



GSSA Constitution and By-Laws
Complaints & Disciplinary
(February 2023)



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COMPLAINTS AND DISCIPLINARY

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ANNEXURE 3 OF THE BYLAWS OF THE GSSA CONSTITUTION: COMPLAINTS AND DISCIPLINARY PROCEEDURES

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1 PREAMBLE

Employees are generally subject to the policies, rules and regulations of their organisation. Academics are peer-reviewed regularly through their publications, through staff development and promotion committees and through student assessments of their teaching and of their courses. Depending on where an individual works, the codes/policies might vary and will certainly change when/if that individual changes employment or institutions.

The one constant is affiliation with the GSSA, which is applicable wherever the member might be employed - in academia, research, industry or government. As defined in the GSSA constitution, the Code of Ethics (Annexure 2 to the GSSA Constitution) is binding upon all members of the GSSA and membership with the GSSA implies that the member agrees to abide by them and be subject to them and the associated Complaints and Disciplinary processes described below (Annexure 3 to the GSSA Constitution).

The purpose of the Society's Code of Ethics is to maintain the professional esteem of the members throughout the wider community (*see June 2019 (Vol62, No2) Geobulletin for details of the GSSA's Code of Ethics*); it follows that anyone should be able to make a

complaint against a member, in relation to an alleged breach of the Codes or Constitution of the Society. Complaints against members are handled as follows:

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. The requirements of the process 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 Society, but that when warranted, cases are passed onto the Statutory Body (SACNASP), or to the judicial system if there is perceived criminal intent.
- e. That an independent appeals process be available.

To meet these requirements two independent committees, a Complaints Committee and an Ethics Committee, deal with complaints. **The Complaints Committee** receives and screens all complaints and, if necessary, gathers evidence, before either:

- rejecting complaints as frivolous;
- resolving them; or
- elevating them to the Ethics Committee.

Complaints can involve non-compliance against the Code of Ethics, the SAMCODE or the Constitution of the Society; they may also relate to situations that potentially exhibit dishonesty, intent, repetition or reckless incompetence. Any individual or organisation can make a complaint - a complainant does not have to be affiliated to the GSSA in any way. All complaints, however, whatever their nature, must be referred in writing, to the Chair of the Complaints Committee. Routing should be via the General Manager of the GSSA. **Such complaints need to be detailed and refer to explicit actions/comments by the individual with reference to specific clauses in the GSSA Code of Ethics - it is not the responsibility of the Complaints Committee to build the complaint - that is the obligation of the complainant.** Any incomplete complaints are simply referred back to the complainant without any action, until full, complete and relevant documentation has been provided by the complainant.

Where a complaint has been processed by the Complaints Committee and found to be substantiated and not resolved, relevant recommendations and/or findings are then passed on to the **Ethics Committee** for assessment and determination. The separation of committees in this way is intended to enable complaints to be handled without an implication of unethical behaviour or bias.

2 THE COMPLAINTS COMMITTEE

A prime goal of this committee is to protect the reputation of a member while an alleged breach is dealt with. This committee handles all complaints; resolves and rejects frivolous complaints; and actions complaints where there has been non-compliance or if there has been a serious breach such as “unethical behaviour”. All cases are to be dealt with confidentially; with the following exceptions: the person who laid the complaint should be notified of the Committees findings and action; and the Stock Exchange must be notified in the case of a finding of non-compliance in relation to the SAMCODE.

A member against whom a complaint is made shall be entitled to notice in writing of the grounds of the complaint and to a reasonable opportunity to be heard in respect of such complaint before the Complaints Committee, and the procedure to be adopted in respect of complaint shall be at the discretion of the Complaint Committee.

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. The Complaints Committee can seek advice from independent experts (for example, but not limited to, 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 GSSA policy from the President or the Council.

The Complaints Committee will address each complaint, then after deliberation and advice and, within 90 days of receipt of the complaint, will:

- Dismiss the complaint as frivolous or vexatious;

- Refer the complaint back to the parties or to an Alternative Disputes Resolution process if related to dysfunctional contractual arrangements;
- Resolve the complaint if it is deemed a technical breach of a Society Code or Statute;
- Refer the complaint to the Ethics Committee;
- Refer the case to the judicial system if there is perceived criminal intent;

If a technical non-compliance is established, penalties available to the Complaints Committee include personal admonition, mediation and counselling, but not suspension of membership.

3 THE ETHICS COMMITTEE

The purpose of the Ethics Committee is to deal with all complaints directed to it by the Complaints Committee, as well as appeals against Complaints Committee decisions.

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 GSSA member of Council, nominated annually by the Council constitutes the fifth member of the Ethics Committee. A representative from SACNASP may be invited as a sixth member for specific complaints that may go onto SACNASP. The Ethics Committee elects its own Chair for a period agreed amongst its members. Three members constitute a quorum for a meeting of the Ethics Committee. The current Councillor cannot chair the committee. The Councillor serving on the Ethics Committee has the responsibility to advise the GSSA Council, on a "need to know basis", of any fiduciary or other matters related to Committee business, which could potentially affect Council members.

Notwithstanding the membership conditions outlined above, Complaints and Ethics Committee members must always be independent and declare any Conflict of Interest to the Council, who are then to nominate a replacement for the period of the Conflict of Interest.

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. A member against whom a complaint is made shall be entitled to notice in writing of the grounds of the complaint and to a reasonable opportunity to be heard in respect of such complaint before the Ethics Committee, and the procedure to be adopted in respect of a complaint shall be at the discretion of the Ethics Committee.

A complaint referred to the Ethics Committee must be dealt with as expeditiously as is reasonable. In relation to a complaint brought before it by the Complaints Committee, the Ethics Committee may:

- Find that the complaint has not been established, in which case the Ethics Committee may decide to take no further action;
- Find that a breach of the Code of Ethics has been established, either as “non-compliance” or in more serious cases as “unethical behaviour”, and impose an appropriate penalty:
 - Warn or reprimand the member concerned;
 - Suspend the membership of the member concerned for a period not exceeding 12 months;
 - Require that the member undergo further training;
 - Resolve that the member be suspended or expelled from the Society; or
 - Forward serious cases of unethical behaviour onto the Statutory Body (SACNASP).

In relation to an appeal against a Complaints Committee decision, the Ethics Committee can

- Uphold the decision of the Complaints Committee, or
- Reclassify the Complaint and the way it is to be handled, as appropriate.

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 Society, 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.

An appeal against a ruling by the Ethics Committee, on any alleged breach of the Code of Ethics, is to be made to an independent arbitrator. A member who is dissatisfied with a decision on an ethics complaint by the Ethics Committee adverse to that member may by notice in writing delivered to the Chief Executive Officer of the Society within 60 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.

The Council shall proceed to hear and determine an appeal from a decision of the Ethics Committee as expeditiously as is reasonable. The member 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, providing it proceeds with as little formality and technicality and as much expedition as a fair consideration permits. 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 have 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.

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 may be reported to members in a publication of The Society, or be reported to appropriate regulatory authorities. A member about whom an ethics complaint has been made and which is subsequently dismissed may publicise that dismissal to the same extent as any publicity given the lodging of the ethics complaint.

4 Complaints since 2010

Since 2010 the Complaints Committee has dealt with 15 separate cases involving allegations of plagiarism, unprofessional conduct, resource reporting issues and even criminal conduct. Some of these instances were found to be unsubstantiated, frivolous or not pursued by the complainant. As of July 2019, only two of these cases are still current/active with the Ethics Committee.

The bulk of the cases investigated were resolved internally by the GSSA, with only one case being referred to SACNASP. The case of Criminal Conduct was also dealt with independently through both SACNASP and the criminal justice system.

Of the cases investigated by the GSSA, three cases were abandoned because they were not pursued by the complainants who took the time to put in a written complaint (in the form of an affidavit), but then failed to provide follow-up details or evidence when requested by the

relevant committee (too much effort or insufficient substance to the complaint?). Such actions, along with the number of complaints found to be unsubstantiated or frivolous, based upon hearsay and personal opinion or bias, highlight an unfortunate, unintended consequence of the C&D process - that complaints are sometimes being used to settle academic and/or professional disagreements. This is an unacceptable abuse of the system; fortunately, the GSSA C&D process is set up to identify such impropriety before it injures the reputation of the respondent.

A major frustration of the committees is that there is a perception that all a complainant has to do is to forward a grievance (either formally or informally) to the committee or the GM with the expectation that the relevant committee will then build the case, hunt down the evidence and progress the complaint on their behalf. In at least one case, the expectation was that the C&D committees would build a case based on piles of alleged evidence on behalf of the complainant. As highlighted earlier in this article, this is not the case - the complainant (and not the Committee) is obliged to provide specific details of the alleged breach, citing specific clauses in the GSSA Constitution, SAMCODE or Code of Ethics.

A second disturbing trend is that complainants often confuse the GSSA Code of Ethics and the SACNASP Code of Conduct - while both types of codes share many similarities, they are not synonymous, having some very specific and important differences, including different clause references. Complaints in terms of the SACNASP Code of Conduct may not be addressed to the GSSA (and vice-versa) and such complaints will not be forwarded to SACNASP on behalf of the complainant. Therefore, complainants are advised to be certain of which Code they are referencing and refer the relevant complaint to the correct organisation.

An understanding of the purpose and the roles of SACNASP vs GSSA might help a complainant in showing which avenue is appropriate under different circumstances, i.e. who to complain to. The GSSA C&D process is there to self-regulate members and the profession, whereas the main purpose of SACNASP is to protect the public - they are different processes (with SACNASP proceedings being a legal process, whereas the GSSA process is a professional, peer-to-peer consideration) with different intentions and differing levels of sanction. While certain complaints dealt with by the GSSA can be handed over to SACNASP, this would usually happen only when the allegations are serious enough that they should follow both processes, or be dealt with in parallel.

A comment frequently levelled at the C&D process is that it takes many months to finalise a matter. While the By-Laws allow for 90 days for the conclusion of a complaint, it is true that some cases have taken significantly longer. The reasons for this are not simple and even though the Complaints and Ethics committees are staffed by volunteers, there is an acknowledgement by the GSSA that cases need to be attended to much more aggressively. However, often the complainants themselves are the main cause of delay, frequently failing to submit the required evidence timeously. In addition, due process must be followed, as defined in both the GSSA Constitution and the laws of South Africa.

The GSSA as an entity (including its structures) cannot and does not raise complaints (GSSA members, or members of the Public, can). The Complaints Committee can investigate and build a case based on a complaint (it doesn't raise them or formulate complaints). The role of the Ethics Committee is to judge the case/facts presented by the Complaints Committee, it does not investigate or formulate a case - this is the principle of separation of roles/powers. So, in summary:

- Every member of the GSSA is subject to the C&D process, as defined in the Constitution
- Complaint is raised by a member of the public (including GSSA members)
- The complaint is investigated by the Complaints Committee who investigate it and try to resolve it amicably between the parties. If this fails, they formulate a case and present it to the Ethics Committee
- The Ethics Committee judge the case presented to it, using the principle of the balance of probabilities (not beyond reasonable doubt which is the standard in legal cases). The Ethics Committee does not investigate or add to the case or complaint.
- At every stage, an independent appeals process is available.

ANNEXURE 3 OF THE BYLAWS OF THE GSSA CONSTITUTION

COMPLAINTS AND DISCIPLINARY PROCEDURE

1 INTRODUCTION

- (1) The purpose of the Society's Code of Ethics is to maintain the professional esteem of the members throughout the wider community; it follows that anyone should be able to make a complaint against a member, in relation to an alleged breach of the Codes or Constitution of the Society. Complaints against members will be handled as follows:
- (2) 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.
- (3) 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 Society, but that when warranted, cases are passed onto the Statutory Body (SACNASP), or to the judicial system if there is perceived criminal intent.
 - e. That an independent appeals process be available.
- (4) To meet these requirements two independent committees, a Complaints Committee and an Ethics Committee, deal with complaints. The Complaints Committee receives and screens all complaints and if necessary gathers evidence, before either rejecting complaints as frivolous, redirecting them as commercial, or dealing with them as

potential “non-compliance” against any Code or the Constitution of the Society, except for complaints relevant to the Code of Ethics. These can arise as primary complaints against the Code of Ethics or as cases of “non-compliance” established by the Complaints Committee, that also potentially exhibit dishonesty, intent, repetition or reckless incompetence.

- (5) The Complaints Committee will pass complaints relevant to the Code of Ethics to the Ethics Committee for assessment and determination. The Ethics Committee can obtain independent opinion but not gather evidence, or bring an ethics complaint of its own accord.
- (6) 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.

2 THE COMPLAINTS COMMITTEE

- (7) 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”. It will handle the majority of complaints without an implication of unethical behaviour.
- (8) 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.
- (9) All complaints, whatever their nature, are to be initially referred in writing, to the Chair of the Complaints Committee, and any individual or organisation can make a complaint.
- (10) 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 GSSA policy from the

President or the Council.

- (11) A member against whom a complaint is made shall be entitled to notice in writing of the grounds of the complaint and to a reasonable opportunity to be heard in respect of such complaint before the Complaints Committee, and the procedure to be adopted in respect of complaint shall be at the discretion of the Complaint Committee.
- (12) The Complaints Committee will address each complaint, then after deliberation and advice and within 90 days of receipt of the complaint will:
 - a. Dismiss the complaint as frivolous or vexatious.
 - b. Refer the complaint back to the parties or to an Alternative Disputes Resolution process if related to dysfunctional contractual arrangements.
 - c. Refer the case to the judicial system if there is perceived criminal intent.
 - d. Refer the complaint to the Ethics Committee (see below) if there is a perceived breach of the Code of Ethics (even for complaints not initially directed to the Code of Ethics).
 - e. Deal with the matter if it is deemed a technical breach of a Society Code or Statute (excluding the Code of Ethics). If a "non-compliance" is established, penalties available to the Complaints Committee to include personal admonition, mediation and counselling, but not suspension of membership.
- (13) All cases are to be dealt with confidentially; with the exceptions, - the person who laid the complaint should be notified of the Committees finding and action and the Stock Exchange must be notified in the case of a finding of non-compliance in relation to the reporting code.
- (14) If an established "non-compliance" of a Society or other Professional Code or Statute 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 Ethics.
- (15) 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.
- (16) The complainant has a right of appeal against any decision of the Complaints Committee, directly to the Ethics Committee or the Council.

3 THE ETHICS COMMITTEE

- (17) The purpose of the Ethics Committee is to deal with all complaints directed to it by the Complaints Committee, and any appeals against Complaints Committee decisions, brought before it.
- (18) It must always be independent.
- (19) An "Ethics complaint" means a complaint that a member of the Society has breached any obligation of the Code of Ethics or any other Code of The Society, or any rule published by the Council prevailing at the relevant time or any alleged unprofessional conduct by a member.
- (20) 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 GSSA member of Council, nominated annually by the Council constitutes the fifth member of the Ethics Committee. A representative from SACNASP may be invited as a sixth member for specific complaints that may go onto SACNASP. The Ethics Committee elects its own Chair for a period agreed amongst its members. The current Councillor cannot chair the committee. Three members constitute a quorum for a meeting of the Ethics Committee.
- (21) The Councillor serving on the Ethics Committee has the responsibility to advise the Council, on a "need to know basis", of any fiduciary or other matters related to Committee business, which could potentially affect Council members.
- (22) 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.
- (23) 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.
- (24) In relation to an ethic's complaint brought before it, the Ethics Committee will:

- a. Find that a breach of the Code of Ethics has not been established.
 - b. Find that a breach of the Code of Ethics 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 Society and publication of the case.
 - c. Forward serious cases of unethical behaviour onto the Statutory Body (SACNASP).
- (25) Notwithstanding (b) above, a second finding of technical “non-compliance” with the Code of Ethics is not to be directed against a member for the same offence, purely as a result of commonality of code principles.
- (26) 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.
- (27) An appeal against a ruling by the Ethics Committee, on any alleged breach of the Code of Ethics, is to be made to an independent arbitrator.
- (28) An ethics complaint shall be referred to the Ethics Committee for hearing and determination as expeditiously as is reasonable.
- (29) A member against whom an ethics complaint is made shall be entitled to notice in writing of the grounds of the complaint and to a reasonable opportunity to be heard in respect of such complaint before the Ethics Committee, and the procedure to be adopted in respect of an ethics complaint shall be at the discretion of the Ethics Committee.
- (30) 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 decide to take no further action, or it may warn or reprimand the member concerned or suspend the membership of the member concerned for a period not exceeding 12 months, require that the member undergo further training, resolve that the member be suspended or expelled from the Society or refer the matter to the Statutory Body (SACNASP).
- (31) 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 Society, 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.

- (32) A member who is dissatisfied with a decision on an ethics complaint by the Ethics Committee adverse to that member may by notice in writing delivered to the Chief Executive Officer of the Society 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.
- (33) The Council shall proceed to hear and determine an appeal from a decision of the Ethics Committee as expeditiously as is reasonable. The member 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 have 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.
- (34) 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.
- (35) In any proceeding under this By-Law 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 expedition as a fair consideration permits.
- (36) 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 Society or be reported to appropriate regulatory authorities.
- (37) A member about whom an ethics complaint has been made and which is subsequently dismissed may publicise that dismissal to the same extent as any publicity given the lodging of the ethics complaint.
- (38) The Council may from time to time make or amend Guidelines to assist members in the implementation of this Bye-law. Such Guidelines must not be inconsistent with this By-Law.

(39) All members are bound by a determination of the Ethics Committee or the Council made pursuant to this Bye-law.