

# **DISCIPLINARY POLICY**

## **TT-FOA-04**

Standard Operating Policy – Finance,  
Operations & Administration

Effective Date 24 August 2021

## 1. DOCUMENT CONTROL

### 1.1. Document Information

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Author signature confirms the contents of this document.

### 1.2. Approvals

The signatures below confirm that the reviewers agree with the content of the document and that this document is approved for implementation within Tshiamiso Trust.

Name	Position	Signature	Date
Dr May Hermanus	Chairman of the Board		
Kgomotso Molebatsi	Chairperson: HR, Remuneration and Governance Committee		
Daniel Kotton	Chief Executive Officer	<i>Daniel Kotton</i>	05/10/2021

This document is effective from the date of the last approval signature.

### 1.3. Change Record

Date	Effective Date	Author	Version	Change Reference

### 1.4. Document Location

The fully executed document is held by: The Trust.  
When printed this document is uncontrolled.

## **2. POLICY SCOPE**

### **2.1. Purpose of the Policy**

The purpose of the Disciplinary Policy and Procedure is to give a broad outline of the rules, regulations and standards of work performance which apply to all employees. This includes standards of conduct and work-related performance expected of employees in terms of their contracts of employment. It also provides examples of behaviour or performance which do not meet these required standards.

### **2.2. Objectives of the Policy**

To help maintain harmonious and equitable working relations in the best interests of the Trust and all its employees, and to ensure that employees are treated fairly and consistently and that any disciplinary action is affected for a fair reason and in accordance with a fair procedure.

To regulate the management of Incapacity: Poor-Performance together with the Trust's Incapacity Policy and Procedure and to ensure fair consideration of the points of view of both the employee concerned and management. To avoid hasty or ill-considered judgements and/or action by supervision, management or the employee(s) concerned.

As the main purpose of disciplinary action is to correct unacceptable conduct or inadequate performance, dismissing an employee should be considered only when corrective discipline has failed, unless or where the offence and/or circumstances are so serious that no alternative action, but a dismissal is appropriate.

It is Management's responsibility and prerogative to establish fair and equitable standards of conduct and performance that are consistent with the specific requirements of the industry and/or the business requirements of the Trust.

While it remains the responsibility of management to ensure the proper administration of discipline, it is always the responsibility of all employees to maintain discipline and comply with the disciplinary code and reasonable standards of performance and conduct.

This disciplinary procedure, processes and code shall at all times be subject to the provisions of the Labour Relations Act (No. 66 of 1995), as amended, ("LRA"), any other related labour legislation, any other legislation, case law and the requirements of the Trust and industry.

### **3. POLICY GOVERNANCE**

#### **3.1. Policy Review**

The Policy will be reviewed in the year 2024 taking into account any changes in legislation and the Trust's operational requirements.

#### **3.2. Ownership of Policy**

Ownership of the Policy will be vested in the Human Resources scope of accountability.

#### **3.3. Approval of Policy**

The Policy and any amendments from time to time must be approved by the Chief Executive Officer and the Board of Trustees.

#### **3.4. Legal Context**

This Policy is informed by the:

- The Constitution of the Republic of South Africa, 1996
- The Employment Equity Act, 1998, as amended
- The Labour Relations Act, 1995, as amended
- The Code of Good Practice, Schedule 8 of the Labour Relations Act
- Commission for Conciliation, Mediation and Arbitration ("CCMA")
- The Basic Conditions of Employment Act, 1997, as amended

#### **3.5. Related Documents**

The Policy is supported by and should be read in conjunction with the following documents:

- Code of Conduct
- Employment Contracts
- All Human Resources Policies

## **4. POLICY STATEMENT**

The Disciplinary Policy only deals with misconduct. Incapacity and operational requirements are dealt with in separate policy documents. The purpose of this policy is to regulate standards of conduct within the Trust; and the aim is to correct unacceptable Behaviour using a progressive approach. This policy is not aimed at creating rigid rules and is intentionally general as each case is unique. It is based on the principle of fairness; maintaining that an employee is not guilty of any offense until found guilty by the relevant body and authority. While consistency will be applied; each case will be judged and dealt with according to its own merits.

## **5. DISCIPLINARY POLICY**

### **5.1. General Procedural processes and Principles**

The disciplinary principles, procedures and code contained in this policy are applicable whenever the conduct of an employee is deemed to be undesirable or unacceptable. Where a dismissal arises from the operational requirements of the Trust, the LRA's related provisions shall apply. Where a dismissal arises due to an employee's incapacity on the grounds of ill health or injury, then the provisions of the Code of Good Practice contained in Schedule 8 of the LRA shall apply.

Having regard for the circumstances of each individual case and except where exceptional circumstances prevail and with due consideration for the provisions of the LRA and related case law, no employee shall be disciplined without being afforded the opportunity of stating his/her case. Discipline shall be applied in private between an employee, his/her representative and a superior, and must include, for example:

- a clear explanation as to why disciplinary action is necessary in the circumstances, for example, violation of rules, etc. and which leaves no doubt in the employee's mind that he/she has erred in the opinion of his/her superior; an
- an opportunity for the employee to respond to the allegation of misconduct; and
- a clear explanation of what further disciplinary action may result in the event of the employee failing to correct his/her conduct.

Unless so determined by management, a formal disciplinary hearing, as detailed in this policy, does not need to be held every time misconduct occurs and where such transgression may only lead to a Verbal or Written Warning. In such instances, the superior initiating the disciplinary action must comply with the procedure detailed in this policy.

For explanatory and categorisation purposes, the disciplinary procedure applicable to issuing a Verbal or Written Warning will be referred to as the Informal Disciplinary Procedure, whereas the

disciplinary procedure applicable to issuing a Final Written Warning or Dismissal or where a Final Written Warning or Dismissal is contemplated, will be referred to as the Formal Disciplinary Procedure.

Where the Formal Disciplinary Procedure/s disciplinary hearing are invoked against an employee, every employee shall have the following rights:

- To be represented by an employee, it is the employee's duty to arrange for such representation.
- To be notified in writing of the charge(s) in advance, namely at least two working days before a disciplinary hearing commences, thereby affording the employee and his/her representative an opportunity to prepare for the disciplinary hearing.
- To request an interpreter. It is the duty of the Trust to provide an interpreter should the employee request one and such employee request is reasonable. The employee making such a request must direct the same to his or her direct manager at least two working days prior to the hearing commencing.
- To be allowed to state his/her case and defend him/her, both in respect of the allegations/charges, as well as in the determination of a sanction/penalty.
- To call witnesses. It is the employee's responsibility to arrange for the attendance of such witnesses. Where such witnesses are also employees of the Trust, the employee must channel a request for their involvement as witnesses via the direct manager for his or her area.
- To cross-examine any Trust witness (es).
- To be notified in writing of the outcome of the Disciplinary Hearing.
- To be entitled to all documentary evidence presented as evidence at the disciplinary hearing, as well as a copy of the minutes of the disciplinary hearing, should such minutes be compiled by the Trust.

The Trust's Formal Disciplinary Procedure makes provision for internal Appeals in respect of an employee feeling dissatisfied with any disciplinary action taken against him/her with the sanction being a Final Written Warning, a Dismissal, or any disciplinary action as an alternative to a dismissal. Where an employee is dissatisfied with the outcome of an Appeal, he/she may utilise the Labour Relations Act's dispute resolution mechanisms, for example, by referring the matter to the Commission for Conciliation, Mediation and Arbitration ("CCMA").

Where an employee refuses and/or fails to attend a Disciplinary Hearing or an Informal Disciplinary Procedure, the Disciplinary Hearing or Informal Disciplinary Procedure may be held in his/her absence without further notice to the Employee.

The chairperson is not required to provide minutes, verbatim minutes, tape recordings, and so on, of any disciplinary process. However, where the Trust has such recordings and uses same as evidence at any forum related to the Formal Disciplinary Procedure or to defend a case at any of the LRA's dispute resolution mechanisms, The Trust will provide the employee or his/her representative with a copy of such record.

## **5.2. Suspension**

In circumstances where serious misconduct and/or inadequate performance is, or appears to be, involved, the employee may be suspended pending an investigation of the alleged offence and/or pending the outcome of a disciplinary hearing.

Under normal circumstances the employee will be paid normal basic remuneration during any period of suspension that relates to a suspension for reasons detailed in this policy.

All aspects pertaining to an employee's suspension from duty will furthermore be done in compliance with the LRA's related provisions, relevant case law and the Trust's operational requirements.

## **5.3. Rules/Standard of Conduct and Performance**

The Trust is responsible for ensuring that rules/standards of conduct and performance exist, are clear and communicated to all employees. These rules/standards of conduct and/or performance could be detailed in writing and/or be orally communicated and/or be changed from time to time.

Some of these rules or standards could be so well established and/or known that it is not necessary to communicate them to employees. When determining fair discipline/dismissal. The Trust will also be guided by the LRA's Code of Good Practice: Dismissal provisions that deal with rules or standards pertaining to conduct and/or performance, as well as its related procedural provisions.

## **5.4. Types of Discipline**

The following types of disciplinary sanctions may be taken against an employee:

- Verbal Warning
- Written Warning
- Final Written Warning
- Dismissal with notice
- Dismissal without notice (summary dismissal)

The disciplinary hearing Chairperson may impose other forms of disciplinary action, as an alternative to dismissal, for example, suspension without pay together with or not of a Final

Written Warning, demotion (in salary and/or status and/or grade and/or position), or an extended Final Written Warning.

In determining an appropriate sanction, the Chairperson shall have regard to the Trust's consistent sanction for such offence or breach of a conduct or performance standard. However, the Chairperson shall also have regard to aggravating and mitigating circumstances in respect of, for example, the following:

- The seriousness of and particular circumstances surrounding the breach of the standard.
- The interests and personal circumstances of the employee, such as, for example, his/her disciplinary record and/or work record and/or his/her length of service; and
- The interests of the Trust and the particular requirements of the industry and business.

## **5.5. Disciplinary Procedure**

### **Informal Disciplinary Procedure**

The Informal Disciplinary Procedure must be used for minor offences that could lead to a Verbal Warning or Written Warning. Although it is the objective of discipline per se, the primary objective with the Informal Disciplinary Procedure is to also encourage offending employees, in a timeous and less legalistic manner, to correct their conduct and/or performance and/or to discourage employees from breaching standards of conduct and/or performance.

As per the Disciplinary Code, Verbal Warnings are normally given for minor offences which, within the circumstances, do not warrant a Written Warning. Written Warnings are normally given for a repeated minor offence or for more serious offences.

The procedural principles applicable to this Informal Disciplinary Procedure are specifically detailed in this policy. Where an employee believes that a Verbal Warning or Written Warning was issued procedurally- and/or substantively unfair, he/she may utilise the LRA's dispute resolution mechanisms, for example, by referring the matter to the CCMA.

Having issued a Verbal Warning, The Trust has the right to record same on an employee's personnel file. Having received a Verbal Warning or a Written Warning, an employee should be aware that any future similar misconduct or non-performance could lead to more stringent disciplinary action being taken against him/her.

### **Formal Disciplinary Procedure**

The Formal Disciplinary Procedure must be used when it is envisaged by The Trust that the alleged offence could lead to a Final Written Warning or Dismissal or any other type of



disciplinary action as an alternative to a dismissal. With due consideration for the Disciplinary Code, this Formal Disciplinary Procedure must be used when, for example:

- An employee has failed to heed a previous Written Warning or, in the case of a more serious offence, where, although dismissal is not necessarily appropriate, the alleged offence is serious enough to warrant an immediate Final Written Warning.
- An employee has committed a serious offence which could lead to a dismissal or a sanction as alternative to being dismissed.

This Formal Disciplinary Procedure will be implemented by means of a formal Disciplinary Hearing as is detailed in this policy. Where an employee believes that a Final Written Warning was issued procedurally- and/or substantively unfairly or that his/her Dismissal or any other sanction as alternative to being dismissed, was procedurally- and/or substantively unfair, such aggrieved employee may appeal by complying with the procedure detailed in this policy.

Having received a Final Written Warning or any other sanction as alternative to being dismissed, an employee should be aware that any future misconduct or non-performance could lead to more stringent disciplinary action being taken against him/her, for example, being dismissed.

## 5.6. Disciplinary Hearing

A Disciplinary Hearing is a formal and structured process which has as objectives to ensure procedural fairness and a substantively fair decision on guilt and an appropriate sanction. In doing so, all the facts/evidence pertaining to an alleged offence need to be presented at the Disciplinary Hearing whereupon the Disciplinary Hearing's Chairperson must base his/her decisions.

All levels of management may act as a chairperson and will have the authority to determine and hand down an appropriate sanction on guilt and penalty. Any Chairperson will be at least one level/grade higher than the accused employee.

As is applicable to all aspects of this Disciplinary Policy and Procedure, Management could play an advisory role, for example, to the Chairperson in respect of, for example, legal-technical matters, procedural fairness requirements, substantive fairness requirements, and so on.

A Disciplinary Hearing shall be initiated against an employee by means of a "Notice to Attend a Disciplinary Hearing".

It is the Trust's obligation, through the Chairperson of a Disciplinary Hearing, to ensure a procedurally fair Disciplinary Hearing. In pursuance of a fair Disciplinary Hearing and the Formal Disciplinary Procedure, an accused employee could expect:

- To receive the written Notice to Attend a Disciplinary Hearing at least two working days prior to the Disciplinary Hearing starting.

- An impartial Chairperson.
- To be assisted by a representative as defined in this policy.
- To timeous discipline.
- To hear the Trust's evidence/witness (es).
- To cross-examine the Trust's witness (es).
- To present evidence and/or to call a witness (es).
- To a finding (guilty/not guilty and the reasons).
- To argue in mitigation of the sanction/penalty.
- To be advised of the sanction/penalty and the reason(s).
- To appeal in terms of the procedure detailed in this policy.

## 5.7. Appeal Hearing

Where an employee is dissatisfied with, for example, the sanction/penalty of a Final Written Warning or Dismissal or disciplinary action as an alternative to a dismissal or is dissatisfied with the disciplinary procedure and/or finding of guilt that gave rise to the latter sanction/penalty, such aggrieved employee may lodge an appeal. Apart from the aforesaid possible grounds of appeal, an aggrieved employee may, for example, also appeal on the grounds that new evidence came to light. An aggrieved employee must appeal within three working days after having received the final outcome on sanction/penalty of a disciplinary hearing. All appeals must be in writing as per the attached form and must be lodged with the Executive Assistant and a copy to be sent to the responsible Manager.

An Appeal Hearing's chairperson should, preferably, hold a more senior position to the person who chaired the Disciplinary Hearing. The Appeal Hearing's chairperson may decide how he/she wishes to conduct the Appeal Hearing and such decision will be based on the grounds of appeal. The latter procedure may be by means of one of, for example, a re-hearing, a partial re-hearing, hearing argument from parties, analysing minutes and/or documents, and so on, or any combination of the latter. The Trust is not obliged, at any stage, to hold a re-hearing of whatsoever nature and may, for example, only review a matter. Dependent on, for example, the cost and/or complexity and/or duration of an Appeal Hearing, the Trust may, after consultation with the aggrieved employee, decide to not hold an Appeal Hearing and direct the employee to rather refer his/her dissatisfaction/dispute to the CCMA and/or by utilising the LRA's dispute resolution mechanisms.

There shall be no payment of the salary of an employee who is dismissed and who is appealing such dismissal for the duration of the appeal unless the employee is reinstated. An Appeal Hearing's chairperson, in considering an appeal, must comply with the required procedural- and substantive fairness requirements and, in doing so, may impose a more severe sanction/penalty than the one imposed at the Disciplinary Hearing stage.

The Trust will endeavour to start an Appeal Hearing within seven working days after having received an appeal.

## **5.8. The Labour Relations Act Dispute Resolution Procedures**

After having exhausted the aforesaid aspects of the Disciplinary Procedure and should an employee still be dissatisfied with any disciplinary action taken against him/her and should he/she wish to take the matter further, he/she may invoke the relevant dispute resolution mechanisms of the LRA.

## **5.9. The Disciplinary Code**

This Code reflects only examples of the types of misconduct and/or non-performance and related penalties. As such, Employees may also be fairly disciplined for other offences/reasons not specifically listed in this Code.

With specific reference to the listed penalties, those disciplining must always take cognisance of mitigating and extenuating circumstances. This could thus have as consequence that a penalty could be more or less harsh than what is prescribed in this Code, dependant on, for example, also the circumstances, the seriousness of the offence, and so on. Notwithstanding the penalties prescribed in this Code, all penalties will always comply with relevant statutory provisions, case law and fairness principles.

Although an offence in this Code is listed as a misconduct offence, certain poor performance offences could also be categorised as misconduct, for example, where poor performance represents negligence or dereliction of duty.

When considering an appropriate penalty/sanction, the Trust may consider an Employee's overall suitability by taking cognisance of, for example, a valid warning(s) pertaining to other offences. Employees are also required to take cognisance of the offences/violations and related penalties/sanctions as contained in, for example, other Trust policies, rules, regulations, procedures, and their employment contracts. Employees are to note that, in this Procedure and Code, the terms "charge" and "violation" and "allegation" are used interchangeably and have the same meaning, and so also are the terms "sanction" and "penalty" used interchangeably and have the same meaning, and so also have the terms "hearing" and "enquiry" the same meaning.

Notwithstanding this Code providing for progressive disciplinary sanctions, for example, for a particular offence, it could prescribe a Verbal Warning for the first offence followed by a Written Warning and then a Final Written Warning and only then a Dismissal, circumstances may exist where the first offence may justify, for example, a Final Written Warning.

The sanctions reflected in this Code will act as guidelines only and may be deviated from in appropriate circumstances.

## 5.10. Disciplinary Code of Offences

NATURE OF OFFENCE		DISCIPLINARY ACTION			
1. ABSENTEEISM AND TIMEKEEPING		FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
1.1	Late for work or leaving work early without permission.	Verbal Warning	Written Warning	Final Written Warning	Dismissal
1.2	Unauthorized and / or un-communicated absence from place of work for three days or less.	Written Warning	Final Written Warning	Dismissal	
1.3	Unauthorized and / or un-communicated absence from the place of work for three to five days.	Final Written Warning	Dismissal		
1.4	Unauthorized and / or un-communicated absence from the place of work for more than five days.	Dismissal			
1.5	Fraudulent timekeeping, including clocking in / out for another employee and / or allowing another person to clock in / out for an employee.	Dismissal			
1.6	Extended breaks, lateness, and poor time-keeping, unauthorized or unreasonable absence from workstation, loitering or not clocking in/out.	Verbal Warning	Written Warning	Final Written Warning	Dismissal
1.7	Abuse of sick leave.	Final Written Warning	Dismissal		
1.8	Fraudulent claiming/recording or non-recording of leave.	Dismissal			
2. DISORDERLY/IRREGULAR BEHAVIOUR		FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
2.1	Non-adherence to safety rules and regulations on the Trust's property and / or on client premises.	Final Written Warning	Dismissal		
2.2	Non-adherence to local work rules and / or work processes.	Written Warning	Final Written Warning	Dismissal	

2.3	Negligence in safekeeping of the Trust's property and / or the Trust's leased / rented property.	Written Warning	Final Written Warning	Dismissal	
2.4	Rough or unruly Behaviour or unacceptable practical jokes.	Verbal Warning	Written Warning	Final Written Warning	Dismissal
2.5	Misuse and/or allowing the misuse of the Trust's property and / or the Trust's leased/rented property.	Final Written Warning	Dismissal		
2.6	Misuse of the Trust's e-mail by sending / forwarding non-work-related communications.	Final Written Warning	Dismissal		
2.7	Making excessive private calls without permission.	Verbal warning	Written Warning	Final written warning	Dismissal
2.8	Smoking in areas where it is prohibited.	Verbal Warning	Written Warning	Final written Warning	Dismissal
2.9	Sleeping on duty.	Verbal Warning	Written Warning	Final Written Warning	Dismissal
2.10	Non-compliance to the Trust's rules, policies, and procedures.	Written Warning	Final written Warning	Dismissal	
2.11	Distribution / possession of pornographic material on the Trust's PC, laptop and / or e-mail.	Dismissal			
2.12	Transgression of safety rules that may endanger own / colleagues / customers / public lives and / or property.	Dismissal			
2.13	Sexual harassment.	Dismissal			
2.14	Unauthorized disclosure of the Trust's confidential information.	Dismissal			
2.15	Direct or indirect involvement in any business in conflict with the Trust's policy on work outside the scope of The Trust and all its subsidiaries' duties.	Dismissal			
2.16	Racism in any form whether it be verbal / written or communicated in a closed group.	Dismissal			
2.17	Victimization or discrimination in any form whether it be through fear, by threats of harm or other means.	Dismissal			
2.18	Intimidation/ harassment in any form whether it be through fear, by threats of harm or other means.	Dismissal			

2.19	Insubordination by the refusal of an employee to obey a reasonable and / or lawful instruction.	Final Written Warning	Dismissal		
2.20	Theft, fraud, bribery, or unauthorized possession of the Trust's property	Dismissal			
2.21	Incitement and / or threatening employees to partake in disruptive Behaviour which will have a negative effect on the Trust's business.	Dismissal			
2.22	Assault / threat of assault and / or infighting.	Dismissal			
2.23	Use of abusive and / or derogatory and / or offensive language or signs	Final Written Warning	Dismissal		
2.24	Willful damage to the Trust's equipment, materials, or property.	Dismissal			
2.25	Unauthorized / unlawful possession or borrowing or usage of the Trust and / or a fellow employee's property.	Dismissal			
2.26	Industrial sabotage.	Dismissal			
2.27	Deliberately furnishing incorrect or falsified information.	Dismissal			
2.28	Dishonesty during course of employment.	Dismissal			
2.29	Damaging the public image of the Trust.	Final Written Warning	Dismissal		
2.30	Participating in an unprotected strike / industrial action.	Dismissal			
2.31	Professional misconduct.	Dismissal			
2.32	Committing an unsanitary act.	Final Written Warning	Dismissal		
<b>3. NEGLIGENCE</b>		<b>FIRST OFFENCE</b>	<b>SECOND OFFENCE</b>	<b>THIRD OFFENCE</b>	<b>FOURTH OFFENCE</b>
3.1	Negligent loss of the Trust's property and / or the Trust's leased / rented property.	Written Warning	Final Written Warning	Dismissal	
3.2	Damage to the Trust's property and / or the Trust's leased / rented property due to carelessness or negligent behaviour.	Written Warning	Final Written Warning	Dismissal	
3.3	Gross negligence / dereliction of duty.	Dismissal			
<b>4.1 FINANCIAL ADVISORY INTERMEDIARY SERVICES ACT (FAIS) HONESTY AND INTEGRITY</b>		<b>FIRST OFFENCE</b>		<b>SECOND OFFENCE</b>	

4.1	Civil Judgments i.e. Being under administration as a key individual.	Dismissal	
4.2	Criminal Judgment i.e., Being found guilty by a court of law for any criminal offence.	Dismissal	
4.3	Lying / or withholding information about past civil judgments and/or Criminal judgments.	Dismissal	
4.4	Adverse findings i.e., the Trust discovers employee lied about her criminal and / or civil record.	Dismissal	
4.5	Lying about qualifications, civil and / or criminal records.	Dismissal	
<b>5. ALCOHOL/DRUGS</b>		<b>FIRST OFFENCE</b>	<b>SECOND OFFENCE</b>
5.1	Reporting for work whilst under the influence of alcohol and / or drugs.	Final Written Warning	Dismissal
5.2	Drinking alcohol or taking drugs whilst on duty.	Final Written Warning	Dismissal
5.3	Incapable of performing work because of being under the influence of alcohol or drugs.	Final Warning	Dismissal
5.4	Unauthorized possession of alcohol / drugs whilst on duty and / or on The Trust's or client premises.	Final Written Warning	Dismissal
5.5	Possession of illegal drugs whilst on duty and/or on the Trust's premises	Dismissal	