

POLICY NUMBER 1

DISCIPLINARY CODE OF CONDUCT

A) Purpose

The Disciplinary Code of Conduct acts as a guide and regulatory tool to both management and employees in the handling of disciplinary matters. The Disciplinary Code of Conduct is designed to support the principles of fairness, objectivity and consistency in the management of deviant behaviour in the organisation.

Management at all levels is responsible to deal with deviant behaviour and employees at all levels are responsible to act within the confines of the Disciplinary Code of Conduct.

In the application of disciplinary measures, the Disciplinary Code of Conduct requires the consideration of specific circumstances related to each case. Such circumstances could include the work environment; circumstances at the work station; and the specifics of the situation.

The Labour Relations Act of 1995 defines procedural and substantive fairness that applies in cases of dismissal. The Disciplinary Code of Conduct is designed to ensure compliance with applicable legislation in this regard.

Objectives

Key objectives of the Disciplinary Code of Conduct are as follows:

1. To promote management of deviant behaviour in a manner that is both corrective and consultative.
2. To ensure that employees are treated with respect.
3. To support the efficient and orderly operation of the business from a behavioural perspective.
4. To promote justice in the work place and to ensure compliance with relevant legislation.
5. To promote certainty, consistency and fairness in the management of deviant behaviour.

B) Scope of Application

This code is applicable to all employees of Finbond Mutual Bank, including temporary employees.

C) Rules and Standards

It is fundamental to substantive fairness that employees are made aware of expected behaviour and the standards of performance. These rules and standards are to be communicated for the knowledge of both management and employees. Behaviour related rules are typically contained either in the Disciplinary Code of Conduct or are published through general notices and other communiques. Some behavioural standards are well established and embedded in the rules of society and therefore do not need to be specifically communicated in writing.

It must be emphasised however, that the Disciplinary Code essentially serves as a guideline and does not prescribe the “blind” application of the rules. The diversity of the human behaviour must always be considered as well as the working conditions and circumstances that are specifically associated with Finbond Mutual Bank’s widely divergent activities.

It should be considered that in Labour Law a distinction is drawn between “misconduct” and “incapacity as a result of poor work performance”. The main difference is that misconduct is associated with “fault” (intention or negligence) whereas it is accepted that poor work performance is resulted from incapacity, for any variety of reasons, to effectively meet work expectations.

D) Guidelines for the Management of Discipline

Sound Management Practices: Disciplinary action is normally corrective by nature, taken by management in order to remedy unacceptable employee behaviour. It should not be separated from other management activities which are central to leadership such as counselling, guidance and training. Disciplinary action should only be taken when normal day to day discussions fail to correct deviant behaviour or when the alleged offence is serious enough to warrant serious discussions.

Performance counselling is regarded as formal corrective action for which a specific procedure needs to be followed.

E) Progressive Application of Discipline

Disciplinary Action will normally be applied progressively, but may result in summary dismissal – depending on the seriousness, nature and circumstances of a specific offence. For the application of a progressive disciplinary action, a sanction with regard to any misconduct will be valid for twelve (12) months from the date of issue, but may be considered after its expiry, where relevant and applicable.

Normally a less serious offence may result in dismissal if there are already two written warnings with respect to similar offences (misconduct) on the employees record (i.e. written warning and a final written warning). The following progressive sanctions typically apply to offences of a less serious nature:

1. First Offence: Counselling.
2. Second Offence: Written Warning.
3. Third Offence: Final Written Warning.
4. Fourth Offence: Dismissal.

For the application of a progressive disciplinary action, a Written Warning will be valid for six (6) months and a Final Written Warning will be valid for twelve (12) months from the date of issue, but may be considered after its expiry, where relevant and applicable. In the event of a serious misconduct, the sanction of dismissal would normally be applicable.

In exceptional circumstances (i.e. compelling mitigating circumstances, no dishonest conduct, etc.) an alternative sanction, short of dismissal, may be issued. Such an alternative sanction must include a final written warning and may only be handed down in consultation with the Head: HCD and with the written consent of the employee. These sanctions include:

1. A ten (10) days unpaid suspension. The entire period of suspension to commence immediately after the decision is handed down.
2. Demotion, with written consent of offender.

F) Nature of Offences

The Finbond Mutual Bank Disciplinary Measures identifies the following categories by which offences must be categorised:

- Poor Work Performance.
- Misconduct.
- Irrevocable Breakdown of Trust.
- Dishonesty.
- Fraud/Theft.

When issuing a sanction, the line manager or chairperson must ensure that the Nature of Offence, Category of Offence and the Offence Number is recorded in direct alignment as stated in the Finbond Mutual Bank Disciplinary Measures. By way of illustration, please see the following guidance:

Nature of Offence: See above

Category of Offence: 1 – 13

Offence Number: 1.1 – 13.3

The reporting of the Disciplinary and Fraud Register (DFR) has been aligned to this governance.

G) Consistency

In order for employees to clearly understand what is expected from them and how discipline in the workplace is managed, but without elevating this principle beyond what is required as fair practice by an employer, rules, standards and procedures should be applied consistently. This is a management responsibility. Consistency should not result in rigidity or detract from the principle that the unique facts of each case should be considered in determining the outcome of any matter.

H) Fairness

To be fair and unbiased is to be just. Fair employment and disciplinary practices mean that employees are treated in a just and unbiased manner and in accordance with the Disciplinary Code of Conduct. It is also required of the employees to act in a just and fair manner towards the employer.

I) Representation

An employee who has received notice of a disciplinary enquiry has the right to be assisted by any available co-employee. It will always be the responsibility of the alleged offender to ensure that his or her chosen representative is properly briefed to deal with the matter at the scheduled time of the hearing and is present at the disciplinary hearing to avoid delays. Disciplinary enquiries will not be unreasonably delayed or postponed due to the unavailability of the representative or requests for further preparation time.

J) Timing of Discipline

In all Disciplinary Enquiries, the Chairperson needs to familiarise himself/herself with the relevant mitigating and aggravating circumstances which may include the following:

1. Years of service.
2. Disciplinary record.
3. Work Performance.
4. Personal Circumstances (e.g. addiction).
5. Age, where relevant.
6. Behaviour and attitude during the investigation.
7. Seriousness of the offence.
8. Awareness of the offence.
9. The totality of the circumstances.
10. The importance of the rule that had been breached.
11. The reason the Company wishes to impose the sanction and the reason the employee opposes such a request.
12. The harm caused by the employee's conduct.
13. Whether additional training and instruction may result in the employee not repeating the misconduct.
14. The effect of the sanction on the employee and/or the third party.

1.02 **GRIEVANCE PROCEDURE**

It is normal that certain grievances might arise from employment. In the event of such a grievance arising in Finbond Mutual Bank, the following procedure should be followed to resolve the grievance in an amicable fashion:

Step 1

The employee may, with the assistance of a colleague, approach his/her line manager and lodge the grievance verbally. The line manager shall attempt to resolve the grievance with the assistance of the employee. Should the parties fail to agree, step two (2) should be followed.

Step 2

The employee, with the assistance of a colleague if he/she wishes, shall lodge a written grievance with the line manager, within a period of two (2) days after the informal meeting proved unsatisfactory.

The line manager shall within a period of two (2) days after receipt of the written grievance, convene a formal meeting between him/herself and the aggrieved party and his/her representative, should the aggrieved party require one. Brief minutes of the meeting shall be kept. If the formal meeting achieves agreement; it will be reduced to writing and implemented. The minutes as well as the agreement reached must be placed on record.

Should the line manager be of the opinion that he/she will not be able to solve the issue, step three (3) should be implemented.

Also, should the formal meeting fail to reach agreement; step three (3) should be implemented. Step 3

The grievance should now be referred to a HCD representative or another qualified and appropriate person on the prescribed form, signed by both line manager and employee. The HCD representative or another qualified person should now convene a meeting between the parties within three (3) days of receipt of referral. Minutes of the meeting should be kept and should any agreement be reached it will be reduced in writing and implemented. The agreement and minutes should be kept on record. Should the agreement not be reached the employee may declare a dispute.

1.03 DISCIPLINARY PROCEDURE

Discipline/Dismissals

Schedule 8 L.R.A CODE OF GOOD PRACTICE: DISMISSAL SECTION 3 INTER ALIA STATES: "Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a warning or other falling short of dismissal. Dismissals should be reserved for cases of serious misconduct or repeated offences."

A) Dismissals for Misconduct

"Generally it is not appropriate to dismiss an employee for the first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merit, are gross dishonesty or wilful damage to the property of the employer, wilful endangering of the safety of others, physical assault of an employee, a fellow employer, client or customer and gross insubordination".

"When deciding whether or not to impose a penalty of dismissal the employer, in addition to the gravity of the misconduct, should also consider the factors such as the employee's circumstances (including length of services, previous disciplinary records and personal circumstances), the nature of the job and the circumstances of the infringement itself."

"The Employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration."

B) Disciplinary Procedure

The primary purpose of the disciplinary action is not to simply punish persons (employees) who transgressed any rule. The purpose is to inform/tell employees what he/she is doing wrong and to give the employee an opportunity to take corrective action and to rectify his/her conduct (counselling and written warning). Should the employee fail to utilise the opportunities offered and further infringements occur it will result in a disciplinary enquiry which may result in dismissal.

In the event of an employee failing to comply with his/her conditions of employment, the Company's Disciplinary Code of Conduct or withstanding orders, the following procedures should be followed:

- At the discretion of Management the employee may receive a Counselling Discussion
- Should the seriousness of the alleged misconduct warrant it, or should a Counselling Discussion and/or Written Warnings have failed to have the desired results, a disciplinary enquiry must be arranged

- The Employee must receive notice of the scheduled enquiry timeously to ensure that the employees is able to prepare for the enquiry (48 hours prior to the enquiry)
- When warranted at the discretion of management, an employee may also be suspended on full pay pending a disciplinary hearing
- In the event that further investigation is warranted whilst an employee is suspended, the employee should be informed of the probable charge when he/she is suspended, which has to be confirmed or amended in writing prior to the enquiry.

The requirements for a fair hearing as laid down by the labour court are to be followed with specific reference to the following rights:

- The right to be represented by a fellow employee of your choice.
- The right to an interpreter should you require one.
- The right to call witnesses and show evidence to help your case.
- The right to cross-examine witnesses.
- The right to plead in mitigation.
- The right to appeal, which should be done within two (2) working days after the outcome of the initial disciplinary hearing.

An employee may receive a Written Warning, a Final Written Warning, suspension without pay, or be dismissed after having been found guilty and having been offered the opportunity to plead in mitigation. The disciplinary action taken will be in keeping with the nature of misconduct.

Less serious infringements

This is an infringement where remedial action can be taken by means of a Counselling Discussion.

Serious infringement

This is an infringement that occurs after a previous warning (given with regards to a similar infringement) did not have an acceptable result, and where strongest remedial action must therefore be taken by means of official warning

OR

That, in itself is more serious in nature and where remedial action for a Final Written or a Disciplinary Hearing which could result in dismissal (e.g. theft or were three previous Written Warnings did not result in satisfactory correction of the conduct or performance).

The rule for dismissal offences is that each case should be judged on merit and include transgressions such as gross dishonesty or wilful damage to property of the employer; wilful endangering of the safety of others; physical assault on the employer, a fellow employee, client or customer; and gross insubordination.

A Counselling will remain valid on an employee's record for a period of three (3) months. A Written Warning will remain valid on an employee's record for a period of six (6) months. A Final Written Warning will remain valid on an employee's record for a period of twelve (12) months depending on the seriousness.

Suspension pending an investigation

An employee must be suspended on full pay without loss of any benefits in appropriate circumstances which may include:

- Where the employee's presence in the work place presents a significant risk to the Company.
- Where the employee may interfere with the Company's investigations (including tampering with evidence or intimidating witnesses).

Before suspending an employee, he/she must be advised that the Company is considering his/ her suspension from duty, given the reasons for this and then granted the opportunity to provide reasons for why he/she should not be suspended. Only after considering the reasons for and against suspension, should a final decision be taken regarding the intended suspension.

Preliminary Enquiry

The purpose of the Preliminary Enquiry is to:

- Determine whether, on face value, misconduct has taken place.
- Identify whether there is reasonable evidence to this effect.

Formulate a charge

The person conducting the Preliminary Enquiry would normally act as the complainant during the Disciplinary Enquiry.

Where possible, statements from witnesses should be taken during the Preliminary Enquiry in order to substantiate any possible allegation or complaint. These statements may then be used in the Disciplinary Enquiry, but must be confirmed by verbal evidence from the witness in the enquiry.

The Disciplinary Code of Conduct serves as a guide as to what constitutes unacceptable behaviour.

Misconduct not specifically listed in the code should also be addressed through disciplinary procedure – after consultation with HCD who will assist with formulating the allegations of misconduct. The alleged offender must be charged for the alleged misconduct most relevant to the category of offence in the Disciplinary Code.

Notice of Disciplinary Enquiry

The Complainant, in collaboration with the HCD representative, must complete the notice of Disciplinary Enquiry and make the necessary arrangements for the meeting.

The alleged offender must receive notice of the Disciplinary Enquiry at least two (2) days before the commencement of the meeting in order to have sufficient time to prepare.

Disciplinary Enquiry

Process and Procedure

The Disciplinary Enquiry - except for cases of collective misconduct on which the advice of the Employee Relations Department should be sought - entails the following:

1. The chairperson must introduce everyone present and explain their roles. The chairperson must ensure that only the relevant people are present.
2. The chairperson must get confirmation from the alleged offender that he/she received the notification at least two (2) working days before enquiry.
3. The chairperson must confirm whether the alleged offender wishes to be represented or not. If the employee does not wish to be represented he/she must waive this right by signing the disciplinary form.
4. The allegations of misconduct must be read to the alleged offender and his/her understanding of the matter should be confirmed.
5. The alleged offender must be asked to indicate whether he/she concede to having committed the offences or deny same. The answer must be recorded on the disciplinary form.
6. If the alleged offender pleads guilty to all elements of charges levelled against him/her, the chairperson may proceed directly to the submission of mitigating and aggravating circumstances.
7. The complainant must give an outline of the Company's case against the alleged offender (opening statement).
8. After the complainant's opening statement the alleged offender must be given the opportunity to give an outline of his/her response to the allegations.
9. Hereafter witnesses are called in one by one to testify, preferably starting with witnesses of the complainant and then those called by the alleged offender. The alleged offender must first testify before he calls any of his witnesses.
10. Witnesses will be subjected to cross examination by the complainant and alleged offender/ employee's representative.
11. Each witness must be asked to leave the room once he/she has given evidence and answered questions.
12. After all the witnesses have been heard, the complainant and the alleged offender or his/ her representative will be required to present the chairperson with a closing statement. The purpose of the closing statement is to provide a succinct summary of the evidence presented together with argument on why the chairperson should find in favour of either party in light of evidence.
13. The chairperson must present a summary of his/her understanding of the respective case and evidence presented.
14. The meeting may adjourn in order for the chairperson to decide whether the accused has committed the misconduct as per the allegations or not.
15. The chairperson will then consider all the evidence submitted to the inquiry in order to come to a final decision. The chairperson will first make a decision on whether the alleged offender committed the misconduct or otherwise. This will be done using the balance of the probability test. The hearing must then be adjourned.

16. The alleged offender and the complainant are then called back into the Disciplinary Enquiry and informed of the outcome on the commission of the misconduct and the reasons therefore.
17. The alleged offender must then be requested to raise mitigating factors.
18. The complainant must also raise mitigating and aggravating considerations.
19. The HCD representative must submit the disciplinary record of the offender to the chairperson to be taken into account when deciding on appropriate measures. Only similar previous offences should be considered.

The meeting may adjourn for the chairperson to decide on the appropriate sanction. The meeting must reconvene and the employee informed of the sanction and the reason, therefore the employee must be informed of his rights to appeal and to declare a dispute. If an employee is summarily dismissed, the dismissal is effective as of the day the decision is handed down. The minutes, including the sanction must be in writing and will be available to the employee or his/her representative on request.

Disciplinary Enquiry Process

Introduction

- Introduction and outline of the ground rules.
- Confirmation of representative and interpreter.
- Explanation of roles, procedure and employee rights.
- Allegations of misconduct.

- Employee concedes/denies allegations.
- Opening statements (optional).

Management's Case

- Initiator leads evidence.
- Management's witnesses are called.
- Cross examination by employee/representative.

Employee's Case

- Employee's opportunity to respond and call witnesses.
- Cross examined by initiator.
- Closing arguments.
- Chairperson's summary.

- Adjournment.
- Finding on allegations communicated to parties.
- Mitigating/aggravating factors/examination of record.
- Adjournment.
- Sanction.
- Right to appeal/challenge the decision.

Minutes

The chairperson should assign responsibilities for writing up of the minutes, including all the chairperson's considerations in coming to a finding.

Postponement or adjournment of hearings

Any hearing in progress can be adjourned if the circumstances warrant it, e.g.:

- Where it emerges that new evidence or testimony is available for presentation.
- A situation where technical advice or input is needed on the procedural or substantive issues.
- If the circumstances require a site inspection to establish clarity.
- If the chairperson approves a request from the time from any party to prepare, clarify or obtain detail which could improve clarity, strengthen facts or support new evidence.
- The chairperson has the sole right to grant or reject any request for adjournment or postponement.
- To contemplate the finding and weigh up evidence.

Disciplinary Enquiry in absentia

A Disciplinary Enquiry in absentia must be arranged and/or finalised when a notice for a Disciplinary Enquiry is already submitted to an accused under the following circumstances:

- The death of an alleged offender;
- The non-attendance of the alleged offender; or
- The resignation of an alleged offender.

The finding of the chairperson needs to be recorded on the system for future reference. Date of Dismissal

The date of the dismissal will be the date on the sanction of the dismissal handed down by the Disciplinary Enquiry chairperson. Where a lesser sanction is handed down at the appeal or review stage, the employee will be reinstated with the effect from the date of dismissal.

Role Clarification

The chairperson of a Disciplinary Enquiry or an Appeal Hearing must be an employee of Finbond Mutual Bank. External representatives are not allowed to be involved in the internal process.

- The chairperson must ensure that the Disciplinary Enquiry procedure is followed.
- The chairperson is also responsible for the orderly conduct of the Disciplinary Enquiry and must ensure that the proceedings are conducted fairly.
- The chairperson must decide on all procedural aspects such as the admissibility of evidence and postponements.
- The chairperson must ensure that each party has the opportunity to present its case properly.
- The chairperson must ensure that all relevant evidence is considered in the

Complainant

- Leads the allegations of misconduct against the alleged offender.
- Must have full knowledge of the case and must know the facts pertaining to the allegations.
- Must present evidence and argument to sustain the allegations against the alleged offender.
- Ensures that all evidence regarding the alleged infringement is submitted to the enquiry.

Human Capital Development (HCD)

The chairperson of a Disciplinary Enquiry (including an external chairperson, if so appointed) must consult the Head: HCD in the following scenarios:

- Where the chairperson considers the sanction of a Final Written Warning.
- Where the chairperson considers a sanction of Dismissal.
- Where the chairperson considers a sanction inconsistent with that which is prescribed in the Finbond Mutual Bank Disciplinary Code of Conduct.

In these instances the chairperson, may preside over the presentation of evidence and may proceed to announce his/her verdict. After issuing a verdict, the chairperson must recess for at least 24-48 hours before issuing a sanction. During this period, the chairperson must engage the Head: HCD.

In all other instances, the Disciplinary Enquiry may proceed without direct HCD engagement, on the condition that the governance Finbond Mutual Bank Disciplinary Code of Conduct, including the Disciplinary Measures is strictly followed and applied.

Representative of the Alleged Offender

- Must ensure that the alleged offender is treated fairly, both substantively and procedurally.

- Must ensure that all relevant evidence is submitted to the enquiry.
- Assists the offender to appeal or review if it, if so required.

1.04 **APPEAL PROCEDURE**

The Right to Appeal

Both the employee and management have the right to appeal the finding of the chairperson of the disciplinary hearing.

An appeal may be instituted on any of the following grounds:

- The finding by the chairperson
- Against the sanction imposed (being too harsh considering the offence)
- Based on new evidence not available at the time of inquiry
- The chairperson was biased.

An appeal case should be dealt with by a manager at least on the same level or more senior than the chairperson of the Disciplinary Enquiry, unless the circumstances warrant that another authority should deal with the appeal (e.g. a manager from another division). In the latter case, the appeal authority should be of at least the same level as the chairperson of the Disciplinary Enquiry.

An appeal must be logged in writing to the HCD representative within three working days after a decision has been handed down. The reasons for the appeal (e.g. new evidence), must be indicated by the appellant on the letter of appeal.

The chairperson of the Appeal Hearing may convene a meeting at which the appellant is allowed to make submissions on the grounds for appeal only. The main objective for the "new" chairperson is to consider the reasons for appeal and decide on whether the initial inquiry outcome should be amended. The chairperson may consult with the chairperson of the Disciplinary Enquiry to determine whether procedural requirements were met.

However, if the chairperson of the Appeal Hearing finds that there has been a procedural infringement during the disciplinary inquiry, he/she may either take corrective action (e.g. allow a witness to testify) or order a rehearing to take place if applicable (e.g. if the chairperson of the Disciplinary Enquiry was biased).

The chairperson considers the appeal only on the grounds that were raised by the appellant.

1.05 **REVIEW PROCEDURE**

The Company or the employee may review the decision of the chairperson of the Appeal Hearing where either party is of the view that the chairperson was aberrant and did not follow the disciplinary guidelines.

A review may be instituted by application by either party to Management, Employee Relations or his nominated representative, who will determine whether application will be reviewed.

Review process will be guided by the following conditions:

- A review may be instituted by either party to appeal the process within three (3) working days after the chairperson of appeal provides his ruling.

- The respondent party may provide written submissions within three (3) working days after the receipt of the applicant's submission on review.
- The review will be limited to written submissions made by the parties to the process.
- If an employee's dismissal sanction is confirmed on review, the date of dismissal will be the date the decision is handed down by the chairperson of the Disciplinary Enquiry.