



**DEPARTMENT OF EDUCATION &
SPORT DEVELOPMENT, NORTH WEST**

***MANAGERS DISCIPLINING MANUAL IN
RESPECT OF PUBLIC SERVICE ACT STAFF***

MANAGERS DISCIPLINING MANUAL IN RESPECT OF PUBLIC SERVICE ACT STAFF

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Note: Amended by Public Service and Administration circular, dated 3 September 2003, with effect from 15 September 2003, read with PSCBC Resolution 1 of 2003 and PSCBC Resolution 10 of 1999.

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MANAGERS DISCIPLINING MANUAL IN RESPECT OF PUBLIC SERVICE ACT STAFF

1. PURPOSE OF MANUAL

The purpose of this manual is to –

- 1.1 provide practical guidelines to managers, in their role as supervisors, on managing discipline;
- 1.2 elucidate certain principles applicable to disciplining;
- 1.3 identify different role-players and their responsibilities in this regard;
- 1.4 provide a brief overview of the processes involved in regard to misconduct and incapacity/inefficiency;
- 1.5 indicate the specific responsibilities of managers in regard to disciplining; and
- 1.6 provide practical hints, where appropriate, on how to deal with relevant issues.

2. WHAT DOES DISCIPLINING ENTAIL?

- 2.1 Disciplining refers to those activities that are undertaken with the view to correct behavioural and/or performance deviations from set norms or standards in the workplace. The two main procedures involved are those relating to misconduct and incapacity and these procedures are dealt with separately in the Manual.
- 2.2 Disciplinary actions also provide for correcting deviating behaviour and/or performance.
- 2.3 A misconduct by an employee requiring that corrective action be taken can consist of a specific act or omission on the part of the employee.

2.4 Managing effective discipline is an ongoing process that interfaces with a number of other human resource practices, i.e.

- managing probationary appointments;
- establishing job descriptions, procedure guides and performance standards;
- performance management; and
- training and development.

2.5 In general terms, misconducts that will require corrective actions can be placed in two categories viz –

- deviations from performance standards for reasons other than incapacity;
or
- behavioural deviations from set rules and norms or from normative standards.

2.6 Where the facts related to an alleged misconduct point to deliberate neglect of duty, non-compliance with prescripts or gross negligence, the misconduct procedure will normally be applied.

2.7 Where the employee's conduct reflects an inability to comply with qualitative and/or quantitative performance standards after having been provided with sufficient guidance in regard to his/her duties, the employee's incapacity should be investigated.

3. WHICH STAFF GROUPS ARE COVERED BY THIS MANUAL

3.1 This manual covers all employees who are appointed in terms of the Public Service Act, 1994 (as amended).

3.2 Please note that references to “managers” and “supervisors” are used interchangeable in this Manual.

3.3 The relevant acts and related consequential prescripts, normally contain standards of behaviour or conduct as well as specific procedures to be followed in regard to formal disciplinary procedures and inefficiency inquiries.

4. WHAT CONSTITUTES MISCONDUCT?

- 4.1 Annexure A to the Public Service Co-ordinating Bargaining Council's (PSCBC) Resolution No. 2 of 1999 contains 31 stipulations describing actions or omissions on the part of an employee that are regarded as misconduct. This list is not comprehensive and managers may discipline an employee in respect of other conduct if the employee knew, or ought to have known, that the conduct constituted grounds for disciplinary action.
- 4.2 One of the above stipulations indicates that a contravention of any prescribed Code of Conduct for the Public Service is regarded as misconduct. There are 38 stipulations in the relevant Code of Conduct and a contravention of any one of these stipulations could constitute an act of misconduct.
- 4.3 Attention is invited to the fact that the Code of Conduct for public servants as contained in the Public Service Regulations, contains a number of normative norms or standards of behaviour such as references to being "*faithful to the Republic.....*", and "*loyally executes the policies of the Government of the day.....*".
- 4.4 To be able to judge whether a normative standard of conduct has been transgressed requires understanding of exactly what is meant or intended by the provision. Managers will find that the "Manual on the Code of Conduct" as issued by the Public Service Commission, is invaluable for this purpose.

NOTE: Managers must ensure that they obtain copies of the relevant prescripts and that these prescripts are maintained. As it may not be feasible to provide all employees with a copy of the relevant parts of the prescripts containing the standards that they have to comply with, it should be arranged that a set of these prescripts is kept at a central point at each educational institution where employees may have access to it.

5. WHAT CONSTITUTES INCAPACITY/INEFFICIENCY

Incapacity/inefficiency can be described as an employee's inability to comply with production standards in terms of quantity and quality, as well as an employee's inability to develop required skills through training.

6. ORIGIN OF EMPLOYER'S POWERS TO MANAGE DISCIPLINE

6.1 The authority to act against inefficient employees and employees who make themselves guilty of misconduct and the approach and procedure to be followed in this regard, are found in –

- section 16 B and 17 of the Public Service Act, 1994;
- Public Service Co-ordinating Bargaining Council Resolutions No. 2 of 1999 and No. 10 of 1999;
- Schedule 8 of the Labour Relations Act, 1995;

6.2 This Manual must at all times be read and applied within the context of relevant statutory and related prescripts, with due consideration to appropriate principles contained in Labour, Common and Administrative Law.

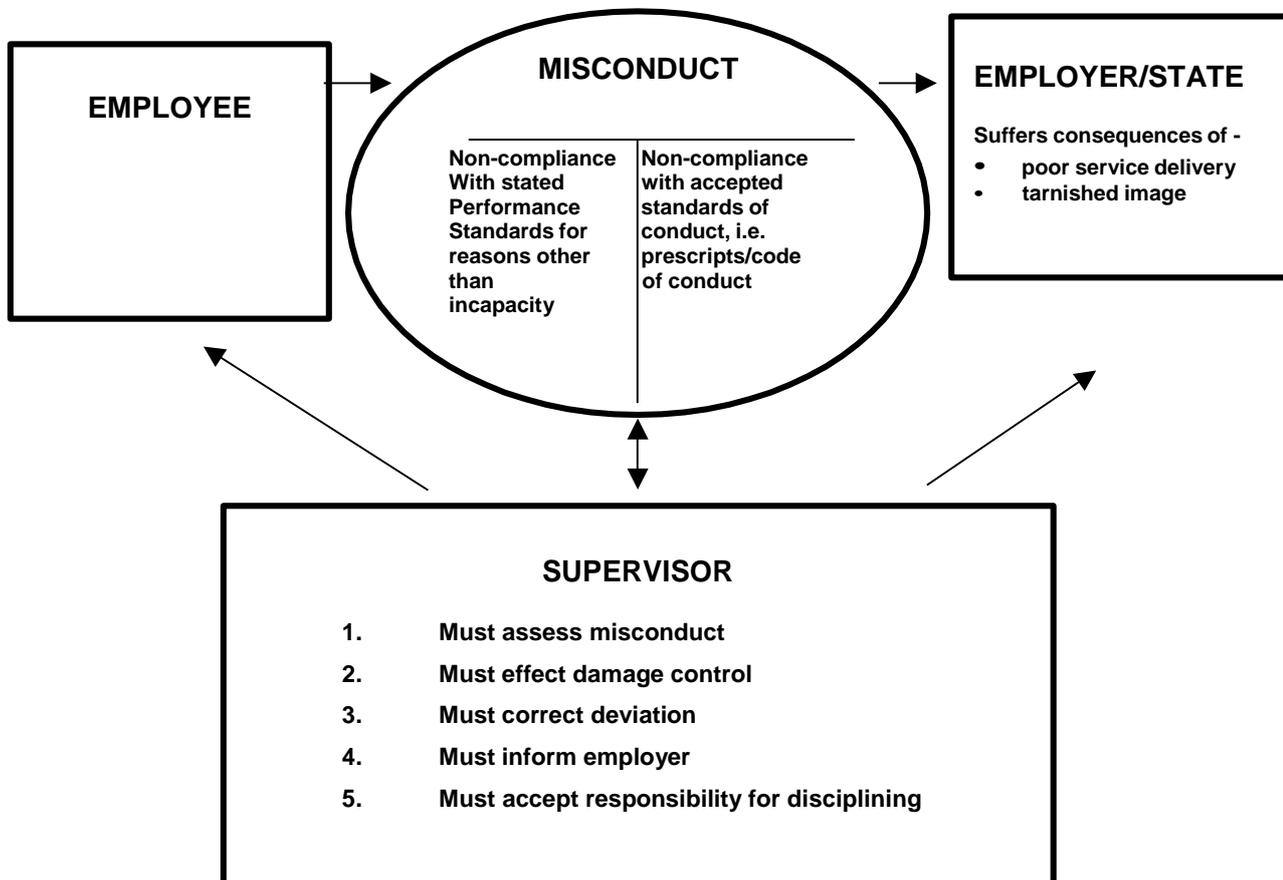
7. RESPONSIBILITIES OF DIFFERENT ROLE-PLAYERS

7.1 The responsibility to ensure that sound discipline is managed in a department vests with -

- the Executive Authority/head of department in the first instance;
- managers (supervisors) at all levels as custodians of the interests of the State as Employer and in terms of delegated powers (where applicable);

- staff functionaries (personnel and labour relations practitioners) who have the responsibility of providing suitable policy and advice to line functionaries and to assist them where and when required to do so; and
- persons/employees who are appointed in terms of the relevant prescripts to conduct investigations into misconduct, officiate at misconduct hearings/inquiries and inquiries into incapacity/inefficiency as Chairpersons of such inquiries, or as Prosecutors. They have to ensure that due (fair) process is followed in accordance with the prescripts.

7.2 The central role that supervisors at all levels have to fulfil in managing discipline, cannot be over-emphasized and can best be explained based on the following schematic:



8. PRINCIPLES APPLICABLE TO THE PROCESS OF DISCIPLINING

- 8.1 Supervisors (all levels) must accept and carry out their responsibility to enforce and maintain discipline.
- 8.2 Employees must subject themselves to the disciplinary rules and procedures and must ensure that they are conversant with what is expected from them.
- 8.3 Supervisors should, within reasonable limits, ensure that their staff members are aware of and understand what is expected from them in terms of rules and performance and behavioural standards that they have to comply with.
- 8.4 The focus must in the first instance be on the problem and not the person who has transgressed.
- 8.5 Emphasis should be placed on corrective measures rather than punitive measures but punitive measures shall serve as the vehicle to correct deviations from the norm, where required.
- 8.6 Problems must be addressed at the earliest possible stage and disciplinary action should not be withheld until a problem situation has grown out of proportion.
- 8.7 Supervisors should ensure that they are fully acquainted with the facts before they act.
- 8.8 Apply the *audi alteram partem*-rule in all instances - listen to and consider the other party's explanation/response before action is taken. This should be done in writing for record purposes. Where the supervisor is involved as a first party, this should be dealt with at a higher level.
- 8.9 All actions taken and the procedure followed must be fair - this is referred to as substantive and/or procedural fairness.
- 8.10 Punishment, if appropriate, must be handed out even-handedly - there ought to be consistency in handing down punishment for comparable misconducts.
- 8.11 Ensure that the requirements of prescripts are fully understood before acting.

- 8.12 Recognise the basic rights of an employee who is being disciplined to-
- be heard;
 - be represented or assisted, that in the case of an employee is limited to a recognised trade union or a fellow employee;
 - have reasonable access to relevant documents to prepare a proper defence; and
 - have his/her case considered objectively.
- 8.13 Apply the mind to the case/facts and do not prejudge a case.
- 8.14 Do not exceed authority - the fairness and validity of an action or the process can be jeopardised if authorised persons performs unauthorised actions.
- 8.15 Utilise the disciplinary procedure to address a specific identified problem only - do not engage in such actions with ulterior motives.

[Please also consult clause 2 of Resolution No. 2 of 1999 pertaining to Public Service Act Staff that, *inter alia*, provides for the employer to deviate from the prescribed procedure if required by circumstances.]

9. **GOLDEN RULES OF DISCIPLINING**

- Set and maintain standards.
- Ensure that staff members are aware of and, within reasonable limits, understand and adhere to standards that have been set.
- Undertake continuous monitoring of staff members' performance.
- Act at an early stage if deviations are detected.
- Be specific in regard to what a misconduct/shortcoming entails and how re-occurrence can be prevented and shortcomings can be surmounted.
- Allow the employee opportunity to improve - where applicable.
- Allow the employee to respond to any allegation and consider response.
- If desired effect is not elicited - act swiftly in instituting formal procedures
- Ensure that all relevant prescripts are fully complied with.

10. MANAGING DISCIPLINE CONSISTS OF FOUR PHASES

- 10.1 **Setting standards** - that consists of the employer articulating its requirements in terms of behaviour and work performance.
- 10.2 **Training** - to create awareness of the employer's expectations with the employee and to enable the employee to comply with such set standards.
- 10.3 **Monitoring and Reporting** - to ensure that misconducts/deviations/ shortcomings are detected and addressed at an early stage.
- 10.4 **Disciplining** - that consists of the more informal phase of verbal and written warnings as well as the formal misconduct and inefficiency procedures.

11. THE SETTING OF STANDARDS

- 11.1 Where a relationship exists between two or more parties, it is normal to find that rules are put into place that serve to regulate and enforce the rights and responsibilities of such parties.
- 11.2 The relationship that is established between an employee and an employer has similar requirements.
- 11.3 In practice it will be found that in the Public Service, the employee's rights are protected and enforced through legislation, structures and procedures such as the Labour Relations Act, 1995, the Public Service Act, 1994, Resolutions of Bargaining Councils at different levels, subordinate policy prescripts, trade unions and the structures within that they operate as well as the grievance procedure.

11.4 The employee's responsibilities and the employer's rights are typically embodied in those prescripts that are intended to regulate conduct and performance. The prescripts on conduct will to a large extent be found in the relevant service acts and subordinate prescripts and the Code of Conduct for Public Servants whilst the standards in regard to performance need to be put in place by the employer. This requires sufficient detailed job descriptions, procedure guides and performance standards.

11.5 The following documents need to be put in place in order to regulate performance standards:

11.5.1 **Job descriptions:** Each post must have a job description and/or duty sheet indicating the specific main activities to be performed by the incumbent of such post. This document must sufficiently indicate what the incumbent's responsibilities are. The purpose and functions of a component as indicated on the organisational chart will not suffice for this purpose as these are normally too vague to tie down the incumbent or to direct training.

11.5.2 **Procedure guides:** The procedure guides should indicate how each of the main activities should be executed. A systematic break down of each activity, listing the sub-activities to be performed chronologically, is required. References to applicable national and departmental policies to be complied with in executing such sub-activities must be included.

In many cases the "how" is part and parcel of the technical, academic and/or other training of people. It is a prerequisite that these people should be *au fait* with these "hows" to qualify for employment.

Procedure guides are not always documents attached to a specific post. They may also be found in, for example, regulations, resolutions, publications on new initiatives, professional guides and circulars.

11.5.3 **Performance standards:** Performance standards deal with the desired outcomes or outputs to be realised and will in many instances indicate the quantity (how many) and quality (standard) of work required.

This means that products of a specific quality must be completed within a given time or that objectives as agreed upon must be realised.

In respect of Public Service Act Staff, cognisance must also be taken of the prescripts on performance management and development as contained in Part VIII of Chapter 1 of the Public Service Regulations, 2001.

As a general guideline in respect of staff at more junior levels, it could be said that in determining quantity, the time to be spent on a certain activity could be prescribed while, for example, the percentage mistakes that will be tolerated could be set as a quality standard.

Performance standards can be formulated in general for a group of people or be determined individually.

11.5.4 Attention is invited to the fact that quite a number of national prescripts such as the Public Finance Management Act, 1999, Financial Regulations, the Provisioning Administration System, Circulars, etc may contain specific prescripts that have to be complied with and that form part of performance standards. Misconducts in regard to performance standards could result in an inefficiency investigation being instituted against an employee but could also result in disciplinary procedures being instituted/a charge of misconduct being laid against such an individual where there is wilful non-compliance.

11.6 Standards of conduct or behaviour will mostly be found in national prescripts that may also be augmented by means of provincial or departmental policy. These standards will indicate the *"thou shall or thou shall not"* that are regarded as the "domestic rules" of the employer.

NOTE: Not all standards need to be put in writing. In respect of such standards, the test in regard to "fair practice" will be whether the employee could reasonably have been expected to have had knowledge of the relevant standards.

11.7 The above-mentioned standards are to be found in the following prescripts:

- (a) The Public Service Act, 1994.
- (b) Resolutions concluded in Bargaining Councils at different levels.
- (c) Public Service Regulations.
- (d) Code of Conduct for Public Servants.
- (e) Departmental policies and circulars.
- (f) Public Finance Management Act, 1999.

11.8 Misconducts concerning behavioural (conduct) standards could culminate in formal charges of misconduct being laid.

11.9 **Practical hints**

The contents of paragraph 11.5 above to a large extent describe the ideal situation that the Public Service is working towards, but that might still take some time before it is attained. In the meantime it is proposed that the following activities be undertaken to bridge the situation.

11.9.1 **Job descriptions**

- (a) Part III/I of Chapter 1 of the Public Service Regulations, 2001, prescribes the establishment of job descriptions for each post or group of posts.
- (b) Job descriptions must place emphasis on service delivery and must indicate-
 - the main objectives of each post or group of posts;
 - the inherent requirements of the job; and
 - the requirements for promotion or progression.
- (c) Where these do not exist at present, a combined effort by the relevant subordinate and his/her supervisor should be made to identify the contents (duties) of each post.
- (d) Where a work study report or job evaluation formed the basis for the creation of posts, it should be possible to obtain sufficient indicators from the report or evaluation on what the incumbent of the post is suppose to do.

- (e) Where posts have been advertised, the activities related to the post as indicated in the advertisement, could also be of assistance.

11.9.2 Procedure guides

- (a) As has been indicated, many procedural matters are dealt with during the academic or technical training of staff.
- (b) With regard to more operational procedures, it could also be considered to request selected employees who have occupied posts at a certain level for some time to describe how they perform their various duties and then to apply these descriptions to all generic (similar) posts at that level.

11.9.3 Performance standards

- (a) At the production levels, the outputs of an employee who performs on norm (preferably a person who has already been subjected to performance assessment), could be used for similar posts at that level.
- (b) At the higher (managerial) levels, the outcome objectives that have been set through an interactive process between the supervisor and staff member can be utilised.
- (c) The factors and elements as defined in the various performance assessment forms can also be used for this purpose as they represent articulated group standards that reflect the expectations of the employer in regard to the performance of employees at the different levels. The performance standards must be well communicated to all employees as well as their actual performance in relation to the set standards. Managers must comply with the requirements stipulated in the departmental performance management and development system.

12. TRAINING/SUPPORT

- 12.1 It is a pre-requisite that before the employer may consider disciplining an employee, the employer must have made it possible for such an employee to be fully aware and capable of complying with both performance and behavioural standards.
- 12.2 This implies that the employer (supervisors at different levels) is charged with the responsibility to inform/counsel/train/facilitate training of staff members in regard to standards that have been set.
- 12.3 There are many ways to go about providing training in this regard and the full spectrum of available options should be contained in the department's training policy. Depending on the available infrastructure, supervisors must either programme for training to be offered by other support structures or else provide such training themselves.
- 12.4 It should be taken into account that the supervisor should do everything in his/her power to train the staff member. The staff member should, however, actively participate in the process as it is impossible for the supervisor to train the staff member against his/her will or above his/her capacity. Neglect to fully utilise training opportunities or incapacity to absorb it, could also be a reason for disciplining, or instituting an inquiry in regard to incapacity/inefficiency.
- 12.5 The most important types/phases of training or informing staff members on standards to be met, are the following:
- 12.5.1 **Induction:** It must be ensured that new appointees are introduced to the main body of performance and behavioural standards as well as to what constitutes misconduct as soon as possible after having assumed duty. The importance of this lies in the fact that the employee, on accepting the appointment and thus also the service contract, undertakes to subject himself/herself to, *inter alia*, the department's disciplinary code. Such a disciplinary code is, however, only given substance to once the standards have been laid down and disciplining can only take place once the employee has been made aware of these standards.

- 12.5.2 **Structured and unstructured (person-to-person) training:** Due to the volume and diversity of the subject matter to be covered, induction training has to be followed up and augmented by ongoing structured and person-to-person training. This type of training is intended to strengthen the standards of conduct and performance (norms) introduced during induction and can either be offered by supervisors or specialised training structures, where these exist.
- 12.5.3 **Formal training:** This can encompass both appropriate formal studies or structured courses offered by for instance the National School of Governance or other outside training institutions.
- 12.5.4 **Guidance/counselling:** It is the responsibility of each and every supervisor to provide his or her staff members with ongoing guidance/counselling. These activities should be directed towards contextualising standards on, for instance, stipulations contained in the Code of Conduct for Public Servants. They should also provide direction to staff members who might not fully meet or comply with standards. This touches on the first phase of progressive disciplining.
- 12.6 Record should be kept of all training activities undertaken in regard to each staff member as it will assist managers in regard to disciplining, performance appraisal and the further development of staff members.

13. MONITORING AND REPORTING

- 13.1 Before a supervisor can consider instituting disciplinary actions, the supervisor will be expected to have -
- 13.1.1 identified and properly articulated non-compliance with performance and/or behavioural standards at the earliest possible stage;
- 13.1.2 made the employee aware of such shortcomings or misconducts;
- 13.1.3 granted the employee the opportunity to correct such deviating actions, where appropriate; and

13.1.4 provided the employee, within reasonable bounds, with the necessary support to overcome such shortcomings or to meet with requirements.

13.2 For supervisors to comply with the above "fair practice", it is essential that the conduct and performance of staff members are monitored and properly reported on. In relation to employees, performance management must be conducted in accordance with the provisions contained in Part VIII of Chapter 1 of the Public Service Regulations, 2001.

13.3 This does not by any measure mean that an employee who commits a serious misconduct may not be charged with misconduct due to the fact that the recommended structured approach as indicated above has not been followed. However, it will be very difficult to successfully institute an inquiry into the incapacity of an employee without this route having been followed.

13.4 The most important phases of monitoring and reporting that would inform disciplinary measures, are the following:

13.4.1 Probationary assessments:

- (a) This is a critical phase in the employer-employee relationship. There must be constant interaction between the supervisor and employee on probation for the purpose of the supervisor informing, guiding and counselling the staff member in regard to performance and behavioural standards. Shortcomings and/or deviating conduct must be identified at the earliest possible stage and corrective action must be taken. Support must be provided promptly and on a continuous basis.
- (b) If the employee persists in his/her conduct, this must be clearly indicated in probationary reports, that must be completed strictly for, and within the prescribed period.
- (c) The worst scenario is a situation where an employee on probation is left to her/his own devices with little if any ongoing monitoring, counselling or reporting by the supervisor. It is extremely difficult, if not impossible, to try and rectify or address deviations experienced during a probationary period, near or at the end of such a probationary period.

- (d) Many problems are experienced in practice where probationary appointments are not actively and properly managed by supervisors. It must be accepted that the foundation for the future employer-employee relationship would have been laid by then. Supervisors will then be faced with the daunting task of having to change entrenched performance and behavioural patterns or most likely having to apply the more formal disciplinary procedures.

13.4.2 Performance assessments

- (a) This entails all forms of assessment related to developmental actions, or incentives for good performance.
- (b) Assessments of this nature presupposes a continuous process of monitoring of staff members' work performance and conduct and that deviations, if any, have been recorded and addressed timeously.
- (c) It is again stressed that an otherwise high performer can at any stage commit a misconduct that might require formal disciplinary action to be taken, such as theft or alcohol abuse, or that (minor) behavioural problems might not have been recorded in such reports, is acknowledged. However, it should be most unlikely to find an employee who has been given outstanding assessments and who might have been awarded incentives for good performance, being investigated for incapacity/inefficiency soon afterwards.
- (d) The desired correlation will only be effected if there is a continuous process of monitoring and interaction with staff members by their supervisors.

13.4.3 Feedback from managers

Apart from the more formal processes of monitoring and reporting on staff members' performance, managers should provide their staff members with directions related to meeting standards even on a daily basis. This is done through verbal feedback given to staff members on tasks performed and includes, for instance, corrections made to draft submissions, letters, etc. Managers should keep copies of such documents on their personal files on staff members as it could be required for, *inter alia*, disciplining purposes.

14. **“INFORMAL” OR PROGRESSIVE DISCIPLINING**

14.1 **Supervisor interfacing**

14.1.1 Although this type of constant interaction between supervisor and staff member is an integral part of the practices discussed above, it deserves further discussion under this separate heading.

14.1.2 It must be noted that the principle of "incremental (progressive) disciplining" is provided for in Schedule 8 of the Labour Relations Act, 1995 and has also been endorsed by the courts. This principle is also now accommodated within the Public Service in respect of employees in the disciplinary procedure contained in PSCBC Resolution No.2 of 1999.

14.1.3 "Progressive disciplining" entails that supervisors direct a series of verbal and written warnings to staff members who transgress with the purpose of discouraging misconduct. A verbal warning is followed by a first written warning, that is then followed up by a second written warning and then a final warning. Only then should the formal disciplinary procedure be applied. This approach naturally only applies to "less serious" misconducts.

NOTE: The process of progressive disciplining as dealt with here excludes actions to be taken in regard to poor work performance related to incapacity. In respect of Public Service Act Staff [employees], a specific procedure is prescribed in terms of PSCBC Resolution No. 10 of 1999 as dealt with in paragraph 16 of this Volume of the Disciplinary Manual. The relevant procedure encompasses a “progressive” approach before a formal hearing in regard to an employee’s incapacity is instituted.

**14.2 The Process of “Progressive Disciplining”
(As contained in PSCBC Resolution No. 2 of 1999)**

14.2.1 Corrective Counselling

(a) Application

This paragraph applies in cases where the seriousness of the misconduct only warrants counselling.

(b) Procedure

The counselling procedure must at least include the following:

- The alleged misconduct must be brought to the employee’s attention. For this purpose the manager involved should arrange a private discussion with the employee. It might be advisable to include a co-manager in the meeting as a witness.
- The reasons for the alleged misconduct must be determined. For this purpose the employee must be given the opportunity to respond to the allegations and provide information in respect of any act or omission.
- Agreement must be sought on how to remedy the unacceptable conduct of the employee. For this purpose the different available options should be explored and the most acceptable option for both parties should be agreed on.
- The manager involved must take steps to implement the agreed course of action. It is advisable to plan for the implementation of the course of action and to fully inform the employee involved of the envisaged actions, expected results and timeframes involved.

(c) Timeframe

- Although no specific timeframes are prescribed, one of the principles underlying the disciplinary code and procedure is that discipline must be applied in, *inter alia*, a prompt manner.
- Managers ought to endeavour to initiate the process of counselling within five (5) working days from the date on that the alleged misconduct (misconduct) is detected.

14.2.2 Verbal Warnings

(a) Application

This paragraph applies in cases where the seriousness of the misconduct warrants a verbal warning.

(b) Procedure

Although no specific procedure is prescribed, the following serves as a guideline for dealing with such cases:

- The alleged misconduct must be brought to the employee's attention. For this purpose the manager concerned should arrange a private discussion with the employee. It might be advisable to include a co-manager in the meeting as a witness.
- The reasons for the alleged misconduct must be determined. The employee must be given the opportunity to respond to the allegations and to provide information in respect of any act or omission.
- The manager concerned must consider all facts relevant to the case and if the employee is found to have transgressed, the relevant manager may give the employee a verbal warning.
- The manager concerned must inform the employee that further misconduct may result in more serious disciplinary action.

- The manager concerned must record the verbal warning. For this purpose it is recommended that such a warning be recorded on the personal file of the employee that is kept in the personnel registry. The standardised format attached as Annexure 1 to this Manual can be used for this purpose.
- The form provides for the employee to sign the form in confirmation that a verbal warning had been directed to him/her. If the employee refuses to sign the form, this fact must be recorded on the form and signed by a co-manager as witness.
- No indication is given for what period such a verbal warning shall remain valid. In line with the principles underlying progressive disciplining and the periods of validity for written warnings, this record ought to be removed from the employee's personal file after six months.

(c) Timeframe

- No specific timeframes are prescribed.
- Managers ought to endeavour to commence the process leading to a verbal warning within five (5) working days from the date on that the alleged misconduct is detected.

14.2.3 Written Warnings

(a) Application

This paragraph applies in cases where the seriousness of the misconduct warrants a written warning.

NOTE: These are normally cases of more serious misconducts or when a misconduct is repeated during a period of validity of a verbal warning or if the act or omission warrants a written warning without a prior verbal warning.

(b) Procedure

- A written warning may be in the form of Annexure 2 to this Manual.
- A written warning ought to include the following:
 - A clear indication of the rule that was transgressed
 - A description of the behaviour/deed/act/omission with specific reference to the what, when and where of the alleged misconduct
 - The accepted norm/standard of behaviour expected of the employee.
- The manager concerned must hand a copy of the written warning to the employee, who must sign receipt of it.
- If the employee refuses to sign receipt, the manager concerned must hand the warning to the employee in the presence of a co-manager who must sign in confirmation that the written warning was conveyed to the employee concerned.
- The written warning must be filed on the employee's personal file (i.e. the official personal file that is kept in the personnel registry).
- A written warning remains valid for six months.
- If during such six months the employee is subjected to disciplinary action, the written warning may be taken into account in deciding on suitable punishment.
- After expiry of the six-month period, the written warning must be removed from the employee's personal file and destroyed.
- The form at Annexure 2 provides for the employee to direct an appeal to a designated person who ought to be a manager senior to the manager dealing with the matter.
- If the appeal is successful, the written warning must be removed from the record immediately.

(c) Timeframe

- No specific timeframes are prescribed.
- Managers ought to endeavour to commence the process leading to a written warning as soon as possible and strive to issue a written warning within five (5) working days from the date on that the misconduct is detected.

14.2.4 Final Written Warnings

(a) Application

This paragraph applies in cases where the seriousness of the misconduct warrants a final written warning.

NOTE: These are normally cases of more serious misconducts or when a misconduct is repeated during a period of validity of a written warning or if the act or omission warrants a final written warning without a prior verbal or written warning.

(b) Procedure

- A final written warning may be in the form of Annexure 3 to this Manual.

NOTE: A final written warning ought to include the following:

- **A clear indication of the rule that was transgressed.**
 - **A description of the behaviour/deed/act/omission with specific reference to the what, when and where of the alleged misconduct.**
 - **The accepted norm/standard of behaviour expected of the employee.**
- The manager concerned must hand a copy of the final written warning to the employee, who must sign receipt of it.

- If the employee refuses to sign receipt, the manager concerned must hand the warning to the employee in the presence of a co-manager who must sign in confirmation that the final written warning was conveyed to the employee concerned.
- The final written warning must be filed on the employee's personal file (i.e. the official personal file that is kept in the personnel registry).
- A final written warning remains valid for six months.
- If during such six months the employee is subjected to disciplinary action, the final written warning may be taken into account in deciding on suitable punishment.
- After expiry of the six month period, the final written warning must be removed from the employee's personal file and destroyed.
- The form at Annexure 3 provides for the employee to direct an appeal to a designated person who ought to be a manager senior to the manager dealing with the matter.
- If the appeal is successful, the final written warning must be removed from the record immediately.

(c) Timeframe

- No specific timeframes are prescribed.
- Managers should, however, endeavour to commence the process leading to a final written warning as soon as possible and strive to issue a final written warning within five (5) working days from the date on that the misconduct is detected.

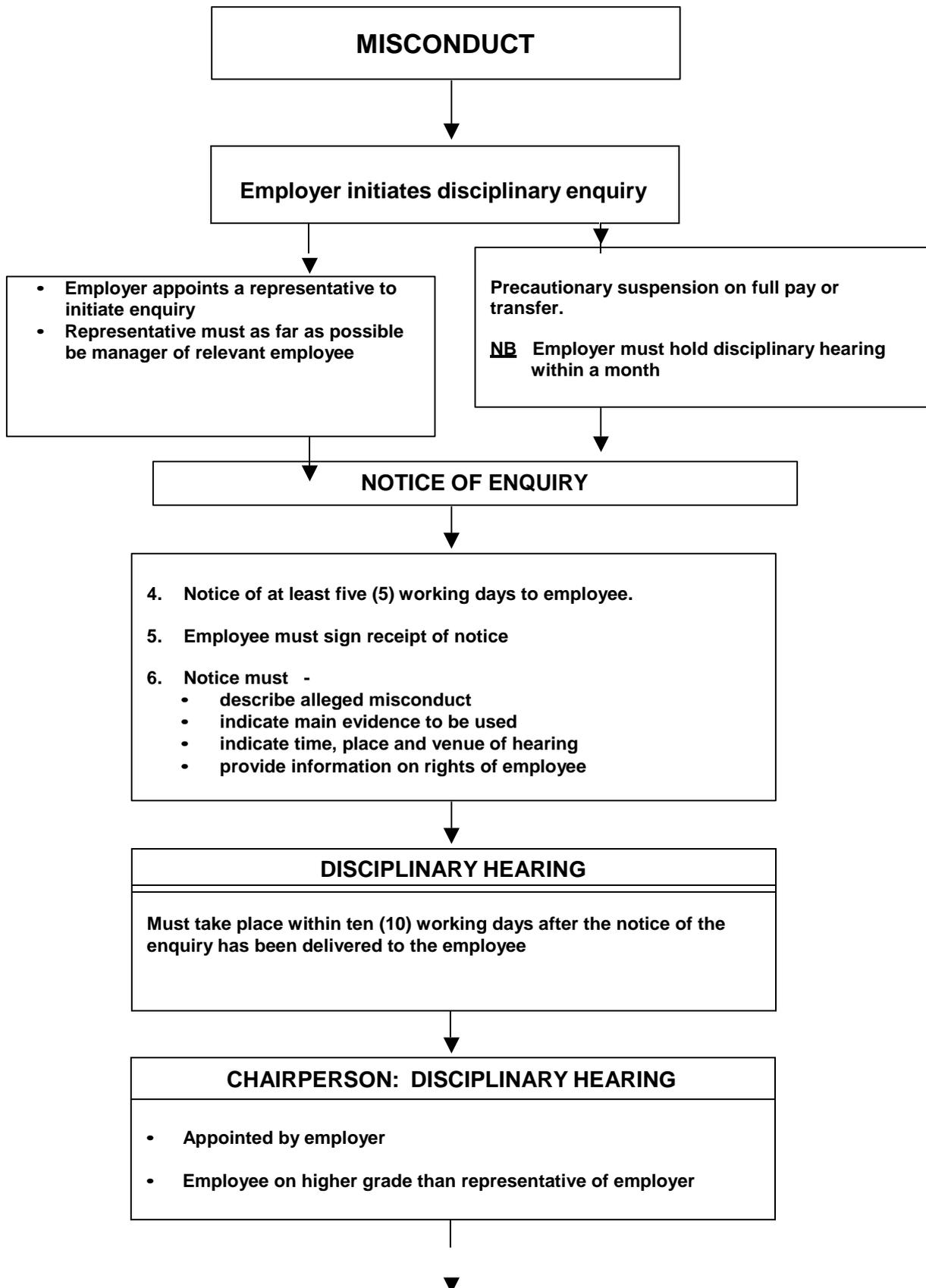
NOTE:

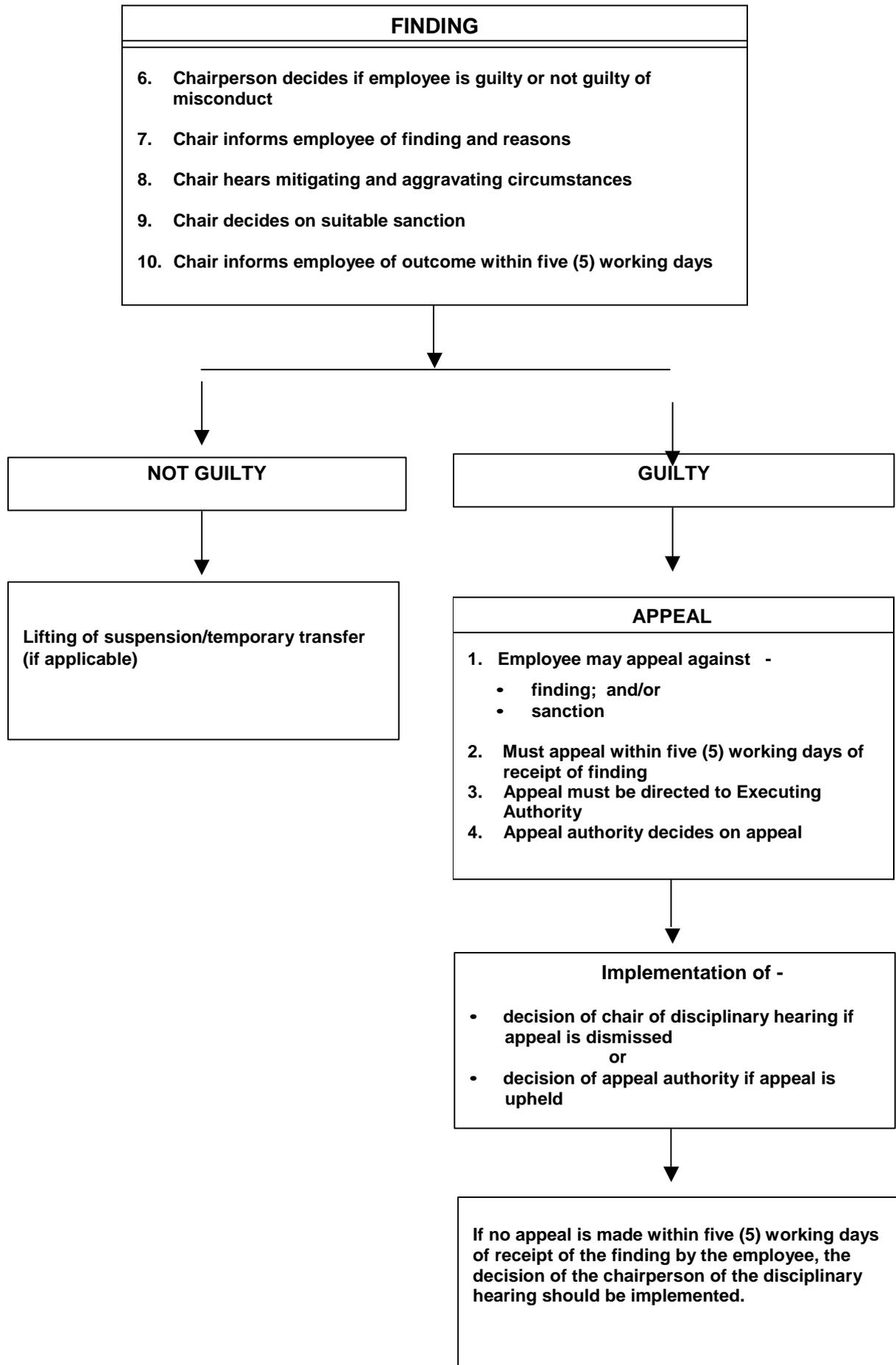
- **The time frames that have been indicated within that various actions ought to be dealt with should be regarded as a guideline in compliance with “Good Practice”. However, if geographical or other reasonable considerations do not make it possible to follow these guidelines, the actions must still be dealt with as a priority within the shortest possible space of time.**
- **Supervisors must guard against the possible manipulation of the progressive disciplining procedure by staff members. If there is any indication of a tendency of deviating behaviour or in the case of matters of a more serious nature, the formal disciplinary processes must be instituted without hesitation.**
- **Supervisors must also not revert to informal disciplining merely to avoid utilising the more formal process of disciplinary inquiries where the latter is justifiable.**

15. THE FORMAL PROCESS OF MISCONDUCT CHARGES/ENQUIRIES

- 15.1 This process and the one related to incapacity/inefficiency inquiries as dealt with under paragraph 16 below are of necessity structured as they are based on existing statutory prescripts and collective agreements that find mandatory application.
- 15.2 The manager’s (supervisor’s) involvement in the total process is crucial. While there is a number of other role-players who will assist in the carrying out of certain activities, managers remain responsible to ensure that proper disciplining takes place.
- 15.3 For purposes of creating clarity on the manager’s specific responsibilities and to provide an overview of the total process, a schematic exposition of the process in respect of Public Service Act Staff is provided followed by a discussion of the manager’s specific responsibilities under the following headings:
- 15.3.1 Identifying/detecting and reporting on alleged misconduct.
 - 15.3.2 Facilitating activities after the formal disciplinary procedure has been instituted.
 - 15.3.3 Suspensions.

SCHEMATIC EXPOSITION: MISCONDUCT PROCEDURE FOR PUBLIC SERVICE ACT STAFF (PSCBC RESOLUTION NO 2 OF 1999)





5.4 Identifying/detecting and reporting on alleged misconduct

15.4.1 Incidents of alleged misconduct can come to the attention of a supervisor or the department in different ways, i.e. –

- (a) through the monitoring/control/inspection functions that supervisors have to exercise in respect of staff members;
- (b) through the control functions exercised by staff functionaries such as departmental inspectors, internal auditors, transport inspectors or financial control staff;
- (c) through reports by the Auditor-General;
- (d) through complaints emanating from a member of the public or colleagues;
- (e) through a referral from the Public Protector or a provincial public protector;
- (f) through inspections carried out by staff attached to Circuits, Areas or Regional Offices; or
- (g) through reports from the courts where an employee has been prosecuted.

15.4.2 As will be evident from the above, the supervisor might not always be the first person to become aware of such an incident. The Public Protector will, for instance, normally direct his/her correspondence to the head of department.

15.4.3 It is extremely important that the person who first detects or receives a complaint/report on an incident of alleged misconduct, shall obtain as much information as is possible to enhance the further possible actions to follow, without entering into the process of initiating a formal disciplinary enquiry.

15.4.4 In practical terms this means that if a member of the public should for instance lodge a complaint on the conduct of an employee, a sworn affidavit or declaration reflecting the date on that the alleged misconduct took place, the venue, a detailed version of the actions of the employee, the involvement of other employees (if applicable) and particulars of witnesses, should be obtained. Copies of relevant documents must also be obtained.

- 15.4.5 The central role that supervisors must play in maintaining discipline in respect of staff members must at all times be acknowledged and honoured. He/she must be informed of the matter as soon as possible where the incident was not detected by or reported to the supervisor herself/himself. The supervisor's opinion on whether a disciplinary enquiry/a further investigation of the matter is required or not, should also be obtained.
- 15.4.6 Where a supervisor institutes actions related to a possible disciplinary enquiry/charge of misconduct, that supervisor must submit the matter via the normal channels to the Labour Relations Directorate/ Sub-Directorate. A standardised format of a submission that can be used for this purpose is appended as Annexure 4 to this Manual.
- 15.4.7 Supervisors must provide the Labour Relations Directorate/ Sub-Directorate with all the relevant information and documents and must also make a recommendation whether a further investigation of the matter is required.
- 15.4.8 Care must be taken not to propose further investigation of the matter where *prima facie* evidence exists merely to avoid taking action. It is expected from supervisors to, as far as possible within the normal constraints experienced within an organisation, investigate and obtain all relevant facts relative to an alleged misconduct. If sufficient evidence is available to initiate a disciplinary enquiry/to continue with a charge of misconduct, the supervisor must also indicate what the contents of the charges should be.
- 15.4.9 If circumstances should require it, the question of a possible precautionary suspension/suspension or temporary transfer of the relevant employee will also have to be addressed by the supervisor and this matter will then have to be included in the submission referred to in paragraph 15.4.6 above. In this regard attention is invited to the contents of paragraph 15.6 of this Manual.
- 15.4.10 The manager in charge of a specific component, etc, where such a manager is not the direct supervisor of the employee against whom a disciplinary enquiry is being initiated, will naturally be involved in all relevant activities and all correspondence entering or leaving that component will flow through him/her.

15.4.11 The Labour Relations Directorate/ Sub-Directorate will, based on the recommendations made by the supervisor and/or head of the relevant component, advise the Head of Department (or delegate) whether a further investigation of the matter is required or whether the employee should be charged on the available facts.

NOTE:

- **Long delays often occur where a department is notified that an employee has been or is being prosecuted in a court of law and it is decided to await the outcome of this process and/or a copy of the court proceedings, before departmental action is taken.**
- **Similar situations arise where the Police requests a department to hold back on an internal investigation or misconduct charges, for the fear of its own investigation possibly being prejudiced.**
- **Managers must assess such situations carefully as it might, due to long delays being experienced in the courts and in respect of police investigations, not be in the best interest of the department or the employee concerned to delay taking departmental action. Employees who have been suspended can be affected very negatively by delays.**
- **Where managers have to make a recommendation or advise on the way forward, the emphasis should thus always be to try and finalise departmental actions as soon as possible. [Note: It is stated as a principle in clause 2.6 of Resolution No. 2 of 1999 that if an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.]**
- **Where it comes to the attention of a supervisor that an employee is being prosecuted in a court of law, the matter must be reported to the Labour Relations Directorate/ Sub-Directorate without delay. The Labour Relations Directorate/ Sub-Directorate will then endeavour to obtain information from the court/police. It will be decided, in consultation with the supervisor, how the matter is to be dealt with.**

- **Where the matter before the court is not work related (e.g. assaulted a neighbour) the employer may not charge the employee until the court has found the employee guilty as charged. In the case of a verdict of not guilty as charged, the employer cannot charge the employee.**
- **Where losses are incurred or a financial irregularity has occurred, the matter must be reported to the accounting officer and if such losses are incurred through criminal or possible criminal acts or omissions on the part of an employee, the matter must also be reported to the Police. Where it involves monies under the control of a (School) Governing Body, the matter must also be reported to the chairperson of that body.**

15.5 Facilitating activities after the formal disciplinary procedure has been instituted. (Enquiries conducted in terms of PSCBC Resolution No. 2 of 1999)

15.5.1 The Labour Relations Directorate/ Sub-Directorate will inform the manager of the decision of the Executive Authority (or delegate) on the further steps to be taken in the matter.

15.5.2 If it is decided that a further investigation of the matter is required, the Head of Department (or delegate) may appoint a representative in terms of clause 6 of Resolution No. 2 of 1999, to carry out such an investigation.

NOTE: Resolution No. 2 of 1999 does not specifically provide for this activity to be carried out by such a representative. In opinion, the phrase used in clause 6 of the Resolution "... to initiate the enquiry", could also include a pre-investigation. The Head of Department (or delegate) may, however, also decide to refer the matter back to the Labour Relations Directorate who may then cause such matter to be further investigated in accordance with his/her general powers in terms of section 7(3)(b) of the Public Service Act, 1994.

15.5.3 Unless sound reasons exist to appoint another person, the representative will normally be the direct supervisor of the employee under investigation.

15.5.4 Where a supervisor is appointed to carry out such an investigation, he/she should consult Part A of VOLUME III (a) of the Manual on Disciplining and specifically the part dealing with the procedure to be followed in carrying out the investigation.

- 15.5.5 If it is intended to initiate a disciplinary enquiry on the available facts, the direct supervisor of the employee concerned will normally likewise be appointed as representative in terms of clause 6 of Resolution No. 2 of 1999 to initiate the disciplinary enquiry.
- 15.5.6 On being appointed as such, the manager will be informed of the name of the person who has been appointed to chair the disciplinary enquiry.
- 15.5.7 The manager will also be provided with a letter of notification to the concerned employee as intended by clause 7.1 of Resolution No. 2 of 1999 that will be drafted by the Labour Relations Directorate/ Sub-Directorate and where applicable, would have been cleared with the legal component in the department.
- 15.5.8 The relevant notification will not contain information on the venue and date of the inquiry – this has to be arranged and filled in by the relevant manager.
- 15.5.9 The letter of notification may also contain provisions on precautionary suspension or the temporary transfer of the employee concerned (if applicable) or may be dealt with in a separate letter, that will also be provided by the Labour Relations Directorate/ Sub-Directorate.

NOTE: If a pre-investigation had been carried out by someone else than the relevant manager, the relevant report and supporting documents will also be provided to the manager by the Labour Relations Directorate/ Sub-Directorate.

- 15.5.10 The manager then has to execute the following activities:
- (a) Determine a suitable venue for the enquiry, that venue should as far as possible be in the workplace.
 - (b) Determine a date and time that the enquiry is to be held with due consideration to –
 - the time required to prepare for the case – please refer to Part B of VOLUME III (a) of the Disciplinary Manual and specifically the part dealing with the activities to be performed by the “Prosecutor”;

- clause 7.2 (c) of Resolution No. 2 of 1999 that requires that an enquiry be held within a month where the employee concerned had been subjected to precautionary suspension or a temporary transfer; and
 - clause 7.3(a) of Resolution No. 2 of 1999 that requires that the disciplinary enquiry must be held within ten (10) working days after the notice of the enquiry has been served on the employee.
- (c) Notify the person who will chair the enquiry of the date, time and venue of the enquiry.
- (d) Fill in the date, time and venue of the enquiry on the letter of notification to the employee concerned as provided by the Labour Relations Directorate/ Sub-Directorate – re. Paragraph 15.5.7 above.
- (e) Sign the notification and serve it at least five working days prior to the date of the enquiry on the employee concerned and ensure that the employee signs receipt of the notification. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who shall sign in confirmation that the notice was conveyed to the employee. The relevant prescripts do not provide for the notification to be mailed to the employee and it must be noted that practical problems may arise where an employee has been subjected to precautionary suspension before the notification of the enquiry is served.

Prepare for the enquiry – refer to VOLUME III (a) of the Transverse Disciplinary Manual and specifically the part dealing with the activities to be performed by the “Prosecutor”, that activities include identifying and notifying witnesses to be called in support of the employer’s case.

15.5.11 It should further be noted that if an employee resigns before a disciplinary enquiry has been concluded, the resignation must be processed and sent through to the staff office in the normal manner. Managers must clearly indicate in the covering letter that a disciplinary enquiry had been instituted against the employee and that it is still pending. The staff office will record this fact suitably on the employee’s personnel record for future reference.

15.5.12 If the event provided for in paragraph 5.5.11 above should occur, the disciplinary enquiry could be continued with if indications are that it can be reasonably concluded before the effective date of resignation.

15.6 Suspensions

15.6.1 Managers' involvement in the practice of (precautionary) suspension, is basically limited to two main areas, viz. –

- considering, recommending and motivating the suspension of an employee, where applicable; and
- “performing” certain activities related to the suspension.

15.6.2 Managers must note that, due to the far-reaching effects of a suspension, an employee may only be suspended on approval by a properly authorised person. These powers are seldom assigned to employees below the level of the deputy to the head of department.

15.6.3 The Labour Relations Directorate/ Sub-Directorate will play a central role in administering suspensions by *inter alia* obtaining the required approval.

15.6.3.1 Justification

(a) Even though it might be decided at senior level to suspend an employee, a recommendation to suspend an employee can also be made by the manager (supervisor) or head of that component. Where this decision originates from a different point, the supervisor should be involved in the process. If it is the intention to suspend an employee, the employer must be able to justify such a step. The grounds for effecting a precautionary suspension are limited to the following (in terms of clause 7.2 (a) of Resolution No. 2 of 1999):

- Where the employee is alleged to have committed a serious offence.
- Where the employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the well being of any person or state property.

- (b) Unless suspension is imposed as sanction in terms of clause 7.4 (a)(iv) of Resolution No. 2 of 1999 in respect of an employee who has been found guilty of misconduct, a suspension may never constitute a judgement or have the intention to punish an employee. Before (precautionary) suspension is considered, alternatives such as the following ought to first be considered:
- Instructing the employee in writing not to interfere with specified matters, not to interfere with an investigation, not to have contact with specified persons and/or not to enter specified areas.
 - Temporarily transferring the employee to other duties, a post or location.
 - Directing/ordering an employee to temporarily perform other functions as provided for and under the conditions as set out in section 32 of the Public Service Act, 1994.

NOTE:

- (aa) The actions stipulated in sub-paragraph (b) (ii) above, as well as an actual suspension, **must** be preceded by the application of **the audi alteram partem-rule**. This means that the employee must be informed of the employer's intention to act in this manner, must be afforded the opportunity to forward representations against such intended action and that the employer must consider such representations **before** taking a decision in the matter.
- (bb) Suspensions are technically involved and managers should limit their activities in this regard to the making of a motivated recommendation on a suspension to the Labour Relations Directorate/ Sub-Directorate, where applicable, who will then take the matter up with the authorised persons in the department, apply the audi alteram partem rule and obtain approval for the conditions that will apply to the suspension.

- (cc) Practical considerations may dictate that an employee be removed from the workplace in circumstances that do not allow for the normal procedures of obtaining approval for a suspension/transfer to be followed. A Magistrate can be approached to issue an order in terms of section 384 of the Criminal Procedure Act, (Act 56 of 1955), binding that person over to keep the peace. This mechanism can be utilised to prevent a person from entering the employer's premises. The legal component's advice should be obtained in these circumstances.
- (dd) It may also be considered to grant an employee special leave in accordance with clause II/11 of Annexure B (page 8) of PSCBC Resolution No. 3 of 1999.

15.6.3.2 Administering process

- (a) As has been stated earlier on, the Labour Relations Directorate/ Sub-Directorate will facilitate the process of obtaining approval for the suspension of an employee. The precautionary suspension of an employee shall be with full pay.
- (b) Managers have the responsibility to make arrangements to give practical effect to the suspension. They must charge a specific person, if they do not undertake it themselves, to attend to, *inter alia*, the following, where applicable:
- Ensuring that any cash, cheques, warrant vouchers, receipt books, journals and any other financial documents are reconciled and taken over properly.
 - Inspecting and taking over subsidised vehicles.
 - Safeguarding official documents.
 - Overseeing the removal of "personal property" from the office and premises.
 - Collecting security and parking passes and informing security if the employee is not to be allowed on the premises again.
 - Physically escorting the employee from the premises.

15.6.3.3 Termination of the suspension

- (a) Suspension can be effected and withdrawn at any time before or during the process of an investigation into misconduct or after a disciplinary enquiry has been initiated/formal charges have been laid.
- (b) If an employee who has been subjected to precautionary suspension resigns, the staff office must be notified of this and it will make a suitable entry on the employee's personnel record for future reference. If, however, it comes to the attention of managers that an employee who has thus been suspended has assumed other employment, not being authorised remunerative work in terms of the Public Service Act, 1994, such action could constitute an act of misconduct that managers have to deal with and report to the staff office promptly.
- (c) Whenever a suspension is lifted, the relevant notification to the employee must contain a direction as to the date on that he/she has to resume duties.
- (d) Managers must ensure that the date of assumption of duty is reported to the staff office promptly.

16. THE FORMAL PROCESS OF DEALING WITH POOR PERFORMANCE (INCAPACITY) IN RESPECT OF EMPLOYEES

- 16.1 The procedure to act against inefficient employees is contained in PSCBC Resolution No. 10 of 1999.
- 16.2 The contents of paragraphs 10 to 13 of this Volume of the Manual on Disciplining are crucial if any success is to be had in applying the relevant provisions stated in paragraph 16.1 above.
- 16.3 Even more so than in the case of misconduct, the manager occupies a key role in the successful handling of these procedures.

16.4 Employees must be equipped to perform their duties satisfactorily and their performance must be monitored thoroughly and deviations recorded properly before this course can be embarked on.

16.5 In terms of the Code of Good Practice on Dismissal, the following test will be carried out to determine whether a discharge based on incapacity/inefficiency was fair:

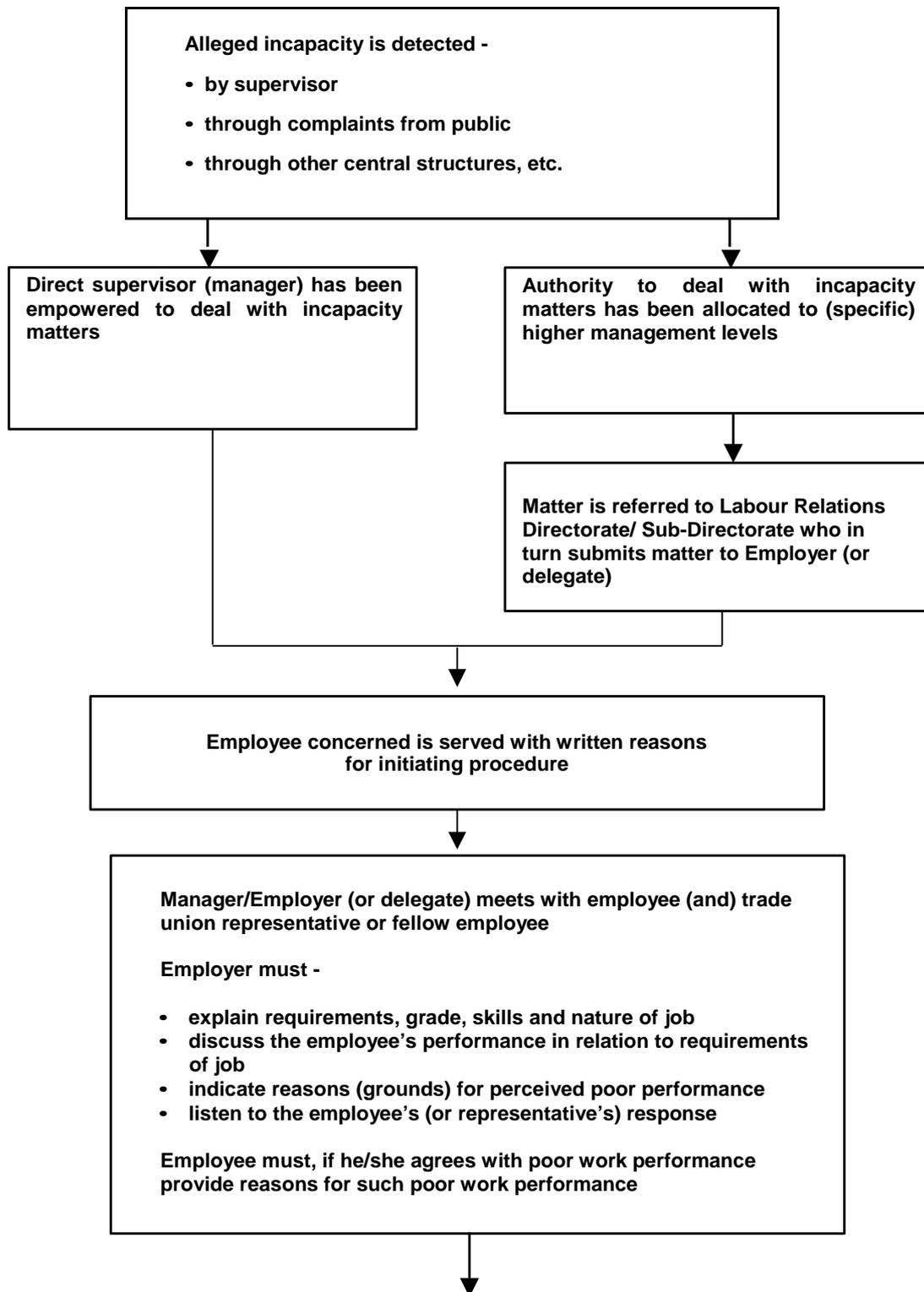
16.5.1 Whether the employee indeed failed to meet performance standards.

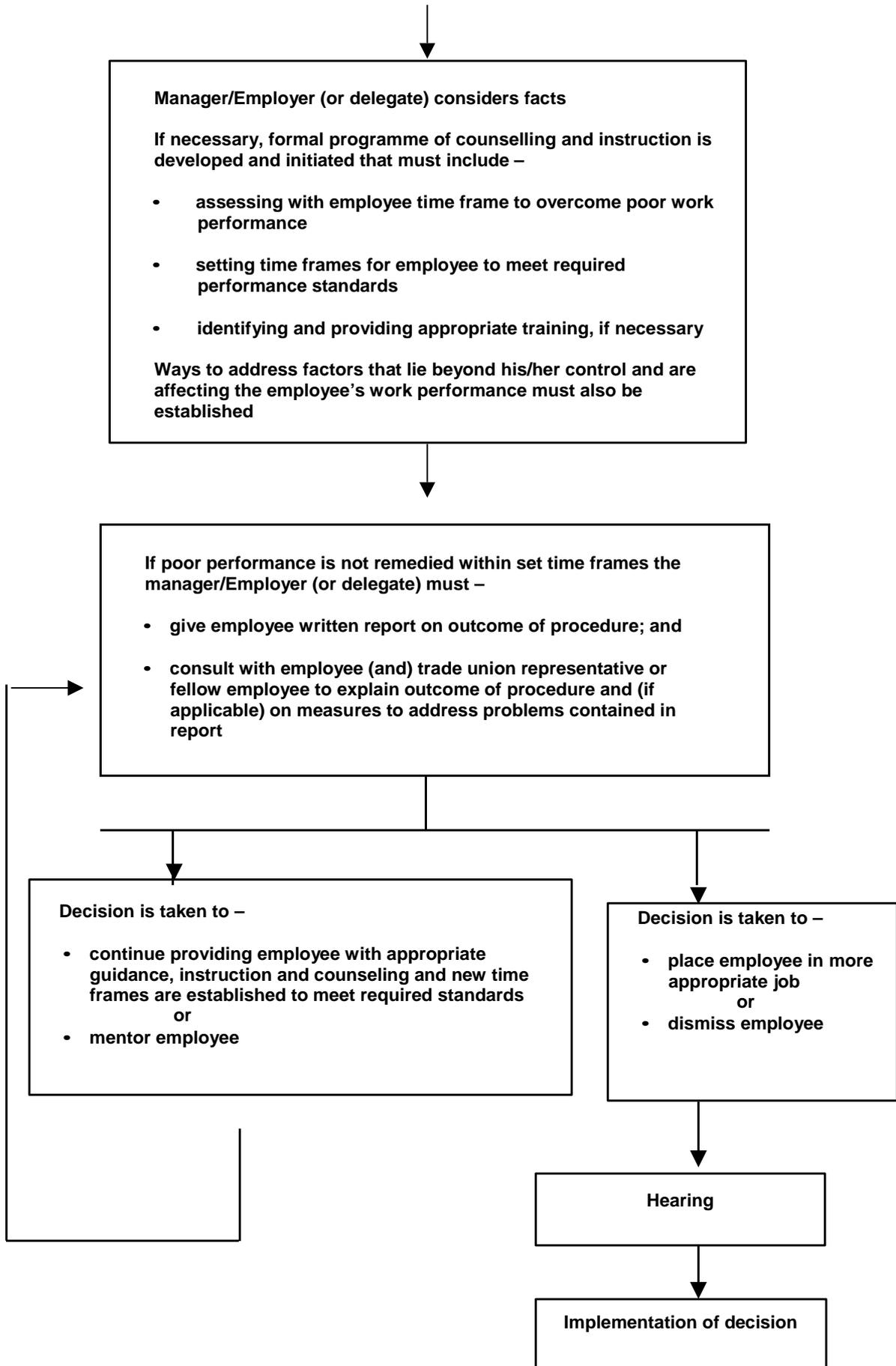
16.5.2 Whether the employee was aware, or could reasonably be expected to have been aware, of the required performance standards.

16.5.3 Whether the employee was given fair opportunity to meet the required performance standards.

16.5.4 Whether dismissal was an appropriate sanction in the circumstance.

**SCHEMATIC EXPOSITION OF THE INCAPACITY PROCEDURE APPLICABLE TO AN
EMPLOYEE (RESOLUTION NO. 10 OF 1999)**





16.5 The manager's responsibilities in regard to managing the performance of staff members, can be captured as follows:

16.5.1.1 Setting performance standards.

16.5.1.2 Informing staff members in regard to these standards, *inter alia*, through training.

16.5.1.3 Monitoring and reporting on a staff members' performance.

16.5.1.4 Taking actions to address poor performance.

16.6 The Manager's responsibilities are discussed in the following paragraphs.

16.6.1 Initiating the incapacity/inefficiency procedure

NOTE: In accordance with PSCBC Resolution No. 10 of 1999, the authority to act against employees who perform poorly, is vested in the employer. The "employer" is not statutorily defined but section 3(7) of the Public Service Act, 1994 (as amended), inter alia, empowers the Executive Authority to deal with any career incident of an employee. The Executive Authority may allocate these powers. Individual managers must ascertain whether they have been suitably empowered to take actions in accordance with this procedure themselves or whether it has to be referred to specific employees who have been empowered accordingly, in that instance the Labour Relations Directorate/ Sub-Directorate will play a central (co-ordinating) role.

- (a) As in the case of misconduct, complaints in regard to an employee's alleged unfitness for his/her duties or inability to carry out such duties efficiently (hereafter referred to as alleged inefficiency), can emanate from different sources.
- (b) In the first instance, a member of the public may lodge complaints against an employee. In such instances, supervisors (or the person receiving the complaint) have to ensure that sufficient information is obtained in regard to the alleged neglect or incapacity.
- (c) Other internal control structures such as departmental inspectors, internal auditors, etc may also report on such cases.

- (d) It is, however, more common for supervisors to detect inefficiency in regard to their staff members in view of their responsibility to manage the performance of such employees.
- (e) The supervisor should, as a rule, always be informed whenever such a complaint is received where he/she is not the original entry point or source of the complaint.
- (f) The reason for involving the supervisor is to ensure that sound judgement is exercised in determining whether the alleged act or omission on the part of the employee should be regarded and dealt with as misconduct or whether the matter should be pursued in terms of the incapacity procedure.
- (g) The supervisor must assess the nature of the complaint against the backdrop of the employee's duty sheet, duty manual(s), training schedules, performance reports and past disciplinary record and provide the Labour Relations Directorate/ Sub-Directorate with a motivated recommendation as to the course to be pursued.
- (h) Such a recommendation to be made by the supervisor must cover at least the following aspects:
- Why the matter is not regarded as one of misconduct.
 - Whether a duty sheet, duty manual and relevant prescripts are available to employee.
 - Information on performance standards.
 - An indication of training provided in regard to relevant duties.
 - Past performance record.
 - Corrective actions (if applicable) that have been taken in the past.
 - The employee's response to corrective actions (if applicable).
- (i) Where alleged inefficiency is reported on by the supervisor in the first instance, the matter must also be submitted to the Labour Relations Directorate/ Sub-Directorate, providing full details in regard to the alleged inefficiency and care must be taken that the factors referred to in subparagraph (h) above, are covered.

- (j) In deciding on whether to further the matter as a case of misconduct or inefficiency, the guidelines provided in paragraph 2.6 and 2.7 in this Volume of the Manual on Disciplining, can be used.
- (k) The Labour Relations Directorate/ Sub-Directorate will then further the matter in accordance with the prescribed procedures and undertake the actions in this regard as set out in Volume II (a) of the Manual on Disciplining in respect of employees.

16.7.2 Applying the procedure relating to poor performance in respect of Public Service Act Staff where managers (supervisors) have been suitably empowered

- (a) In instances where managers detect or are made aware of the fact that an employee is not performing in accordance with the requirements of the job that he/she has been employed to do, the following approach must be applied both in respect of employees on probation as well as those whose probationary appointments have already been confirmed.
- (b) Managers must assess the alleged incapacity of the employee by considering the following:
 - The extent to that the incapacity impacts on the work of the Public Service, the employee's component(s), colleagues and the public.
 - The extent to that the employee fails to meet the required performance standards established by the employer.
 - The extent to that the employee lacks the necessary skills to perform in accordance with the employee's job description.
 - The nature of the employee's work and responsibilities.
 - The circumstances of the employee.
- (c) If it is concluded that the employee is indeed performing poorly, the manager must serve the employee with a written notification that the formal procedure relating to incapacity, as contained in PSCBC Resolution No. 10 of 1999, is being initiated and the notification must indicate the reasons for doing so.

Note: The notification ought to be served on the employee by handing it to him/her personally and having him/her sign receipt of the notification on a copy of the notification. If the employee refuses to acknowledge receipt in this manner, the notification ought to be handed to the employee in the presence of a co-manager who must then sign the copy of the notification in confirmation that it had been handed/conveyed to the employee.

- (d) After the notification has been served, the manager must as soon as possible meet with the employee and if the employee so chooses, with his/her trade union representative and/or a fellow employee.

Note: It might be advisable for managers to co-opt a co-manager to attend any discussion held in terms of this procedure as a witness to the event(s).

- (e) In the meeting referred to in (d) above, the manager must –

- explain the requirements, grade, skills and nature of the job;
- discuss the employee's performance in relation to the requirements of the job;
- indicate the reasons for the employee's poor performance as seen by the manager; and
- listen to the response from the employee or the employee's representative on whether the employee has performed in accordance with the requirements of the job.

- (f) If the employee agrees that his/her work performance is poor, he/she must provide reasons for his/her poor work performance. This will assist the manager in deciding on suitable remedial action to be taken.

Note: Managers ought to create a suitable record of the proceedings to be kept on the personal file of the employee for possible future reference and also to safeguard them against the facts being placed in dispute at a later stage.

- (g) After having considered all the available information, the manager must, if necessary, develop and initiate a formal programme of counselling and instruction to enable the employee to reach the required standard of performance that must include –
- assessing with the employee the time that it will take for the employee to overcome the poor work performance;
 - on the basis of the assessment, establishing realistic time frames within that the manager will expect the employee to have met the required performance standards; and
 - if necessary, identifying and providing appropriate training.
- (h) The manager must also establish ways to address any factors that lie beyond the control of the employee and that affects the employee's performance.

Note: To prevent any misunderstandings or disputes from arising, the contents of whatever is decided on in accordance with subparagraphs (g) and (h) above, ought to be conveyed to the employee in writing and a copy should be kept on the manager's personal record. After this has been conveyed to the employee, the manager must closely monitor the employee's progress and keep record of his/her work performance to be used should the poor work performance continue.

- (i) If the poor work performance of the employee is not remedied within the time frames established by the programme referred to in (g) above, the manager must -
- provide the employee with a written report on the outcome of the procedure; and
 - again consult with the employee, and if the employee chooses, with his/her trade union representative and/or fellow employee, to explain the outcome of the procedure and on measures to address any problems indicated in the report.

- (j) After consulting with the employee, the manager must consider whether to-
- continue to give the employee further appropriate guidance, instruction and counselling and to establish a further appropriate period for the employee to meet the required standard of performance;
 - mentor the employee;
 - place the employee in a more appropriate job; or
 - recommend the dismissal of the employee.
- (k) Before exercising the option of dismissal or placement in an alternative job, the employee must be given a hearing to establish failure to meet required standards.

Note: Even though it is not prescribed, it is advisable that an independent/impartial chairperson who is senior to the direct supervisor be appointed to chair such a hearing.

It is suggested that the matter be referred to the Labour Relations Directorate/ Sub-Directorate at this stage with copies of all the accompanying documents with the request that it approaches the Executive Authority (or delegates) to appoint a suitable chairperson and to administer the hearing as set out in VOLUME II (a) of the Disciplinary Manual.

SUMMARY

1. Disciplining encompasses all those activities that are undertaken by the employer to enforce compliance with set standards on behaviour and performance.
2. In terms of Good Practice, the employer must -
 - establish standards on behaviour and performance;
 - ensure that employees are aware of and understand the requirements that they have to comply with;
 - monitor and report on the behaviour and performance of employees on a continuous basis;
 - identify misconducts or shortcomings at the earliest possible stage;
 - assist employees in rectifying deviations from the norm and afford them the opportunity to do so, where applicable; and
 - act swiftly in applying disciplinary measures where deviations re-occur or where deviations are of a more serious nature.
3. Managers (supervisors) have a key role to play in establishing and maintaining sound discipline. They will be assisted during the application of the formal prescribed processes of misconduct charges and incapacity/ inefficiency inquiries by the Labour Relations Directorate/ Sub-Directorate and persons who are appointed to officiate at such misconduct and incapacity/inefficiency inquiries, but the responsibility to manage discipline remains theirs.

4. The manager's responsibilities in regard to disciplining consist of the following:
- 4.1 **Setting standards**
- Behavioural standards are normally contained in more formal prescripts such as relevant service acts, codes of conduct and other subordinate prescripts.
 - Performance standards have to be put into place by managers and should indicate -
 - what needs to be done by staff members (job description/duty sheets);
 - how the main activities must be executed (procedural manuals); and
 - how many (quantitative) and at what standard (qualitative), outputs should be generated.
- 4.2 **Training**
- That consists of induction of new appointees, structured and person-to-person training, formal training, guidance and counselling to be undertaken or facilitated by managers.
- 4.3 **Monitoring and reporting**
- That includes probationary and all other forms of performance assessments.
- 4.4 **Progressive disciplining**
- That entails the counselling of staff members and the issuing of verbal and/or written warnings linked to specific misconducts.
- 4.5 **Formal disciplining**
- In respect of that there is structured procedures to be applied, relating to misconduct and incapacity/inefficiency, respectively. In applying these procedures, managers have to refer to the relevant prescripts as the procedures are prescribed and compliance is mandatory.

5. In regard to applying both the procedures relating to formal misconduct enquiries/charges and incapacity/inefficiency inquiries, the manager's responsibilities consist mainly of the following:
 - 5.1 Detecting and reporting misconducts/deviations.
 - 5.2 Advising on whether sufficient evidence exists to charge an employee or whether a further investigation is required.
 - 5.3 Indicating what the contents of a misconduct charge should be if this step is not preceded by an investigation.
 - 5.4 Obtaining and providing all available relevant information.
 - 5.5 Facilitating correspondence with the employee concerned once the formal process has been instituted.
 - 5.6 Advising on suspensions and the conditions that should apply to such suspensions.
 - 5.7 Administering certain activities related to giving effect to suspensions.
 - 5.8 Monitoring the relevant process to ensure that it is finalised as soon as possible.

Note: Managers may be appointed as the employer's representative in that instance they will be directly involved in carrying out the pre-investigation (if required) and leading evidence on behalf of the employer (acting as Prosecutor) as set out in this Volume and VOLUME III (a) of the Disciplinary Manual.

6. The crucial role that managers have to fulfil in giving effect to disciplining cannot be over-emphasized. Managers need to have a clear understanding of their responsibilities and a sound knowledge of the prescripts regulating the formal processes of misconduct charges and incapacity/inefficiency inquiries. They should therefore acquaint themselves with the contents of the Disciplinary Manual.

ANNEXURE 1

RECORD OF A VERBAL WARNING

Date:

Full name and surname of employee:
.....

PERSAL number:
.....

Rank:
.....

Institution where employed:
.....

Section where employed:
.....

Date on that warning was given:
.....

Particulars of misconduct:
.....
.....
.....

Has the employee been informed previously that his/her conduct is unacceptable and that a repetition thereof may result in more serious disciplinary action?
.....
.....

Has the employer taken any corrective actions to support the employee in order to prevent a repetition of the misconduct (e.g. training, counselling, etc.)?
.....
.....
.....

What was the employee's response in respect of the misconduct?

.....
.....
.....
.....

The employee has been informed that further misconduct could result in more serious disciplinary action being taken by the employer.

Signature of manager:

Capacity:

Date:

I, the undersigned employee, acknowledge that I have received a verbal warning and that the matter has been explained to me.

Name of employee:

Signature:

Date:

Signature of witness:

Date:

WRITTEN WARNING

Mr/Ms PERSAL No.

.....
(Rank/designation)

.....
(Rank/designation)
(Office/section where employed)

Dear Mr/Ms

WRITTEN WARNING

1. This is a written warning in terms of the disciplinary procedure in regard to the misconduct indicated below.

2. Nature of misconduct:
.....
.....
.....
.....
.....

3. The written warning will be placed on your personal file and will remain valid for a period of six months from the date of this warning.

4. You are hereby informed that should you engage in further misconduct, more serious disciplinary actions could be taken against you. If you commit a further act of misconduct during the validity period of this warning, the warning may be taken into account in determining the appropriate sanction.

5. If you wish to object to this warning, you may direct an appeal to
..... within five working days from
(Name of employee)
the date of this warning.

Signature of manager:

Capacity:

Date:

I, the undersigned employee, acknowledge receipt of this
written warning and understand the contents thereof.

Name of employee:

Signature:

Date:

Signature of witness:

Date:

FINAL WRITTEN WARNING

Mr/Ms PERSAL No.

.....
(Rank/designation)

.....
(Office/section where employed)

Dear Mr/Ms

FINAL WRITTEN WARNING

1. This is a final written warning in terms of the disciplinary procedure in regard to the misconduct indicated below.

2. Nature of misconduct:
.....
.....
.....
.....
.....

3. The final written warning will be placed on your personal file and will remain valid for a period of six months from the date of this warning.

4. You are hereby informed that should you engage in further misconduct, more serious disciplinary actions could be taken against you. If you commit a further act of

misconduct during the validity period of this warning, the warning may be taken into account in determining the appropriate sanction.

5. If you wish to object to this warning, you may direct an appeal to

.....
(Name of person appointed to deal with appeal)

within five working days from the date of this warning.

Signature of manager:

Capacity:

Date:

**I, the undersigned employee, acknowledge receipt of this
final warning and understand the contents thereof.**

Name of employee:

Signature:

Date:

Signature of witness:

Date:

**DRAFT SUBMISSION: REQUEST BY SUPERVISOR
TO CONSIDER APPOINTING AN INVESTIGATING
OFFICER OR CHARGING AN EMPLOYEE
WITH MISCONDUCT**

TO:

.....
(Designation of the head of the Labour Relations Directorate/ Sub-Directorate)

RE: POSSIBLE CHARGE OF MISCONDUCT:

Mr/Ms PERSAL. No.
(Indicate rank and section where employed)

1. Mr/Ms has been in the service
(Name)
of the Department as a since
(Rank) (Date of appointment)

2. On at
(Date) (Place)
he/she
.....
(Provide details of alleged misconduct)
.....
.....
.....
.....

3. Mr/Ms has previously received (a)
(Name)

verbal/written warning(s) in respect of similar or related misconduct cases that are still

valid.

Copies of records in respect of these warnings that were issued on
(Dates)
..... are attached.

4. In respect of the most recent misconduct, the following evidence/information is provided to substantiate the allegations:

.....
(Summarise main evidence and attach relevant documentary evidence)
.....
.....

5. In view of the aforementioned circumstances and facts, Mr/Ms
(Name)

is regarded to have made himself/herself guilty of misconduct in terms of Annexure A to PSCBC Resolution No. 2 of 1999, in that he/she

.....
(Provide formulation of misconduct as mentioned in the relevant clause/section)
.....
.....

6. In terms of clause 6 of PSCBC Resolution 2 of 1999 the employer may initiate a disciplinary enquiry that entails appointing a representative to either investigate the matter further or to initiate a misconduct enquiry.

7. I am of the opinion that insufficient evidence exists to initiate a disciplinary enquiry at this stage and it will be appreciated if you would approach the Executive Authority (or delegate) to appoint a representative in accordance with clause 6 of Resolution 2 of 1999 to further investigate the matter and request the head of department to suitably empower such representative.

or

I am of the opinion that sufficient evidence is available to institute a formal disciplinary enquiry and it will be appreciated if you would approach the Executive Authority (or delegate) to appoint a representative to initiate such an enquiry in accordance with clause 6 of Resolution 2 of 1999 as well as for the appointment of a person to chair the enquiry.

8. I am further of the opinion that the employee should be subjected to precautionary suspension on full pay/be temporarily transferred - based on the following reasons:

.....
.....
.....

(indicate justification for proposed suspension/transfer)

SIGNATURE OF SUPERVISOR

DESIGNATION

DATE

DISCIPLINARY CODE AND PROCEDURE FOR MEMBERS OF THE SENIOR MANAGEMENT SERVICE (SMS)

1. INTRODUCTION

- 1.1 The Public Service Co-ordinating Bargaining Council (PSCBC) Resolution 2 and 10 of 1999 was amended through the **PSCBC Resolution 1 of 2003** in respect of SMS members of the public service.
- 1.2 PSCBC resolution 1 of 2003 contains the procedures that must be applied in cases of misconduct, incapacity due to poor performance and incapacity due to ill health of members of the SMS.
- 1.3 The disciplinary procedures must always be read and applied in conjunction with the Public Service Act, 1994, the Public Service Regulations the Labour Relations Act, 1995 and the PSCBC resolutions applicable to members of the SMS.
- 1.4 The SMS handbook, chapter 7, misconduct and incapacity, dated 1 June 2003 as provided by the Minister of the Public Service and Administration, must also be consulted.
- 1.5 Nothing in this code of procedure detracts from a member's right to utilise dispute-settlement mechanisms provided under the Labour Relations Act.

2. THE PURPOSE OF THIS CODE OF PROCEDURE

- Support constructive labour relations in the public service.
- Promote mutual respect between members and between members and the employer.
- Ensure that supervisors and members share a common understanding of misconduct and discipline.
- Promote acceptable conduct.

- Provide members and the employer with a quick and easy reference for the application of discipline.
- Avert and correct unacceptable conduct; and
- Prevent arbitrary or discriminatory actions by supervisors toward members.

3. WHICH STAFF GROUPS ARE COVERED

3.1 This section of the manual applies to members who are appointed in terms of the Public Service Act, 1994 (as amended).

3.2 In this Code and procedure, unless the context otherwise indicates, the “employer” means:

- In respect of all members (excluding heads of department in their capacity as employees), the head of department or any member of his/her department designated to perform the specific action.
- In respect of heads of departments, the relevant Executive Authority.

3.3 It does not, however, apply to members covered by a disciplinary code and procedure:

- Concluded in a sectoral council and approved by the PSCBC to ensure uniformity of procedures across the public service;
- or
- Contained in legislation or regulations.

3.4 Please note that reference to “members” hereafter refers to members of Senior Management Service (SMS).

3.5 “Fellow employees” means an employee from the same office/institution that the member charged with misconduct.

3.6 “recognised trade union” means all the unions admitted to the PSCBC as well as any other union that enjoys organisational rights from a particular department, provided that the latter union is recognised for the particular department only.

Note: For easy identification, members of SMS will be dealt with separately.

Application which is already covered in the section referring to employees will be referred to in order to only highlight the areas where different applications are applicable.

4. PRINCIPLES APPLICABLE TO THE PROCESS OF DISCIPLINING

4.1 The following principles inform the Code and Procedure and must inform any decision to discipline a member:

- (a) A disciplinary code is necessary for the efficient delivery of service and the fair treatment of members, and ensures that members
 - have a fair hearing in a formal or informal setting;
 - are timeously informed of allegations of misconduct made against them;
 - receive written reasons for a decision taken; and
 - have the right to appeal against any decision.
- (b) As far as possible, disciplinary procedures shall take place in the place of work and be understandable to all members.
- (c) If a member commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.
- (d) Disciplinary proceedings do not replace or seek to imitate court proceedings.
- (e) The Code and Procedure constitutes a framework within which departmental policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provisions of the framework.

Note: This part must also be read with the principles as stated under point No.8 of the staff below the level of SMS

5. WHAT CONSTITUTE MISCONDUCT?

- 5.1 The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, insofar as it relates to discipline, constitutes part of this Code and Procedure.
- 5.2 Member conduct that may warrant a disciplinary action is listed in Annexure A of the PSCBC resolution 1 of 2003 (see Annexure 5 to this manual). This list is not exhaustive. Management may discipline a member in respect of other conduct, if the member knew, or ought to have known, that the conduct constituted grounds for disciplinary action.
- 5.3 In applying Annexure 5, management must assess the seriousness of the alleged misconduct by considering -
- (a) the actual or potential impact of the alleged misconduct on the work of the public service, the member's component and colleagues, and the public;
 - (b) the nature of the member's work and responsibilities; and
 - (c) the circumstances in which the alleged misconduct took place.

6. PROCEDURE: DISCIPLINARY ACTIONS

6.1 Less Serious misconduct

6.1.1 Corrective counseling

In cases where the seriousness of the misconduct warrants counseling, the supervisor of the member must;

- bring the misconduct to the member's attention;
- determine the reasons for the misconduct and give the member an opportunity to respond to the allegations;

- seek to get agreement on how to remedy the conduct; and
- take steps to implement the agreed course of action.

Timeframe

- Although no specific timeframes are prescribed, one of the principles underlying the disciplinary code and procedure is that discipline must be applied in, *inter alia*, a prompt manner.
- Managers ought to endeavour to initiate the process of counselling within five (5) working days from the date on that the alleged misconduct (misconduct) is detected.

6.1.2 Verbal warnings

- In cases where the seriousness of the misconduct warrants a verbal warning, the supervisor of the member may give a verbal warning.
- The supervisor must inform the member that further misconduct may result in more serious disciplinary action, and record the warning (Annexure 6). Verbal warnings remain valid for three months.
- If during the validity of the warning, the member is subjected to disciplinary action on a same or related transgression, the warning may be taken into account in deciding an appropriate sanction.

Timeframe

- No specific timeframes are prescribed.
- Managers ought to endeavour to commence the process leading to a verbal warning within five (5) working days from the date on that the alleged misconduct is detected.

6.1.3 Written warnings

In cases where the seriousness of the misconduct warrants a written warning, the supervisor may give the member a written warning. The following provisions apply to written warnings:

- The written warning may be given in the form of Annexure 7 of this manual.
- The supervisor must give a copy of the written warning to the member, who must sign receipt of it.
- If the member refuses to sign receipt, the supervisor must hand the warning to the member in the presence of another member/employee, and sign in confirmation that the written warning was conveyed to the member.
- The written warning must be filed in the member's personal file.
- A written warning remains valid for six months.
- At the expiry of the six months, the written warning must be removed from the member's personal file and destroyed.
- If during the six-month period, the member is subject to disciplinary action on a same or related transgression, the written warning may be taken into account in deciding an appropriate sanction.
- The form at Annexure 7 provides for the employee to direct an appeal to a designated person who ought to be a manager senior to the manager dealing with the matter.
- If the appeal is successful, the written warning must be removed from the record immediately.

Timeframe

- No specific timeframes are prescribed.

- Managers ought to endeavour to commence the process leading to a written warning as soon as possible and strive to issue a written warning within five (5) working days from the date on that the misconduct is detected.

6.1.4 Final written warnings

In cases where the seriousness of the misconduct warrants a final written warning, the supervisor may give the member a final written warning. The following provisions apply to final written warnings:

NOTE: A final written warning ought to include the following:

- **A clear indication of the rule that was transgressed.**
 - **A description of the behaviour/deed/act/omission with specific reference to the what, when and where of the alleged misconduct.**
 - **The accepted norm/standard of behaviour expected of the employee.**
-
- The final written warning may be given in the form of Annexure 8 of this section.
 - The supervisor must give a copy of the final written warning to the member, who must sign receipt of it.
 - If the member refuses to sign receipt, the supervisor must hand the warning to the member in the presence of another member/employee, and sign in confirmation that the final written warning was conveyed to the member.
 - The final written warning must be filed in the member's personal file.
 - A final written warning remains valid for six months.

- At the expiry of the six months, the final written warning must be removed from the member's personal file and destroyed.
- If during the six-month period, the member is subject to disciplinary action on a same or related transgression, the final written warning may be taken into account in deciding an appropriate sanction.

Timeframe

- No specific timeframes are prescribed.
- Managers should, however, endeavour to commence the process leading to a final written warning as soon as possible and strive to issue a final written warning within five (5) working days from the date on that the misconduct is detected.

6.1.5 For less serious forms of misconduct, no further enquiry shall be held.

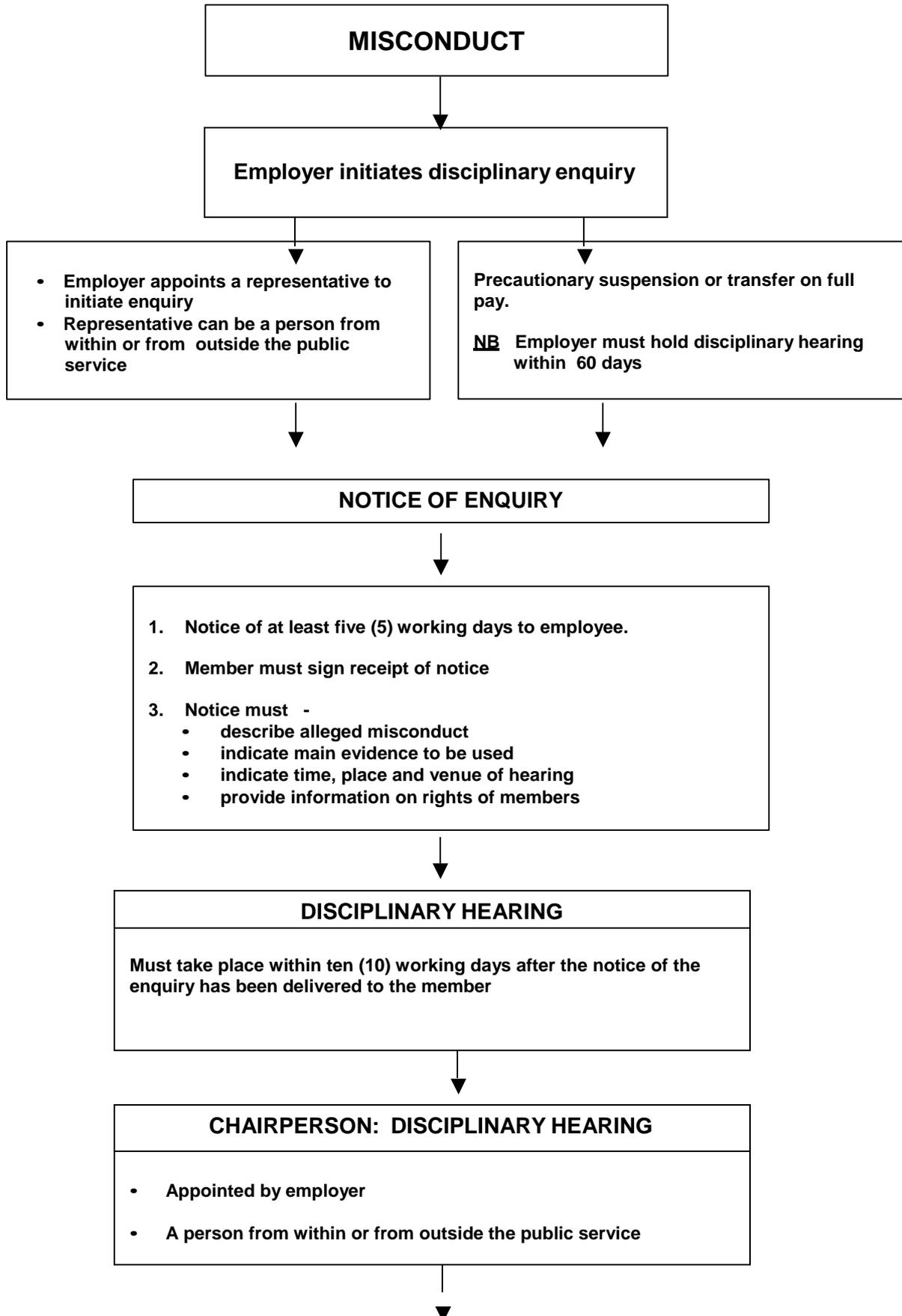
6.1.6 For the purpose of determining appropriate disciplinary actions, valid warnings for similar or related transgressions by the member shall be taken into account.

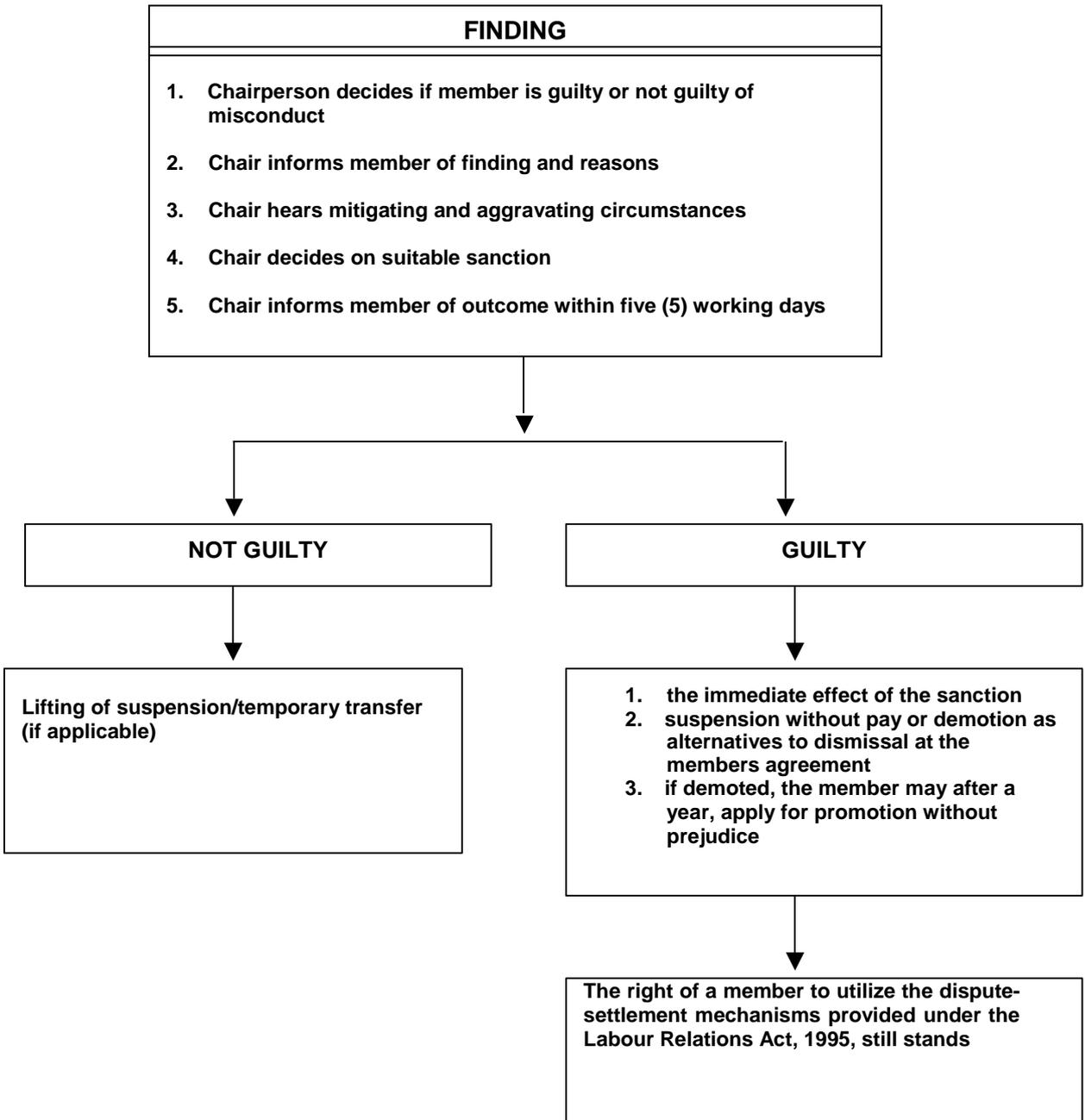
Note: The timeframes that have been indicated within that various actions ought to be dealt with should be regarded as a guideline in compliance with "Good Practice". However, if geographical or other reasonable considerations do not make it possible to follow these guidelines, the actions must still be dealt with as a priority within the shortest possible space of time.

6.2 Serious misconduct

If the alleged misconduct justifies a more serious form of disciplinary action than provided in paragraph 6.1, the employer may initiate a disciplinary enquiry. The employer must appoint a person, from within or from outside the public service, as its representative to initiate the enquiry.

SCHEMATIC EXPOSITION: MISCONDUCT PROCEDURE FOR MEMBERS OF SMS (PSCBC RESOLUTION NO 1 OF 2003)





7. INCAPACITY CODE AND PROCEDURES IN RESPECT OF POOR PERFORMANCE FOR MEMBERS

Note: This section of the manual must be read along with the procedure as setout in point number 16 of staff below the level of SMS

7.1 The objectives of this procedure

- Assist members to overcome poor performance.
- Promote efficient and effective performance.
- Avert and correct inadequate performance.
- Ensure that the employer and members share a common understanding of incapacity.
- Prevent arbitrary or discriminatory actions by the employer toward members.
- Give reasonable assistance to members who are incapable of performing in accordance with the needs of their jobs.
- Promote mutual respect between members/employees and between employers and members; and
- Support constructive labour relations in the Public Service.

7.2 Scope of application

This procedure applies to the employer and all members falling within the registered scope of the PSCBC. It does not, however, apply to the employer and members covered by an incapacity procedure:

- concluded in a sectoral council and approved by the PSCBC to ensure uniformity of procedures throughout the Public Service;
- or
- contained in any other legislation regulating employment conditions.

7.3 Codes, rules and standards

The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, insofar as it relates to incapacity, constitutes part of this procedure.

7.4 The procedure in respect of poor performance as stated in point number 16.7.2 must be consulted for members.

8. INCAPACITY CODE AND PROCEDURES IN RESPECT OF ILL HEALTH FOR MEMBERS

8.1 Procedure in respect of ill health or injury

8.1.1 If the employer is of the view that a member is not performing in accordance with the job that the member has been employed to do as a result of poor health or injury the employer must investigate the extent of the incapacity or injury.

8.1.2 In conducting this investigation the employer must give the member, and his/her representative of her/his choice, the opportunity of stating the member's case and being heard on all the issues that the employer investigates and considers. Relevant medical and other information must be considered.

8.1.3 After the investigation the employer must provide the member with a written report setting out the results of the investigation.

8.1.4 In the investigation the employer must consider whether the nature of the member's ill health or injury is of a temporary nature and the period of time that the member is likely to be absent from work.

8.1.5 In this investigation the employer must consider –

- The nature of the job.
- The likely period of absence.
- The seriousness of the illness or Injury.
- The remuneration of the member during her/his period of absence; and
- The possibility of securing a temporary replacement for the ill or injured member.

8.1.6 If the member's ill health or injury is of a permanent nature the employer must investigate the possibility of –

- Securing alternative employment for the member.
- Adapting the duties or work circumstances of the member to accommodate his/her disability; and
- Offer boarding on the grounds of ill health or injury.

8.1.7 If the investigation conducted by the employer suggests that the member's ill health is as a result of alcohol or drug abuse, the employer may:

- Counsel the member.
- Encourage the member to attend rehabilitation.
- Establish a formal rehabilitation programme which the member will be expected to follow.

or

- Terminate the employment of the member after following fair procedures, if the behaviour is repetitive.

8.1.8 If the member fails to follow the formal programme or to attend rehabilitation or to address the problem of alcohol or drug abuse, the employer must give the member or his/her representative a written report and consult again with the member.

8.1.9 After consulting with the member the employer may consider whether to terminate the employment of the member after the normal disciplinary process is concluded.

9 CONCLUSION

The general guidelines applicable to managers or supervisors mentioned at the beginning of this volume must also be broadly taken into consideration when dealing with members of SMS.

ACTS OF MISCONDUCT

A member will be guilty of misconduct if she or he, among other things (this list is not exhaustive)

1. Fails to comply with, or contravenes an Act, regulation or legal obligation.
2. Willfully or negligently mismanages the finances of the State.
3. Without permission possesses or wrongfully uses the property of the State, or that of another member/employee and/or a visitor.
4. Willfully, intentionally or negligently damages and or causes loss of state property.
5. Endangers the lives of self or others by disregarding safety rules or regulations.
6. Prejudices the administration, discipline or efficiency of a department, office or institution of the State.
7. Misuses his or her position in the public service to promote or to prejudice the interest of any political party.
8. Steals, bribes or commits fraud.
9. Accepts any compensation in cash or otherwise from a member of the public or another member/employee for performing her or his duties without written approval from the department.
10. Fails to carry out a lawful order or routine instruction without just or reasonable cause.
11. Absents or repeatedly absents herself/himself from work without reason or permission.
12. Commits an act of sexual harassment.
13. Discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.
14. Performs poorly or inadequately for reasons other than incapacity.

15. Without written approval from her or his department, performs work for compensation in a private capacity for another person or organisation either during or outside working hours.
16. Without authorisation, sleeps on duty.
17. While on duty, is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/or stupefying drug, including alcohol.
18. While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.
19. Contravenes any prescribed Code of Conduct for the public service.
20. Assaults, or attempts or threatens to assault, another member/ employee or person while on duty.
21. Incites other personnel to unprocedural and unlawful conduct.
22. Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.
23. Intimidates or victimises fellow members/employees.
24. Prevents other members/employees from belonging to any trade union or body.
25. Operates any money lending scheme for members/employees for own benefit during working hours or from the premises of the public service.
26. Carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer.
27. Refuses to obey security regulations.
28. Gives false statements or evidence in the execution of her or his duties.
29. Falsifies records or any other documentation.
30. Participates in unprocedural, unprotected and/or unlawful industrial action.
31. Commits a common law or statutory offence while on state premises.

RECORD OF A VERBAL WARNING

Date:

Full name and surname of member:
.....

PERSAL number:
.....

Rank:
.....

Institution where employed:
.....

Section where employed:
.....

Date on that warning was given:
.....

Particulars of misconduct:
.....
.....
.....

Has the member been informed previously that his/her conduct is unacceptable and that a repetition thereof may result in more serious disciplinary action?
.....
.....

Has the employer taken any corrective actions to support the member in order to prevent a repetition of the misconduct (e.g. training, counselling, etc.)?
.....
.....
.....

What was the member's response in respect of the misconduct?

.....
.....
.....
.....

The member has been informed that further misconduct could result in more serious disciplinary action being taken by the employer.

Signature of supervisor:

Capacity:

Date:

I, the undersigned member, acknowledge that I have received a verbal warning and that the matter has been explained to me.

Name of member:

Signature:

Date:

Signature of witness:

Date:

WRITTEN WARNING

[DATE]

[NAME OF MEMBER]

[PERSONAL DETAILS OF THE MEMBER]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

If you object to the warning, you may direct an appeal to [NAME] within five working days,

The nature of the misconduct is:

SIGNATURE OF MEMBER

DATE _____

SIGNATURE OF SUPERVISOR

DATE _____

SIGNATURE OF WITNESS (If applicable)

DATE _____

FINAL WRITTEN WARNING

[DATE]

[NAME OF MEMBER]

[PERSONAL DETAILS OF THE MEMBER]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

If you object to the warning, you may direct an appeal to [NAME] within five working days.

The nature of the misconduct is:

SIGNATURE OF MEMBER

DATE _____

SIGNATURE OF SUPERVISOR

DATE _____

SIGNATURE OF WITNESS (If applicable)

DATE _____