

**THE COMPLIANCE INSTITUTE SOUTHERN AFRICA (NPC)**

**DISCIPLINARY PROCEDURES**

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## 1. DEFINITIONS AND INTERPRETATION

Words that are defined in the Disciplinary Policy bear the same meaning in these Disciplinary Procedures (“the/these Procedures”).

## 2. PURPOSE

- 2.1 These Procedures provide for the manner and process of adjudication of allegations of Misconduct against Members of the Institute.
- 2.2 In order to expedite the adjudication of complaints, matters will be considered on the papers only, unless circumstances warrant that a hearing be held. However, hearing procedures are reserved for those matters where the alleged Misconduct is deemed so serious, or of such a substantial nature, that adjudication on the papers alone cannot reasonably be considered appropriate in the circumstances.

## 3. SCOPE AND APPLICATION

- 3.1 These Procedures are binding on all Members of the Institute.
- 3.2 These Procedures must be read with the Institute’s Disciplinary Policy and the terms of reference of the Institute’s Social Ethics Remuneration, and Nominations (SERN) committee, as determined from time to time.
- 3.3 The Institute's CEO will be the custodian of these Procedures and ensure that appropriate amendments are initiated and submitted to SERN for approval, as and when necessary, who acts in terms of its mandate delegated from the Board. The CEO may determine revised administrative processes and procedures from time to time, in consultation with SERN, to give effective execution to these Procedures.

## 4. RECEIPT AND ADJUDICATION OF A COMPLAINT ON THE PAPERS

- 4.1 A Complainant must refer a complaint to the Institute in the prescribed format (substantively in the form of **Annexure A** hereto - Standard Reporting Form) detailing the particulars of the complaint, and must, as far as possible, include any documentation in support of their complaint.
- 4.2 Where the Institute itself is the Complainant, the CEO, or their nominee, will assume the role of the Complainant in a particular matter. In such a case, the CEO, or their nominee, may not be a member of a Panel adjudicating the particular complaint.
- 4.3 SERN will identify and constitute a Panel and ensure that the Panel is be provided with the complaint within 10 (ten) days from receipt thereof.
- 4.4 The Panel will consider the complaint and, where the Panel deems is necessary in the consideration thereof, request further particulars from the Complainant, to be given in writing, concerning any aspect of their complaint.

- 4.5 Having initially considered the complaint, the Panel:
- 4.5.1 where it is of the opinion that the complaint does not disclose a *prima facie* case of Misconduct, dismiss the complaint, and provide a report on the matter to SERN and the Complainant, accordingly; or
  - 4.5.2 where it is of the opinion that a *prima facie* case of Misconduct on the part of the Member concerned is or may be made out, send a Notice of Complaint (substantively in the form of **Annexure B** hereto) to the Member setting out the charge or charges against the Member and calling upon the Member to provide the Panel with an answer to the complaint, in writing and in the form of an answering statement, incorporating any documentation in support of their answer, within 10 (ten) days of receipt of such notice.
- 4.6 The notice referred to in 4.5.2 will, in addition to setting out the charge(s) against the Member, include the complaint (Standard Reporting Form), documents and further particulars received from the Complainant, where relevant.
- 4.6.1 In exceptional circumstances, the Panel may, in its sole discretion, redact the name and other identifying particulars of the Complainant to ensure the anonymity of the Complainant. However, this discretion will always be exercised with prudent consideration of the fact that a Member is entitled to the full particulars of a complaint against him/her, including the source of the complaint and the identity of their accuser, to enable the Member to prepare a proper defence against any allegation(s) of Misconduct raised against him/her.
- 4.7 If the Panel deems it necessary, it may request further particulars from the Member to be given in writing, concerning any aspect of the Member's answer to the complaint. The Panel may determine the deadline for the submission of such further particulars.
- 4.8 Following the receipt of the Member's answering statement in terms of section 4.5.2 above (and any further particulars provided in terms of section 4.7 above), the Panel will notify the Complainant of the response received (which will contain the Member's full answering statement and any annexures thereto) and request the Complainant to reply thereto in writing and in the form of a replying statement, within 10 (ten) days of receipt of such notice.
- 4.8.1 The Complainant may elect not to file a replying statement. Should a replying statement not be received within the 10 (ten) day period, it will automatically be assumed that the Complainant has elected not to file a reply, and the proceedings will continue on such basis.
- 4.9 Where a replying statement is received, the Panel will provide the Member with a copy thereof for his/her records.
- 4.10 After having considered the complaint, the Member's answering statement and any replying statement thereto, the Panel will, within a reasonable time and on the papers before it:
- 4.10.1 dismiss the complaint, and inform both the Complainant and Member, accordingly; or
  - 4.10.2 find the Member guilty of one or more of the charges, and inform the Member, the Complainant and SERN, accordingly; or
  - 4.10.3 refer the matter for adjudication by way of Hearing, as provided for in section 5 below, subject to section 2.2 and 5.1 of these Procedures.

- 4.11 The Panel must, regarding each charge, determine whether sufficient facts or circumstances have been proved on a balance of probabilities to support (prove) the charge(s). The written finding of the Panel will reasonably reflect the Panel's considerations in this regard.
- 4.12 The Panel's finding must be communicated to the Member, the Complainant and SERN, in writing.
- 4.13 In circumstances where the Panel has found the Member guilty on a charge or charges, the Panel will, in providing their finding to the Member and the Complainant:
  - 4.13.1 request written representations from the Complainant on any matter(s) to be considered in aggravation in determining an appropriate sanction against the Member; and
  - 4.13.2 request written representations from the Member on any matter(s) to be considered in mitigation in determining an appropriate sanction against the Member; and
  - 4.13.3 after having consider such aggravating and mitigating circumstance or matters as provided for in sections 4.13.1 and 4.13.2 above, make a finding on a sanction or sanctions to be imposed on the Member, in accordance with section 10 of the Disciplinary Policy.
- 4.14 The Panel's finding, now incorporating the sanction(s), will be communicated to the Member, the Complainant and SERN, in writing.
- 4.15 If a Member fails to respond to a Notice of Complaint, as provided for in section 4.5.2, or to the Panel's request in terms of section 4.13.2, the Panel may continue to adjudicate the complaint against the Member solely on the papers before it, to conclusion.

## **5. ADJUDICATION OF A COMPLIANT BY WAY OF A HEARING**

- 5.1 The Panel may, after consideration of a complaint as provided for in section 4.10 above, resolve that the alleged Misconduct is of such a serious nature that it would be inappropriate to conclude the matter on the papers only. In such instances, the Panel will refer the matter to SERN and recommend that a hearing be held ("Hearing"). Such a recommendation will include the full record of the proceedings in terms of section 4 above.
- 5.2 SERN, in accordance with its terms of reference, may elect to convene a Hearing and appoint a Hearing Panel comprising 3 (three) panel members from the list of persons described in section 5.2 of the Disciplinary Policy, provided that at least one Committee member shall form part of the Hearing Panel, and no person having considered the initial complaint in terms of section 4 above, may be a member of the Hearing Panel in a matter referred to SERN in terms of section 4.10 above.
  - 5.2.1 If SERN is of the opinion that a Hearing is not appropriate in the circumstances, it will issue its directives to the Panel to conclude the matter in terms of the provisions of section 4 above, including any guidance that SERN deems appropriate in the circumstances.
- 5.3 The Member of SERN appointed to the Hearing Panel in terms of section 5.2 above will be the Chairperson of the Hearing Panel, unless SERN determines otherwise.
- 5.4 SERN will appoint a "Case-Initiator" to conduct the case for the Institute, and to represent the Institute at the Hearing. The Case-Initiator so appointed shall be a suitable person from the list of

persons described in clause 5.2 of the Disciplinary Policy. The Case-Initiator will be provided with the full record of the relevant proceedings in terms of section 4 above.

5.4.1 The Case-Initiator may not have been a member of the Panel, having considered the initial complaint in terms of section 4 above.

5.4.2 Following a request from the Case-Initiator, SERN may appoint one or more persons to assist the Case-Initiator.

5.5 In addition to the Hearing Panel members, SERN may appoint one or more assessor(s) with relevant skill, expertise and experience to assist the Hearing Panel in considering technical, legal or evidentiary matters. The assessor(s) will not participate in (make or vote on) any decision of the Hearing Panel.

5.6 The Case-Initiator must send a written Notice of Hearing (substantively in the form of **Annexure C** hereto) to the Member informing him/her of the charges against him/her (including the documentation that the Case-Initiator intend using in the Hearing) and the particulars of the Hearing to be held.

5.7 In formulating the Notice of Hearing, the Case-Initiator will not be limited to the allegations or charges disclosed in the initial complaint process in terms of section 4 above, and will be entitled to reformulate, amend, delete, or expand on any charge(s) against the Member if he/she deems it necessary to do so.

5.7.1 The Case-Initiator will inform the Member of the date and time of the Hearing, which may not be earlier than 15 (fifteen) days after the date of dispatch of the Notice of Hearing and inform the Member of his/her rights in general.

5.8 The Member will, in response to the Notice of Hearing, file an answering statement with the Case-Initiator at least 5 (five) days prior to commencement of the Hearing. Such a statement may contain information or documentation in addition to, or in supplementation of, that which he/she has already submitted in terms of section 4.5.2 and/or 4.6 above.

5.9 Where the Case-Initiator or the Member intends to rely on testimony from witnesses they will procure such evidence in the form of written affidavits which affidavits must be furnished to the Case-Initiator, Hearing Panel and Member, as the case may be, no later than 5 (five) days prior to commencement of the Hearing;

5.10 Where the Case-Initiator or Member intends presenting the evidence of experts they will be obliged to disclose that fact together with a summary of the issues the expert(s) will be testifying on to the other party and the Hearing Panel no later than 5 (five) days prior to commencement of the Hearing.

5.11 The Chairperson of a Hearing will determine the procedure for Hearing and will, in the absence of any written agreement between the Hearing Panel, Case-Initiator and Member to deviate therefrom, substantively follow the procedures detailed in **Annexure D** hereto.

5.12 At the conclusion of the Hearing, the Hearing Panel must find the Member guilty or not guilty of the charge(s) against the Member. The Hearing Panel's finding must be communicated to the Member, the Complainant and SERN, in writing, and in the case of a guilty finding on one or more charges against the Member:

- 5.12.1 request written representations from the Case-Initiator on any matter(s) to be considered in aggravation in determining an appropriate sanction against the Member; and
  - 5.12.2 request written representations from the Member on any matter(s) to be considered in mitigation in determining an appropriate sanction against the Member; and
  - 5.12.3 after having consider such aggravating and mitigating circumstance or matters as provided for in sections 5.12.1 and 5.12.2 above, make a finding on a sanction or sanctions to be imposed on the Member, in accordance with section 10 of the Disciplinary Policy.
- 5.13 The Hearing Panel's finding, now incorporating the sanction(s), must be communicated to the Member, the Complainant and SERN, in writing.
- 5.14 If a Member fails to file their reply to the Notice of Hearing as envisaged by section 5.8 above, and/or fails to attend a Hearing or to be present at any resumption thereof after an adjournment, the Hearing Panel may continue to deal with the matter in the absence of the Member provided that the Case-Initiator has produced proof, to the satisfaction of the Hearing Panel, that the Member was duly notified of the Hearing (or any resumption thereof) and failed to provide a reasonable excuse for non-attendance. The matter will then be adjudicated on the evidence produced by the Case-Initiator and on the papers before the Hearing Panel, to a conclusion.

## 6. ANNEXURES

The following annexures form part of these Procedures as if specifically incorporated therein:

- Annexure A: Standard Reporting Form
- Annexure B: Notice of Complaint
- Annexure C: Notice of Hearing
- Annexure D: Hearing Procedures

**STANDARD REPORTING FORM**

*[This form should be used to report alleged Misconduct against a Member of the Institute]*

<b>Name of Member(s) against whom the complaint is lodged:</b>	
<b>Particulars of the organisations they are employed by / contracted to / affiliated with:</b>	
<b>Date on, or time period within which, the Misconduct took place:</b>	
<b>Location where the Misconduct took place (includes publications or online activity):</b>	
<b>Describe the Misconduct that took place:</b> <i>(Provide as much detail as possible (names, dates, circumstances) and attach any documents in support of the allegations. Use additional pages if necessary)</i>	
<b>Name and particulars of any witness(es) who may substantiate or verify the allegations of Misconduct:</b>	
<b>Is the Misconduct described above already being dealt with (or concluded) in any civil-, or criminal- or employer-based proceedings against the Member?</b> <i>(if yes, please provided details of such proceedings – e.g institution or court, case number, outcome, etc.)</i>	

<b>Complainant's name and surname:</b>	
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<b>If you are lodging the complaint on behalf of another, please state the name of the person or entity on behalf of whom the complaint is lodged and your relationship to them:</b>	
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<b>Complainant's contact number(s):</b>	
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<b>Complainant's email address:</b>	
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<b>Complaint's relationship with the Institute:</b> (e.g. Member, contractor, employee, director)	
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*I confirm that the information provided in this form, and any annexures thereto, is to the best my knowledge and belief, true and accurate:*

.....  
**COMPLAINANT'S SIGNATURE**

.....  
**DATE**

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**SUBMIT THIS FORM TO:**

Compliance Institute Southern Africa NPC  
Att: Sherma Malan  
By email: [sherma@compliancesa.com](mailto:sherma@compliancesa.com)  
*or by hard copy:* The Hube Workspace, 84 Sophia Street, Fairland, Johannesburg

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**NOTICE OF COMPLAINT**

*[A notice, substantively in the form of this Annexure B, should be sent to the Member advising him/her of the complaint received against him/her. Refer to section 4.5.2 of the Procedures]*

**To:**

(Member's name, address, email and membership number)

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**Notice of Complaint**

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1. The Institute has received a complaint alleging Misconduct against you *[alternatively, the Institute has become aware of alleged Misconduct on your part (section 4.2)]*.
2. In terms of section 4.5 of the Institute's Disciplinary Procedures ("the Procedures"), the complaint was considered by a Disciplinary Panel ("the Panel") convened by the Institute's Social, Ethics, Remuneration and Nominations Committee. In terms of section 4.5.2 the Panel found that the complaint against you constituted a *prima facie* case of Misconduct.
3. The Panel has determined charge(s) against you are as follows:
  - 3.1 *(i.e a contravention of the Code in that you.....)*
  - 3.2
  - 3.3
4. A copy of the Standard Reporting Form (and annexures thereto), forming the basis of the charge(s) of alleged Misconduct against you, are attached to this notice.
5. You are required, in terms of section 4.5.2 of the Procedures to provide the Panel with an answer to the charge(s), in writing and in the form of an answering statement, incorporating any documentation in support of you answer, within 10 (ten) days of receipt of this notice.
6. Your attention is drawn to the provisions of the Institute's Disciplinary Policy, and these Procedures, copies of which are attached hereto.
7. Should you fail to respond to this notice, the Panel may nevertheless, in terms of section 4.15 of the Procedures, adjudicate and conclude the complaint against you in the absence of your response.

**[signed]**

**For and on behalf of the Institute:**

Date:

**NOTICE OF HEARING**

*[A notice, substantively in the form of this Annexure C, should be sent to the Member advising him/her of the intended hearing against them. Refer to section 4.10.3 and 5 of the Procedures]*

**To:**

(Member’s name, address, email and membership number)

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**Notice of Hearing**

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1. In terms of section 5.6 of the Institute’s Disciplinary Procedures (“the Procedures”) you are required to attend a Disciplinary Hearing (“the Hearing”) to be held on ..... (date) at ....h.... (time) at .....place.
  
2. The purpose of the Hearing will be to adjudicate the following charge(s) of Misconduct against you:
  - 2.1
  - 2.2
  - 2.3
  
3. The Hearing will be conducted in English. You are required to inform the Hearing Panel whether you require the services of an interpreter.
  
4. In terms of section 5.8 of the Procedures, you are required to file a response to this notice, in the form of an answering statement to the charge(s), with the Case-Initiator at least 5 (five) days prior to commencement of the Hearing. Such statement may contain information or documentation in addition to, or in supplementation of, that which you have already submitted in terms of section 4.5.2 and/or 4.6 of the Procedures.
  
5. You are referred to section 5 and Annexure D of the Procedures for further detail on the intended Hearing proceedings. Your rights concerning the Hearing are summarised as follows:
  - 5.1 You have the right to be represented at the Hearing, subject to section 8 of the Institute’s Disciplinary Policy;
  - 5.2 You have the right to present your case on your own behalf, to call witness and/or experts (refer to section 5.9 and 5.10 of the Procedures) and to cross-examine witnesses called on behalf of the Institute;
  - 5.3 You have the right to access all relevant information intended to be used as evidence by the Institute.
  
6. Copies of the documentation, forming the basis of the charge(s) of alleged Misconduct against you, and which the Case-Initiator intends to use at the Hearing, are attached to this notice. The Case-Initiator reserves the right to amend and/or supplement the relevant documentation as he/she deems necessary.
  
7. If you fail to file your response to this notice as provided for in section 5.8 of the Procedures, and/or if you fail to attend the Hearing or to be present at any resumption thereof after an adjournment, the Hearing Panel may continue to deal with the charge(s) in your absence provided that the Case-Initiator has produced proof, to the satisfaction of the Hearing Panel, that you were duly notified of the Hearing (or any resumption thereof) and failed to provide a reasonable excuse for non-attendance. In either case, the matter will then be adjudicated on the evidence produced by the Case-Initiator and on the papers before the Hearing Panel, to conclusion.

8. Your attention is drawn to the provisions of the Institute's Disciplinary Policy, and these Procedures, copies of which are attached hereto.

9. The contact details for the Case-Initiator are as follows:

(name)

(contact number and email address)

(address for the delivery of documents)

10. The Contact details for the Hearing Panel is as follows:

(c/o name)

(contact number and email address)

(address for the delivery of documents)

**[signed]**

**Case-Initiator**

***for and on behalf of the Institute***

Date:

**GUIDANCE ON HEARING PROCEEDINGS**

***With reference to section 6 of the Policy, all Hearings will substantively be conducted as follows:***

1. The Chairperson of the Hearing Panel reads the charge(s) to the Member.
2. The Chairperson then asks the Member to plead by admitting or denying each one of the charges individually.
3. If the Member informs the Hearing Panel that he/she admits to all or some of the charges, the Hearing Panel may find the Member guilty on the charge(s) admitted to without hearing evidence, or after hearing evidence if it deems necessary, thereon.
4. If the Member denies a charge or charges the Hearing Panel will hear evidence pertaining to the charge(s) so denied.
5. If the Member refuses or fails to plead to a charge(s) (or is absent from a Hearing), the Hearing Panel shall make a note of the refusal or failure or absence and shall enter a not guilty plea to the charge(s) on behalf of the Member and a plea so entered shall have the same effect as if it had in fact been so pleaded.
6. The Case-Initiator then states the case against the Member and adduces evidence in support thereof.
7. If witnesses are called, no such witness may be examined or questioned by any party unless he/she is, at the commencement of his testimony, warned by the Chairperson of the Hearing to tell the truth.
8. The Hearing Panel must consider all documents, submissions and evidence produced for the purposes of the Hearing.
9. The Member may be represented by a person of his choice, subject to section 8.1 of the Policy. For the purposes of drafting any document, adducing evidence and argument of presentation of the Member's case, any reference to the Member shall mean to include his/her representative.
10. The Member shall be given the opportunity to cross-examine any witness called by the Case-Initiator and the Case-Initiator may re-examine the witness on points raised in cross-examination. Similarly, the Case-Initiator shall be given the opportunity to cross-examine any witness called by the Member and then the Member may re-examine the witness on points raised in cross-examination. The Case-Initiator may cross-examine a Member who has elected to give evidence personally, provided that the Member shall be given an opportunity for re-examination thereafter.
11. The Hearing Panel may ask any witness any question, at any time during the course of such witness' testimony, and may re-call any witness in the interest of establishing the facts on any point or to clarify evidence testified to.
12. If any person whose evidence may be material (in the opinion of the Hearing Panel) is not called as a witness by the Case-Initiator or Member at the Hearing, the Hearing Panel may at any time request such person to testify, after it has informed both parties of the name of the witness and the expected evidence, and subject to Case-Initiator or Member's rights to cross-examine such witness.
13. At the conclusion of the case presented by the Case-Initiator, the Member must be afforded the opportunity of stating his defence, and of adducing evidence in support thereof. If the Member's defence is contained in a written statement the statement must be read at the Hearing, failing which, the Chairperson may deem it as having been read into record.
14. Members of the Hearing Panel may, with the permission of the Chairperson, question the Case-Initiator and/or a Member who was elected to give evidence.

15. At the conclusion of the matter for the Member, the Hearing Panel must, irrespective of whether the Member has adduced evidence or not, hear the closing address of the Case-Initiator on the matter generally, but may hear no further evidence unless, in a special case, it deems it just to receive further evidence.
16. At the conclusion of the address of the Case-Initiator, the Hearing Panel must hear the closing address of the Member, but may hear no further evidence unless, in a special case, it deems it just to receive further evidence.
17. The Case-Initiator or the Member, as the case may be, may re-address the Hearing Panel if the Case-Initiator or Member, as the case may be, has adduced further evidence after their respective closing address.
18. The Case-Initiator may, with the consent of the Hearing Panel, withdraw any charge before the Hearing Panel has made a finding has been made on it, but once the Member has pleaded to a charge the Member is entitled to a finding thereon.
19. The Hearing Panel may deliberate in camera to decide on any point in the course of and at the conclusion of a hearing.
20. A Hearing Panel may adjourn a Hearing at any time and reconvene it at a time or place which is acceptable to both parties and failing agreement thereon, may take any decision about the time and place for the reconvening of a Hearing that would be efficient, cost-effective and reasonable to most of the parties involved in the circumstances.