at its discretion consider alternatives to dismissal. These must be authorised by the Executive Director and will usually be accompanied by a final written warning. Examples include:

- demotion
- a period of suspension without pay
- loss of seniority
- pay reduction
- loss of future pay increment or bonus
- loss of overtime
- transfer to another department or job.

Misconduct

The Lioncare Group reserves the right to institute disciplinary action against an employee who commits a misconduct offence, and this may result in a disciplinary sanction such as a written warning or final written warning. Examples of misconduct include:

- the failure and / or unnecessary delay on the part of the employee to report an incident of abuse, or suspected abuse, whether past or present, in relation to a child cared for by The Lioncare Group, to the appropriate person
- the failure and / or unnecessary delay on the part of the employee to log and / or record an incident or allegation of abuse, or suspected abuse, whether past or present, in relation to a child cared for by The Lioncare Group
- persistent lateness, poor timekeeping or otherwise failing to adhere to working hours
- time wasting
- unacceptable levels of absence
- failing to comply with absence notification and certification procedures
- a breach of The Lioncare Group's policies and procedures
- a breach of health and safety or security rules
- inappropriate dress or appearance which is below required standards
- failing to behave in a professional, polite and courteous manner towards other employees, clients, customers or visitors
- using foul or abusive language or engaging in other offensive behaviour
- failing to comply with a reasonable management instruction or insubordination
- failing to willingly co-operate with other employees

- misuse of The Lioncare Group’s property, materials or equipment, including excessive wastage of materials and minor damage to property
- excessive personal use of The Lioncare Group’s telephones
- excessive personal e-mail or Internet usage
- negligence or carelessness in the performance of job duties
- failing to maintain satisfactory standards of performance at work
- negligently breaking a legal requirement in connection with employment.

The above is intended as a guide and is not an exhaustive list.

Gross misconduct

Offences under this heading are so serious that an employee who commits them will normally be summarily dismissed. In such cases, The Lioncare Group reserves the right to dismiss without notice of termination or payment in lieu of notice. Examples of gross misconduct include:

- any breach of the criminal law, such as theft
- any unauthorised possession or removal of The Lioncare Group’s products or property, or property belonging to another employee, client, customer or visitor, fraud (including making fraudulent or false expense claims), deliberate falsification of records, false declarations in connection with employment or applications for employment or any other form of dishonesty
- using The Lioncare Group’s property, materials or equipment to carry out work for third parties on a personal basis without permission
- misuse of The Lioncare Group’s benefits, such as improper use of a staff discount card
- offering, promising or giving a bribe or requesting, agreeing to receive or accepting a bribe or bribing a foreign public official in connection with employment contrary to the Bribery Act 2010
- wilfully or negligently causing harm or injury to another employee, client, customer or visitor, physical violence, assault, fighting, bullying or grossly offensive, abusive or aggressive behaviour or language
- deliberately or negligently causing loss or damage to The Lioncare Group’s property, or to property belonging to another employee, client, customer or visitor
- vandalism of, or otherwise intentionally interfering with, The Lioncare Group’s computers or computer or telephone network
- serious carelessness or gross negligence, including grossly negligent acts or omissions
- dereliction of duty, including sleeping whilst at work and undertaking unauthorised activities during normal working hours
- wilful refusal to obey a reasonable management instruction or serious insubordination
- serious incapacity at work through an excess of alcohol or illegal drugs, whether consumed on or off The Lioncare Group premises but which affects the employee’s ability to carry out their job duties whilst at work
- bringing illegal drugs or other illegal substances or items or weapons on to The Lioncare Group premises
- smoking on The Lioncare Group premises, other than in designated outside smoking areas
- logging on to sexually explicit websites, downloading or circulating pornographic or other offensive, illegal or obscene material or using the Internet or e-mail for gambling, illegal activities or the sending of offensive e-mails (e.g. jokes) to work colleagues (in the latter case, including from the employee’s home computer in their own time)
- engaging in sexual activity on The Lioncare Group premises at any time
- posting derogatory, offensive, discriminatory or defamatory comments online (for example, on social media)

websites) about The Lioncare Group, its employees, clients or customers or otherwise conducting themselves online in a way that is detrimental to The Lioncare Group or brings The Lioncare Group into serious disrepute

- a serious breach of health and safety rules, including acts or omissions which endanger the safety of another employee, client, customer or visitor
- a serious breach of security rules
- behaviour outside working hours or work location, which either results in or has the potential to result in criminal charges or convictions, which affect the employee's ability to perform their job duties
- discriminating against, harassing, bullying or victimising another employee, client, customer or visitor because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including colour, nationality and ethnic or national origins), religion or belief, sex and/or sexual orientation
- a serious breach of confidentiality, including unauthorised access of computer and personnel records and communicating or leaking trade secrets or confidential information about The Lioncare Group or its employees, clients or customers to third parties
- working for a competitor without permission
- engaging in an unauthorised activity which conflicts with the interests of The Lioncare Group or its clients or customers
- breaching copyright or any other proprietary interest belonging to The Lioncare Group
- knowingly breaking a legal requirement in connection with employment
- bringing The Lioncare Group into serious disrepute, even if done in the employee's own time
- unauthorised absence, including failure to return from a period of annual leave or other approved leave of absence.

The above is intended as a guide and is not an exhaustive list.

Suspension

In the event of an allegation of serious or gross misconduct, and if necessary in the interests of the safety or welfare of the children cared for by The Lioncare Group, consideration will be given as to whether an employee may need to be suspended on full basic pay while a full and thorough investigation is carried out.

In considering whether or not suspension is justifiable, necessary and legally defensible, and where the allegation is concerned with a safeguarding matter in relation to the children cared for by The Lioncare Group, the threshold for referral to the Local Area Designated Officer will be used for guidance to assist in the decision-making process;

1. Has the employee behaved in a way that has harmed, or may have harmed, a child?
2. Has the employee possibly committed an offence against, or related to, a child?
3. Has the employee behaved towards a child or children in a way that indicates they may pose a risk of harm to children?

The above criteria relates to the employee's behaviour in the workplace, the community and in their home and social life.

As clarified in the high court ruling on the case between Agoreyo v London Borough of Lambeth, suspension should not be treated as a 'knee jerk' response to the need to carry out an investigation and should not be considered a neutral act. Before making any decision to suspend, the employee will be asked for their response to the allegations unless and except in circumstances where the police have prohibited The Lioncare Group from discussing the matter with the employee (e.g. where it is believed that a crime has or may have been committed), and consideration will always be given to any alternatives to suspension. Any decision to suspend, even where the allegations are serious, will always be carefully thought through and must always be authorised

and approved by the Executive Director. The decision whether or not to suspend an employee is always at the absolute discretion of the Executive Director acting as the employer on behalf of The Lioncare Group. Such suspension does not imply guilt or blame and will be for as short a period as possible. Suspension is not considered a disciplinary action.

Alternatives to Suspension

Alternatives to suspension that may be considered by The Lioncare Group and depending on the specific situation and circumstances include the following;

- Redeployment and / or a change of usual work-place
- Allowing the employee to work from home
- Agreement between the employee and employer for the employee to take a period of leave; this may be paid annual leave, special leave, or 'garden leave'.
- Agreement by the employee to refrain from work for an agreed period of time
- Temporary restriction on duties and / or authority
- Temporary allocation of alternative duties

Such alternatives will often be less stressful for the employee; however, it must be noted that it is only through a suspension that an employee can be required not to attend their place of work.

Appeals

An employee may appeal against any disciplinary decision, including dismissal, to the Executive Director of The Lioncare Group within five working days of the decision. Appeals should be made in writing and state the grounds for appeal. The employee will be invited to attend an appeal hearing chaired by a senior manager or a Director or an independent chairperson appointed by The Lioncare Group.

At the appeal hearing, the employee will again be given the chance to state his or her case and will have the right to be accompanied by a trade union official or a fellow employee of his or her choice.

Following the appeal hearing, the employee will be informed in writing of the appeal decision. The Lioncare Group's decision on an appeal will be final.

Employees with short service

Under current employment law, the disciplinary procedure does not apply to any employee who has been employed for less than two years. However, The Lioncare Group is a fair employer and will seek to apply its disciplinary procedure to all employees including those with short service.

Appendix 1: Disciplinary Procedure Flow-Chart

