



## FURNITURE BARGAINING COUNCIL

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### **BARGAINING COUNCIL DISPUTE RESOLUTION CODE OF CONDUCT**

This code is developed in terms of Section 127(4)(e) and (f) of the Labour Relations Act No 66 of 1995. Words and expressions used in this “Code of Conduct” and which are defined in the Labour Relations Act, 1995 (Act No 66 of 1995) or the Constitution or collective agreements unless repugnant to or inconsistent with the context of the “Code of Conduct”.

#### **1. PURPOSE**

The purpose of this code is to

- 1.1 assist in maintaining the good repute of the conciliation, mediation and arbitration processes and in particular the office of the panel of bargaining council panelists.
- 1.2 provide guidance to all bargaining council panelists on matter of professional conduct and practice generally.
- 1.3 ensure compliance with the requirements prescribed in section 127 (4) of the Act.

#### **2. GENERAL ATTRIBUTES OF BARGAINING COUNCIL PANELISTS**

Bargaining Council panelists are responsible for the first line of dispute resolution in dealing with disputes in the industry.

In order for conciliation, mediation and arbitration processes to be seen to be fair, just and gain the confidence of the parties and non-parties to bargaining council agreements, bargaining council panelists shall –

- 2.1 act with dignity, tact, honesty, circumspection, impartiality, due diligence and independent of the state, any political party, trade union, employers’ organisation, federation of trade unions or federation of employers’ organisations and any outside pressure in the discharge of their statutory functions;
- 2.2 conduct themselves in a manner that is fair to all parties and shall not be influenced and/or swayed by fear of criticism or by self-interest;
- 2.3 not solicit favours or appointment for themselves. This shall not, however, preclude bargaining council panelists from indicating a willingness to serve in any capacity;
- 2.4 accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment;
- 2.5 not enter into any financial business or social relationship which is likely to affect their impartiality or integrity or which might reasonably create a perception of partiality or bias;
- 2.6 not influence bargaining council officials or employees or be influenced by representatives, alternate representatives or officials or office-bearers of any of the parties to the council or any other non-party by improper means including gifts, favours or other inducements or enticements;
- 2.7 not unfairly discriminate against any employee or employer, directly or indirectly, on any arbitrary ground including but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.

### **3. CONFLICT OF INTEREST AND DISCLOSURE**

- 3.1 Bargaining council panelists should disclose any interest or relationship that is likely to affect their impartiality or which might create a perception of partiality at any time. The duty to disclose such interests and relationships rests on the bargaining council panelists.
- 3.2 Bargaining council panelists appointed to intervene in any matter should before accepting, disclose directly to the Secretary of the council –
  - 3.2.1 any direct or indirect financial or personal interest in the matter;
  - 3.2.2 any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias;
  - 3.2.3 if the circumstances requiring disclosure are known to commissioners prior to accepting appointments disclosure must be made when such circumstances become known to the commissioners. The disclosure in this regard could in arbitration proceedings include witnesses who may have a relationship with the commissioners;
  - 3.2.4 after appropriate disclosure bargaining council panelists may serve if both parties so desire but should withdraw if they believe that a conflict of interest exists irrespective of the view expressed by the parties;
  - 3.2.5 in the event where there is no consensus on whether bargaining council panelists should withdraw or not, bargaining council panelists should not withdraw if the following circumstances exist –

if the terms of reference provide for a procedure to be followed for determining challenges to the bargaining council dispute resolver, then those procedures should be followed.

if bargaining council panelists after carefully considering the matter, determine that the reason for the challenge is not substantial and that they can nevertheless act impartially and fairly and that the withdrawal would cause unfair delay or would be contrary to the ends of justice.

### **4. HEARING CONDUCT DURING CONCILIATION OR ARBITRATION OF A DISPUTE**

- 4.1 Bargaining council panelists should conduct proceedings fairly, diligently and in an even-handed manner;
- 4.2 bargaining council panelists should have no casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other party to the dispute;
- 4.3 bargaining council panelists should be patient, tactful and courteous to the parties and their representatives or witnesses and should encourage similar behaviour by all participants in the proceedings;
- 4.4 agreements by the parties for the use of mechanical recording should be respected by bargaining council panelists acting as arbitrators;
- 4.5 in determining whether to conduct an ex parte hearing, a bargaining council arbitrator must consider the relevant legal contractual and other pertinent circumstances;
- 4.6 a bargaining council dispute resolver must be satisfied before proceeding ex parte that a party refusing or failing to attend the hearing has been given adequate notice of the time, place and purpose of the hearing;
- 4.7 in the event of more than one commissioner acting as either a conciliator bargaining council panelist should afford each other a full opportunity to participate in the proceedings;
- 4.8 bargaining council panelists should not delegate their duty to intervene in any matter to any other person without prior notice to and the consent of the secretary of the bargaining council.

### **5. POST-HEARING**

- 5.1 Bargaining council arbitrators should not disclose a prospective award to either party prior to its simultaneous issuance to both parties.
- 5.2 bargaining council arbitrators awards should be definite, certain and as concise as possible.
- 5.3 no clarification or interpretation of an award is permissible without the consent of both parties.

5.4 under agreements which permit or require clarification or interpretation of an award, bargaining council arbitrators shall afford each party an opportunity to be heard.

## 6. **CONFIDENTIALITY**

6.1 Information disclosed to bargaining council panelists in confidence by a party during the course of conciliation should be kept by the dispute resolver in the strictest confidence and should not be disclosed to the other party or to third parties unless authority is obtained for such disclosure.

6.2 Bargaining council panelists investigating agreement contraventions shall under no circumstances reveal their source or have documents in their possession that could reveal this source.

## 7. **JURISDICTION**

7.1 Bargaining council panelists must observe faithfully both the limitation and inclusions of the jurisdiction conferred by an agreement or by statute under which they serve.

7.2 a direct settlement by the parties of some or all issues in a case at any stage of the proceedings must be accepted by bargaining council panelists as relieving him or her of further jurisdiction in respect of such issues.

## 8. **CONCILIATION BY BARGAINING COUNCIL ARBITRATORS**

Bargaining council panelists acting as arbitrators may suggest to the parties that they should conciliate if they are of the view that conciliation is appropriate. Bargaining council panelists should not pursue the matter if the parties do not agree.

## 9. **RELIANCE ON OTHER ARBITRATORS' AWARDS AND INDEPENDENT RESEARCH**

Bargaining council arbitrators issuing awards may have regard to other arbitrators' awards, decided cases or independent research but must assume full and unimpaired responsibility in each matter for the decision reached.

## 10. **AVOIDANCE OF DELAYS**

10.1 Bargaining council panelists have the duty to plan their work schedules in a manner that ensures that commitments to the council are fulfilled timeously.

10.2 bargaining council panelists should co-operate with the parties and the bargaining council to avoid delays.

10.3 on completion of a hearing, bargaining council arbitrators must adhere to the time limits for issuing an award.

## 11. **FEES AND EXPENSES**

11.1 Bargaining council panelists acting as such should be governed by the fee structure of the bargaining council dispute resolution panel and should not enter into any arrangement with the parties regarding fees.

11.2 bargaining council panelists must maintain adequate records to support charges for services and expenses and must account timeously to the bargaining council secretary for any expenses occurred within the financial policy framework of the bargaining council.

## 12. **COMPETENCY**

12.1 Bargaining council panelists should decline appointment, withdraw or request technical assistance when they decide that a matter is beyond their competence.

12.2 bargaining council panelists acting as conciliators should understand the issues which form part of the dispute before endeavouring to assist the parties with the settlement of that dispute. In this regard they should spend time at the beginning of the proceedings to make sure that they understand the positions, the needs and expectations of the parties.

13. **BASIS OF CONCILIATION PROCEEDINGS**

Bargaining council panelists acting as conciliators should determine at the commencement of a matter whether the proceedings will take place on a “without prejudice” basis and should secure the agreement of parties in this regard.

14. **OTHER COUNCIL STAFF**

This Code of Conduct shall mutatis mutandis apply to all other council staff, who on the instructions of the secretary of the council may become involved in the procedure for the resolution of disputes about the application or interpretation of collective agreements.

15. **DISCIPLINARY PROCEDURES**

15.1 In terms of section 127(4)(f) of the Act, it is a requirement for accreditation that a bargaining council use an acceptable disciplinary procedure to ensure that its panelists adhere to the Bargaining Council Dispute Resolution Code of Conduct. In terms of clause 4.1.2 of the Bargaining Council Accreditation Handbook, the council must amend any existing disciplinary procedure if there is one or adopt a disciplinary procedure to meet the requirements of the section. In order for a disciplinary procedure to be acceptable it must meet the minimum requirements in clause 15.2.

15.2 If any complaint or allegation of misconduct is lodged against a panelist, the disciplinary procedure must provide –

- \* that reasonable notice of the complaint or allegation be given to the panelist
- \* for the establishment of a disciplinary committee by resolution of the council
- \* that the panelist is given a proper opportunity to be heard
- \* that written reasons be given for any decision of the committee; or
- \* that the misconduct includes –
  - \* breach of the Bargaining Council Dispute Resolution Code of Conduct
  - \* acting in an improper manner
  - \* conduct that impairs the perception of the panelist’s independence, impartiality or duties; and
  - \* that the committee has the power to warn or remove a panelist for misconduct.

16. **INCORPORATION OF CODE AND PROCEDURES**

The council must include the Bargaining Council Dispute Resolution Code of Conduct and its disciplinary procedure in the terms and conditions of appointment of panelists.

## **DISCIPLINARY PROCEDURES FOR PANELISTS**

### **(Conciliators and Arbitrators)**

#### **DISCIPLINARY COMMITTEE**

In order to ensure consistent and fair discipline and to promote disciplined behaviour amongst the panelists it is our policy to vest disciplinary action and accountability in a disciplinary committee consisting of one member from each Party to the Bargaining Council by resolution of the Council. A Chairperson should be appointed from one of the committee members.

#### **OBJECTIVE OF THE DISCIPLINARY PROCEDURES**

1. To initiate corrective action where performance is unsatisfactory or the behaviour of the panelist is unacceptable or improper.
2. To initiate corrective action where the performance of the panelist deviates from acceptable standards as set out in the Code of Conduct.
3. To ensure that the panelist is impartial.
4. To protect the interest of the Council and the panelists and to give a fair hearing against any measure which is considered to be unacceptable.

#### **STAGES OF DISCIPLINARY ACTION**

Disciplinary action must be taken as soon as possible after the alleged offence has been committed or a complaint has been received.

##### **1. Verbal warnings**

In cases of minor breaches the committee should give the panelist a verbal warning/reprimand. Record should be kept of the verbal warnings.

##### **2. Formal written warnings**

Written warnings represent more formal disciplinary action by the committee than verbal warnings and may be used if the verbal warning is considered inadequate because of the nature of the offence or where previous verbal warning/s have not produced the desired effect. Record should be kept of the formal written warnings.

##### **3. Final written warnings**

Where a formal written warning is considered inadequate because of the nature of the offence or where a further breach of discipline has occurred, the panelist should be given a final written warning signed by the disciplinary committee. This enquiry is similar to a hearing but more informal. Record must be kept of this enquiry.

##### **4. Removal from panel**

Where the disciplinary committee is of the opinion that the seriousness of the offence necessitates such a step.

#### **DISCIPLINARY ENQUIRY PROCEDURE (for chairperson)**

##### **1. Before the enquiry**

- 1.1 Ensure that the panelist has been informed of the complaint/allegation of misconduct in advance.
- 1.2 Ensure that sufficient time has been given to the panelist to prepare his/her case and to alert his/her witnesses (if any)
- 1.3 Ensure that the Committee has advised the panelist of his/her rights.
- 1.4 Ensure that all parties involved are advised of the date, time and venue.
- 1.5 Ensure that an interpreter is available (if necessary).
- 1.6 Ensure that recording facilities are available.

## 2. **At the enquiry**

- 2.1 Ensure that the witnesses are available (they should not be present at the enquiry until called).
- 2.2 Allow everybody to introduce themselves.
- 2.3 Explain the procedure of the enquiry and advise of the rules of conduct.
- 2.4 Advise the panelist of his/her rights.
- 2.5 Read the complaint/allegation of misconducts and ask the panelist if he/she admits or denies the allegations (even if the panelist pleads guilty, proceed with a full hearing).
- 2.6 Ask the Committee representative to state its case.
- 2.7 Allow for any party i.e. panelist/representative/chairperson to cross-examine the Committee representative.
- 2.8 Call witnesses (one at a time) to give evidence and allow for cross-examination of such witnesses.
- 2.9 Allow panelist to state his/her case.
- 2.10 Allow for any party i.e. Committee representative/chairperson to cross-examine.
- 2.11 Complete checklist once all evidence has been given.
- 2.12 Ask committee representative and panelist about panelist's work record and length of service as a panelist and explain that this will only be examined after all the evidence has been weighed up and only in the event of the panelist having been found guilty on the evidence or on a balance of probabilities. The panelist's record may serve to reduce the penalty especially in cases where such record reflects a clean record.
- 2.13 Close enquiry and inform when the findings will be available.
- 2.14 Weigh evidence and decide whether panelist is guilty or not. If found guilty give full reasons for the finding. If found guilty, consider work record as a panelist before deciding on penalty. Apply the principle of reasonableness and fairness.
- 2.15 Hand down findings (recommendation).
- 2.16 Advise panelist of his/her right to appeal the procedure and attach two Appeal forms to findings.
- 2.17 Ensure that panelist signs copy of findings. Should the panelist refuse to sign, two witnesses must sign as proof that panelist has received same. Attach warning forms/removal as panelist forms, whichever is applicable and give it together with findings to the Council for final decision.

## **PROCEDURE FOR APPEAL HEARING**

1. When a panelist wishes to appeal against disciplinary action against him/her, he/she must appeal to the General Secretary on the prescribed Appeal forms for referral to a special selected sub-committee of the Council. (Members of the special sub-committee cannot comprise of any of the members of the original disciplinary sub-committee). He/she may appeal in the following circumstances –
  - 1.1 If the Disciplinary Enquiry procedures were not adhered to
  - 1.2 If new evidence or witnesses are available which may materially influence the decision of the hearing or enquiry
  - 1.3 If the decision of the Chairperson is considered to be unfair, or the penalty is considered to be too harsh or if the Chairperson has allegedly not applied his/her mind in a fair and just manner.
  - 1.4 A panelist who wishes to appeal must notify the Committee within three working days after the findings of the Disciplinary Enquiry have been handed down.
    - 1.4.1 The Appeal forms must be completed and signed by the panelist
    - 1.4.2 Reasons for the appeal must be furnished.
  - 1.5 The Chairperson of the Appeal Hearing should not have been involved in or be biased or prejudiced by the original disciplinary case
  - 1.6 The panelist is entitled to representation at the Appeal Hearing

- 1.7 The Appeal Hearing procedure is the same as for the Disciplinary Enquiry except that it need not be necessary to re-hear all the previous statements as this information is available for the tape recording of the Disciplinary Enquiry
- 1.8 The Chairperson of the Appeal Hearing must inform all the parties of his decision in writing
- 1.9 All documentation pertaining to the Disciplinary Enquiry and/or Appeal Hearing (i.e. charge sheet, minutes, evidence, appeal request and findings) must be forwarded to the Chairperson of the Council.

## **PANELIST RIGHTS**

Every panelist has the following rights –

1. To be given advance warning of any complaint/allegation of misconduct against him/her.
2. To be advised of the complaint/allegation.
3. To be given time to prepare his/her defence.
4. To be allowed a formal hearing or enquiry.
5. To be present at a formal hearing or enquiry.
6. To be represented at a formal hearing or enquiry by a colleague of his/her choice (i.e., an employee of the Council).
7. To cross-examine any person giving evidence and to ask questions of any evidence produced.
8. To call witnesses to testify on his/her behalf.
9. To an interpreter who is an employee of the Council.
10. To appeal within three (3) working days against any penalty which may be imposed to the General Secretary of the Council.