

THE SOUTHERN AFRICAN INSTITUTE OF MINING AND METALLURGY

COMPLAINTS AND DISCIPLINARY PROCEDURE

INTRODUCTION

The Complaints and Disciplinary Procedure has been adopted to reinforce By-law H, Code of Professional Conduct.

The purpose of the Southern African Institute of Mining and Metallurgy's Code of Professional Conduct (By-law H) is to maintain the professional esteem of the members throughout the wider community. Anyone should be able to make a complaint against a member, in relation to an alleged breach of the Code of Professional Conduct or the Constitution of the Institute.

- (1) The overriding principles here are firstly that the reputation of a member must be protected while an alleged breach is assessed and secondly, that the process itself conforms to the principles of natural justice.

Complaints against members will be handled as follows:

- (2) The requirements are:
 - a. That confidentiality is paramount.
 - b. That the process must minimise the opportunity for false implications from accusations and complaints.
 - c. That a committee handling a complaint with serious implications is not both prosecutor and judge.
 - d. That appropriate cases are handled internally by the Institute or are referred to the judicial system if there is perceived criminal intent.
 - e. That an independent appeals process be available.
- (3) To meet these requirements two independent committees, a Complaints Committee and an Ethics Committee, will deal with complaints. The Complaints Committee receives and screens all complaints and if necessary gathers evidence, before rejecting complaints as frivolous, redirecting them as commercial, or dealing with them as potential "non-compliance" against any of the SAMCODES or the Constitution of the Institute, except for complaints relevant to the Code of Professional Conduct. These can arise as primary complaints against the Code of Professional Conduct or as cases of "non-compliance" established by the Complaints Committee, that also potentially exhibit dishonesty, intent, repetition or reckless incompetence.
- (4) The Complaints Committee will pass complaints relevant to the Code of Professional Conduct to the Ethics Committee for assessment and determination. The Ethics Committee can obtain independent opinion but not gather evidence, nor bring an ethics complaint of its own accord.
- (5) The separation of committees in this way is intended to enable the majority of complaints to be handled without an implication of unethical behaviour, and ethical complaints to be handled without a perception of bias.

THE COMPLAINTS COMMITTEE

- (6) The purpose of this committee is to protect the reputation of a member while an alleged breach is dealt with. This committee will handle all complaints; sort out frivolous complaints, complaints where there has been non-compliance and complaints where there have been serious breaches such as "unethical behaviour".

- (7) The Complaints Committee comprises three Fellows (excluding current members of Council and Fellows sitting on the Ethics Committee) and one current member of Council. Council selects committee members for a three-year term, following a general call for nominations. The Complaints Committee elects its own Chair (not a current Councillor) for a period agreed amongst its members.
- (8) All complaints, whatever their nature, are to be initially referred in writing, to the Chair of the Complaints Committee. Any individual or organisation can make a complaint.
- (9) The Complaints Committee can seek advice from independent experts (such as SAMREC competent persons, or legal practitioners), or it can seek additional evidence relating to the complaint if deemed necessary. It can also seek advice relating to SAIMM policy from the President or the Council.
- (10) A member against whom a complaint is made shall be entitled to notice in writing of the substance of the complaint and to a reasonable opportunity to be heard in respect of such complaint before the Complaints Committee. The procedure to be adopted in respect of the complaint shall be at the discretion of the Complaints Committee.
- (11) The Complaints Committee will address each complaint, then after deliberation and advice and within 90 days of receipt of the complaint will either:
 - a. Dismiss the complaint as frivolous or vexatious or
 - b. Refer the complaint back to the parties or to an Alternative Disputes Resolution process if related to dysfunctional contractual arrangements or
 - c. Refer the case to the judicial system if there is perceived criminal intent or
 - d. Refer the complaint to the Ethics Committee (see below) if there is a perceived breach of the Code of Professional Conduct (even for complaints not initially directed to the Code of Professional Conduct) or
 - e. Deal with the matter if it is deemed a technical breach of an Institute Code (excluding the Code of Professional Conduct). If a “non-compliance” is established, then apply the penalty that is available to the Complaints Committee. This can include personal admonition, mediation and counselling, but not suspension of membership.
- (12) All cases are to be dealt with confidentially. The person who laid the complaint should be notified of the Committees finding and action and the Johannesburg Stock Exchange must be notified in the case of a finding of non-compliance in relation to the relevant SAMCODE.
- (13) If an established “non-compliance” of an Institute or other Professional Code has characteristics of dishonesty, intent, repetition or reckless incompetence, then it has to be additionally forwarded to the Ethics Committee for judgement against the Code of Professional Conduct.
- (14) The Chair of the Complaints Committee is to present, to the Ethics Committee, the evidence and process undertaken surrounding any complaint referred to the Ethics Committee.
- (15) The complainant has a right of appeal directly to the Ethics Committee of the Council against any decision of the Complaints Committee.

THE ETHICS COMMITTEE

- (16) The purpose of the Ethics Committee is to deal with all complaints directed to it by the Complaints Committee, and any appeals against the Complaints Committee decisions, brought before it.
- (17) It must always be independent.

- (18) An "Ethics complaint" means a complaint where a member of the Institute has breached any obligation of the Code of Professional Conduct or any other Code of the Institute, or any rule published by the Council prevailing at the relevant time or any alleged unprofessional conduct by that member.
- (19) An Ethics Committee constitutes four Fellows (excluding current members of Council and Fellows sitting on the Complaints Committee), selected by the Council for a three-year term, following a general call for nominations. One current SAJMM member of Council, nominated annually by the Council constitutes the fifth member of the Ethics Committee. The Ethics Committee elects its own Chair for a period agreed amongst its members. The current Council member cannot chair the committee. Three members constitute a quorum for a meeting of the Ethics Committee.
- (20) The Council member serving on the Ethics Committee has the responsibility to advise the Council, on a "need to know basis", of any fiduciary or any other matter related to Committee business, which could potentially affect Council members.
- (21) Notwithstanding the membership conditions outlined in (8) and (20) above, Complaints and Ethics Committee members must declare any Conflict of Interest to the Council, who are then to nominate a replacement for the period of the Conflict of Interest.
- (22) In relation to complaints brought before it, the normal "Rules of Evidence" are not to bind the Ethics Committee. It can obtain independent or legal advice on evidence before it but because this committee is set up to judge (not prosecute) it cannot seek additional evidence, nor bring an ethics complaint against any member of its own accord.
- (23) In relation to an ethics complaint brought before it, the Ethics Committee will either:
- a. Find that a breach of the Code of Professional Conduct has not been established or
 - b. Find that a breach of the Code of Professional Conduct has been established, either as "non-compliance" or in more serious cases as "unethical behaviour", and impose an appropriate penalty, which can include suspension or expulsion from the Institute and publication of the case or
 - c. Forward serious cases of unethical behaviour onto the relevant Statutory Bodies (ECSA, etc.).
- (24) Notwithstanding (b) above, a second finding of technical "non-compliance" with the Code of Professional Conduct is not to be directed against a member for the same offence, purely as a result of commonality of code principles.
- (25) In relation to an appeal against a Complaints Committee decision, the Ethics Committee can
- a. Uphold the decision of the Complaints Committee.
 - b. Reclassify the Complaint and the manner in which it is to be handled, as appropriate.
- (26) An appeal against a ruling by the Ethics Committee, on any alleged breach of the Code of Professional Conduct, is to be made to an independent arbitrator.
- (27) An ethics complaint shall be referred to the Ethics Committee for hearing and determination as expeditiously as is reasonably possible.
- (28) A member against whom an ethics complaint is made shall be entitled to notice in writing of the substance of the complaint and to a reasonable opportunity to be heard in respect of such complaint before the Ethics Committee. The procedure to be adopted in respect of an ethics complaint shall be at the discretion of the Ethics Committee.

- (29) At the conclusion of the hearing of an ethics complaint, the Ethics Committee may find that the complaint has not been established, or may find that the complaint has been established, in which case the Ethics Committee may:
 - (30) decide to take no further action;
 - (31) warn or reprimand the member concerned;
 - (32) suspend the membership of the member concerned for a period not exceeding 12 months, require that the member undergo further training;
 - (33) resolve that the member be suspended or expelled from the Institute;
 - (34) refer the matter to the relevant Statutory Body (ECSA, etc.).
- (35) A resolution of the Ethics Committee that a member be expelled shall not take effect until such resolution is confirmed by an ordinary resolution of the Council of the Institute, and the member concerned shall be given the opportunity to be heard by the Council before it decides whether or not to adopt any such resolution of the Ethics Committee.
- (36) A member who is dissatisfied with a decision by the Ethics Committee that is adverse to that member may by notice in writing delivered to the Manager of the Institute within sixty days of the giving of such a decision (or within such later time as the Council may by ordinary resolution allow) appeal against such decision.
- (37) The Council shall proceed to hear and determine an appeal from a decision of the Ethics Committee as expeditiously as is reasonably possible. The member who is appealing shall be given a reasonable opportunity to be heard on the appeal, but otherwise the procedure to be adopted shall be at the discretion of the Council. The Council shall decide the appeal by ordinary resolution, and shall in reaching a decision as to what should be the outcome of the ethics complaint giving rise to the appeal has all of the powers of the Ethics Committee, and may, within those powers, decide to vary the penalty that was imposed by the Ethics Committee.
- (38) On the hearing of an appeal by the Council, and in considering whether or not to confirm a resolution of the Ethics Committee that a member be expelled, the Council shall be provided with a record of the proceedings before the Ethics Committee, including the evidence, and shall be bound by any findings of fact made by the Ethics Committee, unless it is persuaded that it would be manifestly unjust for it to do so, and it shall not be necessary for the evidence before the Ethics Committee to be recalled before the Council.
- (39) In any proceeding under this procedure neither the Ethics Committee nor the Council shall be bound by the rules of evidence and each shall proceed with as little formality and technicality and as much expeditiousness as a fair consideration permits.
- (40) The Ethics Committee or the Council may direct that any finding made by the Ethics Committee or the Council (as the case may be) made against a member as a result of an ethics complaint be reported to members in a publication of the Institute, or be reported to the appropriate regulatory authorities.
- (41) A member against whom an ethics complaint has been made and which is subsequently dismissed may publicise that dismissal to the same extent as any publicity given to the lodging of the ethics complaint.
- (42) The Council may from time to time make or amend the guidelines to assist members in the implementation of these procedures. Such guidelines must not be inconsistent with these procedures.
- (43) All members are bound by a determination of the Ethics Committee or the Council made pursuant to these guidelines.