

POLICY 17: DISCIPLINARY CODE

This Disciplinary Code 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 separate HSRC Disciplinary Procedure document.

1. PURPOSE OF THE DISCIPLINARY CODE

The Disciplinary Code serves a dual purpose:

1.1. To outline the standard conduct and rules applicable to employees at the workplace

It is accepted that a disciplinary code and procedure are necessary for:

- ☐ The efficient running of the HSRC's business;
- ☐ The safety and fair treatment of all employees; and
- ☐ For ensuring sound labour/management relations.

1.2. To provide guidelines for line managers

The guidelines are intended:

- ☐ To ensure the fair, just and uniform application of disciplinary measures; and
- ☐ To provide a reference for line managers engaged in applying discipline.

2. UNDERLYING PRINCIPLES

The Disciplinary Code is based on the following principles, which must be observed:

2.1. The application of discipline is the right and responsibility of line management

As disciplinary action should not be taken lightly, the responsibility for implementing action is reserved for officials of the appropriate responsibility and seniority.

2.2. Disciplinary steps are instituted in order to obtain the co-operation and involvement of all employees within the workplace

In addition, the prescribed steps protect the interests of both the employer and the employee in the process of dealing with unacceptable behaviour or poor work performance.

2.3. In the enforcement of discipline, the emphasis must rather be focused on guidance and corrective measures than on the imposition of punitive measures

However, where necessary (where corrective action fails), punitive measures must be used as a legitimate deterrent in the maintenance of discipline.

2.4. Depending on the seriousness of the offence, the verbal reprimand and/or written warning stages may be omitted

Where this principle is applied, the HSRC will be at liberty to apply more serious disciplinary action.

2.5. Discipline must be lawfully, justly, fairly and consistently applied

The application of discipline must at all times be lawful, just, fair and consistent.

2.6. Disciplinary action is not valid for an indefinite period

Validity of disciplinary action is as follows:

Disciplinary action	Validity
Verbal warning	Three months
Written warning	Six months
Final written warning	Nine months

Note: Disciplinary action is not restricted to the above action only. Alternative actions such as suspension, transfer, demotion, withholding salary/wages increment and dismissal may be taken in exceptional cases.

2.7. The disciplinary code must not be seen as an independent document

The Disciplinary Code should be read in conjunction with Disciplinary Procedure and the Grievance Procedure (where applicable) so as to ensure the fair and just application of discipline within the HSRC.

2.8. The actions reflected in the schedule of offences (Item 6 onwards) represents the proposed disciplinary action that may be applied

The actual disciplinary action applied will depend on the nature/type of breach of discipline involved, as well as on any history of breaches of discipline involving the employee concerned.

2.9. Previous breaches of discipline and penalties imposed – if still valid – may be considered when action is taken

Breaches of discipline that are considered to be related are grouped into categories. Where disciplinary measures are to be applied and the employee has previously been penalised for a breach *in the same category*, and *the penalty accorded is still valid* the previous breaches/penalties may be considered when deciding upon the action to be taken.

2.10. Mitigating factors should be considered

If the line manager/chairperson is of the opinion that there are valid mitigating factors, s/he may impose the actions/penalties as reflected in the Mitigating Circumstances column reflected in the schedule of offences.

2.11. The schedule of offences and proposed actions indicated below serve merely as a guideline

The schedule and proposed actions do not constitute inflexible rules which have to be followed to the letter. The circumstances and merits of each individual case must be taken into account in making a decision and the chairperson (in the case of a disciplinary hearing) is expected to use discretion in making a value judgement.

3. TYPES OF DISCIPLINARY BREACHES

The Disciplinary Code is based on offences divided into the following main categories:

- ☐ Mandatory offences;
- ☐ Non-mandatory offences; and
- ☐ Research misconduct and plagiarism

3.1. **Mandatory offences: gross misconduct**

Mandatory offences are serious offences which, when committed, necessitate the automatic holding of a disciplinary hearing which could lead to summary dismissal.

The following are examples of misconduct committed in the course of HSRC duties and considered to be very serious breaches of the Disciplinary Code (the list is not exhaustive):

- ☐ Assault, inappropriate gesturing/touching; (See also Policy 16, Harassment)
- ☐ Harassment and racism and discrimination; (See also Policy 16, Harassment)
- ☐ Malicious damage to property;
- ☐ Absence without leave for more than three consecutive days;
- ☐ Theft, unauthorised possession of HSRC property, dishonesty, fraud, forgery;
- ☐ Gross negligence;
- ☐ Instigating or promoting violence, intimidation, victimisation or illegal strike;
- ☐ Gross insubordination;
- ☐ To be, whilst on duty, under the influence of substances which have narcotic, intoxicating or abnormal stimulating effects;
- ☐ Breach of the trust relationship between employer and employee;
- ☐ Sabotage;
- ☐ Regular unexplained absenteeism;
- ☐ Misappropriation of funds;
- ☐ Unauthorised disclosure of confidential information;
- ☐ Entering false information on claims to the HSRC;
- ☐ Unjustified enrichment/abuse of position for personal gain at the expense of the HSRC – including the unauthorised contracting of business (particularly research), for personal or other private income and that is normally contracted

by the HSRC;

- ☐ Bribery or receiving of goods or money as bribes;
- ☐ Failure to disclose crucial or relevant information on request before being appointed;
- ☐ Failure to declare gifts, relevant business and/or any other interests (refer to Human Resources Policy 13, Acceptance of Gifts from External Parties);
- ☐ Failure to report to the HSRC known or suspected work-related misconduct, criminal and corrupt activities committed by colleagues in the course of their HSRC duties;
- ☐ Unauthorised possession of a firearm and/or dangerous weapon on HSRC premises;
- ☐ Unauthorised use of alcohol while on duty;
- ☐ Possession or use of prohibited drugs while on duty;
- ☐ Driving an HSRC vehicle while under the influence of alcohol or drugs;
- ☐ Grossly rude or abusive behaviour towards visitors, the public, supervisors, subordinates or colleagues;
- ☐ Bringing the name of the HSRC into disrepute.

Note: In assessing the seriousness of the breach, regard shall be given to the consequences or possible consequences of the employee's actions in order to ascertain whether the employer/employee relationship has been impaired or whether the HSRC's property and/or operations have been jeopardised or any lives have been endangered.

3.2. Non-mandatory offences: other misconduct

Non-mandatory offences are minor offences that require corrective discipline as a first step, or other less serious offences that require warnings, coaching and/or counselling.

The following are examples of misconduct considered to be serious breaches of the disciplinary code that could lead to dismissal after the issuing of warnings (the list is not exhaustive):

- ☐ Unauthorised absenteeism;
- ☐ Leaving the workplace without permission;
- ☐ Negligence;

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- ☐ Ignoring standard operating procedures;
 - ☐ Ignoring or holding in contempt HSRC rules and regulations;
 - ☐ Performing poorly at work due to recklessness, negligence or lack of interest;
 - ☐ Sleeping on duty;
 - ☐ Insolence or refusal to follow lawful instructions;
 - ☐ Failure to report an accident involving damage to property (HSRC or other), or resulting in injuries to a person or persons/employee;
 - ☐ Failure to initiate disciplinary action against an employee who has allegedly committed an offence;
 - ☐ Indecent action, slander or swearing;
 - ☐ Unprofessional conduct;
 - ☐ Reckless or negligent driving of an HSRC vehicle or rental vehicle;
 - ☐ Late coming/early departure;
 - ☐ Taking unauthorised extended lunch/tea/smoke breaks;
 - ☐ Abuse of authority;
 - ☐ Disrespect for quality assurance procedures;
 - ☐ Discourteous behaviour and rudeness to customers/clients;
 - ☐ Excessive use of paid working time for personal business.

3.3 Research misconduct and plagiarism

For research misconduct related offences also refer to the policies governing research ethics.

Note: Depending on the circumstances, any of the above could be viewed as gross misconduct if the employer/employee relationship has been impaired or if the HSRC's property and/or operations have been jeopardised or any lives have been endangered.

Nothing in the Disciplinary Code and Procedure shall affect the HSRC's right to summarily terminate an employee's contract of employment on grounds recognised by law as sufficient.

4. GROUNDS ON WHICH A TERMINATION OF THE EMPLOYMENT CONTRACT MAY BE LEGITIMATE

The Labour Relations Act recognises three grounds of termination of service:

- ☐ The conduct of the employee (e.g. dishonesty related misconduct);
- ☐ The capacity of the employee (e.g. Poor performance or ill health);
- ☐ Operational requirements of the employer's business (e.g. restructuring).

5. NOTES ON THE SCHEDULE OF OFFENCES (SECTION 6 TO SECTION 9)

5.1. Proposed actions

The proposed actions listed at Section 6 to Section 9 should not be automatically imposed. The nature and circumstances of each case should be taken into account before making a decision.

The proposed actions therefore serve as a guideline.

5.2. Key to abbreviations in Schedule of Offences

VW - Verbal warning

FWW - Final written warning

WW - Formal written warning

DISM - Dismissal

6. SCHEDULE OF OFFENCES: SERVICE IRREGULARITIES

6.1. Absenteeism

Offence	Definition/Interpretation	Mitigating circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
Absent for 1-3 consecutive days	Refers to being absent from work without permission and without a reasonable explanation.	Yes	VW Counselling	WW	FWW	Dism
Absent for 4-6 days		Yes	WW	FWW	Dism	
Absent for 7 days or more		Yes	FWW If employee has absconded and the employer has been unable to make contact, then summary dismissal based on Desertion process.	Dism		

Failure to notify the HSRC of his/her absence from work and expected date of return	An employee has a duty to notify his employer (generally in the person of his or her immediate supervisor) of his absence within a reasonable period (at least on the first day of absence before 11am). It is of the utmost importance to establish exactly why he failed to do so,	Yes	WW VW	FWW WW	Dism FWW	 Dism
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			Proposed action			
Offence	Definition/Interpretation	Mitigating circumstances	First offence	Second offence	Third offence	Fourth offence
	especially if communication channels were at his/her disposal. Note: Employees working remotely are expected to notify their line manager if they are unable to work on any day of remote working. Failure to do so will result in a written warning.					
Failing to produce a medical certificate	A valid medical certificate must be produced for all absences of a period of three days or more. (Refer to Leave policy) or if the employee has been absent on more than two occasions within an eight-week period. An employee is expected to obtain such medical certificate for the stipulated absence.	Mitigation	WW VW	FWW WW	Dism FWW	 Dism
Abuse of sick leave	If an employee absents him/herself from duty under false pretenses e.g., in order to conduct private business.	Mitigation	FWW WW	Dism FWW	 Dism	

6.2. Control at work

Offence	Definition/Interpretation	Circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
Poor timekeeping – including working remotely arrangements.	Examples: * Reporting late for work * Leaving work early * Away from the workplace for excessive periods * Taking excessive breaks or breaks that are longer than permitted. * Late for meetings or work sessions	Mitigation	WW	FWW	Dism	
			VW	WW	FWW	Dism

Loafing/idleness	Standing or sitting idly or aimlessly and thereby neglecting one's work.	Mitigation	WW	FWW	Dism	
	<p>Failing to work when there is work to be completed – especially in cases of remote working arrangements.</p> <p>Before taking action, check on the following:</p> <ul style="list-style-type: none"> * Were the standards of supervision adequate? * Was work in fact allocated? * Were the instructions clearly understood? * Did the employee have the means to carry out the work? * Were conditions suitable for carrying out the work? 		VW	WW	FWW	

			Proposed action			
Offence	Definition/Interpretation	Circumstances	First offence	Second offence	Third offence	Fourth offence
Sleeping whilst on duty	Refers to sleeping at the office based workplace during working hours. Bedding down (Bedding down is considered in a much more serious light than dozing.)	Mitigation	FWW WW	Dism FWW	Dism	

Negligence	<p>Examples:</p> <ul style="list-style-type: none"> * Failure to complete normal work. * Failure to adhere to policies or procedures e.g. capturing leave the next working day after unexpected leave was taken. * * Any act or omission which has the potential to give rise to serious consequences to the HSRC, its staff, its reputation, or its clients. <p>Negligent loss: Any act whereby an employee, through carelessness or negligence, causes HSRC property to be lost or is unable to account for it properly.</p> <p>Negligent damage: Any act whereby the employee, through carelessness or negligence, causes or allows HSRC property to be damaged.</p> <p>Negligent misuse: The use of HSRC property or accommodation for a purpose other than that for which it is intended.</p>	Mitigation	FWW WW	Dism FWW	Dism	
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7. Schedule of offences: Improper conduct

7.1. Disorderly conduct

Offence	Definition/Interpretation	Circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
Practical jokes/horseplay	The seriousness will be determined by the possible or actual repercussions of such action.	Mitigation	WW	FWW	Dism	
			VW	WW	FWW	Dism
Abuse, derogatory or insulting language	The uttering of any words or any written expression or showing hatred, ridicule or contempt for any person. The offence is more serious when it is wholly or mainly of race, tribe, creed place of origin or colour.	Mitigation	FWW	Dism		
			WW	FWW	Dism	
Harassment	Behaviour of a sexual nature, affecting the dignity of women or men at work. Such behaviour is unacceptable if it is unsolicited, unreasonable and offensive. The conduct creates an intimidating, hostile and humiliating situation.	Mitigation	Dism			
			FWW	Dism		
	Behaviour that is found threatening or disturbing (refer to Harassment Policy)	Mitigation	FWW	Dism		
			WW	FWW	Dism	

Violence	Threatening to injure - or actually physically injuring - any other person within the HSRC (whether	Mitigation	Dism FWW	Dism		
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Offence	Definition/Interpretation	Circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
	inside or outside of working hours).					
Assault/attempted assault	Causing or attempting to cause bodily harm to any other person. The action to be taken is dependent upon, inter alia: * Provocation * Self-defense * Intention * Nature and severity of injury sustained	Mitigation	Dism FWW	 Dism		
Intimidation and/or incitement	To incite or intimidate other employees to: * Use violence * Damage HSRC's property * Adopt impermissible industrial action, or * Indulge in any other disorderly behaviour (Abuse of power may also constitute a form of intimidation).	Mitigation	Dism FWW	 Dism		

Sabotage	Any act by an employee to interfere with the normal operations of the HSRC by damaging property or by interrupting any supplies of power, material or services necessary to the operations; any bomb threats, whether intended seriously or as a joke.	Mitigation	Dism FWW	Dism		
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7.2. Alcohol/Smoking and use of prohibited substances

Offence	Definition/Interpretation	Circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
Under the influence of intoxicating alcohol/drugs while on duty	Incapable of working (whether remotely or in office) properly whilst under the influence of alcohol and/or drugs, or reporting for work in an unfit condition whilst under the influence of alcohol and/or drugs.	Mitigation	FWW WW	Dism FWW	Dism	
Unauthorised consumption of intoxicating alcohol/drugs while on duty (whether working remotely or not)	Refers to the actual consumption of alcohol/drugs while on duty.	Mitigation	FWW WW	Dism FWW	Dism	
Unauthorised /illegal possession of drugs while on duty (whether working remotely or not)	Refers to the actual possession of drugs while on duty without the necessary permission or authority.	Mitigation	FWW WW	Dism FWW	Dism	
Selling or distributing of alcohol / drugs while on duty (whether working remotely or not)	Refers to the actual selling or distribution of alcohol or drugs while on duty.	Mitigation	Dism FWW	Dism		
Smoking within the HSRC Building	Refers to the smoking of any cigarettes or tobacco product in an area of the HSRC building not specifically assigned for that purpose.	Mitigation	WW VW	FWW WW	Dism FWW	Dism

7.3. Insubordination

Offence	Definition/Interpretation	Circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
Insubordination/insolence	Insubordination refers to an unwillingness to submit to authority, i.e. directly challenging the lawfully applied authority of a supervisor.	Mitigation	FWW	Dism		
	Insolence towards a supervisor is shown by disrespect, rudeness, use of offensive language or manner; in general being grossly disrespectful.		WW	FWW	Dism	

Refusing to carry out a reasonable instruction	When an employee directly or deliberately confronts his/her supervisor by e.g. refusing verbally and/or making no effort to carry out work when instructed to do so. The seriousness of the offence is determined by, inter alia: * The instruction complying with statutory/HSRC regulations * It being within the capabilities of the employee(s) * It being clearly issued	Mitigation	FWW WW	Dism FWW	Dism	

			Proposed action			
Offence	Definition/Interpretation	Circumstances	First offence	Second offence	Third offence	Fourth offence
Failing to carry out a reasonable instruction	Failure to adhere to or execute work according to a lawful and reasonable instruction.	Mitigation	WW VW	FWW WW	Dism FWW	Dism
Divulging confidential information to unauthorised persons	Revealing confidential information means unauthorised presentation, revealing discussion, press release, publication and/or any communication whatsoever that could embarrass or harm the HSRC. Included herein are divulging, stealing and issuing of access passwords (PINs).	Mitigation	Dism FWW	Dism		

7.4. Dishonesty

Offence	Definition/Interpretation	Circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
Giving false evidence making false statement/declaration	When a deliberate attempt is made to mislead or defeat the ends of justice through misrepresentation of a fact, either verbally or in writing.	Mitigation	Dism FWW	Dism		
Bribery/Corruption	Giving or receiving or attempting to give or receive any bribe to induce or attempting to induce any person to perform any corrupt/dishonest act that will be detrimental to the HSRC.	Mitigation	Dism FWW	Dism		
Fraud/Forgery	Any willful misrepresentation by any employee with a view to deriving personal gain or to damage/harm or potentially harm/damage the HSRC.	Mitigation	Dism FWW	Dism		
Misappropriation	The incorrect application of HSRC funds, assets or property for reasons of personal gain or other such purposes.	Mitigation	Dism FWW	Dism		

Theft	The unauthorised removal or taking of property other than the employee's own.	Mitigation	Dism FWW	Dism		
Unethical Research conduct or plagiarism	Breaching research ethics or making guilty of plagiarism	Mitigation	Dism FWW			

8. Schedule of offences: Miscellaneous improper conduct

Offence	Definition/Interpretation	Circumstances	Proposed action			
			First offence	Second offence	Third offence	Fourth offence
Prejudicial conduct	Any conduct prejudicial to the maintenance of good order and the smooth running of the HSRC.	Mitigation	Dism FWW	Dism		
Any act or omission which seriously impairs the relationship between the HSRC and its employees.	This refers to any other act not referred to in this code, which is serious enough to warrant the termination of the employment relationship.	Mitigation	Dism FWW	Dism		

9. Schedule of offences: Poor work performance (capacity)

			Proposed action			
Offence	Definition/Interpretation	Circumstances	First offence	Second offence	Third offence	Fourth offence

Unsatisfactory work performance	<p>Attention must be paid to the differences between incapacity ("cannot") and misconduct ("will not").</p> <p>If the unsatisfactory work performance is due to conduct (e.g., refusal) refer to Item 7 (above) – Insubordination or negligence.</p> <p>If the unsatisfactory work performance is due to incapacity, the following must be adhered to:</p> <p>* A formal evaluation must be made of the employee's performance.</p> <p>* Substandard performance as well as ways to correct such performance must be discussed with the employee. The employee must also be informed as to the action that can be taken against him or her if his or her performance does not improve.</p> <p>* A reasonable period of time</p>	Mitigation	FWW WW	Dism FWW	Dism	
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		<p>employee to improve his or her performance. The HSRC must assist the employee as far as reasonably possible.</p> <p>* The employee's performance must be re-evaluated against set standards.</p> <p>* If the employee's performance is still below standard, his or her employment may ultimately be terminated.</p> <p>* Refer to Poor Performance Procedure document.</p>						
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10. LEVEL AUTHORISED TO IMPOSE ACTION

Authority	Verbal warning	Written warning	Final written warning	Dismissal	Alternative disciplinary action: * Transfers * Demotion	Dismissal or Unpaid Suspension or disciplinary action against: * Executive Directors * Deputy Executive Directors * Deputy CEO
Line Manager	A	A	A			
Responsible Executive	A	A	A	R	Action in consultation with Director: Human Resources	R – Unpaid Suspension
Deputy CEO and GE:SS	A	A	A	R	Action in consultation with Director: Human Resources	R
CEO	A	A	A	Action in consultation with Director: Human Resources	Action in consultation with Director: Human Resources	Action in consultation with Director: Human Resources
Board	A	A	A	A	A	A

Key to abbreviations: **A** – Action that may be taken **R** – Action that may be recommended

Note: The defined rights of the employee notwithstanding – under certain extreme circumstances it may not be necessary to hold a disciplinary hearing before dismissal, e.g., where conduct has proved to be life threatening and/or where HSRC property has been exposed to the possibility of serious damage. As this is the exception to the rule, the Director: Human Resources must be consulted before such drastic action is resorted to.

11. RIGHTS OF AN EMPLOYEE

Although discipline is a managerial prerogative, the following rights of employees are accepted and protected by management:

- ☐ The right to be informed about the nature of the breach;
- ☐ The right to be disciplined timeously;
- ☐ The right to an interpreter;
- ☐ The right to call witnesses;
- ☐ The right to representation (either by a fellow employee or an union official or shop steward from a union recognized by the HSRC) ;
- ☐ The right to prepare or be given adequate notice before an inquiry/hearing;
- ☐ The right to defend a case;
- ☐ The right to a finding/decision;
- ☐ The right to have one's employment record considered (prior to deciding on the penalty, but only after guilt has been established);
- ☐ The right to present mitigating circumstances;
- ☐ The right to be advised of penalty;
- ☐ The right against victimisation.

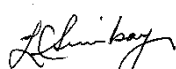
Note: It is not possible to compile an exhaustive list of all possible offences which may arise, consequently the HSRC reserves the right to take disciplinary action for any alleged transgression, whether it is listed in this code or not.

12. DEFINITIONS

Responsible Executive	The Executive who serves on the Executive Committee (EXCO) and who are responsible for the overall management of the Division/ Centre / Institute/ Unit.
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13. AUTHORISATION

This Policy Document was approved by the HSRC Board and the CEO on 31 May 2021.


Prof Leickness Simbayi
Acting CEO

Date 31 May 2021

Version control

Version	Date	Author	Detail
4.0	31 May 2021	Ms Erika Lewis	Updates following consultation with Executives and the HSRC Board