ASSESSMENT OF THE HANDLING OF DISCIPLINARY CASES IN THE PUBLIC SERVICE

FEBRUARY 2016
FOREWORD

The Public Service Commission (PSC) is charged with the constitutional responsibility to investigate, monitor and evaluate the organisation and administration and the personnel practices in the public service. As part of fulfilling this responsibility, the PSC has conducted this study to assess the handling of disciplinary cases in the public service, identify challenges faced by government departments in the management of disciplinary cases and then develop a set of recommendations in order to advise and provide guidance to departments.

Discipline management is one of the most critical aspects of labour relations in the public service. To this end, there are established legislative frameworks and disciplinary codes and procedures in the public service that govern management of discipline. These set out principles for the proper handling disciplinary cases in the workplace and are designed to encourage employers, employees and organised labour to create and uphold acceptable standards of behaviour and to ensure fair and consistent disciplinary processes.

Over the years, the PSC has been concerned about reported and alleged inconsistencies in the manner in which departments have been managing discipline. The PSC’s major concern is that the management of discipline has an impact on the performance of departments and if not properly managed, the impact will be negative. The PSC is equally mindful of the fact that the management of discipline is intricately linked with employees’ careers and livelihood, particularly when discipline is inconsistently applied or used as punishment against officials rather than the means to correct unacceptable behaviour or misconduct. It was therefore important for the PSC to conduct this study in order to determine the extent of compliance with applicable prescripts and to gain an in-depth understanding of the manner in which disciplinary cases are handled in departments, and the challenges thereof.

The study has revealed that in some departments, the management of discipline is effective, while in other departments it is fraught with challenges. It is expected that this study will assist departments in addressing the challenges identified in the report, and also serve as a platform for information sharing and dialogue.

The PSC would like to thank all Heads of Department for cooperating with the PSC, including managers, practitioners and representatives of organized labour who took time to complete the questionnaires and to participate in focus group sessions.

The PSC trusts that departments will study the report and consider the recommendations.

PUBLIC SERVICE COMMISSION
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<td>DG</td>
<td>Director-General</td>
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<td>DPSA</td>
<td>Department of Public Service and Administration</td>
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<td>DPME</td>
<td>Department of Planning, Monitoring and Evaluation</td>
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<td>Executive Authority</td>
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<td>ER</td>
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<td>Member of the Executive Council</td>
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<td>Management Performance Assessment Tool</td>
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<td>MPSA</td>
<td>Minister for Public Service and Administration</td>
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<td>OTP</td>
<td>Office of the Premier</td>
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<td>PERSAL</td>
<td>Personnel and Salary Information System</td>
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<td>Public Service Act</td>
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<td>SMS</td>
<td>Senior Management Service</td>
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<td>Special Investigative Unit</td>
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EXECUTIVE SUMMARY

1. INTRODUCTION

Discipline is an integral component of healthy employer-employee relations in the workplace. It is a fundamental requisite for effective and efficient management of organisations. Universally, discipline is accepted and regarded as the core responsibility of line managers and supervisors and disciplinary cases must be conducted within established regulatory frameworks. The purpose of discipline is to correct unacceptable behaviour rather than to punish or victimise an employee, and to ensure that an employee performs in a manner that is deemed acceptable by the organisation.

In South Africa, respective legislative interventions and guidelines were introduced for the public service to inculcate and reinforce a culture of discipline and professional ethos. These regulatory frameworks are intended to ensure that departments and management apply and implement disciplinary processes and outcomes of such disciplinary processes in a consistent, fair and transparent manner to enhance and sustain sound labour relations and peace in the workplace.

Management of discipline and handling of disciplinary cases in the public service departments is not without critical challenges, despite these comprehensive and progressive legislations, disciplinary codes and procedures, guidelines and intervention programmes. It is therefore important for the Public Service Commission (PSC) to from time to time investigate the progress made on issues of discipline management in the public service.

2. MANDATE OF THE PUBLIC SERVICE COMMISSION

In terms of sections 195 and 196(4)(b) of the Constitution of the Republic of South Africa, 1996, read in conjunction with sections 9 and 10 of the Public Service Commission Act, 1997, the PSC is mandated to promote the democratic principles and values of the public service by “investigating, monitoring and evaluating the organisation and administration and the personnel procedures in the public service.”

In addition, in terms of section 196(4)(c) and (f) of the Constitution, the PSC has a mandate to “propose measures to ensure effective and efficient performance within the public service; to investigate grievances of employees in the public service concerning official acts or omissions and to recommend appropriate remedies; and to monitor and investigate adherence to applicable procedures in the public service”. Thus, the issues dealt with in the study fall within the mandate of the PSC.
3. OBJECTIVES OF THE STUDY

The broad aim of the study was to assess the handling of disciplinary cases in the public service. The following were the specific objectives of the study:

- Assess the level of awareness of legislative frameworks and understand the manner in which disciplinary cases are handled in departments;
- Assess consistency in the application of rules governing the management of disciplinary cases and the manner in which precautionary suspensions, disciplinary sanctions and arbitration awards are handled in departments;
- Determine the perceived role of organized labour and assess the capacity of units and competencies of designated officials in the management of disciplinary cases;
- Identify challenges faced by public service departments in the management of disciplinary cases; and
- Develop a set of recommendations with the aim of improving the state of employee relations and efficiency of departments in the management of disciplinary cases.

4. METHODOLOGY

A purposive sampling procedure was applied to select participants for the study. To collect primary data a survey was conducted using a set of questionnaires designed and circulated for completion by Employee Relations (ER) managers, Senior Management Service and Middle Management Service (SMS and MMS) members and organised labour representatives in all national and provincial departments.

Focus group sessions were convened with ER managers from all national and provincial departments as an additional method of validating and enriching the findings and recommendations. The findings are presented according to the thematic areas derived from the objectives of the study.

5. LIMITATIONS OF THE STUDY

The following limitations affected this study:

- The unresponsiveness of some departments, which despite numerous extensions granted, did not result in the submission of completed questionnaires.
- The incomplete and erroneously completed questionnaires could not be included in the study.
- Many departments could not provide reliable information pertaining to the nature of disciplinary cases and precautionary suspensions reported and finalized. Where it was provided, it was at times incoherent and uninterpretable.

Notwithstanding the afore-mentioned limitations, the PSC is of the view that the quality of information collected is reasonably sufficient to provide for the findings and recommendations.
6. KEY FINDINGS

6.1 AWARENESS OF LEGISLATIVE FRAMEWORKS AND UNDERSTANDING OF THE MANNER IN WHICH DISCIPLINARY CASES ARE HANDLED

The study sought to establish the levels of awareness of public servants on the legislative frameworks governing the handling of disciplinary cases and understand the manner in which disciplinary cases are handled in departments.

The findings show that the majority of ER managers (103 out of 111), SMS and MMS members (566 out of 640) and organized labour representatives (43 out of 70) is of the view that the disciplinary codes and procedures and other prescripts relating to the management of disciplinary cases are, to a large extent, known in their departments and are applied regardless of rank, gender and affiliation as required.

However, a few ER managers (8 out of 111), SMS and MMS members (74 out of 640) and organized labour representatives (27 out of 70) indicated that they are not aware of any disciplinary codes and procedures or policies governing the management of discipline in their departments. These respondents indicated that there are no departmental disciplinary policies in place to assist in the handling of discipline in their departments.

6.2 THE APPLICATION OF RULES GOVERNING THE MANAGEMENT OF DISCIPLINARY CASES

6.2.1 Consistency in the application of disciplinary codes and procedures

The study sought to establish the application of rules governing the management of disciplinary cases. The findings indicate that most ER managers (84 out of 111) and SMS and MMS members (435 out of 640) believe that the implementation of disciplinary codes and procedures assists their departments in the handling and prompt finalisation of disciplinary cases, and is fairly and consistently applied.

However, the majority of organised labour representatives (46 out of 70) holds an opposite view and alleges that there is favouritism, management-political interference and biasness in the handling of disciplinary cases in their departments.

6.2.2 Time taken to finalise disciplinary cases

The study sought to determine the time taken to finalise disciplinary cases in departments. According to the norm in the public service, disciplinary cases are expected to be finalised within 3 months (90 days) of initiation of the disciplinary process.

The findings reveal that a substantial number of disciplinary cases is resolved within 3 months after the initiation of the disciplinary process. However, of concern is that a large number of disciplinary cases is finalised between 4 and 12 months.
The findings also show that there is a small number of cases that were finalised between 1 and 3 years. The worst case scenario is a situation where some departments have taken between 3 and 6 years or more to finalise disciplinary cases.

6.2.3 Strategies departments put in place to finalise disciplinary cases promptly

The study sought to establish strategies departments put in place to finalise disciplinary cases promptly. The findings demonstrate that in order to finalise disciplinary cases within the acceptable time frame, most departments ensure that disciplinary codes and procedures are complied with in their departments. Respective supervisors are required to investigate and handle informal or minor disciplinary enquiries in their directorates as soon as allegations of misconduct emerge, instead of referring all disciplinary issues to LR units.

In some departments, adherence to timeframes stipulated in the appointment letters of investigators, initiators and presiding officers for finalizing disciplinary cases is strictly monitored by management. Officials of such departments are of the view that implementation of these strategies will improve the finalization of disciplinary cases.

6.2.4 Consistency of disciplinary actions and sanctions

The study sought to establish whether there is consistency in the application of disciplinary actions and sanctions in departments. The findings indicate that the majority of ER managers (83 out of 111) and organised labour representatives (45 out of 70) believes that not all officials within their respective departments face similar actions and sanctions for similar misconduct.

However, most SMS and MMS members (389 out of 640) believe that all officials face similar actions and sanctions for similar misconduct, and in this regard, consistency of disciplinary actions and sanctions is ensured in their departments.

6.2.5 Implementation of sanctions and arbitration awards emanating from discipline

The study sought to establish whether sanctions and arbitration awards emanating from discipline are fully implemented in departments. The findings show that the majority of ER managers (89 out of 111), SMS and MMS members (453 out of 640) and organised labour representatives (46 of 70) thinks that disciplinary sanctions imposed by the presiding officers are implemented fully and arbitration awards issued by the councils are binding and therefore implemented.

However, a few ER managers (22 out of 111), SMS and MMS members (121 out of 640) and organised labour representatives (24 out of 70) indicated that there is sometimes lack of commitment by management to implement some disciplinary sanctions and arbitration awards, particularly if those outcomes are in favour of employees. Sixty-six (66) SMS and MMS members indicated that they were not sure.

6.2.6 Internal appeals

The study sought to establish whether departments adhere to internal appeal procedures as prescribed in their respective disciplinary codes and procedures and regulations. The findings
show that the majority of ER managers (86 out of 111) and SMS and MMS members (437 out of 640) is of the view that their departments comply with internal appeal processes.

However, organised labour representatives are split in their views, with half (35 out of 70) saying the internal appeals procedures are adhered to and others disagreeing and arguing that internal appeal procedures are not adhered to. The disagreeing organised labour representatives allege that manipulation of appeals procedures by some managers is rife in their departments and there is general lack of adherence to appeal timeframes.

6.2.7 Effectiveness of departments in the handling of disciplinary cases

The study wanted to establish the effectiveness of departments on the handling of disciplinary cases in departments. Asked to comment on this variable, the majority of ER managers (102 out of 111), SMS and MMS members (459 out of 640) and a few organised labour representatives (27 out of 70) agree that the overall handling of disciplinary cases is effective and very effective in their departments.

A minority of ER managers (9 out of 111), SMS and MMS members (181 out of 640) and the majority of organised labour representatives (43 out of 70) disagree and view the handling of disciplinary cases in their departments as ineffective, indifferent and bad. Among this group, some argued that their departments are effective only when dealing with disciplinary cases involving employees at lower levels (salary levels 2-12) and ineffective when dealing with SMS members’ cases due to the involvement of external parties and lenient treatment of SMS members.

6.3 THE PERCEIVED ROLE OF ORGANISED LABOUR

The study sought to establish the perceived role of organised labour in the management of disciplinary cases. The findings reveal that most ER managers (60 out of 111), SMS and MMS members (375 out of 640) and organised labour representatives (49 out of 70) acknowledge the constructive role played by organised labour in the handling of disciplinary cases in their departments. Such participants indicated that organised labour plays a constructive role during the disciplinary process by representing their members in meetings held with management and during hearings to ensure fairness, consistency and transparency.

However, some ER managers (50 out of 111), SMS and MMS members (265 out of 640) and organised labour representatives (21 out of 70) disagreed and indicated that at times the conduct of union representatives is unpleasant, and union representatives often try to frustrate the process in defence of their members. They allege that some organized labour representatives always protect their members irrespective of the merits of the case and do not act decisively against their members who are ill-disciplined.

6.4 CAPACITY OF UNITS AND COMPETENCIES OF DESIGNATED OFFICIALS IN THE MANAGEMENT OF DISCIPLINARY CASES

6.4.1 Capacity of units handling disciplinary cases

The study sought to establish the capacity of LR units handling disciplinary cases in departments. The study found that the majority of ER managers (70 out of 111), SMS and MMS
members (340 out of 640) and a few organized labour representatives (26 out of 70) are of the view that LR units are sufficiently capacitated to deal with disciplinary cases in their departments.

However, some ER managers (40 out of 111), SMS and MMS members (254 out of 640) and the majority of organised labour representatives (44 out of 70) think that LR units are not sufficiently capacitated. There is a recognition by some respondents that LR units are well capacitated in terms of experience and quality of employees manning these units. However, these units are often manned by a few employees, and therefore lack the numbers to handle large volumes of disciplinary cases.

6.4.2 Competencies of employees handling disciplinary cases

The findings indicate that almost all ER practitioners of departments that participated in the study have a post matric qualification and these qualifications range between an undergraduate degree and honours degree.

Relatively all ER practitioners possess labour relations or labour law related qualifications while very few ER managers and practitioners possess qualifications that are not relevant to the management of discipline in certain departments.

6.5 CHALLENGES EXPERIENCED BY PUBLIC SERVICE DEPARTMENTS IN THE MANAGEMENT OF DISCIPLINARY CASES

The study also sought to identify challenges experienced by departments in the management of disciplinary cases. The following were the key challenges highlighted by most of the departments:

6.5.1 Delays in finalising disciplinary cases

According to the norm in the public service, disciplinary cases are expected to be finalised within 3 months (90 days) of initiation of the disciplinary process. However, the findings in this study reveal that some departments take up to 12 months or more to finalise disciplinary cases. The factors contributing to the delays and the analysis in finalizing disciplinary cases are discussed in Chapter 4.

6.5.2 Improper handling of precautionary suspensions

The findings of the study reveal that there are precautionary suspensions that are imposed on some officials based on personal feuds rather than factual information directly linking them to the misconduct. The findings show that there are also precautionary suspensions that have gone beyond a period of 60 days and beyond 12 months in some departments.

This has resulted into situations where departments spend huge sums of public funds in salaries for suspended employees who are sitting at home for prolonged periods. The factors contributing to the delays and the analysis in finalizing precautionary suspensions are discussed in Chapter 4 of this study.
6.5.3 Perceived manipulation of disciplinary cases

The majority of organised labour representatives (41 out of 70) believes that disciplinary cases are manipulated by people who are not part of the disciplinary and/or appeal processes. These representatives allege that there is a culture of manipulation and interference by management, and fear.

Contrary to the views of the representatives of organised labour, the majority of ER managers (89 out of 111) and SMS and MMS members (354 of 640) is of the view that there are no disciplinary cases that are manipulated or predetermined by people who are not part of the disciplinary and/or appeal processes.

6.5.4 The negative impact of disciplinary cases on working relations

The findings of the study indicate that the majority of SMS and MMS members (304 out of 640), organised labour representatives (48 out of 70) and some ER managers (48 out of 111) believe that the manner in which disciplinary cases are handled negatively affects working relations between management, employees and trade unions.

On the other hand, the majority of ER managers (63 out of 111), a few SMS and MMS members (244 out of 640) and organised labour representatives (22 out of 70) think that the manner in which disciplinary cases are handled in their departments does not and should not affect working relations. These respondents contend that there must be trust among stakeholders and appreciation of each other’s roles and responsibilities.

6.5.5 Lack of monitoring and evaluation of disciplinary cases

The findings reveal that there are conflicting views between ER managers and organised labour representatives on the monitoring and evaluation of disciplinary cases in departments. The majority of ER managers (76 out of 111) claims that there are monitoring and evaluation mechanisms to monitor the handling disciplinary cases in their departments.

However, the majority of organised labour representatives (56 out of 70) indicated that there are no such monitoring and evaluation mechanisms in their departments. They allege that organised labour representatives are not made aware of disciplinary cases in their departments, hence they are not aware of any mechanisms used to monitor and evaluate such cases.
7. RECOMMENDATIONS

The proposed recommendations are grouped according to thematic areas derived from the objectives of the study as follows:

**Awareness of legislative frameworks and understanding of the manner in which disciplinary cases are handled**

- Crucial provisions in the disciplinary codes and procedures or policies must be provided for in small booklets and leaflets as part of the institution’s awareness strategy on discipline, and the documents must be circulated as part of reading materials and induction programme within the organisation.
- Line managers and supervisors must be conscientised that disciplinary processes and precautionary suspensions should be used to correct unacceptable behaviour and should never be considered as a form of punishment.

**The application of prescripts governing the management of disciplinary cases**

- Disciplinary codes and procedures must be regularly reviewed to ensure that they remain current and aligned with provisions of the regulatory framework of the public service.
- The PSC will engage relevant stakeholders on the provisions of the Public service Act, 1994, and regulations as they relate to the management of discipline in the public service and the powers given to the EAs with respect to their execution of HR functions including discipline management, and establish whether there is a link between what participants in this study view as manipulation of disciplinary cases by management or politicians, and those powers.
- The PSC will also consider engaging stakeholders on the provisions of the Labour Relations Act, 1995, regarding the issuing and implementation of arbitration awards. The view of respondents in this study is that there are no mechanisms to monitor the implementation of such awards, and departments implement them as they wish, or do not implement them at all.

**The perceived role of organised labour and capacity of units and competencies of designated officials in the management of disciplinary cases**

- Departments must ensure that LR units are staffed by sufficient and competent officials.
- Provincial offices must be capacitated to deal with disciplinary cases instead of escalating or referring them to the national offices. This will assist in improving the turn-around times in respect of disciplinary cases.
- Line managers and supervisors must be trained on disciplinary codes and procedures, labour relations, application of labour laws and the handling of disciplinary processes. In-depth training, not only on the obvious i.e. disciplinary codes and procedures, but also on how leadership relates to discipline management, must be prioritised.
- Line managers and supervisors are at the frontline of their directorates or branches and are expected to conduct the initial investigation of alleged misconduct. They must be encouraged to take management of discipline as a core management function and steps should be taken against those avoiding this responsibility. Such function must form part of their performance work plans, developmental and competency areas.
• The PSC will engage the DPSA on the structure and location of labour relations units in national and provincial departments with a view to addressing issues raised around the independence of these LR units from interference, incapacity and shortage of LR officials, given the workloads and staff complement of departments.

Challenges faced by public service departments in the management of disciplinary processes

• To counteract reported delays in the appointment of presiding officers and alleged irregularities in the management of precautionary suspensions, an independent institution must be tasked to preside over sensitive disciplinary and/or appeal cases to ensure that investigations or enquiries are completed in the shortest time possible, in a fair, consistent and transparent manner.
• The suggested institution will, moreover, assess and confirm before the commencement of hearings whether the grounds for disciplinary action or precautionary suspension are in line with the provisions of the disciplinary laws and if the matter is taken to court, whether the employer will succeed.

8. CONCLUSION

The findings in this study conclude that the management of disciplinary cases and implementation of sanctions and arbitration awards in most departments are not congruent with the disciplinary codes, procedures and other prescripts governing the handling of discipline in the public service. The challenges identified in this study have an adversarial effect on the application of discipline in departments. Consequently, this impedes the effectiveness and efficiency of departments in dealing with disciplinary cases.
CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

The management of disciplinary cases is a touchy subject and one of the most critical aspects of labour relations in the workplace. The purpose of employee discipline is to ensure that an employee behaves in a manner that is deemed acceptable by the organisation. It is one of the principles that are essential to effective management. A disciplined employee is one who is sincere about his work, and also has faith in the policies and procedures of an organization and fulfills the directives given to him.

The Public Service Commission's (PSC) 2013 report on roundtable discussions on the state of discipline management in the public service revealed that the objective and timeous management of disciplinary cases, abuse of precautionary suspensions and inconsistency in the application of sanctions and implementation of arbitration awards emanating from discipline management were raised as problematic. These challenges have a serious effect on the application of discipline as well as the morale of employees, which in turn affects the effectiveness and the performance of a department.

The manner in which disciplinary cases are conducted in the public service is essential for the development and maintenance of a disciplined workforce in the public service. It is important to ensure that disciplinary cases are conducted within established regulatory frameworks both in national and provincial departments. It is against this background that the PSC decided to conduct a study to investigate the management and handling of disciplinary cases in the public service.

1.2 THE MANDATE OF THE PUBLIC SERVICE COMMISSION

The PSC derives its mandate from sections 195 and 196 of the Constitution of the Republic of South Africa, 1996, read in conjunction with sections 9 and 10 of the Public Service Commission Act, 1997. Section 195 sets out the values and principles governing public administration, which should be promoted by the PSC. More importantly, in terms of section 196(4)(b) of the Constitution, 1996, the PSC, amongst others, has the responsibility to “investigate, monitor and evaluate the organisation and administration and the personnel procedures in the public service.”

Furthermore, in terms of section 196(4)(c) and (f) of the Constitution, the PSC has a mandate to propose measures to ensure effective and efficient performance within the public service; to investigate grievances of employees in the public service concerning official acts or omissions and to recommend appropriate remedies; and to monitor and investigate adherence to applicable procedures in the public service. Thus, the issues dealt with in the study fall within the mandate of the PSC.
1.3 OBJECTIVES OF THE STUDY

The PSC through this study aims to:

- Assess the level of awareness of legislative frameworks and understand the manner in which disciplinary cases are handled in departments;
- Assess consistency in the application of rules governing the management of disciplinary cases and the manner in which precautionary suspensions, disciplinary sanctions and arbitration awards are handled in departments;
- Determine the perceived role of organized labour and assess the capacity of units and competencies of designated officials in the management of disciplinary cases;
- Identify challenges faced by public service departments in the management of disciplinary cases; and
- Develop a set of recommendations with the aim of improving the state of employee relations and efficiency of departments in the management of disciplinary cases.

1.4 METHODOLOGY

The methodology adopted in the study is elaborated below:

1.4.1 Sampling of participants

A purposive sampling procedure was applied to select participants for the study. Three categories of participants were selected, namely: ER managers, SMS and MMS members and organised labour representatives from all national and provincial departments. Questionnaires were distributed to all national and provincial departments for their participation in the survey. A total of 900 questionnaires were received from national and provincial departments that participated in the study, of which 78 were spoilt due to incomplete information, incorrect questionnaires used and duplicate submission.

1.4.2 Data collection

A combination of qualitative and quantitative research methods was employed in conducting this study. This included an analysis of prescripts that are relevant to the handling of disciplinary cases in the public service, various PSC reports, and comparative analysis of disciplinary management practices in selected organisations in South Africa and other countries.

A set of self-administered questionnaires was designed and circulated for completion by ER managers, SMS and MMS members and recognized organised labour representatives from all national and provincial departments. The three questionnaires included structured statements, which respondents had to agree or disagree with, and where necessary, the respondents were requested to substantiate their responses. Findings are presented according to the thematic analysis derived from the objectives of the study.

1.4.3 Focus group sessions

Focus group sessions were convened with all ER managers from national and provincial departments to validate the preliminary findings and to solicit additional inputs. Not all departments were represented in the focus group sessions. The draft report was however
presented to all those who attended the focus group sessions and contributions in the form of additional inputs were made by participants from various departments in the group sessions and subsequently incorporated in the findings. Only the Mpumalanga province did not hold the focus group sessions.

1.4.4 Data analysis

Quantitative data was analysed using an excel database and thematic areas were used for the qualitative data. Data collected through self-administered questionnaires was combined according to the units of analysis. Additional information obtained through focus group sessions was also included in the analysis.

1.5 LIMITATIONS OF THE STUDY

In the course of data gathering and analysis, the following limitations were encountered:

- The unresponsiveness of some departments, which despite numerous extensions granted, did not result in the submission of completed questionnaires.
- The incomplete and erroneously completed questionnaires could not be included in the study.
- Many departments could not provide reliable information pertaining to the nature of disciplinary cases reported and finalized and those addressed at disciplinary hearings for the period covering 2012/13, 2013/14 and 2014/15 financial years. Where it was provided, it was at times incoherent and uninterpretable. The same applies to precautionary suspensions dealt with in the same period.
- Concerns were also raised during the focus group sessions that some respondents might have completed the questionnaires for the sake of completing and therefore did not apply their minds carefully.
- Lastly, not all national and provincial departments attended the focus group sessions convened by the PSC.

Notwithstanding the afore-mentioned limitations, the PSC is of the view that the amount and quality of information collected is reasonably sufficient to provide for the findings and recommendations.

1.6 STRUCTURE OF THE REPORT

The content of the report is structured as follows:

Chapter 2: Legislative and Regulatory Framework
Chapter 3: Literature Review and Comparative Analysis
Chapter 4: Findings and Analysis
Chapter 5: Recommendations and Conclusion
CHAPTER 2: LEGISLATIVE AND REGULATORY FRAMEWORK

2.1 INTRODUCTION

This chapter presents the legislative and regulatory framework with regard to the management of disciplinary cases in the public service. The management of discipline in the workplace forms an integral part of human resource management in any organisation. The Constitution of the Republic of South Africa, 1996, and the Labour Relations Act, 1995, require public and private institutions to ensure fair labour practices in the workplace. In the public service, the management of discipline is guided by various legislative frameworks, regulations and bargaining council agreements.

In particular, the Public Service Act, 1994, and Public Service Regulations, 2001, are applicable to employees who are appointed in terms of the Public Service Act, whereas service departments such as the Departments of Correctional Services, Defence, Education and Police have their own legislative and regulatory frameworks that govern the conditions of service of their employees, including the handling of disciplinary matters. The following sections outline the legislative frameworks concerning discipline in the public service, including service departments.

2.2 OVERVIEW

2.2.1 The Constitution of the Republic of South Africa, 1996

In terms of the Constitution, 1996, section 23(1), everyone has the right to fair labour practices in the workplace, including fair disciplinary processes. In addition, section 33 provides that (1) everyone has the right to administrative action that is lawful, reasonable and procedurally fair; (2) everyone whose rights have been adversely affected by administrative action has the right to be given written reasons; and (3) national legislation must be enacted to give effect to these rights and must: (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and (c) promote an efficient administration.

2.2.2 Public Service Act, 1994, as amended

In terms of Section 7(3)(b) of the Act a Head of Department shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations and the proper use and care of State property. According to Section 16A(1)(a) of the Public Service Act, an Executive Authority shall immediately take appropriate disciplinary steps against a head of department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder.

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2 Department of Public Service Administration, Public Service Act, 1994, as amended (Act 103 of 1994). South Africa.
Also, subsection 2 provides for a Head of Department to: (a) immediately take appropriate disciplinary steps against an employee of the department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder; (b) immediately report to the Director-General: Public Service and Administration the particulars of such non-compliance; and (c) as soon as possible report to that Director-General the particulars of the disciplinary steps taken.

In addition, Section 17(2)(d) states that an employee of a department, other than a member of the services, an educator or a member of the Intelligence Services, may be dismissed on account of misconduct. However, this provision may only be invoked after applicable and fair labour processes have been followed by the employer.

### 2.2.3 Labour Relations Act, 1995, as amended

Section 185(a) and (b) of the Labour Relations Act stipulates that every employee has the right not to be unfairly dismissed and subjected to unfair labour practice. Schedule 8: Code of Good Practice of the Labour Relations Act deals with some of the key aspects of dismissals for reasons related to conduct and capacity. This schedule is not intended as a substitute for disciplinary codes and procedures where these are the subject of collective agreements.

Schedule 8 emphasizes substantive and procedural fairness. Substantive fairness refers to plausible and impartial reasonableness for instituting disciplinary action, consistent or in compliance with the department's code and procedure, policies as well as other relevant labour legislations, while procedural fairness refers to the correct processes that need to be followed, step-by-step, to ensure that the employee’s rights are not violated during a disciplinary process.

In terms of section 143(4) of the Act, if a party fails to comply with an arbitration award that order the performance of an act, other than the payment of an amount of money, any other party to the award may enforce it by way of contempt proceedings instituted in the Labour Court. This entails that when the employer fails to implement the award set out by the Commissioner appointed to resolve dispute through arbitration, the other party may approach the Labour Court for recourse.

### 2.2.4 South African Police Service Act, 1995, as amended

In terms of Chapter 8 of the Act, Section 24(1), the Minister of Police may make regulations regarding the training, conduct and conditions of service of members; and the management of labour relations, including matters regarding suspension, dismissal and grievances. The Minister may also make regulations regarding the institution and conduct of disciplinary proceedings or inquiries; conduct by members that will constitute misconduct; attendance by a member or any witness, of such disciplinary proceedings or inquiries;

The Minister may also make determinations regarding the circumstances under which such disciplinary proceedings or inquiries may be conducted or proceeded with in the absence of the

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member accused of misconduct or affected by such an inquiry; hearing and submission of
evidence at such disciplinary proceedings or inquiries; competent findings and sanctions in
respect of such disciplinary proceedings or inquiries; and review and appeal in respect of such
disciplinary proceedings or inquiries.

Section 43(1)(2) of the Act prescribes that a member who is in detention or is serving a term of
imprisonment shall be deemed to be suspended from the Service and will therefore not be
entitled for the applicable period to any salary, wages, allowances, privileges or benefits to
which he or she would otherwise be entitled as a member.

2.2.5 White Paper on Human Resource Management in the Public Service, 1997

Section 5.11 of the White Paper prescribes that in order to manage conduct, all employees are
required to comply with the law, and abide by the Code of Conduct for public servants. Failure to
do so constitutes a breach of discipline for which an employee can be ‘penalised’. Furthermore
and cognisant of the nature of breach of conduct, procedures for dealing with the breach of
conduct should be swift, fair, equitable and effective and the following principles should be
observed:

- the breach of conduct should be objectively substantiated;
- the employee should be informed of the charges against him or her, and be given
  adequate opportunity to respond; and
- action as a result of misconduct should be appropriate and implemented swiftly.

The White Paper sets out the basic tenets for managing discipline in the public service. These
principles cannot be achieved overnight. A number of existing human resource practices will
need to be properly implemented and monitored and, in certain instances, collective agreements
will need to be revisited and revised.

2.2.6 Employment of Educators Act, 1998

Section 17(1) of the Act prescribes that an educator shall be guilty of misconduct if the educator
(a) contravenes or fails to comply with a provision of this Act or any law relating to education;
and (b) performs or causes or permits to be performed, or connives at any act which is
prejudicial to the administration, discipline or efficiency of any department of education,
departmental office or educational institution. In addition, if it is alleged that an educator
committed a misconduct contemplated in subsection (1), the employer must institute disciplinary
proceedings in accordance with the disciplinary code and procedures provided for in Schedule 2
of the Act.

In terms of Section 18(1), misconduct refers to a breakdown in the employment relationship and
an educator commits misconduct if he or she fails to comply with or contravenes this Act or any
other statute, regulation or legal obligation relating to education and the employment
relationship. It also prescribes that “an investigation will be conducted whenever an educator is
accused of misconduct”. If it is alleged that an educator committed misconduct as contemplated
in subsection (1), the employer must institute disciplinary proceedings in accordance with the
disciplinary code and procedures contained in Schedule 2, and if after having followed the
procedures contemplated in subsection (2), a finding is made that the educator committed
misconduct as contemplated in subsection (1), the employer may impose sanctions in accordance with the disciplinary code and procedures contained in Schedule 2.

2.2.7 Military Discipline Supplementary Measures Act, 1999

The objects of this Act\(^5\) are to (a) provide for the continued proper administration of military justice and the maintenance of discipline; (b) create military courts in order to maintain military discipline; and (c) ensure a fair military trial and an accused’s access to the High Court of South Africa and applies to all members of the permanent force subject to the Military Discipline Code\(^6\) referred to in Section 104(1) of the Defence Act, 1957\(^7\).

In terms of Section 62 and subject to Section 64 of the same Code, a convening authority may, in such manner and under such conditions and for such offences as may be prescribed, try summarily any officer below field rank or any warrant officer subject to this Code who is under the command of that convening authority, and may on conviction sentence the offender to a fine or to such lesser penalty as may be prescribed.

In terms of Section 63 and subject to Section 64 of the same Code, a military court chaired by a commanding officer may conduct a disciplinary hearing of any person other than an officer or a warrant officer subject to the Code, for any military disciplinary offence and may on conviction sentence the offender to any punishment referred to in item 63(1)(a) and (b) of the Code.

2.2.8 Public Service Regulations, 2001, as amended

Regulation 2/A/A.1 and A.2 provides for the recognition of the Code of Conduct for the public service in order to give practical effect to the relevant constitutional provisions relating to the public service and all employees are expected to comply with the Code of Conduct provided for in this Chapter; and to guide employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others.

Regulation 2/B/B.3 further outlines that the primary purpose of the Code of Conduct is a positive one, i.e. to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct, and may be dealt with in accordance with the relevant collective agreement if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

Although the Code of Conduct was drafted to be as comprehensive as possible, it does not provide a detailed standard of conduct. Heads of Department may therefore, after the matter has been consulted in the appropriate Chamber of the Public Service Bargaining Council, and without derogating from it, supplement the Code of Conduct provided for in this Chapter in order to provide for their unique circumstances.

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\(^6\) Military Discipline Code, Schedule 1. South Africa.

\(^7\) Defence Act, 2002. South Africa.
2.2.9 Disciplinary Code and Procedures in the Public Service, PSCBC Resolution 1 of 2003

The Disciplinary Code and Procedures for the public service is a collective agreement agreed upon at the Public Service Co-ordinating Bargaining Council (PSCBC) in order to ensure that disciplinary cases are handled in a uniform, fair and transparent manner in the public service. The agreement applies to the employer and employees who are employed by the State and who fall within the registered scope of the PSCBC.

The purpose of the Code and Procedures is to support constructive labour relations in the public service; promote mutual respect between employees and between employees and employer; ensure that managers and employees share a common understanding of misconduct and discipline; promote acceptable conduct; and prevent arbitrary or discriminatory actions by managers toward employees.

In addition, item 7.2 of the Disciplinary Code and Procedures provides for an employer to suspend an employee on full pay or transfer an employee, as a precautionary measure, under the following circumstances: if the employee is alleged to have committed a serious offence; if 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 or safety of any person or state property. Precautionary suspension, in terms of the Code, does not constitute a judgment, and must be on full pay.

2.2.10 SMS Handbook, 2003

Chapter 7, Section 1(1.1) of the SMS Handbook outlines the procedure that must be applied in cases of misconduct, incapacity due to poor performance and incapacity due to ill health of members of the Senior Management Service (SMS). As regards misconduct, PSCBC Resolution 1 of 2003 envisages the issuing of a directive by the Minister for Public Service and Administration to cover the disciplinary matters of members of the SMS. The procedure for misconduct incorporates those provisions of PSCBC Resolution 1 of 2003, which were considered appropriate and practicable in respect of members of the SMS.

Further, according to Section 2 (2.1)(1), the purpose of the Code and Procedure for SMS members is to 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.

2.2.11 South African Police Service Discipline Regulations, SSSBC Collective Agreement of 2006

Based on the agreement reached between the employer and all the unions admitted to the Safety and Security Sectoral Bargaining Council (SSSBC), the South African Police Service
Discipline Regulations\textsuperscript{8} apply to the employer and all employees falling within the registered scope of the said Council. These Regulations also apply to members of the Senior Management Service of the South African Police Service, excluding the National Commissioner and Provincial Commissioners.

The purpose of these Regulations is to (a) support constructive labour relations in the Service; (b) promote mutual respect between employees and between employees and the employer; (c) ensure that supervisors and employees share a common understanding of misconduct and discipline, to (i) promote acceptable conduct in terms of the provisions of these Regulations; and (ii) provide a user friendly framework in the application of discipline.

In terms of subsection 10.3 of the Regulations, the employer may after having afforded an employee a reasonable opportunity to make written representations and after consideration of the representations, suspend with full remuneration an employee as a precautionary measure on conditions, as may be determined.

\textbf{2.2.12 Disciplinary Code and Procedures for the Department of Correctional Services, GPSSBC Resolution 1 of 2006}

This collective agreement was ratified at the General Public Service Sectoral Bargaining Council (GPSSBC) to accordingly amend the regulations on the Disciplinary Code and Procedure\textsuperscript{9} issued under the Correctional Services Act 111 of 1998, in order to ensure a more effective Disciplinary Code and Procedure consistent with the PSCBC Resolution 1 of 2003. It binds the employer and employees of the Department of Correctional Services who are members of the trade union parties to this agreement and employees of the Department who are not members of any trade union.

The purpose of this Code and Procedures is to promote constructive labour relations in the DCS; to promote mutual respect among employees and between employees and employer; to ensure that managers and employees share a common understanding of misconduct and discipline; to promote acceptable conduct; to provide employees and the employer with a quick and easy reference for the application of discipline; to avert and correct unacceptable conduct; to prevent arbitrary or discriminatory actions by managers toward employees; and to act in a preventative, progressive manner with the aim to correct unacceptable behaviour.

\textbf{2.2.13 Public Administration Management Act, 2014}

The Act\textsuperscript{10} was ratified by the President of the Republic on 22 December 2014 and its commencement will be effective on the date still to be proclaimed. Chapter 6 of the Act provides for the establishment of the Public Administration Ethics, Integrity and Disciplinary Technical

\textsuperscript{8} SSSBC Collective Agreement, South African Police Service Discipline Regulations 2006. South Africa
\textsuperscript{9} GPSSBC Resolution 1 of 2006, Disciplinary Code and Procedure for the Department of Correctional Services, Department of Public Service and Administration. South Africa.
\textsuperscript{10} Department of Public Service and Administration, Public Administration Management Act, 2014. South Africa.
Assistance Unit. This unit is the responsibility of and will be located within the Department of Public service and Administration.

Its functions will be, amongst others, to (a) provide technical assistance and support to institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct in the public administration; (b) develop the norms and standards on integrity, ethics, conduct and discipline in the public administration; (c) build capacity within institutions to initiate and institute disciplinary proceedings into misconduct; and (d) strengthen government oversight of ethics, integrity and discipline, and where necessary, in cases where systemic weaknesses are identified, to intervene.

It is expected that once this unit is in operation, it will intervene and assist greatly in the administration and management of serious disciplinary cases such as those relating to corruption and financial misconduct that are reported to it by departments. It is therefore hoped that departments will collaborate fully with the unit, and will report misconduct cases as soon as they emerge and provide the necessary information for the speedy finalization of those cases.

2.3 CONCLUSION

The disciplinary codes and procedures as well as other relevant labour legislative frameworks outline clear and comprehensive processes for the effective management of disciplinary cases in the public service. It would therefore be expected that public service departments and management apply and implement the disciplinary process or action in a consistent, fair and transparent manner to enhance and sustain sound labour relations and peace.

The common denominator in these frameworks is that discipline management must aim to avert unacceptable behaviour and promote acceptable conduct in a fair and consistent manner. The objective is to encourage and maintain sound labour relations in the workplace which contribute to effective and efficient service delivery. Gateere (2008)\(^{11}\) agrees that discipline management should be considered not only from the perspective of imposing a punishment against the employee or deterring other employees from committing similar misconducts but also from the perspective of moulding and developing a positive work attitude in the employee.

CHAPTER 3: LITERATURE REVIEW AND COMPARATIVE ANALYSIS

3.1 INTRODUCTION

The chapter provides an overview of literature relevant to the management of disciplinary cases in the public service, local government, state and privately owned enterprises. The lessons gleaned from the literature analysis will be used to illuminate the findings of the study. The chapter also presents a comparison of prescripts on the management of disciplinary cases in South African institutions and other countries. The rationale is to identify similarities and/or differences between various laws in order to determine the effects of the similarities or differences on the handling of disciplinary cases between the public service in the South African context and other institutions.

The term discipline is frequently used in different fields of study such as academic, professional, practices and society, as an instrument to align behaviour or acts and attitudes that may be deemed disruptive or harmful for human wellbeing or social relations. In the work environment context, the term discipline can be defined as the action taken by management against any employee or group of employees in order to correct unacceptable behaviour or performance or to effect compliance with the values and principles, rules, procedures and process, condition of employment or legislative requirements and discourage potential wrongdoers (Bendix, 2010; Grogan, 2009; Grossett, 1999; Simon, 2010). Bendix (2010) and Venter and Levy (2011) argue that for discipline to be effective and realize its desired outcome, it needs to be substantially and procedurally fair.

3.2 THE USE OF DISCIPLINE

People enter the public service with their own set of views, abilities, attitudes and values and they are expected to acclimatize to and uphold the institutional vision, mission, values and principles of the new environment to achieve organisational goals and objectives. These terms of reference, if not well regulated, can be a source of conflict and may affect the effectiveness and efficiency of departments (Robbins, Odendaal & Roodt, 2003; Knight & Ukpere, 2014). Discipline is a fundamental barometer for the existence of every institution or organisation including the government departments entrusted with the mandate to render quality service delivery.

In order to minimize conflict, disciplinary action or punishment should be used by the employer to maintain workplace peace and relations. It is noteworthy that discipline should be utilised to correct or attempt to improve behaviour to yield desired results. It should never be considered as a form of punishment and should always be considered as a last resort, because if excessively applied, it may be counterproductive. According to Bendix (2010) and Grogan (2009), disciplinary actions and procedures should be used as a corrective measure in organisations to correct behaviour or a current work standard to more appropriate levels, but not to punish the employee. Daniel (2006) and Robbins, et al. (2003), further assert that punishment, if unreasonably or unfairly applied, has the potential of creating fear and exclusion, emotional or mental pain, anger, humiliation and hostility in the work environment.

This suggests that discipline is best addressed by providing good management and leadership and managers or supervisors should be prudent, fair and consistent without fear, favour or prejudice when effecting disciplinary action on the employee, as the action often carries many consequences with it. Universally, discipline is an inherent responsibility of any Head of Department or manager or supervisor or foreman, and should be used to inspire subordinates and ensure that both substantial and procedural fairness are adhered to during disciplinary processes, thus minimizing the frequency of misconduct. It serves no purpose if managers or supervisors are familiar with the agreed rules, codes, procedures and practices but there are no consequences or consequences are inconsistent as this could be attributed to incompetence of managers or supervisors (McGregor & Budeli, 2010).

It is generally accepted that disciplined employees are likely to behave themselves in accordance with the accepted values and principles, rules, code and procedure and process towards the attainment of a government’s objectives. According to Simon (2014), undisciplined employees are a liability to departments, hence the need to implement disciplinary processes and procedures thoroughly and consistently.

### 3.3 DISCIPLINARY CODES AND PROCEDURES

Disciplinary codes and procedures are important aspects of discipline management in the public service to ensure that employees are aware of which action or conduct is acceptable or not acceptable and to uphold objectivity, fairness and consistency in the application of disciplinary processes and actions and implementation of outcomes.

Many scholars (Armstrong & Stephens, 2006; Finnemore, 2006; Rao, 2009; Knight & Ukpere, 2014), contend that disciplinary codes and procedures or policies must be in writing as part of the institution’s formal documents. Employees should be aware of and must have

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access to these formal documents as part of standard reading materials within the organisation. Management must display a copy of the disciplinary codes and policies on notice boards in each department so employees can browse through these at a time convenient for them during their normal working hours. Bendix (2010) further states that trade unions should be consulted by management when disciplinary codes are established and formalised within the organisation. Representatives of trade unions are also part of bargaining councils where codes and procedures are formally discussed and agreed by the parties and incorporated into the conditions of service of employees.

Paragraph 7.4 of PSCBC Resolution 1 of 2003 provides for disciplinary sanctions which include counselling, oral warning, written warnings, a final written warning, suspension without pay for no longer than three months, demotions, a combination of the above, or dismissal. In the workplace context some of these sanctions are applicable to minor or moderate offences like lateness, unexcused absence or leaving the workplace without permission. More serious offences are theft, bribery and fraud, malicious damage to property, assault, possession of alcohol or drugs and refusal to obey legitimate instructions (Finnemore, 2006, p222). Gennard and Judge (2005, p27323), further contend that a disciplinary procedure should be set out as follows: an oral warning, followed by a written warning if the required improvement is not forthcoming, followed by a final written warning if conduct or performance is still unsatisfactory, and finally, dismissal. In terms of the disciplinary code and Labour Relations Act, 1995, when a minor offence is committed for the first time, counseling or an oral reprimand may be given to an employee. If this behaviour occurs again, a written warning may be issued. Where this behaviour carries forward on a continuous basis, a final written warning is given, followed by a dismissal. In more serious offences, there may be a requirement for a first penalty of an instant final written warning.

The question is, who is in the forefront to know or be aware about misconduct committed and be involved in disciplinary matters? The answer is straightforward, the line manager or supervisor and not the labour relations directorate or sub-directorate. Generally, line managers or supervisors are expected to conduct the initial investigation of the facts surrounding the alleged employee’s discipline. According to Holley, Jennings and Walters (2008, p52524), “it is usually the line manager or supervisor who conducts the initial investigation to establish facts and recommends disciplinary action or has the authority to take disciplinary action against an employee”.

In accordance with the principle of good faith, the line manager or supervisor initiates the first step and if an employee is not satisfied with such decision, he/she may then approach the labour relations directorate to review the line manager’s or supervisor’s decision before the disciplinary hearing is instituted and action is taken. If these steps were followed, the problematic state most public service departments find themselves in with when dispensing discipline, would not happen. Effective discipline management depends on the effectiveness of

disciplinary processes that are capable of serving and protecting the interests of all parties in a fair and consistent manner.

With regard to the effectiveness of the disciplinary process and action, Lewis, Thornhill and Saunders (2003, p283) note that disciplinary action should be explored or is necessary where it is an action instigated by management against an employee who fails to meet reasonable and legitimate expectations in terms of performance, conduct and adherence to rules in a number of occasions. The same view is shared by Bendix (2010) and Grogan (2009) who state that disciplinary action must be the last resort. Additionally, the South African Constitution and other relevant prescripts hallmark objectivity, fairness, consistency and transparency, with which measures will be undertaken regardless of age, gender, position, seniority or any other criteria similar to these, in order to sustain trust, peace, morale and positive relations which have been built between the employer and employees. According to the Labour Relations Act, 1995 as amended, supported by other related labour legislations, the employer is guilty of unfair labour practice if it acts substantively and procedurally unfairly when imposing a disciplinary action.

3.4 THE IMPLICATIONS OF INCONSISTENT AND UNFAIR DISCIPLINARY ACTIONS ON AN ORGANISATION

The disciplinary codes and procedures are there to protect employees from unfair and unreasonable treatment, therefore, line managers or supervisors must accept that discipline management is their responsibility. However, it has been observed by scholars such as Cole (2008), Stephens (2011) and Knight and Ukpere (2014) that leaders in government departments do not apply discipline consistently, they disobey organizational disciplinary codes, policies and procedures, and use disciplinary action for their own stereotypes or ulterior motives.

The undesirable practices of leadership create an unhealthy work environment that leads to low employees’ morale and generally dissatisfied and demotivated workforce because of the perceived lack of ‘organisational justice’ in dealing with disciplinary cases. According to Knight & Ukpere (2014, p593), these managers or leaders blatantly abuse their power, and seek to punish individuals they dislike and attempt to push them out of the organisation. When the unfairly treated individuals lodge unfair dismissal claims against the organisation, the time used and costs incurred by the individuals and institution alike can be huge.

3.5 DISCIPLINE MANAGEMENT IN THE REPUBLIC OF KENYA

In terms of section 38 of the Constitution of the Republic of Kenya, 1963, the Public Service Commission (PSC) of Kenya is charged with the constitutional responsibility of exercising disciplinary control in the public service. Section 13 empowers the PSC of Kenya to make regulations including those that govern disciplinary procedures. In line with these powers, the PSC of Kenya developed the Disciplinary Manual in 2008, as a guide for the management of disciplinary cases in the public service.

The objectives of the Disciplinary Manual are, according to section 4 of the Constitution of Kenya, to define discipline and understand its meaning; create understanding of the roles and responsibilities of the authorized officers (supervisors) and the PSC on disciplinary cases; and internalize and outline the steps in disciplinary procedures and processes within the context of the Public Service Commission Regulations of Kenya 2005.27

Whereas the PSC of Kenya has the constitutional responsibility to develop regulations that govern disciplinary processes; issue guidelines on discipline management and monitor the implementation thereof; preside over certain disciplinary cases and decide on sanctions and appeals; and decide on interdictions (precautionary suspensions), it is not the case with the PSC of the Republic of South Africa.

In terms of section 5(b) and 6 of the Disciplinary Manual, the PSC of Kenya has delegated some disciplinary powers to the authorized officers in departments to manage discipline and the authorities in those departments to decide on sanctions. However if an employee who has been subjected to discipline is not satisfied with the outcome, such an employee has a right to appeal that decision to the Commission.

Subjectivity in the handling of disciplinary cases and dispensing of sanctions has been raised as a serious problem facing the public service in South Africa. This subjectivity is largely attributed to personal predispositions, misuse of power and political pressures associated with officials handling discipline within departments. It can therefore be deduced that vesting authority over appeals in an independent structure such as the PSC of Kenya is an attempt to ensure that issues of subjectivity that are usually aligned with the management of discipline within departments are averted.

3.6 DISCIPLINE MANAGEMENT IN THE UNITED KINGDOM

The Statutory Code of Practice28 on discipline and grievance procedures is set out under Section 199 of the Trade Union and Labour Relations Act, 1992 and came into effect by order of the Secretary of State in 2015. The code of practice provides basic practical guidance to the employer, employees and their representatives and sets out principles for handling disciplinary and grievance cases in the workplace. The code further sets out the basic requirements of fairness that will be applicable in most cases and is intended to provide the standard of reasonable behaviour in most cases.

Section 2 asserts that fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used. Section 4 also provides that whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly, and the following number of elements must be observed:

28 Code of Practice on Discipline and Grievance procedures, 2015. The United Kingdom.
Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

Employers and employees should act consistently.

Employers should carry out any necessary investigations, to establish the facts of the case.

Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.

The code of practice is, as it is with the disciplinary codes and procedures for the public service in South Africa, aimed at assisting employers to deal with disciplinary issues fairly and consistently. However, the code of practice allows for the same misconduct cases, where practicable, to be investigated and carried out by different people and tribunals. In the South African context, one investigator and tribunal gets assigned to carry out investigations and hearings. Overall, the UK's Code of Practice holds the same principles as the disciplinary codes and procedures for the South African public service.

3.7 DISCIPLINARY CODE AND PROCEDURES AT ESKOM HOLDINGS SOUTH AFRICA

The Disciplinary Code\textsuperscript{29} and Procedures\textsuperscript{30} at Eskom are two separate agreements that were negotiated and agreed upon at the Eskom Bargaining Council and authorized for implementation in 2011, respectively. The disciplinary procedures outline the process to be followed or utilized in the event of alleged misconduct as provided for in the disciplinary code. The purpose is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

Item 2.1.1 of the disciplinary procedures emphasizes that discipline will, on the whole, be applied progressively with due regard to the nature and seriousness of infringements, but will not preclude dismissal for first infringement. It is also clearly stated that it is the responsibility of management to institute discipline in a lawful and equitable manner. It is also emphasized that the disciplinary code and procedures falls under the responsibility of Corporate Industrial Relations and Stakeholder Relations (collectively known as Employee Relations)\textsuperscript{30}.

The same principles applied in discipline management at Eskom also apply in the public service, to ensure that discipline is instituted in a lawful and equitable manner. However, the use of the term ‘equitable’ instead of ‘fairly, equally or consistently’ is interesting, since it suggests that while it is possible to achieve equity in the application of discipline at Eskom, it is not possible to achieve total ‘fairness, evenness or consistency’.

While item 2.1.2 provides that employees who participated in unprotected industrial action must be dealt with in terms of the provisions of the Labour Relations Act, 1995, the disciplinary code

\textsuperscript{29} Disciplinary Code, Eskom, 2011. South Africa
\textsuperscript{30} Disciplinary Procedures, Eskom, 2011. South Africa.
and procedures for the public service classify the participation of employees in unprocedural, unprotected and/or unlawful action as a misconduct to be dealt with in terms of its provisions.

3.8 DISCIPLINARY PROCEDURES AND CODE AT THE SOUTH AFRICAN LOCAL GOVERNMENT

The Disciplinary Procedures and Code\textsuperscript{31} applicable to local government employees was signed by the parties under the auspices of the South Africa Local Government Bargaining Council (SALGA) in 2010. As a product of collective bargaining, the application of this agreement is deemed to be a condition of service, as it is in the public service.

According to subsection 4.1, the purpose of the disciplinary code and procedures is to establish a fair, common and uniform procedure for the management of employee discipline. Subsection 5.3 points out that the maintenance of discipline is the responsibility of management and falls within the control of any supervisory position.

The aforementioned principles also apply in the public service. For instance managing discipline is, according to subsection 2.3 of the disciplinary code and procedures for the public service, a management function. It is clear therefore that managers are custodians and should be at the forefront of discipline management in their organisations, and must execute this function without fear, favour or prejudice where cases of ill-discipline occur.

In terms of item 5.6 of the disciplinary procedures and code at local government, disciplinary procedures and code must be published and issued to all employees so that they are made aware of the standard of conduct in the workplace. The requirement is the same for the public servants in respect of the code of conduct, but it is not clearly provided for in the disciplinary code and procedures for the public service.

3.9 DISCIPLINARY CODES AND PROCEDURES AT TRANSNET SOUTH AFRICA LIMITED

There is one Disciplinary Code and Procedures\textsuperscript{32} for all employees that fall within the management function and one for employees that are regarded as the bargaining unit employees. The former was authorized by the Transnet Executive Committee in 2006, while the Disciplinary Code and Procedures\textsuperscript{33} for the bargaining unit employees was negotiated and agreed by parties represented at the organization’s bargaining council in 2011. These disciplinary codes and procedures form part of employees’ terms and conditions of employment.

The common purpose of both disciplinary codes and procedures at Transnet is to promote efficient, constructive, orderly and safe conduct at work; initiate corrective action where an employee’s performance and/or conduct is unacceptable to Transnet; maintain good employment relations within Transnet and encourage employees to adhere to the appropriate standards of conduct required of them by providing for progressive and corrective action.

\textsuperscript{32} Disciplinary Code and Procedures, Management Category, Transnet. 2007. South Africa.
\textsuperscript{33} Disciplinary Code and Procedures for Bargaining Unit Employees, Transnet. 2007. South Africa.
terms of the above-mentioned codes and procedures, the enforcement of discipline and disciplinary action is a management function and responsibility and wherever possible, will be taken at the lowest possible levels of management.

The foregoing elements are also applicable in the management of discipline in the public service. The disciplinary codes and procedures for the public service share the same elements such as the promotion of constructive labour relations, mutual respect between the employer and employee, acceptable conduct etc. However, while an official from human resources is provided for in the disciplinary code and procedures for bargaining unit employees to attend the disciplinary hearing to advise the presiding officer on procedural matters relating to the proceedings and sanctions in order to ensure consistency, it is not provided for in the disciplinary codes and procedures for the public service.

At Transnet, an employee who falls within the management category who is dismissed cannot appeal the decision of the presiding officer internally, but can lodge an appeal to the CCMA or the bargaining council with jurisdiction over the dispute. However, an employee who fall within the bargaining unit who is dismissed can appeal the decision of the presiding officer to the Transnet Bargaining Council. Similarly, public servants who are regarded as senior management are not permitted to appeal disciplinary sanctions with their EAs, but can lodge a dispute with the relevant council outside of the department. However, those who fall below senior management level are allowed to lodge appeals internally with their EAs.

3.10 CONCLUSION

The use of discipline and proper application of disciplinary codes and procedures can foster appropriate behaviour in the workplace. Discipline in the workplace is used for various reasons, chief among them being to identify wrong behaviour that runs afoul of the organisation’s policies and rules. Once wrong behaviour is identified, management must use available disciplinary codes and procedures to remove it from the workplace.

If used positively, discipline can also foster good working relations among fellow employees and between the employees and management. If it is used negatively, perceptions of inconsistency, bias and witch-hunt can be created. These interpretations, if not dealt with swiftly, may destabilise working relations. The aforesaid prescripts emphasise similar principles such as consistency, substantive and procedural fairness and transparency in the handling of disciplinary cases and further emphasize discipline management as a management function and responsibility. The prescripts, policies and procedures from various institutions share common purpose, that is, to correct unacceptable behaviour and performance.

A fair and just disciplinary process is based on rules and regulations, a system of progressive and formal discipline and an appeals process. Without these elements, disciplinary action can never be considered just and consistent. This entails that a set of clear disciplinary codes and procedures must be developed to inform employees ahead of time as to what is and is not acceptable behaviour. However, merely outlining workplace policies and disciplinary codes and procedures is not enough; management must disseminate the codes and procedures including collective agreements and consistently discipline employees who fail to adhere to them.
CHAPTER 4: PRESENTATION AND ANALYSIS OF FINDINGS

4.1 INTRODUCTION

This chapter presents the key findings of the study. The findings are presented according to the thematic areas derived from the objectives of study. It focuses on the views of ER managers, SMS and MMS members, and organised labour representatives on the handling of disciplinary cases in the public service. It also contains views and additional inputs from labour relations officials who participated in the focus group sessions that were convened to validate the preliminary findings across the public service.

4.2 OVERVIEW OF COMPLETED QUESTIONNAIRES

Three sets of questionnaires were distributed to national and provincial departments for completion by ER managers, SMS and MMS members and organised labour representatives. Table 1 below provides an overview of completed questionnaires from national and provincial departments.

Table 1: Overview of completed questionnaires

<table>
<thead>
<tr>
<th>National / Provinces</th>
<th>Number of Questionnaires Analysed</th>
<th>Total Analysed</th>
<th>Expected</th>
<th>Received</th>
<th>Spoilt</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Employee Relations Managers</td>
<td>SMS and MMS Members</td>
<td>Organized Labour Representatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National</td>
<td>28</td>
<td>242</td>
<td>16</td>
<td>286</td>
<td>670</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>12</td>
<td>63</td>
<td>9</td>
<td>84</td>
<td>104</td>
</tr>
<tr>
<td>Free State</td>
<td>10</td>
<td>39</td>
<td>17</td>
<td>66</td>
<td>96</td>
</tr>
<tr>
<td>Gauteng</td>
<td>13</td>
<td>24</td>
<td>5</td>
<td>42</td>
<td>112</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>5</td>
<td>55</td>
<td>4</td>
<td>64</td>
<td>112</td>
</tr>
<tr>
<td>Limpopo</td>
<td>10</td>
<td>78</td>
<td>2</td>
<td>90</td>
<td>96</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>8</td>
<td>57</td>
<td>1</td>
<td>66</td>
<td>96</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>10</td>
<td>34</td>
<td>4</td>
<td>48</td>
<td>96</td>
</tr>
<tr>
<td>North West</td>
<td>11</td>
<td>34</td>
<td>7</td>
<td>52</td>
<td>96</td>
</tr>
<tr>
<td>Western Cape</td>
<td>4</td>
<td>14</td>
<td>5</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>TOTAL</td>
<td>111</td>
<td>640</td>
<td>70</td>
<td>821</td>
<td>1502</td>
</tr>
</tbody>
</table>

As reflected in Table 1 above, a total of 111 questionnaires from ER managers, 640 from SMS and MMS members and 70 from organised labour representatives were captured and analysed.

At national level, all departments were expected to participate in the study and at least between 10 and 20 completed questionnaires were expected from each department, depending on the size of the department. Only Departments of Small Business Development and Telecommunications & Postal Services were excluded from the study because they are newly formed. Table 2 below shows the extent to which the national departments participated in the survey.
### Table 2: Responses from national departments

<table>
<thead>
<tr>
<th>No.</th>
<th>Departments</th>
<th>Number of questionnaires returned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Agriculture, Forestry and Fisheries</td>
<td>39</td>
</tr>
<tr>
<td>2.</td>
<td>Science and Technology</td>
<td>27</td>
</tr>
<tr>
<td>3.</td>
<td>Correctional Services</td>
<td>26</td>
</tr>
<tr>
<td>4.</td>
<td>Health</td>
<td>23</td>
</tr>
<tr>
<td>5.</td>
<td>Public Works</td>
<td>23</td>
</tr>
<tr>
<td>6.</td>
<td>Water and Sanitation</td>
<td>20</td>
</tr>
<tr>
<td>7.</td>
<td>Justice and Constitutional Development</td>
<td>19</td>
</tr>
<tr>
<td>8.</td>
<td>Rural Development and Land Reform</td>
<td>19</td>
</tr>
<tr>
<td>9.</td>
<td>Trade and Industry</td>
<td>18</td>
</tr>
<tr>
<td>10.</td>
<td>Arts and Culture</td>
<td>12</td>
</tr>
<tr>
<td>11.</td>
<td>Human Settlement</td>
<td>12</td>
</tr>
<tr>
<td>12.</td>
<td>National Treasury</td>
<td>10</td>
</tr>
<tr>
<td>13.</td>
<td>Independent Police Investigative Directorate (IPID)</td>
<td>7</td>
</tr>
<tr>
<td>14.</td>
<td>Mineral Resources</td>
<td>7</td>
</tr>
<tr>
<td>15.</td>
<td>Office of the Public Service Commission</td>
<td>5</td>
</tr>
<tr>
<td>16.</td>
<td>Civilian Secretariat for Police</td>
<td>5</td>
</tr>
<tr>
<td>17.</td>
<td>Women</td>
<td>5</td>
</tr>
<tr>
<td>18.</td>
<td>Labour</td>
<td>4</td>
</tr>
<tr>
<td>19.</td>
<td>Public Enterprises</td>
<td>4</td>
</tr>
<tr>
<td>20.</td>
<td>International Relations and Cooperation</td>
<td>3</td>
</tr>
<tr>
<td>21.</td>
<td>Public Service and Administration</td>
<td>3</td>
</tr>
<tr>
<td>22.</td>
<td>Cooperative Governance and Traditional Affairs</td>
<td>2</td>
</tr>
<tr>
<td>23.</td>
<td>Military Veterans</td>
<td>2</td>
</tr>
<tr>
<td>24.</td>
<td>Planning, Monitoring and Evaluation</td>
<td>2</td>
</tr>
<tr>
<td>25.</td>
<td>Statistics South Africa</td>
<td>2</td>
</tr>
<tr>
<td>26.</td>
<td>Transport</td>
<td>2</td>
</tr>
<tr>
<td>27.</td>
<td>Basic Education</td>
<td>1</td>
</tr>
<tr>
<td>28.</td>
<td>Economic Development</td>
<td>1</td>
</tr>
<tr>
<td>29.</td>
<td>Energy</td>
<td>1</td>
</tr>
<tr>
<td>30.</td>
<td>Home Affairs</td>
<td>1</td>
</tr>
<tr>
<td>31.</td>
<td>National School of Government</td>
<td>1</td>
</tr>
<tr>
<td>32.</td>
<td>Sports and Recreation</td>
<td>1</td>
</tr>
<tr>
<td>33.</td>
<td>Communications</td>
<td>0</td>
</tr>
<tr>
<td>34.</td>
<td>Defence</td>
<td>0</td>
</tr>
<tr>
<td>35.</td>
<td>Environmental Affairs</td>
<td>0</td>
</tr>
<tr>
<td>36.</td>
<td>Higher Education and Training</td>
<td>0</td>
</tr>
<tr>
<td>37.</td>
<td>Presidency</td>
<td>0</td>
</tr>
<tr>
<td>38.</td>
<td>Social Development</td>
<td>0</td>
</tr>
<tr>
<td>39.</td>
<td>South African Police Service</td>
<td>0</td>
</tr>
<tr>
<td>40.</td>
<td>State Security Agency</td>
<td>0</td>
</tr>
<tr>
<td>41.</td>
<td>Tourism</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>307</strong></td>
</tr>
</tbody>
</table>
At **provincial** level, all departments were expected to respond to the questionnaires and at least between 6 and 10 completed questionnaires were expected from each department. Table 3 below reflects the manner in which departments responded from each province.

**Table 3: Responses from provincial departments**

<table>
<thead>
<tr>
<th>Provinces</th>
<th>No. of Departments</th>
<th>Responded</th>
<th>Not responded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>13</td>
<td>All</td>
<td>None</td>
</tr>
<tr>
<td>Free State</td>
<td>12</td>
<td>All</td>
<td>None</td>
</tr>
<tr>
<td>Gauteng</td>
<td>14</td>
<td>All</td>
<td>None</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>14</td>
<td>Agriculture &amp; Rural Development; Arts &amp; Culture; Co-operative Governance &amp; Traditional Affairs; Education; Provincial Treasury Public Works; Sport &amp; Recreation and Transport.</td>
<td>Community Safety &amp; Liaison; Economic Development, Tourism &amp; Environmental Affairs; Health; Human Settlements; Office of the Premier and Social Development.</td>
</tr>
<tr>
<td>Limpopo</td>
<td>12</td>
<td>All</td>
<td>None</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>12</td>
<td>Agriculture, Rural Development &amp; Land Administration; Co-operative Governance &amp; Traditional Affairs; Culture, Sport &amp; Recreation; Education; Provincial Treasury; Health; Human Settlements; Office of the Premier; Public Works, Roads &amp; Transport; Community Safety, Security &amp; Liaison and Social Development.</td>
<td>Economic Development, Environment &amp; Tourism.</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>12</td>
<td>Agriculture, Land Reform &amp; Rural Development; Cooperative Governance, Human Settlements &amp; Traditional Affairs Economic Development &amp; Tourism; Environment &amp; Nature Conservation; Health; Office of the Premier; Provincial Treasury; Roads &amp; Public Works; Sports, Arts &amp; Culture and Transport, Safety &amp; Liaison.</td>
<td>Education and Social Development.</td>
</tr>
<tr>
<td>North West</td>
<td>11</td>
<td>Community Safety &amp; Transport Management; Culture, Arts &amp; Traditional Affairs; Education &amp; Sport Development; Health &amp; Social Development; Local Government &amp; Human Settlements; Public Works &amp; Roads; Rural, Environment &amp; Agricultural Development; Tourism and Finance.</td>
<td>Economy &amp; Enterprise Development and Office of the Premier.</td>
</tr>
<tr>
<td>Western Cape</td>
<td>13</td>
<td>Education, Health and Office of the Premier (OTP) (only departments of Education and Health handle their own disciplinary matters in the Western Cape government, all</td>
<td>None</td>
</tr>
</tbody>
</table>
At least 2 organised labour representatives from all recognised trade unions per department were expected to respond to the survey and of the 70 responses received nationally from the organised labour representatives, only Nehawu, PSA, Sadtu, Popcru, Denosa and Hospersa representatives identified themselves as having participated in the survey.

4.3 KEY FINDINGS

The following are the key findings of the study.

4.3.1 AWARENESS OF LEGISLATIVE FRAMEWORKS AND UNDERSTANDING OF THE MANNER IN WHICH DISCIPLINARY CASES ARE HANDLED

4.3.1.1 Awareness and the implementation of disciplinary codes and procedures

The study sought to establish whether ER managers, SMS and MMS members and organised labour representatives are aware of the disciplinary codes and procedures on the management of discipline and handling of disciplinary cases for both levels 1-12 and SMS members in their respective departments. Figure 1 below provides an overview of the level of awareness of employees in the public service.

Figure 1: Awareness and the implementation of disciplinary codes and procedures

Figure 1 shows that the majority of ER managers (103 out of 111), SMS and MMS members (566 out of 640) and union representatives (43 out of 70) is aware of the existence and application of disciplinary codes and procedures on the handling of disciplinary cases for both levels 1-12 and Chapter 7 of the SMS Handbook for SMS members in their departments. The findings show that the majority of participants in the study is of the view that disciplinary codes and procedures and other prescripts governing the management of disciplinary cases are, to a
large extent, known in their departments and are applied regardless of rank, gender and affiliation as required.

However, a few ER managers (8 out of 111), SMS and MMS members (74 out of 640) and organized labour representatives (27 out of 70) indicated that they are not aware of any disciplinary codes and procedures or any policies governing the management of discipline in their departments. Some indicated that there are no departmental disciplinary policies in place to assist in the handling of discipline in their departments. Instead, their departments utilise the Acts, collective agreements (resolutions) and/or directives. Others indicated that their departments are in the process of developing policies.

The study showed that the prescripts are, to a large extent, implemented as required in departments. However, there are challenges relating to timeframes that are not adhered to. Some of the reasons mentioned for this are shortage of labour relations officials, postponements, failure of presiding officers to timeously pronounce on verdicts or sanctions etc. Thus, due to these challenges, it is not always possible to implement the disciplinary codes and procedures fully as expected.

4.3.2 THE APPLICATION OF PRESCRIPTS GOVERNING THE MANAGEMENT OF DISCIPLINARY CASES

4.3.2.1 Consistency in the application of disciplinary codes and procedures

Through this theme the study wanted to establish whether rules governing the management of disciplinary cases are consistently applied in departments.

![Figure 2: Consistency in the application of disciplinary codes and procedures](image)

As shown in Figure 2 above, the majority of ER managers (84 out of 111) and SMS and MMS members (435 out of 640) and a few organised labour representatives (24 out of 70) believe that the implementation of the disciplinary codes and procedures assists their departments in the handling and prompt finalisation of disciplinary cases, and is fairly and consistently applied.
However, the majority of organised labour representatives (46 out of 70) disagreed. These responses are consistent with the reported levels of awareness on disciplinary codes and procedures on the management of discipline. Some representatives reiterated that the disciplinary codes and procedures are user friendly for cases that are dealt with internally and positively contributed to the decrease in the number of misconduct cases. However some respondents alleged that management-political interference, biasness and favouritism are common in their departments.

One respondent summed this as follows: “there is favouritism, other supervisors/managers are not implementing government policies or disciplinary processes as required and it becomes unfair as people are not treated equally based on friendship, union and political affiliation. In some instances, cases that warrant disciplinary measures, disciplinary measures are not taken against offenders and [for] other cases disciplinary measures are abused to pursue personal agendas or vendetta. Also, there is a lot of inconsistency especially with regard to initiating the disciplinary process itself”.

Furthermore, organised labour representatives alleged that the use of discipline management as a tool to deal harshly with those that are seen as troublemakers is common practice in their departments, especially employees who fall within salary levels 2-12. Others indicated that some line managers do not take responsibility for discipline and correcting behaviour of their staff, instead they expect labour relations unit to discipline staff under their span of control and that harsh disciplinary actions are sometimes taken against junior employees but SMS members are treated leniently.

4.3.2.2 Time taken to finalise disciplinary cases

According to the norm in the public service, disciplinary cases are expected to be finalised within 3 months (90 days) of initiation of the disciplinary process. Figure 3 below presents the respondents’ views on how prompt their departments are in finalising disciplinary cases.

**Figure 3: Time taken to finalise disciplinary cases**
Figure 3 indicates that 196 respondents from all categories are of the belief that disciplinary cases in their departments are finalised within 3 months; 243 indicated that disciplinary cases are finalised within 4 to 6 months; 106 said cases are finalised within 7 to 9 months while 76 said it takes 10 to 12 months to finalise disciplinary cases in their departments.

Ninety-one (91) respondents from all categories indicated that it takes 1 to 3 years and 34 said it takes between 4 to 7 years to finalise certain disciplinary cases in their departments, depending on the nature and complexity of cases, which is usually beyond one's control. Seventy-five (75) SMS and MMS members understandably admitted that they do not know how long it takes for the disciplinary cases to be finalised in their departments.

The findings suggest that the majority of disciplinary cases in the public service are finalised between 4 and 12 months. A significant number of disciplinary cases is resolved at least within 3 months while a less but still significant number of cases is finalised between 1 to 3 years. In the worst case scenario, few respondents from all categories indicated that certain number of cases take between 4 and 7 years or more to finalise them.

Some of the reasons given for taking long to finalise certain disciplinary cases are the complexity of those cases, the time it takes for investigators to gather evidence, postponements of some disciplinary hearings due to the unavailability of documents and officials etc. Also, cases that involve members of the SMS are viewed as generally taking long to finalise due to their complex nature and involvement of external parties.

4.3.2.3 Strategies departments put in place to finalise cases promptly

In order to understand strategies departments put in place to finalise disciplinary cases within the acceptable time frame, respondents were further requested to explain the strategies their departments use to finalise disciplinary cases promptly. Respondents from different departments specified the following measures:

- **Strict compliance with disciplinary codes and procedures**
  
  Adherence to disciplinary codes and procedures is necessary to prevent unnecessary postponements and for the institution of investigations as soon as misconduct cases are reported. Managers and supervisors are capacitated and encouraged to handle informal disciplinary enquiries in their components as soon as they emerge, and by so doing prevent them from becoming formal disciplinary cases. If there is prima facie evidence charges must be initiated immediately and there must be strict adherence to collective agreements and public service policies.

- **Capacity building and effective utilisation of managers and LR officials**
  
  The strategies used to fast-track the finalisation of cases include the timeous appointment of investigators, presiding officers and employer representatives; utilisation of internally trained chairpersons or capacitation of managers to chair disciplinary hearings to reduce the number of cases that are handled externally; and capacitation of labour relations officials and
maintenance of that capacity to handle disciplinary cases and conducting of awareness campaigns for all supervisors and managers.

- **Effective communication**

  Constant communication with affected role players is important in order to finalise disciplinary cases within reasonable period and entering into plea bargaining agreements with the accused reduces the need for postponements. Regular involvement of labour relations personnel in setting up timeframes and targets in conjunction with the discipline team is essential and managers and supervisors are constantly made aware of pending cases.

- **Adherence to timeframes**

  Chairpersons are advised on their letters of appointment to respect the set timeframes and there is a shortened process for approval of submissions and execution to the level of the Director. Proposals are also made to the officials to minimise the length of submission and report misconduct immediately. Strict target dates are contained in the performance agreements of LR practitioners.

- **Monitoring and evaluation**

  Regular follow-up meetings with investigation team are scheduled to discuss specifics of cases or precautionary suspensions. Cases and appeals are monitored regularly and in some departments cases are monitored on a weekly or monthly basis by supervisors. Unnecessary postponements are not allowed in some departments. Some departments have developed their own case management system which enables them to initiate and finalise disciplinary cases within 90 days.

**4.3.2.4 Consistency of disciplinary actions and sanctions**

In terms of the Public Service Guidelines on Disciplinary Sanctions, disciplinary sanction imposed in respect of a particular misconduct should be commensurate to the misconduct committed. To ascertain the level of consistency with regard to disciplinary actions taken and sanctions imposed by departments, respondents were asked to indicate whether all employees within their departments faced similar sanction for similar misconduct and other related offences. Figure 4 below illustrates the views of respondents on consistency of disciplinary actions and sanctions for similar offences.

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34 *The Public Service Guidelines for Disciplinary Sanctions and Precautionary Suspension*, DPSA. 2015
As shown in Figure 4, most ER managers (83 out of 111) concurred that not all officials within their departments faced similar sanction for similar misconduct and other related offences and consistency in this regard is not ensured. Similarly, a significant number of SMS and MMS members (251 out of 640) agreed with the sentiment expressed by the majority of ER managers. The same views were shared by the majority of organised labour representatives (45 out of 70).

On the contrary, the majority of SMS and MMS respondents (389 out of 640) think that all employees within their departments faced similar actions and sanctions for similar misconduct and other related offences and consistency is insured in all disciplinary cases. They commented that cases are addressed in terms of evidence provided and are treated on merits, and departments take consistency seriously given the repercussions they may be confronted with later. According to some of the respondents from all categories, employer representatives are informed of previous similar cases to avoid inconsistencies and case laws are taken into consideration when dealing with similar cases.

Some respondents noted that their departments do not interfere with cases chaired by chairpersons to ensure objectivity, fairness and consistency during the process and the investigations conducted by labour relations officers within departments ensure consistency in sanctions. As a result, inconsistencies found in the presiding officers’ decisions are reviewed and corrected during appeal processes.

Notwithstanding the above assenting comments, some respondents attested that there have been cases which were not handled consistently, fairly and objectively in their departments. They opined as follows: “Some employees are given lesser sanctions for serious offences and others are dismissed for the same offence. Some employees were dismissed without following the provisions of the disciplinary codes and procedures by simply applying section 17 (2)(d) of the Public Service Act, 1994 as amended and on external review the department was ordered to reinstate those officials and to compensate others”.

Figure 4: Consistency of disciplinary actions and sanctions
“There is perceived victimisation of employees, inconsistencies and biasness based on friendship, union and political affiliation as well as employee levels and seniority. The arbitration awards are not implemented, instead departments apply for a review after review of arbitration awards. Some employees are charged for misconduct that they never committed and in some instances departments freeze the employees’ salaries even when the appeal is not yet finalised”.

In some departments, respondents expressed concern over the inconsistency of presiding officers with regard to issuing of sanctions and alluded to the fact that the merits of cases are not always the same and therefore guidelines on disciplinary sanctions are not consistently applied. The other challenge, they said, is the fact that cases of common nature are dealt with by different presiding officers, which results in inconsistent outcomes such as dismissal and one month suspension without pay for the same misconduct.

Some respondents from all categories pointed out that there is consistency in their departments, except where one employee pleaded guilty and the other employee pleaded not guilty, and then the employee who pleaded not guilty is found guilty. Technically, such cases are not handled the same. Some alleged that managers or chairpersons of disciplinary enquiries are afraid of or close to certain trade unions, and therefore employees that are members of those unions are dealt with softly when it comes to disciplinary actions and sanctions, compared to employees who are not members of those unions.

4.3.2.5 Implementation of sanctions and arbitration awards emanating from discipline

To establish whether sanctions imposed by presiding officers and arbitration awards issued by the dispute resolution councils are implemented as expected within departments, participants were asked to indicate whether there are disciplinary sanctions and/or arbitration awards that were not implemented by their departments. The results are captured in Figure 5 below.

![Figure 5: Implementation of sanctions and arbitration awards emanating from discipline](image-url)
As shown in **Figure 5**, the majority of ER managers (89 out of 111), SMS and MMS members (453 out of 640) and organised labour representatives (46 of 70) indicated that all disciplinary sanctions and arbitration awards are implemented in their departments. However, a small number (22) of ER managers, together with 121 SMS and MMS members and 24 organised labour representatives disagreed. Sixty-six (66) SMS and MMS members indicated that they were not sure.

Whilst a great number of respondents are of the view that disciplinary sanctions and arbitration awards are fully implemented, some alleged that there is a general lack of will or commitment by management in their departments to implement some disciplinary sanctions or arbitration awards. This is partly because there are no follow-through mechanisms by chairpersons, approving authorities or bargaining councils to check whether the sanctions or awards they issued are implemented or not.

Some respondents from all categories revealed that there are disciplinary sanctions and arbitration awards that are not prioritised and implemented by management because they are in favour of employees. Instead, legal services units get instructed to simply write notices of review, go to court and appeal the awards unnecessarily for as long as they can. Some union representatives disclosed that there are unfair dismissal cases that were, years back, decided upon and overturned by the labour court but are still not actioned or finalised in their departments.

On the other hand, some ER managers indicated that awards that have monetary value are difficult to implement. However in principle, these awards are supported but there are usually delays in their implementation because of budget constraints in their departments. In one province, it was highlighted that a group of dismissed employees won an unfair labour practice case but the employer refused to reinstate them and proposed a golden hand shake instead, which resulted in a deadlock.

In one province, ER managers contended that disciplinary and arbitration outcomes which are contrary to policies are taken for review to the labour court by legal structures. To this end, there are arbitration awards that have not been implemented until such time that there is final outcome.

**4.3.2.6 Internal appeals**

The internal appeal process is provided for in disciplinary codes and procedures for employees in the public service, except for the members of the SMS. An SMS member can, if he or she is not satisfied with the outcome of the disciplinary hearing, approach a dispute resolution council that has jurisdiction over his/her case for review. The participants were requested to indicate whether internal appeal procedures are adhered to when dealing with appealed outcomes in their departments. **Figure 6** below presents the findings.
As reflected in Figure 6, the majority of ER managers (86 out of 111) and SMS and MMS (437 out of 640) members is of the view that their departments comply with the internal appeal processes as prescribed in their respective disciplinary codes and procedures. According to these respondents, most departments have established a panel of senior managers to serve as an advisory authority on appeals lodged. This panel consists of people who were not part of disciplinary hearings and its purpose is to consider appeal cases brought before it and make recommendations to the EA or MEC for approval.

However, it must be noted that organised labour representatives are split in their views, with some saying the processes are adhered to and the other half saying the processes are not adhered to. Again, a significant number of SMS and MMS members indicated that they are not sure. The major concerns expressed by organised labour representatives are the alleged interference by some senior managers, manipulation and lack of adherence to internal appeal timeframes.

According to them, the approving authority is supposed to finalise appealed cases within 30 days irrespective of the outcome of the appeal. However, it often takes a long time to approve and this sometimes results in unnecessary disputes with financial implications. And if the outcome of the appeal is in favour of an employee, the employer often delays the implementation of that appeal outcome.

In some provinces the legal services directorates serve as appeal committees and advise Executive Authorities on their findings while in some provinces appeal authorities are appointment independently of the department. In addition, some respondents alluded that prolonged appeal cases of educators are because the disciplinary code and procedures for educators does not provide timeframes for finalisation of appeals.
4.3.2.7 Effectiveness of departments in the handling of disciplinary cases

In the public service, managers or supervisors utilize disciplinary actions to avert transgressions and encourage acceptable behaviour. When this is done, the principle of good practice must be applied to ensure that the disciplinary action yields the correct results for all parties involved. With this in mind, respondents were asked to rate the effectiveness of their departments in the handling of disciplinary cases. Their views are reflected in Figure 7 below.

![Figure 7: Effectiveness of departments in the handling of disciplinary cases](image)

As indicated in Figure 7, the majority of ER managers (102 out of 111), SMS and MMS members (459 out of 640) and some organised labour representatives (25 out of 70) agrees that the handling of disciplinary cases in their departments is effective and very effective. According to the majority of these respondents, effectiveness in the handling of disciplinary cases in their departments is as a result of strict and sustained adherence to timeframes, immediate allocation of cases to officials and appointment of investigating and presiding officials, and also the regular monitoring of progress and proper and immediate implementation of sanctions and internal appeal outcomes.

A small number of all categories of the respondents rated their departments as not effective and a few respondents view the handling of disciplinary cases in their departments as indifferent and bad. They argued that “their departments are effective only in dealing with disciplinary cases involving officials at salary levels 1-12 and ineffective when it comes to SMS level cases due to involvement of external parties. Also, senior managers are often treated lightly and differently than levels 1-12”. They argue that the daily inconsistencies and discrepancies in the handling of disciplinary cases are enough proof of their departments’ ineffectiveness in handling disciplinary cases.
4.3.3 THE PERCEIVED ROLE OF ORGANISED LABOUR

The study wanted to establish whether organised labour plays any strategic and constructive role in the handling of disciplinary cases in the public service. Figure 8 below reflects the overall responses of participants.

![Figure 8: The perceived role of organised labour in the handling of disciplinary cases]

According to Figure 8, the majority of ER managers (60 out of 111), SMS and MMS members (375 out of 640) and organised labour representatives (49 out of 70) acknowledges that organised labour plays a constructive role in the handling of disciplinary cases in the public service whilst 59 SMS and MMS members indicated that they are not sure.

The majority of respondents from ER managers and SMS and MMS members indicated that organised labour plays a constructive role during the disciplinary process by representing their members peacefully during hearings, to ensure fairness, consistency and transparency; and also make suggestions on how to improve systems of discipline management so that similar offences are not repeated.

However, a few respondents from these categories disagreed and indicated that at times the conduct of organised labour representatives is unpleasant, and they often try to frustrate the process in defence of their members in order to force a postponement of the case. They alleged, “some trade unions always protect their members irrespective of the matter and merits of the case and they do not act decisively on members that are ill-disciplined. Sometimes they delay processes by invoking civil procedure processes by making applications within applications. They often delay and misguide their members by influencing them not to give statements or submit fake documents, when matters could be dealt with informally they then force officials to opt for a formal route. Some trade unions are not fully capacitated to defend their members and they don’t want cases to go to the level of a hearing because they are scared to fail their members, instead they bargain for withdrawal of cases. In addition, they become arrogant without facts and/or conducting research and do not propose solutions to problems”.

Surprisingly, a few organised labour representatives and some SMS and MMS members in some departments complain about similar issues, such as the continuous requests for postponements due to the deliberate unavailability of union representatives, thus delaying the
finalisation of cases. They allege that organised labour representatives attend disciplinary hearings unprepared, thus compromising their members. They further alleged that some organised labour representatives are used as a management tool and side with management for workplace political gains at the expense of their members.

4.3.4 CAPACITY OF UNITS AND COMPETENCIES OF DESIGNATED OFFICIALS IN THE MANAGEMENT OF DISCIPLINARY CASES

4.3.4.1 Capacity of units handling disciplinary cases

In order to establish the capacity of departments in the management of disciplinary cases, the respondents were requested to indicate whether units handling disciplinary cases in their departments are sufficiently capacitated to deal with disciplinary cases. Figure 9 below provides the answers.

Figure 9: Capacity of units handling disciplinary cases

The findings in Figure 9 reflect that the majority of ER managers (70 out of 111), SMS and MMS members (340 out of 640) and a few organised labour representatives (26 out of 70) think that directorates or units handling disciplinary cases are sufficiently capacitated to deal with disciplinary cases. A significant number of ER managers (40 out of 111), SMS and MMS members (254 out of 640) and the majority of organised labour representatives (44 out of 70) suggest that LR units are not sufficiently capacitated. However, 46 out of 640 SMS and MMS members indicated that they are not sure if the directorates and/or units handling disciplinary cases are sufficiently capacitated to deal with disciplinary cases.

Among the respondents from all categories, there is recognition that LR units are well capacitated in terms of experience and quality of employees manning these units. However these units are often manned by a few employees, and therefore lack the numbers to handle large volumes of disciplinary cases in departments. So the major concern remains the shortage of competent staff in LR units, such as general LR practitioners, and initiators, investigators and presiding officers. The shortage of other resources such recording systems, state cars, office space and budget, was also mentioned as a constraint.
According to some respondents one or two or three employee relations official(s) are responsible for dealing with loads of disciplinary cases and other LR work in a department that has a staff complement of +2000 employees. This anomaly results in huge workloads and cases left pending for too long due to understaffing.

Organised labour representatives further revealed that in some departments disciplinary cases are referred to and dealt with by legal services offices rather than LR units which are mandated to facilitate employee relations matters. This perhaps is the reason why in some departments disciplinary outcomes are unnecessarily taken for review for long periods and implementation is delayed as a result.

Training, development and tools

Further, respondents were probed to reflect on whether staff members handling disciplinary cases are provided with proper training, development and tools necessary to perform their tasks. The majority of ER managers and SMS and MMS members with the exception of organised labour representatives is of the opinion that training in the form of in-house capacity building (i.e. mentorship and coaching from experienced supervisors), workshops, seminars and conferences is provided on a regular basis to update and equip staff handling disciplinary cases.

Most of the training provided by external parties covers various areas, including discipline management, grievance investigations, dispute resolution, prosecution, chairing disciplinary hearings, report writing and so forth. This training takes place monthly, quarterly or annually as and when the need arises. Officials are given opportunities to attend courses of their choice in line with their personal development plans. Some employee relations officials are provided with tools such as laptops, law libraries, recorders and cars to effectively perform their tasks. Some positively asserted that the quality and number of disciplinary cases concluded within set timeframes justify the efforts of respective departments in training and development of their staff.

However some respondents from all categories across national and provincial departments are of the view that ER officials are not properly trained and developed and often have to execute their tasks using limited tools due to the so called budgetary constraints and/or lack of support from management. In particular, most organised labour representatives reiterated that some departments are not investing time and money in equipping management and officials to deal with disciplinary matters. Instead they invest time influencing or masterminding how certain employees who are perceived to be troublemakers should be dealt with.

The other view is that if some managers or supervisors are not keen to heed advices of employee relations officials on disciplinary matters, training them does not help much.

4.3.4.2 Competencies of employees handling disciplinary cases

Only ER managers were asked to indicate their qualifications and number of years and therefore their experience in the handling of disciplinary cases in their departments. The results are captured in Figure 10 below.
As illustrated in Figure 10, the highest qualification amongst ER practitioners is a Masters’ Degree and the lowest is Grade 12. Almost all ER practitioners have a post matric qualification, with the exception of one with a Grade 12 coupled with 16 years of experience. The qualifications of the majority of ER practitioners range between an undergraduate degree and honours degree. Furthermore, the majority of ER practitioners obtained Human Resource, while others possess Public Management and Administration qualifications with labour relations and/or labour law in the field of management sciences while others are qualified purely in the field of law and are admitted attorneys.

This finding probably informs the perception that ER practitioners who possess purely law qualifications are legal people and are therefore likely to represent the interests of their departments regardless of the merits of the case, instead of facilitating sound employee relations in the workplace and correct wrong behaviour. They often have opposing views to those of other practitioners qualified in industrial relations or labour law and they often turn a minor transgression which could be resolved at line management level into a serious transgression. The organised labour representatives propose therefore that these officials must
also, over and above their law qualifications, be capacitated with labour relations training in their departments.

It appears that the majority of ER practitioners (21) have been in the employ of their current departments in the management of disciplinary cases environment for 9 to 11 years, followed by (20) for 15 to 17 years, (18) for over 18 years, (16) for 6 to 8 years, (15) for 3 to 5 years and lastly, (8) for 1 to 2 years.

4.3.5 CHALLENGES FACED BY PUBLIC SERVICE DEPARTMENTS IN THE MANAGEMENT OF DISCIPLINARY PROCESSES

In addition to the aforementioned challenges the following were identified:

4.3.5.1 Delays in finalising disciplinary cases

Many of the respondents from all categories highlighted the following factors as contributing to delays in the finalisation of disciplinary cases:

- **Inadequate labour relations staff compliment and capacity building**
  Inadequate labour relations staff compliment given the case load in some departments; positions not filled for a long period after being vacated; lack of training for managers and labour relations staff in disciplinary processes and labour relations; reluctance of staff, especially managers, to conduct investigations and assist indisciplinary hearings as presiding officers and/or initiators of disciplinary cases; and lack of capacity to monitor and evaluate internal cases in some departments.

- **Delays and postponements of cases**
  Some of the factors that contribute to delays include postponements of cases due to requests by employees or employees’ representatives; unavailability of parties because of their hectic schedule given their permanent positions; delays in decision making by managers entrusted with discipline responsibilities; dependency on other departments for assistance; forensic investigations, especially for high profile cases take too long to be finalised; delays from managers and departments in providing relevant documents to support investigation of particular cases.
  Delays are also experienced due to the complexity of cases which require legal representation, for example, in respect of SMS members’ cases and cases referred to sister departments’ anti-fraud and corruption units. Also complex cases (stemming from forensic and SIU investigations), voluminous information one has to go through to understand the case and draft charges take up time. Complex financial mismanagement cases as well as sexual matters where learners involved are minors are handled with extreme care. The latter are also delayed due to unavoidable postponements caused by school recess or closure, not being able to trace victims once they leave the school, and delays in referrals for victims undergoing long-term counselling for trauma. Lastly, cases that were taken over by the intervention team (section 100) and were later returned to the department not finalised and are regarded as backlog especially in some Limpopo departments.
• Poor collaboration and support
Lack of cooperation from line managers and other units during investigations and disciplinary
enquiry stages; limited resources to deal with administrative matters; over reliance on
external people to assist with disciplinary cases due to understaffing; use of external lawyers
to prosecute and preside over internal disciplinary matters, as lawyers are doing this for their
own personal reasons and departments are dependent on their availability; and the
involvement of State Attorneys as cases become protracted due to their hectic diaries.

• Lack of accountability
Non-adherence to prescripts regulating management of discipline; reluctance or laxity on the
part of managers to accept that discipline is a management function and participate in
disciplinary cases; managers referring minor cases to head office or labour relations sub-
directorates which can be dealt with at operational level; indecisive decision-making by some
SMS members; management and political interference with disciplinary processes which
result in fear of victimisation or social exclusion; and red tape regarding the approval of
submissions of disciplinary reports.

• Lack of urgency
Lax and business as usual approach toward the handling of disciplinary cases by some
stakeholders, late submission of disciplinary documents by officials involved in the
disciplinary processes and poor time management and planning delay the finalisation of
cases.

• Improper sanctions and punitive measures
Precautionary suspensions are not well understood especially the grounds on which they
must be imposed when addressing certain disciplinary matters. Precautionary suspensions
are regarded as a punitive measure and officials are suspended prior any form of
investigation. Predetermined sanctions or outcomes get challenged and cases drag for years
either because there was no case in the first place or evidence must be found to corroborate
the case.

• Communication deficiency and non-cooperation
Communication breakdown between parties involved in the handling of disciplinary cases is a
challenge. For example, some departments do not share information that will enable
organised labour and employers to work together to speed up the handling of disciplinary
processes or prevent or minimize disciplinary cases. Managers are sometimes reluctant to
consider inputs from organized labour, as well as advice from the labour relations unit on how
disciplinary cases must be handled in some departments.

• Manipulation
It is alleged that at the behest of the employer, labour relations officers deliberately destroy
evidence or twist information to suit and protect some senior managers. It is also alleged that
certain labour relations officers side with management instead of levelling the playground for
both parties involved in a disciplinary process. Presiding officers and initiators are also
alleged to take and implement orders from management instead of provisions from the relevant disciplinary codes and procedures.

4.3.5.2 Improper handling of precautionary suspensions

According to the disciplinary codes and procedures, an employee can be placed on a precautionary suspension if an employee is alleged to have committed a serious offence, and an employer believes that the presence of that employee at the workplace might jeopardise investigations into the alleged misconduct or endanger the well-being and safety of others. All categories of respondents were probed to indicate whether there are any precautionary suspensions that went beyond the prescribed 60 days in their departments. Figure 11 below reflects their views.

![Figure 11: Handling of precautionary suspensions](image_url)

As illustrated in Figure 11, the majority of ER managers (83 out of 111), SMS and MMS members (368 out of 640) and organised labour representatives (52 out of 70) indicated that there are precautionary suspensions that went beyond the prescribed period of 60 days in their departments. Seventy-four (74) SMS and MMS members, understandably so, said they are not sure.

It is clear from the responses that there are challenges with the management of precautionary suspensions in the public service. Departments are, according to the norm in the public service, expected to deal with precautionary suspensions within 60 days. However, it is opined that departments take longer than the expected timeframe to deal with and finalise precautionary suspensions within the prescribed period of 60 days.

The findings show that there are precautionary suspensions that are imposed on some officials based on personal feuds rather than factual reasons. Some of the precautionary suspensions are without information directly linking officials to the misconduct. There are also precautionary
suspensions that have gone beyond a period of 60 days and beyond 12 months in some departments. This has resulted into situations where departments spend huge sums of public funds in salaries for suspended employees who are sitting at home for prolonged periods. The reasons for the delays are encapsulated in subtheme 4.3.5.3 below.

4.3.5.3 Delays in dealing with precautionary suspensions

Many of the respondents highlighted the following factors as reasons contributing to delays in the finalisation of precautionary suspensions:

- **Non-compliance and lack of responsibility**
  There is widespread and deliberate non-compliance with disciplinary codes and procedures by managers in the handling of disciplinary cases and unwillingness on the part of managers to accept responsibility to handle disciplinary cases.

- **Complexity of cases**
  There are difficulties in gathering evidence due to the nature of offences and technical challenges e.g. department not following proper channels in reporting the case through labour relations. Sometimes the unavailability of information to support the allegations; and continuous postponement of hearings at the request of parties, sometimes due to unforeseen circumstances create challenges. Sometimes, in cases where departments are unable to prove or back their allegations, they do not immediately lift the suspension, but drag the matter for months and years for no good reason.

- **Non-availability of stakeholders**
  There are difficulties in sourcing appropriate presiding officers or chairpersons, initiators and employer representatives and the unavailability of witnesses who are sometimes SMS members due to other work engagements, or if the matter relates to another SMS member were cited s challenges.

- **Lack of capacity**
  Capacity challenges are also exacerbated by the unavailability of competent line managers and inadequate labour relations staff compliment to investigate and handle disciplinary cases. It was also reported that some outstanding cases are halted by HoDs and are carried over to the next financial year; thus increasing the workload of LR officials.

- **Abuse of precautionary suspensions**
  It was indicated that precautionary suspensions which are meted out without sufficient information and evidence, and documents linking the accused to the alleged misconduct delay the finalisation of precautionary suspension cases. It was also indicated that suspensions which are used as a punitive measure to prove who has more power when there is no direct evidence to the alleged misconduct and without following relevant prescripts and involving labour relations directorate usually delay the finalisation of precautionary suspensions.
• **Inconsistencies and interference**
  Alleged favouritism and partiality in that if an accused is in good books of the powers that be, such cases are delayed to protect the accused employees. However if the accused is not in good books of management, his/her case gets finalized within 60 days to deal with the person, and perhaps get rid of him/her. The manipulation of disciplinary processes to gain management or political favours and political interference on administrative matters contributes a lot to improper suspensions of persons before establishing prima facie evidence.

• **Utilisation of external people**
  Growing dependency on and involvement of external employer representatives or experts who often prioritise their own departments over the one that is seeking assistance; external forensic investigations that take too long to be finalised especially cases involving high profile people; cases which are taken by intervention teams (i.e. section 100) and returned to the department not finalised.

• **Poor communication and cooperation**
  Poor communication between officials within departments and external service providers and lack of cooperation and coordination amongst stakeholders during the investigations process. Sometimes, labour relations officials themselves hear for the first time in the media when certain managers are put on precautionary suspension.

• **Lack of proper monitoring and evaluation**
  Lack of holistic monitoring and evaluation of the progress of precautionary suspensions and adherence to the provisions of the disciplinary codes and procedures in as far as they relate to disciplinary suspensions. There are no internal systems (case management system) in departments to keep and track progress on precautionary suspensions.

4.3.5.4 **Perceived manipulation of disciplinary cases**

All respondents were asked to disclose whether there are disciplinary cases which they think are somehow manipulated or predetermined by people who are not part of the disciplinary and/or appeal processes in their departments. Figure 12 below provides an overview of the extent of perceived manipulation.
Figure 12: Perceived manipulation of disciplinary cases

Figure 12 indicates that the majority of ER managers (89 out of 111) and SMS and MMS members (354 out of 640) and a few organised labour representatives (29 out of 70) are of the view that there are no disciplinary cases that are somehow manipulated or predetermined by people who are not part of the disciplinary and/or appeal processes. They argue that the disciplinary codes and procedures and regulations are observed when handling disciplinary cases and sanctions are meted out in line with the disciplinary guidelines.

Contrary to the views above, the majority of organised labour representatives (41 out of 70) views disciplinary cases as somehow manipulated by people who are not part of disciplinary processes. They alleged that line managers withhold submissions to the approving authority in cases where sanctions imposed by the presiding officers do not favour their predetermined outcomes. They also alleged that there is a culture of manipulation and interference by management and organised labour, and fear.

Some respondents from all categories reported that certain shop stewards discredit labour relations units, and there are cases where managers influenced investigating officers, witnesses and presiding officers to take a particular position to settle personal scores. Further, some employees are treated differently in that managers do not report misconduct cases if particular officials are involved. These findings support views from various scholars (Cole, 2008; Stephens, 2011; Knight & Ukpere, 2014) given that leaders in government departments or organisations who do not apply discipline consistently disobey organisational disciplinary codes, policies and procedures, and use disciplinary actions for their own stereotypes and vindictive purposes or ulterior motives.

4.3.5.5 The negative impact of disciplinary cases on working relations

It is important for managers and supervisors at all levels to build and maintain high levels of trust and respect amongst staff in order not to undermine sound employer-employee relations. Figure 13 below presents an overview of responses on whether the manner in which disciplinary cases are handled negative affects working relations.
Figure 13: The negative impact of disciplinary cases on working relations

As shown in Figure 13, a minority of ER managers (48 out of 111) and the majority of SMS and MMS members (304 out of 640) and organised labour representatives (48 out of 70) think that the manner in which disciplinary cases are handled in their departments negatively affects working relations.

On the contrary, the majority of ER managers (63 out of 111) and some SMS and MMS members (244 out of 640) and organised labour representatives (22 out of 70) argue that disciplinary cases do not negatively affect working relations between management, employees and organised labour. Ninety-two (92) SMS and MMS members are not sure whether the manner in which disciplinary cases are handled in their departments negatively affects working relations.

There are common and dissimilar opinions raised by the majority of respondents from all categories regarding the approaches adopted in the handling of disciplinary cases and how they affect relations in the workplace. They reiterated that generally, there are many factors that often come into play with regards to disciplinary matters at work, which adversely affect relations amongst staff members.

They commented that “the work environment is purely bureaucratic and not always plain, therefore there will always be differences of opinions amongst trade unions, employees and management. Sometimes it is political or even personalised. The fact that all parties pursue a win-lose and not a win-win situation when faced with a disciplinary case, means that disciplinary meetings become adversarial and as such, they naturally affect relations between the parties involved”.

They continued, “organised labour are always ready to defend their members’ wrongdoings and management has a task to prove guilt and impose sanctions. Also, parties to disciplinary cases have different perspectives on how cases must be handled and are not always happy with
disciplinary outcomes, so it is impossible not to personalise disciplinary matters if you are an affected party and this ends up straining the entire relationship”.

Some other concerns that came up are that most managers across departments refuse to handle disciplinary matters within their area of responsibility and are therefore reluctant to initiate disciplinary processes due to fear of victimisation by organised labour and managers senior to them, or even people outside the workplace. Some managers and supervisors take grievances personally when they are lodged against their actions and it therefore becomes difficult for employees to continue to work in the same unit.

It was also pointed out that interference, favouritism, manipulation and the abuse of disciplinary processes by managers and supervisors also contribute to strained relations between employees and managers and between managers and trade unions. Improper application of disciplinary processes (i.e. lack of organizational justice) leads to low employee morale, low job satisfaction, low organizational commitment, lack of trust and respect amongst stakeholders, loss of valuable employees who choose to resign or are unfairly dismissed, ineffectiveness and inefficiency (i.e. high litigation costs and wasteful expenditure) within departments.

Notably, it is alleged that LR officials become victims for facilitating disciplinary processes that turn out to be viewed as unfair or targets for harm from parties who are left frustrated or unfairly treated by the system. Daniel (2006) and Robbins’, et al. (2003) views confirm the findings of this study in the sense that paralyzed working relations, lack of trust and so forth, among stakeholders involved in the disciplinary process were highlighted by the respondents from all categories as major challenges in their departments.

The respondents also stated that delays in finalisation of particular cases create a bitter feeling, frustrations and animosity at all levels. This creates a situation where the affected party or parties target employees in the labour relations unit to vent their frustrations. While perceptions of such practices create unhappiness and reduce staff morale and job satisfaction, they also reinforce the perception that employees are merely means of production in the public service.

There is also perceived biasness by those who appoint presiding officers and they are often suspected of being in cohorts with management. As a result, trade unions and employees do not have trust in the whole process and in some instances union representatives are viewed as puppets of the employer, looking after the interest of the employer at the expense of the employees. All these factors contribute to a work atmosphere that is almost not conducive for officials to work in.

On the other hand, some respondents from all categories think that the manner in which disciplinary cases are handled in their departments does not negatively affect working relations. They indicated that the effective manner in which their departments handle disciplinary cases ensures that trust built over the years is maintained and transparency is guaranteed between stakeholders in the management of disciplinary cases.
4.3.5.6 Lack of monitoring and evaluation of disciplinary cases

Only ER managers and organised labour representatives were asked to confirm whether there are system(s) or internal databases used by their departments to keep records and monitor the status of disciplinary cases, precautionary suspensions and the implementation of arbitration awards in their departments. Figure 14 below provides an overview of the responses.

![Figure 14: Monitoring and evaluation mechanisms on disciplinary cases](image)

**Figure 14**: Monitoring and evaluation mechanisms on disciplinary cases

Figure 14 shows that the majority of ER managers (76 out of 111) claims that there are monitoring and evaluation mechanisms in their departments. On the contrary, the majority of organised labour representatives (56 out of 70) indicated that there are no such monitoring and evaluation mechanisms in their departments. They alleged that organised labour is not made aware of disciplinary cases in their departments, hence they are not aware of any mechanisms used to monitor and evaluate such cases.

Organised labour is expected to play an active and constructive role in the management of discipline in departments where they are recognised. However the presumption created by the majority of organised labour representatives is that unions are not made aware of progress on disciplinary cases in their departments, hence they are not aware of any mechanisms used to monitor and evaluate such cases. This is a serious concern as far as it gives the impression that unions are not engaged by management on these issues.

While some participants from all categories argued that they are not aware of any monitoring and evaluation mechanisms in their departments, some confirmed that MS Excel spreadsheet/database for weekly or monthly statistics; PERSAL; ER integrated information management system; MS Outlook diarised system for automatic-alert; case-load reports; regular case management reports to MANCO, EXCO and HoDs; and templates provided by the DPSA, OTPs and DPME (MPAT) are utilised in their departments for record keeping and monitoring purposes.
Further, all respondents were specifically requested to reflect on the effectiveness of these systems as a case flow management tool (e.g. registration, tracking, updating and closing of cases) and for record purposes. There were mixed views whether the current system(s) used in their departments are effective or not. The majority of respondents argued that the systems, including PERSAL, are not effective hence there is an urgent need to develop a customised and automated public service system. That system should provide access for tracking finalised cases and suspensions across departments at the national and provincial level. Major concerns were raised concerning PERSAL - that it is centrally controlled, can be easily manipulated and that it does not always provide accurate reports.

While a few respondents indicated that the available systems are effective for monitoring, they complained that they are time consuming and cumbersome in tracking cases and reporting as and when is required. Others said almost all systems in their departments except those provided by the DPSA, DPME or OTPs cannot be guaranteed because they can be easily manipulated. Additionally, in some departments the finalisation of misconduct cases is one of the KPAs on the operational plans and it is also an output on the department’s APP, on which they must report.

ER managers were also probed to indicate whether national and provincial departments submit reports relating to disciplinary cases to the DPSA and OTPs. There was unanimous affirmation by ER managers that reports are, on a quarterly basis, or as and when required, submitted to the DPSA and OTPs, respectively.

4.3.6 Proposals on how to improve the handling of disciplinary cases, precautionary suspensions and implementation of sanctions and/or arbitration awards

In light of the challenges experienced by departments in the management of discipline, all participants in the study were asked to propose solutions that will assist in the improvement of discipline management in the public service. Different respondents proposed the following solutions:

(a) Handling of disciplinary enquiries

- Appointment of qualified and passionate officials in labour relations and provision of training to the current LR officials to assist in administrative work, facilitation of disciplinary processes, initiating, investigations etc.
- In-house training on investigations, investigation report writing skills and presentation of investigation evidence in disciplinary hearings.
- Referral of all disciplinary cases to labour relations units only and not legal services or external lawyers.
- SMS and MMS members and all officials in management and supervisory positions should be taken through discipline management training and alternative dispute resolution courses.
- Provide sufficient budget to implement electronic monitoring system, and establish the LR libraries that can be accessed by all officials in the departments.
- Put a centralised system that can be used to capture, track, update, monitor and evaluate cases at the national and provincial departments. The system should be protected to prevent and detect interference and manipulation by any person.
- Put a system in place to monitor the correct implementation of sanctions and arbitration awards to ensure consistency of sanctions in similar cases.
• Create a national/provincial database consisting of presiding officers whose services can be accessed as and when required.
• Foster co-operation from managers, as cases can be delayed due to their unavailability for disciplinary cases and their reluctance to provide necessary information.
• Labour relations directorates/units should be allowed to report directly to the office of Heads of Department to avoid delays.
• Enhance close working relationship between management and organised labour to enhance cooperation instead of hostility.
• Constant communication and regular feedback with all affected parties.
• Communicate with and capacitate lower level officials in disciplinary process and discipline, because most of them do not have access to websites, and may not understand departmental/national policies and procedures.
• Action must be taken against line managers and employee relations officials who refuse to take responsibility for and facilitate disciplinary processes and there must be consequences for non-compliance with set timeframes.
• Compel senior and middle managers and supervisors to take responsibility for discipline management by including discipline as their KPA in their performance work plans.
• LR units should be entrusted with the necessary delegations to dispense disciplinary matters as opposed to the current practice, as this will put a stop to the current multi-level interference by different stakeholders.
• Initiators, investigators, presiding officers and witnesses must be provided with danger allowances given the dangerous nature of their work.
• Compel departments to establish compulsory provincial labour relations practitioners’ forums that will meet at least 2 times a year to discuss, monitor and evaluate their performance.
• Neutral or external people must be roped in and take part in disciplinary and appeal panels to eliminate managers with unethical agendas in the panel.
• There must be an independent body responsible for the appointment of chairpersons for the formal disciplinary enquiries.
• Ensure that departments adhere to the DPSA guidelines on disciplinary sanctions and management of suspensions in the public service.
• Compel LR units to develop internal databases and submit regular reports on cases that are still pending.
• Put in place less bureaucratic and clear delegations of power i.e. Directors responsible for levels 1-7; Chief Directors for levels 8-9; DDGs for levels 10-12 and HoDs for all SMS members.
• Where appropriate, departments must seek legal opinion to evaluate prospects of winning cases prior to the commencement of arbitration processes and chairpersons should seek legally sound opinion before issuing a sanction of dismissal.
• Increase timeframes from 30 to 60 days for appeals, 60 to 90 days for precautionary suspensions 90 to 120 days for disciplinary cases because some cases are just too complex, especially those that implicate SMS members or politically connected individuals; or introduce flexible timeframes.
• Employee relations directorates or sub-directorates should be impartial and not one-sided – they should not represent management. It needs to ensure fairness and justice.
(b) Management of precautionary suspensions

- Precautionary suspensions should be resorted to only when there are no alternatives to avoid costs in terms of salary paid to officials who are sitting at home on prolonged suspensions.
- The directive should be issued by DPSA permitting officials on prolonged suspension exceeding 60 days to return to work without necessarily making representations and officials who interfere with the directives should be held liable to account for the suspension costs on departments.
- Departments who wish to extend precautionary suspensions for a period beyond the prescribed period of 60 days must first consult and secure approval to do so from an independent body.
- Consider suspension without pay in certain situations to enforce cooperation of respondents to ease disciplinary processes. Corrective measures must be taken against officials who failed to act correctly with regard to precautionary suspensions where sound advice was provided and proof thereof is provided.
- HoDs must implement precautionary suspensions only on the basis of sound advice from the labour relations directorate, and not only legal services.
- To develop a central system and internal databases to monitor and evaluate the implementation of precautionary suspensions and the speedy finalization of the disciplinary process within the prescribed period.

(c) Mechanisms to ensure proper implementation of disciplinary sanctions and/or arbitration awards

- Departments must be held accountable for not implementing sanctions or arbitration awards and section 143 of the Labour Relations Act, 1995, must be consolidated to allow councils to follow through whether awards are implemented and for timeframes for implementation to be enforced.
- Sanctions or arbitration awards must be clear and relevant to misconduct or offence and employee relations must monitor the implementation of all arbitration awards and disciplinary sanctions and advise accordingly and alert managers on the consequences of non-adherence with relevant processes/awards and implications thereof.
- DPSA to conduct audit to ensure proper implementation of sanctions and arbitration awards annually or quarterly.
- Presiding officers must release disciplinary outcomes within the prescribed time frame and appeal cases must be concluded within a set timeframe.

4.3.7 Proposals to address shortcomings on disciplinary codes and procedures for the public service

All categories of respondents in the study were asked to propose solutions in order to address identified shortcomings on the current disciplinary codes and procedures in the public service. Table 4 below presents the identified shortcomings and proposals.
### Shortcomings and proposals on disciplinary codes and procedures

<table>
<thead>
<tr>
<th>Shortcomings</th>
<th>Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer has no remedies within the disciplinary codes and procedures to review sanction(s) meted out by the chairperson.</td>
<td>The disciplinary codes and procedures should allow for the review of sanctions in situations where the sanctions seem to be inconsistent with the transgression.</td>
</tr>
<tr>
<td>Misconduct incidents are not aligned to the sanctions.</td>
<td>Types of misconduct should be categorised and aligned to a particular sanction.</td>
</tr>
<tr>
<td>Timeframe for the finalization of disciplinary cases is not spelt out at all.</td>
<td>Timeframe must be clearly stipulated.</td>
</tr>
<tr>
<td>Timeframe for the finalization of precautionary suspensions is not clear.</td>
<td>Timeframe must be clearly stipulated.</td>
</tr>
<tr>
<td>60 days’ timeframe is impractical to finalise cases where precautionary suspensions involve complex cases of especially SMS members.</td>
<td>Increase the timeframe to 120 days.</td>
</tr>
<tr>
<td>It is not clear who between the chairperson and the manager who instituted precautionary suspension must monitor that suspension.</td>
<td>It must be clearly spelt out that the institutor of a precautionary suspension is responsible for monitoring that suspension.</td>
</tr>
<tr>
<td>For levels 2-12 precautionary suspensions should under no circumstances go beyond 60 days.</td>
<td>Review the precautionary suspension provisions.</td>
</tr>
<tr>
<td>Under PSA, 1994 as amended, if a public servant is charged with misconduct and resigns, it is regarded as a resignation. But in terms of the Educators Employment Act of SA it is deemed as dismissal.</td>
<td>There must be a uniform clause that should a public servant served with misconduct charges and resign that is deemed as resignation for all public servants.</td>
</tr>
<tr>
<td>Section 6 of Resolution 1 of 2003 indicates that the manager for the employee must be appointed to initiate the disciplinary enquiry for salary levels 1 to 12. It is open for varying interpretations.</td>
<td>There must be clearer and specific provision on who must initiate.</td>
</tr>
<tr>
<td>There are no alternative sanctions for dismissal.</td>
<td>Repayment as a sanction for misconduct must be included as an alternative to outright dismissal.</td>
</tr>
<tr>
<td>Management and managers are reluctant to testify during disciplinary hearings.</td>
<td>Code should give the presiding officer authority to summons management and/or managers in writing to appear before internal disciplinary hearings and testify.</td>
</tr>
<tr>
<td>Clause 7.2 (c) is not clear as the clause states that the hearing must be held within 60 days but then states that it depends on the complexity of the matter and length of time.</td>
<td>It should be clarified to say that the hearing must be held within a month or 60 days or 120 days.</td>
</tr>
<tr>
<td>Clause 7.3 (o) is almost always impossible for the chairperson to communicate the final outcome within five working days.</td>
<td>Increase number of days to 10 working days because chairpersons need more time as they deal with more than one disciplinary matter at a time and sometimes complex cases.</td>
</tr>
<tr>
<td>No provision to recover money in the event of financial loss.</td>
<td>Provide guidelines on how to handle disciplinary cases that involve financial loss by the department.</td>
</tr>
<tr>
<td>Inconsistent interpretation of clause 2.8 of Resolution 1 of 2003.</td>
<td>For consistency reasons, chapter 2.8 of the code and 2.2(h) of chapter 7 of SMS handbook must be reviewed and made clearer.</td>
</tr>
<tr>
<td>Signing of the charge sheet</td>
<td>To be included as the duty of investigating officer.</td>
</tr>
<tr>
<td>Contradiction of clause 8.8 and 7.2 because a precautionary suspension should be lifted after finalising investigation.</td>
<td>Clause 7.2 (c) must be clarified as it relates to clause 8.8.</td>
</tr>
<tr>
<td>Consider professionalising chairperson or presiding</td>
<td>Creation of professional body to regulate the presiding</td>
</tr>
<tr>
<td>role.</td>
<td>role and registration of chairpersons.</td>
</tr>
<tr>
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</tr>
<tr>
<td>Adequate independent quality assurers and oversight structures must be built into the system.</td>
<td>An independent structure must be tasked to quality assure and chair disciplinary hearings and to provide oversight constantly throughout the year on all reported disciplinary cases.</td>
</tr>
<tr>
<td>Educators unable to re-apply for a job after abscondment.</td>
<td>Educators should be allowed to re-apply for a public service job after abscondment, particularly if they can prove rehabilitation.</td>
</tr>
<tr>
<td>Politicians play a part in influencing appeal and disciplinary decisions and the administrations.</td>
<td>The appeal boards must be external or must be removed from the political heads.</td>
</tr>
<tr>
<td>There is usually no neutral person to monitor whether disciplinary codes and procedures are adhered to during disciplinary hearings.</td>
<td>The disciplinary codes and procedures must provide for an HR official to be part of the disciplinary enquiry to observe proceedings.</td>
</tr>
</tbody>
</table>
CHAPTER 5: RECOMMENDATIONS AND CONCLUSION

5.1 INTRODUCTION

This chapter presents the recommendations and conclusion of the study. The proper management of disciplinary practices is critical in public service departments. Disciplinary action should be used by the employer to correct or attempt to improve employee behaviour in order to yield the desired results and should never be considered as a form of punishment and disciplinary action should always be considered as a last resort. The recommendations presented below seek to address the challenges identified throughout the study.

5.2 RECOMMENDATIONS

The proposed recommendations are grouped according to thematic areas derived from the objectives of the study as follows:

Awareness of legislative frameworks and understanding of the manner in which disciplinary cases are handled

- Crucial provisions in the disciplinary codes and procedures or policies must be provided for in small booklets and leaflets as part of the institution’s awareness strategy on discipline, and the documents must be circulated as part of reading materials and induction programme within the organisation.
- Line managers and supervisors must be conscientised that disciplinary processes and precautionary suspensions should be used to correct unacceptable behaviour and should never be considered as a form of punishment.

The application of prescripts governing the management of disciplinary cases

- Disciplinary codes and procedures must be regularly reviewed to ensure that they remain current and aligned with provisions of the regulatory framework of the public service.
- The PSC will engage relevant stakeholders on the provisions of the Public service Act, 1994, and regulations as they relate to the management of discipline in the public service and the powers given to the EAs with respect to their execution of HR functions including discipline management, and establish whether there is a link between what participants in this study view as manipulation of disciplinary cases by management or politicians, and those powers.
- The PSC will also consider engaging stakeholders on the provisions of the Labour Relations Act, 1995, regarding the issuing and implementation of arbitration awards. The view of respondents in this study is that there are no mechanisms to monitor the implementation of such awards, and departments implement them as they wish, or do not implement them at all.

The perceived role of organised labour and capacity of units and competencies of designated officials in the management of disciplinary cases

- Departments must ensure that LR units are staffed by sufficient and competent officials.
• Provincial offices must be capacitated to deal with disciplinary cases instead of escalating or referring them to the national offices. This will assist in improving the turn-around times in respect of disciplinary cases.

• Line managers and supervisors must be trained on disciplinary codes and procedures, labour relations, application of labour laws and the handling of disciplinary processes. In-depth training, not only on the obvious i.e. disciplinary codes and procedures, but also on how leadership relates to discipline management, must be prioritised.

• Line managers and supervisors are at the frontline of their directorates or branches and are expected to conduct the initial investigation of alleged misconduct. They must be encouraged to take management of discipline as a core management function and steps should be taken against those avoiding this responsibility. Such function must form part of their performance work plans, developmental and competency areas.

• The PSC will engage the DPSA on the structure and location of labour relations units in national and provincial departments with a view to addressing issues raised around the independence of these LR units from interference, incapacity and shortage of LR officials, given the workloads and staff complement of departments.

Challenges faced by public service departments in the management of disciplinary processes

• To counteract reported delays in the appointment of presiding officers and alleged irregularities in the management of precautionary suspensions, an independent institution must be tasked to preside over sensitive disciplinary and/or appeal cases to ensure that investigations or enquiries are completed in the shortest time possible, in a fair, consistent and transparent manner.

• The suggested institution will, moreover, assess and confirm before the commencement of hearings whether the grounds for disciplinary action or precautionary suspension are in line with the provisions of the disciplinary laws and if the matter is taken to court, whether the employer will succeed.

5.3 CONCLUSION

The findings in this study conclude that the management of disciplinary cases and implementation of sanctions and arbitration awards in most departments are not congruent with the disciplinary codes, procedures and other prescripts governing the handling of discipline in the public service. The challenges identified in this study have an adversarial effect on the application of discipline in departments. Consequently, this impedes the effectiveness and efficiency of departments in dealing with disciplinary cases.

It has also been found that disciplinary action is one of the used but least understood and badly administered aspects of behavioural management in the public service. One aspect that comes up is the interpersonal relationships that managers have with employees and the extent of influence these relationships have in the management of discipline. It is reported that managers often resort to ‘punishment’ to change behaviour and manage discipline. This brings into question the style of leadership of managers employed in the public service and managerial behaviours of those managers. How employees respond to a manager’s attempt to effect
discipline is influenced by how those employees interpret that manager’s intent and how much they trust that manager.

Luthans (2011)\textsuperscript{35} advises managers to always attempt to reinforce instead of punish in order to change behaviour. In behavioural management, discipline should attempt to be a learning experience, never purely a coercive experience to prove control over others. Luthans further suggests that regardless of an employee’s transgression, managers must always strive to maintain a positive working relationship by remaining open to dialogue and ensure that employees understand why they are being reprimanded.

\textsuperscript{35} Luthans, F. 2011. \textit{An Evidence-Based Approach to Organizational Behaviour}. (12 Ed.) McGraw-Hill.