

CESA DISCIPLINARY COMMITTEE

Streamlined Disciplinary Procedure (November 2010)

(with reference to Advisory Note 97/7)

1. Disciplinary Process

The Disciplinary Process is based on the holding of a Disciplinary Hearing along the following lines:

1. Only complaints alleging a breach of specific Clause in the CESA Code of Conduct, Constitution or Business Integrity Management System will be entertained.
2. If the details of the allegation are not specific enough the Contractual Affairs Manager will inform the complainant accordingly and request more detail as well as to which clauses of the CESA Code of Conduct, Constitution or Business Integrity Management System have been breached.
3. The CEO, Chairman of the Disciplinary Committee and the Contractual Affairs Manager will discuss the matter by email, telephonically or at a meeting, and decide whether the complaint has merit and should be entertained.
4. If the allegation is not to be entertained, the Contractual Affairs Manager will inform the Complainant accordingly in writing.
5. If the allegation is to be entertained then the Contractual Affairs Manager will undertake the following steps:
 1. Inform both parties and the members of the Disciplinary Committee of the allegation and process to be followed.
 2. Arrange a conciliatory meeting between the parties. Even if the complaint or alleged breach is, in the opinion of the CEO and the Chairman of the Disciplinary Committee, of such a serious nature that conciliation cannot be achieved, a meeting between the parties must be convened.
 3. In the absence of conciliation, refer the matter to a Disciplinary Hearing for formal consideration.
 4. Arrange the Disciplinary Hearing by a Tribunal at a day and time to suit everyone concerned. The Tribunal would typically consist of the Chairman of the DC, at least one Member of the DC, the CEO and the Contractual Affairs Manager. The two parties involved may each bring two representatives (but not a legal practitioner or similar) to the meeting.
6. Once the Disciplinary Hearing has been concluded and the Tribunal has reached a conclusion (verdict and sanction), the Contractual Affairs Manager will, in conjunction with the chairman of the DC, draft a report with recommendations for consideration by Exco. The report will contain a comprehensive account of the proceedings, the basis of findings etc. to enable Exco to vet the Tribunal's recommendations.
7. The CEO shall inform the Complainant and the Respondent of the decision of the Exco in writing within one week of the matter being considered by Exco.
8. The parties may appeal to Exco against the sanction imposed by the Tribunal and vetted by Exco, but not the verdict.
9. Exco shall report the verdict and sanction to Council at the first Council meeting following the Exco meeting where the matter was considered.

2 CESA Notes pertaining to the Hearing

1. The Chairman of the Disciplinary Committee will preside over the Hearing and see to its orderly conduct.
2. The Chairman will be assisted by the Contractual Affairs Manager especially wrt time-keeping and recording of proceedings.
3. The Tribunal need only reach a finding on the balance of probability.
4. The Disciplinary Hearing is not a court of law and its findings are not intended for use in subsequent litigation, if any.

5. No explanation of the basis of the decision will be made available to either the Complainant or the Respondent. Any records of the process will only be made available at the sole discretion of the Chairman.
6. Permissible sanctions remain the same as for previous disciplinary processes (and are included below for ease of reference).

3 Disciplinary Hearing

As far as possible the Disciplinary Hearing will be run as follows:

Ref	Time	Duration	Activity	Players
1	09:00-09:10	10 min	Introductions & outline of process	Presiding Officer
2	09:10-10:10	60 min	'Allegation'	Complainant
3	10:10-11:10	60 min	'Defence'	Respondent
4	11:10-11:30	20 min	Break from proceedings, tea & coffee	All
5	11:30-11:50	20 min	Rebuttal	Complainant
6	11:50-12:10	20 min	Rebuttal	Respondent
7	12:10-12:30	20 min	Questions of clarity to Complainant	Tribunal
8	12:30-12:50	20 min	Questions of clarity to Respondent	Tribunal
9	12:50-13:00	10 min	Thanks & closure of Hearing	Presiding Officer
10	13:00-14:00	60 min	Deliberations	Tribunal
		5 hours		

4 Sanctions/ Disciplinary Actions

Actions which may be taken by Council against a member firm or Retired Principal, in terms of the Constitution and By-laws (see Appendix below), include:

1. Reprimand
2. A fine
3. Suspension of membership
4. Termination of membership

Notwithstanding the above, a complaint against any employee of a member firm registered with the Engineering Council of South Africa (ECSA) may be lodged with ECSA by the complainant if he is of the opinion that the rules of conduct of ECSA have been transgressed.

It is not considered necessary for the investigation of a complaint against a member firm by the Disciplinary Committee and actions subsequently resolved to be taken, to be suspended pending any ECSA investigation of an individual registered person arising from the same complaint, but that the two matters are allowed to proceed in parallel.

Appendix

The CESA Bye-Laws require Council to publish such details of action taken against a Member or Retired Principal, in regard to the Constitution and Bye-Laws, as it considers appropriate (see Bye-Laws, Clause 7.5).

Recommended actions for four sanctions are tabled below.

1. Reprimand

Publish the following on the CESA website:

- The fact that action was taken against a member firm (no names mentioned)
- Region of office(s)
- Details of contravention (eg Code of Conduct clause)
- Detail of action taken

2. Impose Fine

Publish the following on the CESA website:

- The fact that action was taken against a member firm (no names mentioned)
- Region of office(s)
- Details of contravention (eg Code of Conduct clause)
- Detail of action taken

3. Suspend Membership

Publish the following on the CESA website:

- Name of firm and region of office(s)
- Details of contravention (eg Code of Conduct clause)
- Detail of action taken

4. Terminate Membership

Publish the following on the CESA website:

- Name of firm and region of office(s)
- Details of contravention (eg Code of Conduct clause)
- Detail of action taken

Note: In addition to publication on the website, publication in the CESA Newsletter shall be at the discretion of the Tribunal.
