

**ADVISORY NOTE:**  
**A GUIDE TO ECSA's DISCIPLINARY PROCEDURES**  
**Revision One: 26 April 2012**

**1. INTRODUCTION:**

The Engineering Council of South Africa (ECSA) is a statutory body established in terms of the Engineering Profession Act, 46 of 2000 (EPA).

ECSA's role, in partnership with the State and the engineering profession is to promote an appropriate level of education and training of practitioners in the engineering profession to facilitate full recognition of professionalism, both locally and abroad. ECSA enjoys full autonomy although it is accountable to the State, the profession and the public for the fair and transparent administration of its business in the pursuit of its goals.

ECSA will investigate any complaint, charge or allegation that has been brought against a registered person when it has reasonable grounds to suspect that a registered person has committed an act of improper conduct. This process is not intended to account for or replace civil or criminal litigation.

**2. WHO IS A "REGISTERED PERSON"?**

A "registered person" is a person registered under Section **18** (1) of the EPA. The registered person may be referred to as a "respondent". A respondent means a registered person whose conduct is the subject of an inquiry.

The categories in which a person may register in the engineering profession are:

- (a) Professional, which is divided into —
  - (i) Professional Engineer;
  - (ii) Professional Engineering Technologist;
  - (iii) Professional Certificated Engineer; or
  - (iv) Professional Engineering Technician; or

- (b) Candidate, which is divided into —
  - (i) Candidate Engineer;
  - (ii) Candidate Engineering Technologist;
  - (iii) Candidate Certificated Engineer; or
  - (v) Candidate Engineering Technician; or
- (c) Specified categories prescribed by the Council, which is divided into —
  - (i) Registered Lifting Machine Inspectors;
  - (ii) Registered Lift Inspectors;
  - (iii) Medical Equipment Maintainers.

A person who is not registered by ECSA in any of the above categories is referred to as a non-registered person.

### 3. **WHO IS A “COMPLAINANT”?**

A complainant is any natural or juristic person lodging a complaint against a registered person.

### 4. **HOW IS A COMPLAINT LODGED?**

A complaint is lodged by a complainant through an affidavit/affirmation, which is available on ECSA’s website: ([www.ecsa.co.za](http://www.ecsa.co.za)). The affidavit/affirmation must include detailed allegations brought against the registered person and any documentation to corroborate those allegations.

### 5. **WHAT IS IMPROPER CONDUCT?**

The professional conduct of registered person is informed by a Code of Conduct obtainable from the website or a hard copy from ECSA’s offices. The following are deemed not to be improper conduct.

5.1 Purely commercial/contractual disputes **not pertaining** to the provisions of the Code of Conduct fall outside ECSA’s mandate, for example where a complainant wants to be refunded payments made to the respondent.

5.2 ECSA cannot investigate the conduct of unregistered persons.

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## **6. WHAT SHOULD THE COMPLAINT AFFIDAVIT/AFFIRMATION CONTAIN?**

- 6.1 Name, gender, occupation, physical address and telephone number of the complainant.
- 6.2 Name, gender, occupation, registration number, address of place of business (if known to complainant) and telephone number of the registered person.
- 6.3 To the extent possible, describe the alleged misconduct with reference to the Code of Conduct for registered persons (obtainable from ECSA's website ([www.ecsa.co.za](http://www.ecsa.co.za))).
- 6.4 Supplementary documents/evidence such as appointment letters, completion certificates, and photos of the defects complained about.

## **7. WHERE DO I SEND A COMPLAINT?**

Address your complaint to: The Legal Department of ECSA through the following methods:

- Email: [legal@ecsa.co.za](mailto:legal@ecsa.co.za)
- Fax: 086 513 3006 or
- Post/ hand delivery: 1<sup>st</sup> floor Waterview Corner, 2 Ernest Oppenheimer Avenue, Bruma 2198.

A written acknowledgement of receipt will be sent to you, however if no acknowledgement of receipt is received in seven days of lodging a complaint, please contact ECSA using the following number 011-607-9571 (Call Centre).

## **8. WHAT WILL HAPPEN AFTER A COMPLAINT IS RECEIVED BY ECSA?**

A copy of the complaint will be sent to the respondent with an invitation to comment thereto. The complaint will be laid before ECSA's Investigating Committee and a member of the committee will be appointed to assess the complaint. Should it be necessary to gather expert evidence, ECSA shall appoint an expert to investigate the complaint and to present a written report to ECSA. Correspondence/information will be exchanged between the parties to get a comprehensive understanding of the issue. Interviews may be conducted with respondents/complainants/witnesses as necessary.

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**9. WHAT TO EXPECT FROM AN INVESTIGATION:**

The investigation is directed towards the **professional conduct** of the registered person. It is not a legal process intended to recover damages on behalf of any party or to enforce specific performance by the respondent, i.e. to oblige the respondent to perform a specific act. Investigations may take several months to conclude, given the nature of the process.

**10. THE INVESTIGATING COMMITTEE (IC):**

ECSA has a standing Investigating Committee (IC) consisting of experienced professional engineers and legal advisers. The IC will consider all complaints lodged, direct the investigation thereof to ensure consideration of all relevant facts and will resolve as per 11 below.

**11. FINDINGS OF THE IC:**

If the IC finds:

**11.1 No prima facie evidence of improper conduct:**

This decision does not mean that a valid dispute does not exist between the parties; there may be breach of contract involved which may be pursued through civil/criminal litigation. The decision means that no transgression of the Code of Conduct was found.

**11.2 Decision to conduct a Peer Counsel with the respondent**

This decision arises when there is either insufficient evidence of improper conduct, or that the conduct, given all the circumstances, does not warrant a disciplinary hearing. The finding implies, however, that the respondent's conduct/behavior warrants advice or guidance from his peers, which would be members of the IC or peers nominated by the IC who are practising in the same discipline as the respondent.

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11.3 An advisory letter should be sent to the registered person:

This decision arises when the investigation establishes that there is conduct that warrants formal caution. However, given all the circumstances the conduct does not warrant a formal disciplinary hearing.

11.4 Recommendation to prefer charges:

This decision arises when the IC finds ***prima facie*** evidence of improper conduct, it will recommend to Council to prefer charges against the respondent. Should Council decide to prefer charges, Section 30 of the EPA will be applicable:

- “(1) The Council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged—
  - (a) Denies the charge; or
  - (b) Fails to comply with section 29(3)(b).
- (2) The disciplinary tribunal must consist of at least—
  - (a) A person who specialises in the professional field concerning the charge;
  - (b) A professional who has appropriate experience; and
  - (c) A person qualified in law and who has appropriate experience.”

12. **THE COMPLAINANT’S ROLE WHEN CHARGES ARE PREFERRED:**

The complainant may be required to consult with ECSA’s legal representative responsible for presenting the case to the disciplinary tribunal, and to testify at the disciplinary hearing. ECSA will endeavor not to put witnesses to any unnecessary inconvenience during this process. Civil and criminal litigation against the respondent are different processes from ECSA’s role in investigating unprofessional conduct and the two processes may run concurrently. The complainant will thereafter be advised of the outcome of the investigation and disciplinary hearing, if any.

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**13. SANCTION IMPOSED:**

When a finding of guilty is made, the disciplinary tribunal may impose the sanctions prescribed in Sections 32(3) (a) and (b) of EPA. These include:

- (3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either —
- (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
  - (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in section 11(c) of the EPA.
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).

**14. APPEAL:**

A registered person found guilty of improper conduct may appeal to the Council of ECSA within 30 days from the day he/she is sanctioned, and if that appeal is dismissed, within 30 days, appeal to the Council for the Built Environment (CBE) and if dismissed by the CBE, to the High Court.

**15. PUBLICATION OF FINDINGS AND SANCTION:**

The findings of a disciplinary tribunal and sanctions imposed must be published in the Government Gazette 30 days after the sanction was imposed on the respondent, and will also be published on the ECSA website.

**16. CAUTION:**

This advisory note is to be read in conjunction with the EPA, Act 46 of 2000 and the Code of Conduct and it does not replace it. Complainants are advised that achievement of the status of “professional” is limited to persons considered by their peers to be competent and registerable. Complaints may have dire implications for a registered person and should therefore be well considered.

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