

DISCIPLINARY PROCEDURE

This Disciplinary Procedure should be read in conjunction with the HSRC Human Resources Policies and Procedures Covering Document which contains important information on HSRC Human Resources Policy, its purpose and scope, how it will be applied, and the delegation of authority under it, as well as the Disciplinary Code document.

1. PURPOSE OF THE DISCIPLINARY PROCEDURE

The Disciplinary Procedure has been established in order to:

- ☐ Provide a fair mechanism through which discipline and order are to be maintained in the organisation;
- ☐ Ensure that all employees are informed of:
 - Acceptable standards of performance,
 - What the employer regards as misconduct, and
 - Steps that may be taken to maintain discipline;
- ☐ Ensure that, where employees must be disciplined, this takes place in a fair and consistent manner; and
- ☐ Initiate corrective action where work performance is unsatisfactory or the behaviour of an employee is unacceptable.
- ☐ Where the Disciplinary Procedure is applied by the HSRC, the emphasis should always be corrective rather than punitive.

Note: An Employee will always have the right to be represented by a fellow employee, or by an employee representative (an official or Shop Steward of a union that is recognised by the HSRC), during disciplinary hearings.

2. APPLICATION OF THE DISCIPLINARY PROCEDURE

2.1. When is the Disciplinary Procedure invoked?

The HSRC Disciplinary Procedure is activated when an HSRC standard is transgressed. Possible disciplinary measures include:

- ☐ A verbal warning;
- ☐ Written warnings; and
- ☐ Dismissals.

The Disciplinary Procedure should be read together with the HSRC's Disciplinary Code which provides for "mandatory" and "non-mandatory" offences and serves as a guide to be used in maintaining discipline within the organisation.

2.2. How is the Disciplinary Procedure applied?

The application of disciplinary action shall be administered by HSRC management and shall include:

- ☐ A clear explanation as to why the disciplinary action is necessary;
- ☐ A warning to the effect that failure to correct or change behaviour may result in further and more severe disciplinary action.

2.3. A senior employee may not perform as a functionary in a hearing examining his or her own disciplinary matter

In the procedures detailed below, should a Responsible Executive / the Deputy CEO / CFO / GE:SS be the subject of the hearing, the roles defined for them must be taken on by a more senior employee.

Should the CEO be the subject of a disciplinary matter, the matter is automatically referred to the Chair of the HSRC Board.

3. STEPS IN THE DISCIPLINARY PROCEDURE

The Disciplinary Code defines procedural steps to be used as a guide to maintaining discipline within the HSRC. However, depending on circumstances, any of the stages recorded hereunder may be invoked in isolation.

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3.1. Step 1: Informal reprimand

The informal reprimand is a verbal warning / discussion intended to educate and coach the Employee in correcting or improving any deviant behaviour. It is noted that:

- ☐ These warnings / discussions are seldom written down, however file notes can be placed on record; and
- ☐ Repeated reprimands which do not result in improvement will lead to formal disciplinary action.

3.2. Step 2: Verbal Warning

When an employee commits a first breach of the disciplinary code, an immediate supervisor may formally reprimand an employee after conducting a formal disciplinary discussion. The warning:

- ☐ Should be formally recorded by the supervisor, and
- ☐ Remains valid for a period of three (3) months.
- ☐ Fair procedure should be adhered to at all times.

Note: When a verbal warning is issued, the Employee must be given the opportunity to state his/her case.

3.3. Step 3: Written Warning

A supervisor may give a formal written warning for a breach of the Disciplinary Code or other misconduct. If the magnitude of an offence justifies it, more substantial disciplinary action may be taken after conducting a formal disciplinary hearing. (Refer to the Disciplinary Code.)

The written warning will indicate the nature of the offence and also contain an explanation of the correct or desired behaviour and will be discussed with the concerned employee.

Written warnings will automatically expire after a time period of six (6) months from the date of issue, provided that the Employee has not repeated the same offence – in which case a more severe sanction may be imposed.

3.4. **Step 4: Final Written Warnings**

If an employee commits a further similar breach of the Disciplinary Code, or in the event of a very serious transgression of the Disciplinary Code, the manager/head or Director, Responsible Executive concerned may issue a further (final) written warning to the Employee. The warning:

- ☐ Indicates the nature of the offence and must also contain an explanation of the correct or desired behaviour. The offence and the warning are to be discussed with the Employee concerned;
- ☐ Represents a final effort to avoid termination of the Employee's contract by attempting to change the Employee's unacceptable behaviour or work performance;
- ☐ Will be valid for a period of nine (9) months.

Note: When a written or final warning is issued, the Employee must be given the opportunity to state his/her case and s/he must be allowed to call any witnesses in support of his/her case.

The supervisor must always complete the "Disciplinary Warning Form" and must endeavour to obtain the Employee's signature acknowledging that disciplinary action has been taken. If the Employee refuses to sign, then a witness must be obtained to sign.

3.5. **Warnings are time-sensitive and must follow set procedure**

Warnings:

- ☐ Will lapse after a predetermined period, dependent on the type of warning issued;
- ☐ Are to be signed by the authorised person (i.e. supervisor, line manager, director etc.);
- ☐ Are to be presented (in duplicate) by the authorised person to the employee concerned for signature (in the presence of his or her representative, if applicable); and
- ☐ Are to be signed by the Employee's representative (if s/he has one), along with the Employee, as acknowledgement of receipt thereof.

Refusal to sign will have no bearing on validity of the disciplinary action.

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3.6. Step 5: Dismissal s and Suspension without pay

Where a final written warning has been issued and the Employee concerned again commits (a similar) breach of the disciplinary code – or in the event of misconduct of a very serious nature as described in the Disciplinary Code, and upon the recommendation of the Chairperson following a disciplinary hearing an employee's services may be terminated subject to CEO approval in consultation with the Director: Human Resources.

In highly exceptional cases, suspension without payment as alternative to dismissal, may be applied as sanction. Unpaid suspension may not be imposed without the prior written consultation with the Director: Human Resources and the responsible Executive.

4. DISCIPLINARY HEARING PROCEDURE

All employees of the HSRC have the right to a fair hearing before a dismissal sanction is applied. The following procedure is applicable to all disciplinary hearings, provided that a fair procedure is followed:

4.1. The employee will be formally charged and provided with time to prepare

The relevant line manager will charge the employee (through the giving of a notification of disciplinary hearing) and allow the Employee at least three (3) working days to:

- ☐ Arrange for representation and/or a translator;
- ☐ Prepare his or her case; and
- ☐ Seek witnesses (if applicable).

4.2. A disciplinary hearing will be convened

As soon as possible or appropriate – but ideally within ten (10) working days but not limited to 10 working days of the offence having occurred or the alleged transgression having come to the attention of the HSRC – a disciplinary hearing will be convened by the chairperson appointed, unless there are valid reasons why a longer period is required. (The appointment procedure is detailed in Section 10 of this document.)

4.3. The formal disciplinary hearing will be attended by:

- ☐ The HSRC Representative (line manager who is presenting the case/leading HSRC evidence, or an externally appointed representative, as approved by the Director: HR, who may have been involved during an investigation or gathering evidence pertaining to the case);
- ☐ The Employee concerned;
- ☐ The Employee's Representative/s (if applicable);
- ☐ Witnesses, when required to give testimony;
- ☐ The Chairperson;

Human Resources equipped with a recording system to keep both written and audio records of the proceedings.

4.4. The formal disciplinary hearing will take place on the set date, set time and at the set venue and the recommendation arising must be recorded

The chairperson must ensure that the recommendation made by him or her is:

- ☐ Properly recorded – ideally on the disciplinary outcome report; and
- ☐ Carries the date of and reasons for the recommendation.

4.5. Alternative arrangements may be made in case of delay

Should the Employee's chosen representative not be available due, for example, to sick or annual leave or any other valid reason, the procedure may be delayed for a further two (2) working days while the employee makes alternative arrangements.

4.6. Where the employee is absent from the initial disciplinary hearing

- ☐ The chairperson determines the reason for the absence;
- ☐ The chairperson determines a new time date and place (giving consideration to ensuring that these are reasonable);
- ☐ HR notifies the Employee in writing about the new time date and place and confirm with the Employee that, should s/he be absent from the second hearing, the hearing will proceed in absentia.

4.7. The disciplinary hearing must comply with fair and reasonable procedure

To comply with fair and reasonable procedure:

- ☐ The hearing must include evidence of the alleged transgression/s;
- ☐ The hearing must refer to the standard of behaviour expected;
- ☐ The employee concerned must have the right of representation and/or translation;
- ☐ Proper investigation (with due reference to any extenuating circumstances) must have taken place prior to the hearing;
- ☐ The decision to dismiss or not to dismiss must be based on factual information; and
- ☐ The chairperson is obliged to consider all the options, circumstances and considerations available in each individual case and, only then, come to a conclusion and forward a recommendation based on all evidence.

If the employee has been placed under suspension prior to the disciplinary hearing, the employee will remain on suspension until a final decision has been communicated.

4.8. The outcome of the hearing must be delivered promptly

As soon as possible, but in any event within ten (10) working days after the disciplinary hearing:

- ☐ The Chairperson of the hearing must submit the outcome report to the Director: Human Resources. If the recommended sanction is dismissal, the CEO must approve such in consultation with the Director: Human Resources. If the recommended sanction is a warning of some sort, the Responsible Executive, in consultation with the Director: Human Resources, is required to decide on an appropriate action based on the recommendation from the chairperson. (In an instance where the responsible Executive Director has represented the HSRC, then the Deputy CEO or GE:SS will be required to decide on an appropriate action); and
- ☐ The Employee concerned, and his or her representative, are to be informed of the decision/outcome.

4.9. Disciplinary records are time-sensitive and must be dealt with in terms of set procedure

Disciplinary records:

- ☐ The Employee should receive a valid letter confirming the outcome of the disciplinary hearing; and
- ☐ A copy of the same letter is to be placed on his or her personnel file.

5. HSRC DISCIPLINARY PROCEDURE WHERE A CRIMINAL OFFENCE IS INVOLVED

If the misconduct amounts to an offence of which an employee has been convicted by a court of law the HSRC's disciplinary procedure will still be followed.

If an employee is acquitted by a court of law concerning a criminal offence the acquittal shall not prevent the HSRC from proceeding against the employee in terms of the HSRC's policies where:

- ☐ The charge of misconduct, if proved, would constitute the same offence as set forth in the criminal charge of which s/he was acquitted; or
- ☐ The charge of misconduct, if proved, would constitute some other offence of which s/he might have been convicted at his or her trial on the said criminal charge.

Where misconduct on the part of the Employee also represents the commission of a criminal offence, the HSRC may also – with the prior approval of the CEO – report the matter to the most appropriate authorities. Nonetheless, in such a case, the HSRC's disciplinary procedure will still be followed.

6. HSRC DISCIPLINARY PROCEDURE WHERE THE EMPLOYEE IS SUSPENDED FROM DUTY

In the case of an offence that is of a serious nature that, in the opinion of the Responsible Executive, in consultation with the Director: Human Resources, the Employee's presence at workplace would in any way (actually or potentially):

- ☐ Prejudice the HSRC;
- ☐ Interfere with the investigations and/or the charges against him or her;
- ☐ Cause problems with other employees or management,
- ☐ May interfere with witnesses,

- ☐ Possibility of the Employee may tamper with evidence,
- ☐ Possibility that the accused employee may retaliate against the complainant, or
- ☐ The possibility that the Employee may commit further similar acts of misconduct if he/she is not suspended.

The Employee concerned may immediately be suspended from normal duties on full pay, until a disciplinary hearing has been completed and a decision communicated. This is subject to the employee having been given the opportunity to state why s/he should not be suspended.

In such an event:

- ☐ The Employee concerned is to be advised of his or her suspension from duty by means of a suspension letter;
- ☐ A copy of the suspension letter is to be placed on the Employee's personnel file; and
- ☐ The Employee is required to provide up-to-date contact details and to ensure that s/he is available at short notice should this be required by the HSRC.

7. HSRC PROCESS WHERE AN INVESTIGATION IS REQUIRED PRIOR TO A DISCIPLINARY HEARING

This procedure is to provide a further defined mechanism through which discipline and order is maintained and applied consistently within the HSRC in matters relating to misconduct.

As the Disciplinary Code of the HSRC (Employer) emphasises corrective action, the Employer should endeavour to determine upfront the facts in the event of an alleged misconduct. The nature of the transgression will determine the most appropriate process to follow.

However, matters relating to dishonesty (refer to the Disciplinary Code) in particular, should be subjected to an initial internal investigation.

At the time of writing of this procedure, no internal HSRC structure is in place for the conducting of such internal investigations. The matter is subject to review upon implementation of a dedicated structure.

8. OUTCOMES FOLLOWING A DISCIPLINARY HEARING

The outcomes and/or recommendations by the Chairperson of a disciplinary hearing could be:

- ☐ Found not guilty;
- ☐ Found guilty and issued with a warning;
- ☐ Found guilty and dismissed with a notice period;
- ☐ Found guilty and summarily dismissed (employee leaves services of the HSRC with immediate effect – upon receipt of written notification).

A summary dismissal can become applicable in cases where gross misconduct has been acknowledged and admitted to by the employee. The Director: Human Resources can action such a dismissal after discussion with the CEO.

9. PROCEDURE DURING DISCIPLINARY HEARINGS

It is expected of the chairperson to communicate the procedure of the disciplinary hearing to all the parties in attendance. The procedure to be followed will be:

- ☐ **The chairperson** introduces him/herself
- ☐ **Both parties to the dispute** present opening statements (Order: employer then employee)
- ☐ **The employer representative** leads evidence and:
 - calls witnesses
 - questions witnesses
 - re-examines witnesses

(Both parties have the right to cross-examine)

- ☐ **The employee representative** leads evidence and: calls witnesses
 - questions witnesses
 - re-examines witnesses

(Both parties have right to cross-examine)

- ☐ **Both parties** have opportunity to present closing arguments
- ☐ **The chairperson** adjourns the disciplinary hearing session to enable him/her to take all evidence presented into account, unless the employee pleaded guilty.

The Chairperson is expected to make a finding of guilty or not guilty on the principle of a balance of probabilities.

- ☐ **The chairperson** either reconvenes the disciplinary hearing session and communicates his / her finding to the parties, or the Chairperson agrees with both parties that s/he will communicate the findings in writing to both parties within an agreed period.

The parties then have the opportunity to present matters in mitigation and/or aggravation. This could follow the hearing or can be by means of written submission.

☐ **The chairperson:**

- writes up the recommendation and presents this to the Director: Human Resources

10. PROCEDURE FOR APPOINTMENT OF THE CHAIRPERSON

When a chairperson is to be appointed to head a disciplinary hearing:

- ☐ HR is tasked with identifying and appointing a chairperson. This appointment is subject to the provisos:
 - that, where a chairperson is appointed from within the HSRC, s/he will always occupy a level higher than that of the employee who is the subject of the hearing; and
 - that where s/he is appointed from outside the HSRC, s/he will always be au fait or expert in this field and be of appropriate experience and status.
- ☐ The appointment of the chairperson will be confirmed by the Director: Human Resources;
- ☐ No employee will handle any disciplinary hearing before s/he has been formally trained to do so;
- ☐ No person may be appointed to preside as chairperson where s/he has had any direct involvement in the investigation of the case or incident, where s/he has a vested interest in the outcome of the hearing, or where s/he is to be called as a witness in the matter.

11. APPEAL PROCEDURE

- 11.1.** The Employee who is found guilty on any charge/s and receive a sanction short of demotion or dismissal, may lodge a formal appeal in a written submission to the CEO within five (5) working days through Human Resources.
- 11.2.** The CEO will consider the grounds of appeal and communicate the outcome of the appeal in writing within 10 (10) working days.
- 11.3.** The Employee's written appeal will be considered based on documentary evidence only and will not be treated through an appeal hearing.
- 11.4.** The Employee may exercise his / her right not to lodge an internal appeal.

12. DISPUTE RESOLUTION

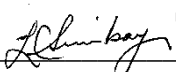
An employee may refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA), as prescribed in the Labour Relations Act.

12.1. DEFINITIONS

CCMA	The Commission for Conciliation Mediation and Arbitration. The CCMA is an independent dispute resolution body established in terms of the Labour Relations Act, (Act 66 of 1995). (The CCMA does not belong to and is not controlled by any political)
LRA	The Labour Relations Act (Act 66 of 1995) and Amendments
Responsible Executive	The Executive who serves on the Executive Committee (EXCO) and who is responsible for the overall management of the Division/ Centre / Institute/ Unit.

14. AUTHORISATION

This procedure was approved by the EXCO and CEO on 7 July 2022.



Prof Leickness Simbayi
Acting CEO

28 September 2022
Date:

Version control

Version	Date	Author	Detail
3.0	31 May 2021	Ms Erika Lewis	Routine revision and updates following consultation with the Executive Committee
4.0	July 2022	Ms E Lewis Mr T Shaku	Routine revision and updates following consultation with the Executive Committee.