

# **DICIPLINARY CODE POLICY**

**Business Function: Human Resources**

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**DISCIPLINARY CODE****1. Introduction**

- This document is an expression of SIGMASOFT's policy on discipline and a guide to all company employees.
- Discipline is a system designed to promote orderly conduct.
- Formal disciplinary action should be the final course of action in rectifying employee behavior.
- Disciplinary action should be supported through investigation, reasonable evidence of guilt and careful consideration of the circumstances of each case before formal action is taken.
- Disciplinary action should always be prompt, fair and firm.
- While every attempt has been made to ensure that this Disciplinary Code is applicable to general disciplinary instances in SIGMASOFT, the requirement for use of discretion within the framework of and in accordance with the spirit of the code may be required.
- A successful disciplinary system and climate is dependent on the good judgement, understanding and consistent treatment of the parties involved in disciplinary action.

**2. Procedure and Documentation**

Action of Manager / Supervisor when an alleged offence has been committed or is reported to have been committed

When an offence is alleged to have been committed, the Manager / Supervisor concerned will investigate or have the matter investigated, and take any form of the following actions:

- a) Dismiss the case;
- b) Counsel the employee;
- c) Give a verbal warning;
- d) Give a recorded warning;
- e) Initiate a formal disciplinary enquiry;

**3. Informal disciplinary action**

It is desirable for sound interpersonal relations within SIGMASOFT that Supervisor where possible resolves disciplinary matters by means of informal disciplinary action. Informal disciplinary action can take the form of either a verbal warning or counselling.

An employee found to have committed an offence of a minor nature should be counselled by the Supervisor, without an entry being made on the employee's personal record. The Supervisor may however, make a record of the counselling session to allow for an assessment of the employee's performance record, should this be necessary at the time, and with the employee's knowledge and understanding thereof, formulate a

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plan of corrective action.

During the counselling, the Supervisor should ensure that the employee is made aware of the nature of the offence and the standard of the conduct or performance that will be expected in the future.

#### **4. Procedure for formal complaints**

A supervisor handling a formal complaint must investigate the case with the assistance of the Human Resources Officer, where possible, and the complaint should be addressed within 48 hours of the offence having been committed or the supervisor having been made aware of the fact that an offence has been committed.

- a) The accused should be suspended pending full investigation (if this has not already been done);
- b) Advise the supervisor on whether to continue with a formal complaint
- c) The Complainant and the accused must provide names of all persons who should be regarded as witnesses as their statements will assist in ensuring a fair hearing of a case. Where possible, should there be witnesses who are non-employees, formal statements should be recorded from them as they may be invited to attend the disciplinary hearing.

#### **5. Disciplinary Inquiries**

The Human Resources Officer will be responsible for the overall application of the code and should where possible:

- a) Advise and guide all participant on the Disciplinary Code;
- b) Ensure that the code is applied fairly and consistently in all cases (procedurally and substantively);
- c) When all documentation pertinent to the matter has been collected, the Human Resources Officer shall serve the papers or detailed Email on the accused and/or his/her representative to allow the employee to fully prepare himself prior to the hearing;
- d) The Hearing Chairperson will hear the case within four full working days of the complaint being lodged – only when further investigation is required shall this period be extended;
- e) The Human Resources Officer will be responsible for arranging a suitable venue and date for the inquiry, informing all the relevant parties; informing the accused of his/her rights to representation; informing the accused of his/her right to appeal against the decision and arranging for all relevant statements to be taken.
- f) The complainant shall be responsible to complete the Complaint form.

#### Attendance at the Inquiry

The following persons must be in attendance at any hearing inquiry:

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- a) Hearing Chairperson
- b) Complainant
- c) Alleged Offender (accused)
- d) Representative of alleged offender (if requested by alleged offender)
- e) Witness (as) (as and only when required for the duration of the testimony)
- f) Human Resources Officer.

#### The Hearing/Inquiry

- a) The accused should be given at least 48 hours notice in advance of the disciplinary hearing (Notice for Disciplinary hearing see Appendix 8), indicating the date, time and venue of the hearing. In addition, the responsible person convening the hearing should advise the accused of his/her right of representation.
- b) In the event that the accused alleges that the Hearing Chairperson is implicated in the case and therefore will not be unbiased, the accused may request the appointment of an alternative Hearing Chairperson, giving a full motivation for such a request. The decision whether to appoint another Hearing Chairperson or not rests with the Human Resources Officer. Such requests shall however not be unreasonable withheld.

### **6. Duties and Responsibilities of the Hearing Chairperson**

**6.1.** The Hearing Chairperson shall be any employee on the same level as the direct supervisor of the Complainant, but not the direct supervisor. The Hearing Chairperson should not have been privileged to any information pertaining to the inquiry prior to the inquiry.

**6.2.** Ideally the Chairperson of a disciplinary inquiry will be required to follow the guidelines below when performing duties of a presiding official:

- a) Introduce and identify all present, stipulate the purpose and format of proceedings;
- b) Ensure that the alleged offender has been given sufficient notification of the inquiry, and that he/she has signed and acknowledged acceptance thereof. Ensure that the alleged offender has understood his/her employee rights in this regard;
- c) Establish if witnesses are present and if so, inform the hearing that they will be excluded from proceedings once they have led evidence and have been cross questioned;
- d) Should it be established that the accused was not informed of his right to representation or that the witnesses are not present, the Hearing Chairperson will adjourn and reschedule the hearing for a later date;

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- e) Should the accused fail to attend the hearing, the Hearing Chairperson will establish whether the accused was notified of the date, time and venue of the hearing. It will be advisable to re-notify all parties to attend the disciplinary hearing at a later date if notification was not given;
- f) If the accused fails to attend a disciplinary hearing, the Hearing Chairperson should in writing advise the accused of the date, time and venue of the hearing and advise him that should he fail to attend, the hearing will proceed in his absence;
- g) Should the accused fails yet again to attend and if no prior notification for his absence was given, he may be deemed to have waived his right to attend the hearing. The Hearing Chairperson will then decide the case in absentia on the facts available and the accused will be informed, in writing, of the outcome;
- h) Having ascertained that the particulars on the complaint form are correct, the Chairperson will inform the accused of the charge(s) against him/her, ascertain his/her understanding thereof and the accused will be asked to plead on the charges;
- i) The accused should be permitted to make any further pertinent comments should he/she wish to do so (whether or not he/she has already made a written statement);
- j) According to the plea entered by the accused, the Hearing Chairperson must verify all facts and allegations by questioning the accused, Complainant and any other parties in order to arrive at a decision. Only information provided in the case documentation pertaining the charge in question and statements raised during the inquiry will be used as facts pertaining to the disciplinary inquiry;
- k) The Hearing Chairperson will allow the accused, with his/her representative, the opportunity to express opinions on the case;
- l) All witnesses should be called to give evidence and to have such evidence examined by the hearing Chairperson, the Complainant and the accused and/or the accuser's representative;
- m) If during the course of the hearing, the Hearing Chairperson finds it necessary to obtain further information, the case should be adjourned to allow for further investigation;
- n) If the accused wishes further evidence to be submitted, this should be allowed, provided that the Hearing Chairperson is of the opinion that such further evidence could be of relevance;
- o) Once the Hearing Chairperson is of the opinion that he/she has gathered sufficient evidence surrounding the case, he/she should request any witness (as) to leave the room;

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- p) At this stage the Hearing Chairperson may call for a recess during which he/she may liaise with the Human Resources Officer in order to obtain further advice and information;
- q) The Hearing Chairperson may call a recess at any stage of the proceedings and may consider any call for a recess by any other party of the inquiry;
- r) Once the Hearing Chairperson is satisfied that he/she is in a position to make a decision on the guilt or innocence of the accused, he/she will reconvene the inquiry and inform the accused and his/her representative of his/her findings. The Complainant and Human Resources Official (where possible) should be present when the decision of guilt or innocence is informed.
- s) If it is the opinion of the Hearing Chairperson that the accused is not guilty, he will inform him accordingly and the finding “case dismissed” will be entered on the Complainant form and the employee’s disciplinary record will be cleared of any reference to the case;
- t) Where an employee is found guilty, the Hearing Chairperson will then take note of the offender’s record of service, disciplinary record, mitigating and aggravating circumstances, seriousness of the offence, consistency of application and any other circumstances he/she may deem necessary to consider;
- u) In all cases, current un-expired disciplinary warnings will be taken into account when deciding on the appropriate action;
- v) Depending on the nature and seriousness of the offence, the whole of the employee’s disciplinary record may be considered;
- w) The Hearing Chairperson will then record the penalty on the complaint form and inform the offender of the penalty awarded in terms of **Section 6.5** and the reasons for arriving at the decision. The Hearing Chairperson will inform the offender of the period for which the warning will remain on his/her record as a valid entry. The Hearing Chairperson will also inform the offender of his/her right to appeal in terms of Section 6.6 of this code;
- x) With regard to corrective action, the Hearing Chairperson will, in liaison with the immediate Supervisor, the employee and/or representative, and the Human Resources Officer; formulate an action plan to address the required change in behavior. The employee will be required to assist in this process and make proposals in this regard. The aim is to ensure that the process of correcting unacceptable behavior is addressed objectively and amicably;

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- y) Request the employee to acknowledge the disciplinary action proposed. Should the employee opt not to sign, a witness should be requested to acknowledge that the details of the inquiry have been communicated to the accused.

#### Recording of Proceedings

- a) It is in the interest of SIGMASOFT and the individual that all proven offences and subsequent disciplinary action be accurately recorded.
- b) The Chairperson will ensure that all other required administrative details on the complaint form are completed before forwarding the document to the Human Resources Officer for overall review and control.
- c) Statements, Complainant forms and other disciplinary records will be retained by the Human Resources Officer as these may be required even after an employee has left SIGMASOFT's services.
- d) The Human Resources Officer will be responsible for the input of disciplinary penalties on employee's personal files.

#### **6.2.1. Special Cases**

##### **Suspension**

- a) An employee may be suspended from work immediately if he/she has allegedly committed or is allegedly involved in any one of the following offences:
  - Assault/attempted assault
  - Desertion
  - Sleeping on duty
  - Negligent loss, driving, damage or misuse of company property
  - Abuse of electronic/data facilities
  - Sexual Harassment
  - Fighting
  - Riotous Behavior
  - Alcohol and drug offences
  - Willful loss, damage or misuse of company property
  - Theft/Unauthorized possession of company property
  - Breach of Trust
  - Offences related to dishonesty
  - Offences related to Industrial Action

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- Any act or omission which intentionally endangers the health or safety of others, or is likely to cause damage to Company property
- Interference with disciplinary and/or grievance investigations
- Abusive or provocative language (when it is likely to cause a disturbance)
- Insubordination (if the situation shows signs of getting out of control)
- Persistent refusal to obey instructions.
- In certain instances, the Supervisor will recommend that the offender be removed from the work place pending investigation of the case. He/she will take immediate steps to report the matter to his/her immediate Supervisor, who will raise the matter with the CEO.
- It is mandatory to liaise with the Human Resources Officer prior to suspending an employee in order to ensure that the suspension is procedurally and substantively fair.

### **Poor Work Performance**

Cases involving substandard or deteriorating work performance are to be treated differently from those regarded as transgressions of misconduct.

The following guidelines should be considered when dealing with such cases. An attempt should be made to resolve alleged poor work performance by means of counselling the individual involved. Where the supervisor identifies work performance, the following procedural action should be considered:

- a) Investigate and identify the problem area(s)
- b) Communicate this to the individual concerned, and jointly agree on the appropriate plan of action in order to resolve the matter. If deemed necessary and relevant, norms should be established by arranging appropriate task lists and the time duration allowed for the completion of each task;
- c) Consideration should be given to the appointment of a coach or mentor to assist the employee to improve performance;
- d) Accurately minute the agreed contents of any agreement put in place and provide the Human Resources Officer with a copy for record keeping purposes;
- e) Regular evaluation and follow up on the agreed plan of action should be made;
- f) Should counseling fail to produce the desired improvement, alternative action should be considered in liaison with the Human Resources Officer. Alternative action could include, but is not limited to, termination of the employment contract on the grounds of incapacity, demotion or a transfer to an alternative position. The employee, throughout this process, will be entitled to representation.

### **6.3 Offences outside normal working hours**

SIGMASOFT reserves the right to take any action it may deem appropriate against employees who are, in

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the opinion of SIGMASOFT, guilty of gross misconduct not merely in their working situations. This is particularly so where the nature of the misconduct may affect the employment relationship with any other party. Actions that directly relate to the nature of the business are also liable for disciplinary action.

### **Court Actions**

Where an employee has been criminally charged or legal action has been instituted for an employment – related breach, SIGMASOFT reserves the right to take disciplinary action against the employee for the alleged offence, in terms of this Code.

### **6.4 Classification of Offences:**

Offences are classified into five major categories.

- 6.4.1 Absenteeism
- 6.4.2 Offences related to Control at Work
- 6.4.3 Offences relating to indiscipline or disorderly behavior
- 6.4.4 Offences related to dishonesty
- 6.4.5 Industrial Action

#### **6.4.1. Absenteeism**

Absenteeism in the disciplinary context means being absent from work for an entire working shift, or part thereof, without the expressed permission from a direct supervisor.

A sanction of dismissal can apply for the first offence of being absent without permission provided that the employee was absent for three continuous working days without a valid reason.

- a) Absent without leave;
- b) Desertion: Leave the work place without intending ever to return; leave without help or support; abandon; leave without authority or permission.

#### **6.4.2. Offences related to Control at Work**

##### **a) Poor Time Keeping and related offences**

- a) Reporting late for work
- b) Leaving work early
- c) Extended or unauthorized breaks during working hours
- d) Persistently committing all or any of the above.

##### **b) Sleeping on duty**

Any employee who is found asleep on duty, whether or not such an action constitutes a hazard to the safety

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and health of the offender or others or leads to damage to Company property, shall be deemed guilty of an offence.

**c) Negligent Loss, Driving, Damage or Misuse of Company property**

- a) Negligent loss of Company property: any act whereby an employee, through carelessness or negligence, loses Company property or is unable to account for it satisfactorily.
- b) Negligent driving; driving a company owned or rented vehicle without due care, whether such an act results in an accident or not.
- c) Negligent damage to Company property: any act whereby an employee through carelessness or negligence causes or allows Company property to become damaged.
- d) Misuse of Company property: using Company property for a purpose other than that for which it was intended.

**d) Unsatisfactory Work Performance**

- a) Carelessness: Performance of a task or duty without the exercise of due care and attention.
- b) Negligence: failure to exercise proper care and regard to the manner of discharging duty to the extent that tasks have to be repeated or equipment or persons are at risk of damage or injury.
- c) Inefficiency: failure to carry out work at the required standard or failure to complete tasks within the given reasonable time limits, without reasonable cause. This includes poor supervision.
- d) Loafing: passing time idly or failing without reasonable cause to complete tasks set.

**6.4.3 Offences Related to Indiscipline or disorderly behavior.**

**a) Disobedience and related offences**

- a) Refusing to obey an instruction: deliberate refusal to carry out a lawful and/or reasonable instruction given by a person in authority and within the area of his jurisdiction.
- b) Failing to obey an instruction: failure to obey a lawful instruction given by a person in authority and within the framework of his/her jurisdiction.
- c) Non-compliance with established procedure / standing instructions: failure to follow established procedures.

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- d) Abuse of electronic / Data facilities: excessive use / abuse of e-mail and communication facilities; storage and/or transmission of material of discriminatory nature; storage and/or transmission of pornographic material; unauthorized monitoring and interception of electronic documentation.

#### **6.4.3.1 Abuse and related offences**

- a) **Abusive Language:**

The uttering of any words or the publication of any writing expressing or showing hatred, ridicule or contempt for any person or group of persons.

The offence is more serious when it is wholly or mainly because of his/her/their nationality, race, color, ethnic origin, sex, marital status, religion, creed, political opinion, social or economic status, degree of physical or mental ability, sexual orientation or culture.

- b) **Insubordination:**

Insolence towards a superior shown by action or words.

#### **6.4.3.2 Disorderly behavior and related offences**

- a) **Disorderly behavior:**

Indulging in rough or unruly behavior or practical jokes whether or not such behavior endangers the safety or health of others or the smooth running of the work place.

- b) **Threatening violence:**

Threatening to do physical injury to any other person.

- c) **Fighting:**

Physical contact between two or more persons, engaging in or inciting a group of persons to indulge in disorderly behavior or willfully to damage Company property.

- d) **Riotous behavior:**

Unruly behavior between two or more persons, engaging in or inciting a group of persons to indulge in disorderly behavior or willfully to damage Company property.

- e) **Sexual Harassment:**

Any unwanted or unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, causes unreasonable interference with an individual's work performance or creates an intimidating, hostile or offensive work environment.

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**f) Discrimination:**

Any act whereby an employee discriminates against any other employee or group of employees on the grounds of nationality, race, color, ethnic origin, sex, marital status, religion, creed, political opinion, social or economic status, degree of physical or mental ability, sexual orientation or culture.

**Willful loss, damage or misuse of Company property**

*Willful loss:* any act whereby an employee willfully or deliberately loses or causes Company property to be lost.

*Willful damage:* any act whereby an employee willfully or deliberately damages, or allows or causes damage to Company property.

*Willful misuse:* any act whereby an employee willfully or deliberately misuses Company property.

**6.4.5 Offences Related to Dishonesty**

Disciplinary cases involving the following offences must be reported to the Human Resources Officer.

**Bribery or Corruption**

Giving or receiving or attempting to give or receive any bribe or inducing or attempting to induce any person to perform any corrupt act.

**False Evidence**

Deliberately giving untrue, erroneous or misleading information or testimony whether verbally or in writing.

**Forgery and uttering**

Falsifying or changing any documentation with fraudulent intent or attempting to do so.

Uttering or attempting to utter fraudulent or false statements or documents.

**Misappropriation**

Applying or attempting to apply to a wrong use or for any unauthorized purpose, any funds, assets or property belonging to SIGMASOFT.

**Theft of or unauthorized possession of Company property**

Stealing or attempting to deprive SIGMASOFT permanently of its rightful ownership.

Being in possession or disposing of Company property without due authorization.

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**Fraud**

The unlawful making of a misrepresentation with intent to defraud, which causes actual or potential prejudice to another party.

**Breach of Trust**

Actions or conduct of an employee that cause a reasonable suspicion of dishonesty or mistrust and for which there exist extraneous evidence to prove a breakdown in the relationship of trust between the concerned employee and SIGMASOFT. This will include a situation where the conduct of the employee has created mistrust, which is counterproductive to SIGMASOFT's commercial activities or to the public interest, thereby making the continued employment relationship an intolerable one.

**6.4.5 Industrial Action****Intimidation**

Any act by an employee, whether by himself or in concert with other persons (whether or not such other persons are employees of SIGMASOFT), to intimidate any employee with the object of compelling him to take part in any strike or other action which interferes with the normal operations of SIGMASOFT. Intimidation is an offence even if all the procedures for the settlement of the industrial disputes and grievances and the Law have been exhausted.

**Sabotage**

Any deliberate action by an employee that results in the interference with the normal operations of SIGMASOFT by damaging any machinery, or equipment or by interrupting any supplies of power, or services necessary to the operations.

**Illegal Strike/Lockouts**

Participation in any illegal strike action, lockouts, boycott or any other form of work disruption not in accordance with the applicable statute that constitutes a blatant refusal to work. Examples of such action include, inter alia, work-to-rule; overtime ban; go-slow.

Any disciplinary matter referred to in this subsection will not preclude SIGMASOFT from exercising its common law rights to terminate the employment contract in the case of illegal industrial action.

**6.5 Penalties****Classification of Penalties:**

- 6.5.1 Verbal Warning
- 6.5.2 Recorded Warning
- 6.5.3 Severe Warning
- 6.5.4 Final Warning
- 6.5.5 Dismissal
- 6.5.6 Demotion

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6.5.7 Transfer

6.5.8 Alternative Penalty to Dismissal

#### **6.5.1 Verbal Warning**

Any supervisor may, at any time and at his discretion, reprimand an employee without completing a complaint form, in which case there will be no entry made on the employee's disciplinary record. When a verbal warning is given, the supervisor must ensure that the employee being reprimanded is made aware of the existence and function of the Disciplinary Code. A verbal warning is usually issued where the offence is of a minor nature.

#### **6.5.2 Recorded Warning**

Application: This may be given for a repetition of an offence for which an unrecorded warning has been given, or it may be given for a first offence.

Validity Period: The employee must be informed that the warning will remain in force for a period of **six months**.

#### **6.5.3 Severe Warning**

Application: Given for a repetition of the same offence or similar offence during a period when a recorded warning is still in effect, or for a first offence of a more serious nature.

Validity Period: The employee must be informed that the warning will remain in force for a period of **nine months**.

#### **6.5.4 Final Warning**

Application: Given for a repetition of the same offence or a similar offence during a period when a severe warning is still in effect or depending on the nature thereof, for a first offence of a serious nature. In the case of an employee being found guilty of an offence of a dissimilar nature within the prescribed period, the hearing official may, at his discretion, issue a comprehensive final warning on the understanding that if any offence is committed within the next **12 months**, it will render him liable for dismissal.

Validity Period: A final warning is effective for a period of twelve months. The employee is advised in writing by the official hearing the case of the period applicable and reminded that a repetition of the offence or the committing of any similar serious offence within the prescribed period will render him liable for dismissal. A copy of the notice shall be forwarded to the Human Resources Department.

#### **6.5.5 Dismissal**

Application: Dismissal is the final sanction and should be used:

- when other forms of disciplinary action have failed;
- when an employee on a final warning commits a serious offence;

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- when the offence committed is of such a serious nature that it amounts to a serious breach or repudiation of the employee's contractual obligations;
- in cases relating to dishonesty e.g., theft, fraud or corruption;
- in the case of any employee who is absent from work without permission for a period of three continuous working days or more. In this case the employee will be dismissed in absentia after the third day if no reason for such absence is received. Should the employee return to work after he has already been dismissed, he may request that the case be re-opened?

Once an employee has been dismissed in accordance with the procedure contained in this Code, under no circumstances will he be considered for re-employment should he re-apply at a later stage. If it is discovered that a dismissed employee has obtained re-employment with SIGMASOFT either inadvertently or through deception, his services will be terminated immediately.

#### **6.5.6 Demotion**

Demotion is not an acceptable corrective action and is therefore, not used as a punishment for a specific offence. It is used only where the employee is unable to meet the requirements of his present job but is suitable for continued employment in a lower capacity.

#### **6.5.7 Transfer**

Transfer is not permitted as a tool for disciplining employees. A transfer shall only be effective in terms of SIGMASOFT's Conditions of Employment and Service. Transfer, as the result of the outcome of a disciplinary action, will be considered in special circumstances.

#### **6.5.8 Alternative Penalty to Dismissal**

A comprehensive final warning may be considered at the discretion of the Hearing Chairperson as an alternative penalty to dismissal in instances where an employee is found guilty of an offence of a dissimilar nature to a valid final warning on his personal record.

The sanctioning of a comprehensive final warning will only be considered in circumstances warranting corrective action and liaison between the Hearing Chairperson and the Human Resources Officer is encouraged before such a penalty is imposed.

A comprehensive final warning will be valid for twelve months from the date of the imposed penalty.

### **The Role of the HR Officer**

The maintenance of workplace discipline is strictly a function of line management. Human Resources Officer should be available to assist line management where required. As far as possible, the Human Resources Officer should, in consultation with the official chairing hearing, ensure that disciplinary action taken is procedurally and substantively fair.

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The Human Resources Officer should be available to advise and assist all employees on all disciplinary matters.

The Human Resources Officer must not impose penalties, nor hear appeals in respect of own subordinates or immediate Supervisors.

The Human Resources Officer is responsible for:

- Ensuring that the complaint form properly identifies the offence and is otherwise correctly completed
- Ensuring that the alleged offender is aware of the charges against him/her
- Interviewing and taking statements from the Complainant, accused and any witness
- Investigating the domestic circumstances of the alleged offender, when necessary
- Ensuring that all facts are collated marshalled and presented without bias.
- Advising the Complainant, accused, witness (as) and representative of their roles and rights
- Ensuring that documentation pertaining to the hearing is forwarded to the appropriate officials
- Advising the accused and his representatives of progress made for cases that are pending or in recess.

The Human Resources Officer may at his/her discretion recommend that a concluded disciplinary case be reopened in instances where gross non-compliance to the Disciplinary Code is evident.

#### **The Role of the Representative**

Any employee, against whom formal disciplinary proceedings are held may at his request, be accompanied at the initial and any subsequent hearing by a colleague from the same working section, or in the case of an employee who is represented by a properly constituted consultative committee, by a member of such a committee. An employee who is a Union member may be represented by the appropriate Part-time or Full-time Shop Steward, in accordance with the provisions of the Recognition and Procedural Agreement between SIGMASOFT and Union. Legal representation or representation by non-Company persons during internal Company enquiries is not permitted.

The representative has no right to insist on the employee being accompanied if he does not wish it; that is, a representative will attend a disciplinary hearing only at the request of the employee. He will be invited to comment on the evidence.

The representative may ask question and cross-question during the disciplinary hearing, but may not give evidence during such hearings.

The representative may make submissions to the hearing official on the guilt or otherwise of the accused prior to the hearing official making his finding. He may also make submissions to the hearing officials on the mitigating factors to be considered and on the penalty to be imposed.

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Should the representative's comments at the hearing be of such a nature as to warrant re-consideration of certain matters or further investigations, time should be allowed for this and, if necessary, the enquiry recessed.

#### **6.5.9 Dismissal Procedure**

- a) A direct Department Manager may recommend that an employee be dismissed.
- b) For the purpose of the dismissal procedure, a direct Department Manager is defined as an employee graded lower or above who has a supervisory link to the employee concerned.
- c) Following a disciplinary hearing outcome being advised to the employee who results in the recommendation for a dismissal and the employee accepts the recommendation; the Hearing Official will refer the case documentation for review to the relevant Manager for the department concerned.
- d) The relevant Manager will endeavor to review the case within forty-eight hours/two working days and endorse or reject the recommendation.
- e) If the recommendation for dismissal is endorsed, the hearing official shall refer the recommendation to the Human Resources Officer who will review the case with the relevant Head of Department.
- f) If the recommendation for dismissal is rejected, the case shall be referred to the Human Resources Officer and the original hearing official.
- g) The relevant Manager may sanction the recommendation in writing, thereby effecting dismissal, or reject it.
- h) The employee shall be notified of the decision verbally by the Hearing Official. If the employee is dismissed, the employee will be notified in writing. This notification shall be signed by the relevant Executive Committee Member.
- i) Every employee has the right to appeal against a decision to dismiss him/her. The appeal procedure will apply as outlined in Section 6.6.

#### **6.6 Disciplinary Appeal Procedure**

- 6.6.1 Every employee has the right of appeal against any decision which involves any entry on his/her disciplinary record and which may thus affect his future employment prospects.
- 6.6.2 Any employee who wished to appeal against the outcome of any disciplinary hearing against him/he must notify the Human Resources Officer in writing within two days of being notified of the outcome of the disciplinary hearing. The right of appeal must be based on one or more of the following appeal grounds.
  - i Dispute of Guilt
  - ii Severity of Penalty/Mitigating Factors
  - iii Procedural Inconsistencies
  - iv New Evidence

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- 6.6.3 Appeals against Verbal, Recorded and Severe Warnings may be referred to the official at the level above the official who originally heard the case. The decision of the Appeal Hearing Official shall be final and no further appeal level shall be available.
- 6.6.4 Appeals against recommendations for Final Warnings and Dismissals shall be heard by the relevant Executive Committee member. If the sanction was originally imposed by a Manager, the accused may request the Disciplinary Review Committee to review the case.
- 6.6.5 Certain appeals shall be reviewed by the Human Resources Officer may refer the case back to the original Hearing Official for further investigation and/or re-hearing.
- 6.6.6 The employee shall be present at the appeal hearing and shall be entitled to a representative in terms of Section 6 of the Disciplinary Code, except at the Disciplinary Review Committee level.
- 6.6.7 The Disciplinary Review Committee shall be chaired by the Operations manager and shall comprise the Human Resources Officer and Senior representatives of another Department.
- 6.6.8 When an employee requests that his case be referred to the Disciplinary Review Committee for a review, he may at the same time request that he or his representative be invited to make representation or motivate his grounds of appeal in person. The Disciplinary Review Committee shall however review each case on its own merits and take decisions independently.
- 6.6.9 The Disciplinary Review Committee shall have the authority to uphold or reduce a penalty imposed by the Head of Department. It will also have the authority to impose a more severe disciplinary action should it be found that the offence committed warranted a more severe penalty. The Disciplinary Review Committee may refer a case back to the Head of Department or the Human Resources Officer for re-hearing or for further investigation.
- 6.6.10 The decision of the Disciplinary Review Committee will be final. The Human Resources Officer shall inform the employee of the decision of the Disciplinary Review Committee. In addition, the Chairperson of the Disciplinary Review Committee will notify the employee of the decision, in writing.
- 6.6.11 Should an appeal against dismissal be successful, the employee will be reinstated retrospectively to the date on which his services were terminated and he will be advised in writing to return to work. This also applies where an appeal against a dismissal is reduced to a warning also.
- 6.6.12 In the event of the dismissal being upheld by the Disciplinary Review Committee, the dismissal shall be effective from the date of the employee's services were terminated by the Head of Department. The Chairman of the Disciplinary Review Committee shall inform the employee in writing of the outcome of the Committee's Review.

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6.6.13 It should be noted that the Disciplinary Review Committee, referred to above, should only have the authority to review disciplinary cases that have been dealt with by Manager.

**Document History**

Version	Amendment	Date of Amendment
V1.0	Policy Initiated	10-03-2023

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