



Wireless Access Providers' Association Complaints and Disciplinary Procedure

Version 2

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Definition and Interpretation

The following expressions and terms have the meanings given to them below:

“Association” means the Wireless Access Providers’ Association;

“Authority” means the Independent Communications Authority of South Africa;

“Complainant” means without limitation a Member, End-User, the Association or individual or entity that lodges a complaint in terms of this Complaints and Disciplinary Procedure;

“ECA” means the Electronic Communications Act, No. 36 of 2005;

“End-User” means the subscriber or recipient of a Member’s products and services;

“Enforcement Authority” means any governmental department, body or person in the service of such department or body, who has the power or authority to officially investigate any illegal or unlawful conduct or to enforce any law, including the common law;

“Member” means a member of the Association.

Introduction

1. The Association’s Complaints and Disciplinary Procedure applies to all Members.
2. In providing a mechanism for resolving complaints the Association aims to ensure that:
 - 1.1. Members maintain the standards of behaviour and service set out in the Association’s Code of Conduct;
 - 1.2. Members and End-Users have access to a fair, equitable and inexpensive process for the resolution of complaints;
 - 1.3. There is an avenue for appeals following a decision by the Association on a complaint;
 - 1.4. Every effort is made by the Association to resolve complaints and appeals in a timely and effective manner; and,



- 1.5. All parties are given the opportunity to present their case, be fully informed about allegations and decisions made and to have the right to representation.
3. The Association's Management Committee is tasked with dealing with all complaints received, and has designated the Association's Secretariat as the contact person and facilitator for the handling of all complaints.
4. The Association must maintain a record of all complaints and disciplinary processes for a minimum of 3 years.
5. A Complainant has the right to withdraw a complaint at any time prior to appointment of the independent adjudicator.
6. The timelines indicated in this Complaints and Disciplinary Procedure are indicative only and do not constitute a service level commitment.
7. If there is evidence that a complaint or dispute has been lodged, or action has been instituted, with any other regulatory body or a Court, and where the subject matter of that complaint, dispute or action is substantially the same as the subject matter of the complaint lodged with the Association then the Association may, within its sole discretion, elect to dismiss the complaint.
8. Where a complaint cannot be resolved by the Association, the Complainant may pursue other avenues for resolution of his complaint (including but not limited to approaching the Authority, the courts or relevant Enforcement Authority).
9. The Association reserves the right to investigate any transgression of or non-compliance with the Association's Code of Conduct by a Member and to initiate an investigation into that Member using the process outlined below.

Standard Complaints Procedure

1. A Complainant may submit a complaint to the Association by sending an email to complaints@wapa.org.za.
2. A complaint can only be considered where it contains the following information:
 - 2.1. the name of the Member against whom the complaint is being made;
 - 2.2. the name and contact details of the Complainant;
 - 2.3. an indication of the sections of the Association's Code of Conduct which have allegedly been contravened;
 - 2.4. a detailed description of the actions/inactions which resulted in the alleged contravention (including where possible dates and times of the alleged contravention);
 - 2.5. a summary of evidence (e.g. emails, reports of phone conversations) in support of the complaint;
 - 2.6. confirmation that the Complainant has exhausted every available option to resolve the dispute directly with the Member, including following the Member's complaints procedure;
 - 2.7. an undertaking that the complaint is made in good faith; and,
 - 2.8. where appropriate, the Complainant may suggest a satisfactory resolution outcome.

3. If the complaint lacks sufficient information the Complainant will be given an opportunity to provide the required information. A complaint will not be considered if it is deemed to be incomplete.
4. An acknowledgement of receipt will be sent to the Complainant within three (3) working days for complaints validly received.
5. The Association will assess the merits of the complaint and may seek advice from its regulatory and/or an external legal advisor if required by the facts and circumstances of the complaint.
6. The Association will initially attempt an informal complaint resolution process in which:
 - 6.1. The Association will forward the complaint to the relevant Member and request that the Member respond within five (5) working days. Upon request and within the Association's sole discretion the Member may be afforded an further five (5) working days to respond.
 - 6.2. The Association will forward the Member's response to the Complainant and request that the Complainant advise whether the Member's response is satisfactory.
 - 6.3. If the Complainant is satisfied with the Member response the complaint will be considered to have been resolved.
7. Where no resolution is achieved through the informal complaint resolution process or where the Member fails to respond to the Association's satisfaction or within the allocated timeline then the complaint will be escalated to the formal resolution process.
8. In terms of the formal complaint resolution process the complaint together with all correspondence generated by the informal complaint resolution process will be forwarded for resolution to an independent adjudicator.
9. The Association's Secretariat shall elect the independent adjudicator and act as liaison between the independent adjudicator and the Complainant.
10. The independent adjudicator must consider the merits of the complaint, taking into account:
 - 10.1. The facts and circumstances of the complaint;
 - 10.2. The Member's response to the complaint (if any);
 - 10.3. The Association's Code of Conduct;
 - 10.4. All relevant policies and procedures which have been published by the Association;
 - 10.5. Any previous complaints made by the Complainant; and,
 - 10.6. Any previous complaints made against the Member.
11. The independent adjudicator may request additional information relevant to the complaint from the Complainant and/or Member and must specify a reasonable time frame for the provision of this information. If the requested information is not provided within the specified time frame the independent adjudicator must proceed to evaluate the complaint without the additional information.
12. In evaluating the complaint, the independent adjudicator must take the following into account:
 - 12.1. precedent;
 - 12.2. prior record of the Member;
 - 12.3. damages caused as a consequence of the alleged breach of the Code of Conduct; and

- 12.4. any other mitigating or aggravating factor which the independent adjudicator deems relevant.
13. After evaluating the matter the independent adjudicator can make one or more of the following rulings:
 - 13.1. The complaint is not valid;
 - 13.2. Referral of the complaint to the Member with a further opportunity for remedial action within a specified time frame;
 - 13.3. The Member must undertake appropriate remedial action (including the provision of a refund), as specified;
 - 13.4. The Member is issued with a formal reprimand or warning;
 - 13.5. The Member is fined;
 - 13.6. The Member must take-down content (when the complaint stems from a valid take-down notification);
 - 13.7. The Member is to be suspended from the Association subject to conditions determined by the independent adjudicator;
 - 13.8. Revocation of the Member's membership of the Association;
 - 13.9. The Association must publish a report detailing the identity of the Member, the details of the breach of the Code of Conduct and any action taken regarding the breach; and/or
 - 13.10. The Association must report illegal or unlawful conduct or content to the relevant Enforcement Authority
14. The independent adjudicator shall deliver their ruling(s) together with the reasons therefore in a written report which the Association's Secretariat will forward to the Complainant, the Member concerned and the Association's Management Committee and the Association's regulatory advisor(s).
15. There are no costs associated with either the informal or formal complaint resolution processes.

Standard Appeal Procedure

16. Either the Complainant or the Member may lodge an appeal together with full written reasons therefore with the Association's Management Committee within ten (10) working days of the distribution of the independent adjudicator's ruling to the parties.
17. A complaint may only be appealed once to the Association's Management Committee. If no appeal is lodged within ten (1) working days then the matter is considered closed.
18. Where an appeal is lodged the Association's Management Committee may either reject the appeal or refer the matter for adjudication by an appeals panel. A copy of the Association's Management Committee's decision and its reasons will be sent to both the appellant and the respondent.
19. Where the Association's Management Committee accepts the lodgement of an appeal it must appoint an appeals panel that consists of 2 or more independent adjudicators, but which may include the independent adjudicator who considered the original complaint.

20. The appeal will be considered in accordance with the formal complaint resolution process set out above with the appeals panel fulfilling the role of the independent adjudicator.
21. The Association may request a cost estimate from the appeals panel for their consideration of the appeal. The Association may furthermore require payment by the appellant of a deposit towards such fee, which deposit shall not exceed fifty per cent (50%) of the estimated cost.
22. Upon finalisation of the appeal the appeals panel is empowered to make a ruling consistent with the powers afforded to the original independent adjudicator, subject to necessary modifications, but may also make a finding as to costs. Where the circumstance warrant such a ruling the appeals panel may direct that the unsuccessful party be held liable for the costs of the appeal.

Procedure for complaints by Members

23. A Member may approach the Association for resolution of a complaint against another Member where notwithstanding their respective best endeavours the Members have been unable to resolve the dispute amongst themselves.
24. A complaint of this nature will follow both the informal and formal complaints resolution procedures outlined above, subject to necessary modification, and requires the Complainant to submit the required information in the prescribed manner.
25. Unlike the standard complaints procedure the Member lodging the complaint may be required to pay a deposit in order for the matter to proceed to the formal resolution process and the independent adjudicator may in its ruling determine that the unsuccessful party in the complaint bear the costs of the complaint.
26. If either Member is not satisfied with the ruling of the independent adjudicator they may lodge an appeal, which appeal will follow the standard appeal procedures outlined above, subject to necessary modifications.
27. Upon finalisation of the appeal the appeals panel is empowered to make a ruling consistent with the powers afforded to the original independent adjudicator, subject to necessary modifications, but may also make a finding as to costs. Where the circumstance warrant such a ruling the appeals panel may direct that the unsuccessful party be held liable for the costs of the appeal.

Interference Complaints

28. Unless interference results from a breach of the Code of Conduct the Association is unable to mediate or resolve interference complaints which occur in licence-exempt bands, whether between Members or non-members.
29. The Association can however assist with interference complaints in the licence-exempt bands by:
 - 29.1. Facilitating electronic and telephonic communication between Members as a neutral party;
 - 29.2. Making a spectrum analyser available for hire, and making a request on the relevant forum that another Member volunteer to attend the site as a neutral party, as well as assist the parties in resolving the complaint between them;

- 29.3. Suggesting an independent consultant to review the matter and assist the Members in resolving the complaint, with all costs for the independent consultant being for the Members' accounts;
 - 29.4. Providing Authority's contact details, where applicable.
30. Where the Association receives a complaint about a Member causing interference in a licensed band then the Association will notify the implicated Member and afford them the opportunity to respond directly to the Complainant. The Association reserves the right to suspend or revoke a Member's membership if repeated and valid complaints related to causing interference in licensed bands are received against that Member.

Complaints against non-Members

31. The Association can only act where the subject of the complaint is a Member. As non-members are not bound by the Associations Code of Conduct the Association lacks the jurisdiction to process complaints except as to offer to act as intermediary between the Complainant and non-Member, which will be decided on a case-by-case basis and in the Association's sole discretion.

Complaints about Illegal Operators

32. Illegal operators are individuals or entities which provide services without suitable service licensing and/or service licence exemption or radio frequency spectrum licencing as may required by the ECA or any regulations passed by the Authority .
33. The Association has a standard form for the submission of information regarding illegal operators which is available at www.wapa.org.za.
34. A Complainant is required to make its own enquiries as to the licensing status of an individual or entity before submitting a complaint to the Association.
35. Upon receiving a complaint alleging that an individual or entity is operating illegally the Association will make contact with the subject of the complaint and invite them to join the Association so that it may assist such operator to obtain the required service and/or radio frequency spectrum licences as it may require and moreover to assist it in regularising its operations. The Association may also request that the operator provide copies of its licences to indicate that it is not an illegal operator.
36. If the operator does not respond, does not provide copies of its licences or does not show any intention of obtaining the required licences then the Association will forward the information contained in the standard form to the Authority.
37. The Association cannot provide any undertakings regarding the reaction of the Authority to this information or its chosen resolution of the complaint. The Association will assist the Authority as required and may ask the Complainant to assist the Authority with its own investigation of the complaint if required.

Version History

Version	Date adopted	Date effective	Summary of revisions
1	2 April 2014	2 April 2014	-
2	14 August 2024	14 August 2024	