



# **SAIBA Complainants' guide to disciplinary procedures – February 2013**

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# Introduction

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This guide explains the usual procedures followed by SAIBA in disciplinary matters and is intended to be a general guide only. In the event of any conflict between the content of this guide and the content of the *SAIBA Handbook*, the latter shall at all times take precedence. The *SAIBA Handbook* can be found on our website at [www.saiba.org.za](http://www.saiba.org.za)

This guide<sup>1</sup> is in draft form and has not been officially approved.

## WHEN IS DISCIPLINARY ACTION TAKEN?

Members, firms and registered students of SAIBA are required to observe proper standards of professional conduct. SAIBA will take disciplinary action against its members, firms and registered students where there is evidence of a sufficiently serious failure to observe those standards. In addition, certain non-members expressly agree to be bound by, and be subject to, SAIBA's disciplinary regime and consequently SAIBA firms may be disciplined for the conduct of a non-member.

Not all errors made by accountants automatically attract disciplinary action. If a member has given advice which in hindsight turns out to have been flawed, and as a result of which loss has been suffered, this is primarily a matter for the firm's professional indemnity insurers. However, disciplinary action may be appropriate if errors are of such frequency or magnitude as to signify a lack of professional competence. Whether you should make a claim against the firm's insurance policy is a matter for discussion with your legal representative.

## LEGAL CLAIMS

Making a complaint against a member is not a substitute for seeking damages or other redress through the courts. SAIBA's jurisdiction over its members and firms is regulatory and disciplinary in nature. Therefore, whilst SAIBA members or firms may be ordered to pay compensation if a complaint against them is found proved, the maximum sum payable as set by the SAIBA Handbook reflect any inconvenience suffered as a result of the members' or firms' failure to observe proper standards. SAIBA itself cannot provide compensation for any loss suffered.

The standards department is not in a position to give you legal advice. If you feel that you have a claim in law against our member you may wish to seek independent legal advice.

# Introduction

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## FEE DISPUTES

Fee disputes are legal claims, therefore the courts are the proper forum for such matters. However, SAIBA will attempt to conciliate a fee dispute where possible. SAIBA cannot advise on what is a reasonable sum for work done, but can advise on whether members have complied with SAIBA's professional conduct regulations relating to fees.

## HOW DO I MAKE A COMPLAINT?

SAIBA members and firms are required to have in place internal procedures for handling client complaints. These procedures will usually entail a review by a senior partner of the firm, or by a colleague who has not previously been involved in the matter. You should ensure that you have exhausted these procedures before making a complaint to SAIBA, as we may not be able to look into your complaint unless you have done so.

If you have not been able to resolve the matter direct with our member or firm, you may request SAIBA's assistance by contacting the conciliation service on 012 643 1800. Alternatively, if you wish to lodge a written complaint, you should send it, together with any supporting evidence, to:

SAIBA Standards  
PO Box 7905,  
Centurion,  
0046  
fax: 086 508 2923  
email: standards@saiba.org.za

## Use this form to lodge a complaint.

Please note that once SAIBA has received a complaint, it may decide to proceed with an investigation despite a later request by you that it be withdrawn.

## WHO WILL DEAL WITH MY COMPLAINT?

SAIBA's standards department will deal with your complaint.

The standards department will open a file which will be reviewed by the conciliation officer. If appropriate, attempts will be made to resolve the matter by conciliation, for example where the complaint is a fee dispute or has arisen because of misunderstandings or lack of communication. Further information about SAIBA's conciliation service is available in a separate booklet.

If conciliation is not appropriate, or if after conciliation there are disciplinary matters which require investigation, the case will be referred for investigation.

## CONFIDENTIALITY

As a general rule, SAIBA's disciplinary procedures are private and confidential. This means that the correspondence and documentation which you or your representative exchange with SAIBA may not be disclosed to or discussed with third parties. There are two important exceptions to the general rule which are set out below.

**A complaint form is available to download from our website at [www.saiba.org.za](http://www.saiba.org.za)**

## Introduction

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SAIBA may from time to time receive requests for information from third parties carrying out public functions, for example the Police, Trading Standards, the SARS.

Such requests will be assessed by SAIBA on a case by case basis, and information about disciplinary investigations may be disclosed where, in SAIBA's considered opinion, the legitimate interest of the third party outweighs any prejudice to your rights and interests.

Most Disciplinary and Appeal Committee hearings will be held in public, which anyone may attend including you, the member and the press. Should your complaint be referred to such a Committee, documentation will be given to the member, his or her representative, the Committee members, and the SAIBA staff dealing with your case. Some documentation may also be given to any witnesses. Any other parties attending the hearing will not be supplied with documentation.

Given that your affairs may be referred to in public during such hearings, you may wish to consider requesting that certain documents are treated in strict confidence or even that the hearing or part of it is conducted in private. Please note that hearings are held in private only in certain circumstances. The Committee will consider the reasonableness of your request and you will be informed if it is accepted.

Alternatively, you may consider submitting your complaint in a format which protects your confidentiality but nevertheless allows the member a fair opportunity to answer the allegations against him.

## The Investigation

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The investigating officer is your first point of contact throughout the case, and will keep you up to date on developments. Usually the first step in the investigation is for the investigating officer to send a copy of your letter of complaint, together with any supporting documentation, to the member concerned. The member is asked to provide his or her comments and explanations in respect of the complaint. At the same time, the investigating officer will write to you requesting any further information which he or she may require.

Unless a specific request is received to the contrary and that request is reasonable, when investigating a complaint it is the professional conduct department's usual practice to send to you for comment copies of letters and documents received from the member, and to send to the member for comment copies of letters and documents received from you. SAIBA will not normally provide you with copies of letters and documents which it sends to the member, or vice versa, as they are private and confidential.

Although the time taken to investigate will depend on the circumstances and complexity of each complaint, the usual duration of an investigation is approximately six months.

Once the standards department has received all the required information, the investigating officer will consider the evidence and decide whether to raise disciplinary allegations. There are then two different routes which the complaint may take.

- If the investigating officer decides that the case should be closed, you will be informed of the reasons for this decision. You will be given an opportunity to request that the investigating officer's decision is reviewed by an independent assessor. Such a request must be submitted with detailed grounds for review and within a prescribed time limit.
- If the investigating officer decides to raise disciplinary allegations, a report will be prepared. The investigating officer will decide whether there is a case to answer and, if so, whether to refer the case to the Disciplinary Committee.

Where civil or criminal proceedings (or a police or some other authority's investigation) concerning a matter are pending, SAIBA's investigation may be put on hold until the legal proceedings or other investigation are resolved. You will be kept advised of the progress of the investigation and the reasons for any delay.

## The Investigation

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### **HOW TO COMPLAIN ABOUT THE HANDLING OF A CASE**

If you have concerns about the way in which the investigating officer is handling your case, you should raise them with the investigating officer in the first instance. If he or she is unable to reassure you, you should set out your concerns in writing by letter or email to the address on page three. Your communication will be passed to the relevant manager in accordance with our internal how to complain procedures. Further details of those procedures are available upon request.

## The Investigating Officer

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The investigating officer is an individual with a wide range of expertise including insolvency, law and accountancy. The investigating officer has two main roles when reviewing a complaint: to decide to close a case and to consider reports of disciplinary allegations.

### **DECISION TO CLOSE A CASE**

If the investigating officer decides that the case should be closed, that is the end of the matter. However if the complainant feels that this decision is incorrect he or she may appeal to an assessor. If the assessor disagrees with the investigating officer's decision, he may direct him or her to refer a report of disciplinary allegations to the disciplinary committee. The investigating officer follows the procedures below.

### **CONSIDERATION OF A REPORT OF DISCIPLINARY ALLEGATIONS**

The investigating officer will consider the allegations referred to him or her and decide whether the evidence against the member is sufficiently strong that he or she should be called on to answer it. If the investigating officer cannot reach a decision, he or she may decide to carry out further investigations before reaching a decision, including calling for further information.

### **NO CASE TO ANSWER**

If the investigating officer finds there is no case to answer, no record of the matter for disciplinary purposes shall be retained on the member's file. You will be informed of the reasons for the investigating officer's decision and you will be given an opportunity to request that it is reviewed by an assessor.

### **A CASE TO ANSWER**

If the investigating officer /assessor determines that there is a case to answer, he or she has two alternative courses of action:

- i to refer the matter to the Disciplinary Committee for a formal hearing; or
- ii to rest the matter on the member's file.

In addition, the investigating officer may refer the matter to SAIBA's practice monitoring department.

### **REST ON FILE**

This option is reserved for allegations which the investigating officer considers render the member liable to disciplinary action, but which are not serious. Whilst no action will be taken on this occasion, the allegations may subsequently be referred to the Disciplinary Committee in the event of a further matter concerning the member being brought to SAIBA's attention.

If the investigating officer decides to rest the allegations on the member's file, you will be informed of the reasons for this decision. You will be given an opportunity to request that the decision is reviewed by an assessor.

### **REFER TO DISCIPLINARY COMMITTEE**

If the assessor refers allegations to the Disciplinary Committee, a hearing will be fixed for the next available date.

## Disciplinary Committee

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The Disciplinary Committee is independent of SAIBA. It has a minimum of four members, but usually comprises five or six members. The Committee's function is to hear cases referred to it by the investigating officer. It decides if allegations against a member have been made out or not.

If the Disciplinary Committee finds allegations proved, the sanctions it may impose may include for example:

- that the member be excluded from membership;
- that the member be severely reprimanded, reprimanded or admonished;
- that the member be fined a sum not exceeding R50,000;
- that the member pay compensation to you of up to R5,000 to reflect any inconvenience suffered; and
- that the member's fees to you be waived or reduced.

The Disciplinary Committee also has the power to order a disciplined member to pay SAIBA's costs and will normally do so.

Where no allegations are found proved, SAIBA can be ordered to pay some or all of the member's costs. You will not be called upon by SAIBA to bear any costs. In exceptional circumstances, you may be awarded a sum by way of contribution to any costs you may have incurred in bringing the complaint to SAIBA's attention.

Orders of the Disciplinary Committee are normally published by issuing a press release on SAIBA's website and to the local press referring to the member by name. In exceptional circumstances, the press release may not refer to the member by name.

### **Procedure before the Disciplinary Committee**

The Committee does not operate like a court but as a tribunal where a member's conduct is assessed. The Committee is not bound by the strict rules of evidence that apply in courts of law and may consider any relevant evidence brought to its attention. Hearings are generally held in public, which means that anyone may attend.

The Committee may, in an appropriate case, decide to go into closed session for all or part of the proceedings and for documentary evidence to be received without being read aloud.

## Disciplinary Committee

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If you decide to attend the hearing, you should inform the investigating officer prior to the date set for the hearing in order to ascertain the likely time at which the case will be heard. You may be asked to attend the hearing as a witness.

The member is not obliged to attend and may make written submissions to be taken into account by the Committee in his or her absence.

The case presenter will outline the case against the member and seek to substantiate the allegations (which may differ from your original complaint), by reference to the documents before the Committee and, if appropriate, by calling witnesses and asking questions of them. You will not necessarily be called as a witness and you will not be obliged to give evidence unless you wish to. Witnesses do not give evidence under oath.

If the allegations are denied, at the conclusion of the presentation of the case the member, if he or she is in attendance, will be asked to present his or her defence. The member may also call witnesses and questions may be asked of those witnesses.

If the Disciplinary Committee considers it appropriate, you may be invited to comment. Please note that any comments you make will not be covered by legal privilege. As a result it is possible that a member or any other party may take action against you in respect of any defamatory comments made.

After any questioning has finished, the Committee will withdraw to consider its decision. Members of the Regulatory Board, if present, will retire with the Committee to observe, but will not take any part in the Committee's decision. When the Committee reconvenes the Chairman will announce its decision.

If the Committee has found the allegations not proved, the proceedings are terminated, subject only to any order for costs, and no record of the matter for disciplinary purposes shall be retained on the member's file. The decision of the Disciplinary Committee is final in this regard and no appeal by you is possible.

If the Committee has found one or more of the allegations proved, or the member has admitted the allegations and the Committee has formally found them proved, the member will then be invited to make a statement in mitigation.

The clerk to the Disciplinary Committee will then inform the Committee whether any disciplinary orders have previously been made against the member. The Committee will then withdraw again to consider the order(s) to be made.

## Disciplinary Committee

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It will return to announce:

- the order(s) made;
- the costs to be awarded; and
- the manner in which its decision will be published.

At any time during the hearing, the Disciplinary Committee may request from the clerk clarification of points of law, SAIBA's regulations and the extent of its powers. The chairman will announce the content of any advice received by the Committee from the clerk.

After the hearing, you and the member will be formally notified by letter of the decision of the Disciplinary Committee. Shortly thereafter, the member will receive written reasons for the decision. However, you will not be entitled to receive the written reasons.

If the member disagrees with the decision of the Disciplinary Committee, he or she has a right to apply for permission to appeal to the Appeal Committee. No appeal is possible by you against the decision of the Disciplinary Committee. In exceptional circumstances, where there is a clear public interest in the decision being reviewed, SAIBA may apply for permission to appeal the decision of the Disciplinary Committee.

An order made by the Disciplinary Committee will take effect from the date of the expiry of the appeal period unless the member applies for permission to appeal before this period expires. The appeal period expires 30 days after the date of service upon the member of the written reasons for the decision of the Disciplinary Committee.

## Appeal Committee

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The Appeal Committee is independent of SAIBA. It has a minimum of two members, of which at least one must be an accountant and one a lawyer. The chairman must be a lawyer.

Applications for permission to appeal are considered by the Chairman of the Appeal Committee, who may grant permission or may direct that the application for permission should be considered by the Appeal Committee. If permission is granted, the appeal is heard by the Appeal Committee. It may affirm, vary or rescind any order made by the Disciplinary Committee.

The Appeal Committee can impose its own decision, findings and/or orders. This may include a more severe penalty, if appropriate, than that imposed by the Disciplinary Committee.

The Appeal Committee procedure is essentially the same as that before the Disciplinary Committee, save that the appellant presents his case first. SAIBA then responds and the appellant has a right of reply.

An order of the Appeal Committee will normally take effect from the date it is made. Orders of the Appeal Committee are normally published in the same manner as those of the Disciplinary Committee.

1. Acknowledgement: This guide is based on the ACCA Guidance to Disciplinary Procedures