

PROFESSIONAL SIMULATION ENGINEER DISCIPLINARY PROCEDURE

1. Guiding Principles

This document describes the disciplinary procedure to be used by NAFEMS whenever NAFEMS becomes aware, through a complaint or other means, that a Professional Simulation Engineer (PSE) may have breached the NAFEMS PSE Code of Conduct.

“The primary purpose of disciplinary proceedings is not to punish, but to protect the public, to maintain public confidence in the integrity of the profession, and to uphold proper standards of behaviour”. Lord Collins, R (on the application of Coke-Wallis) v ICAEW, Supreme Court, 2011.

The fundamental principles that guide the use of this procedure are:

- 1.1. Whether conducted in public or in private, the disciplinary procedure should be clear, open, fair, unbiased and proportionate; essentially, it should accord with the principles of natural justice;
- 1.2. All persons involved should respect the confidentiality of the proceedings;
- 1.3. No person should participate in decision-making in more than one stage of the procedure in any particular case. All persons who are asked to participate in the disciplinary process and have a conflict of interest in relation to any part of the allegations, or have a connection with the subject or the complainant which creates a real danger of bias, or which could cause others to think it could influence their decision, should declare it and disqualify themselves from participating;
- 1.4. While the procedure is the responsibility of the NAFEMS Council, it should delegate authority in order to comply with principles 1.1 and 1.3 above;
- 1.5. Judgement by peers. Staff may provide administrative and secretarial support and procedural advice but should not influence or participate in the decision-making process, even if they are members of NAFEMS;
- 1.6. No presumption of liability until breach of the Code of Conduct is admitted or proved. Decisions should be based on the appropriate standard of proof (see 4.3 below);
- 1.7. Proved breaches of the Code of Conduct should attract sanctions commensurate with the seriousness of the breach;

The stages of the disciplinary procedure described below are:

- Review of Complaint or Information Received
- A Preliminary Investigation
- Consideration and Judgement by a Disciplinary Panel
- Review by an Appeals Panel
- Record and Publish Outcome

2. Review of Complaint

- 2.1. When a complaint or information is received by NAFEMS indicating a potential breach of the PSE Code of Conduct, the CEO will inform the Chairman.

- 2.2. The Chairman informs the PSE Board that a PSE is subject to this disciplinary procedure and that they should remain on the PSE Register even if they request removal from the Register or their registration lapses.
- 2.3. The Chairman appoints an investigator who must be a member or employee of NAFEMS.
- 2.4. The investigator reviews the complaint or information to determine whether the alleged misconduct would, if admitted or proved, lie within the ambit, or jurisdiction, of the Disciplinary Panel; and secondly, whether there is, or could be, enough evidence to justify an inquiry. If the investigator determines that there is a 'case to answer', a preliminary investigation is started.
- 2.5. If the investigator determines that the complaint is unfounded the Chairman and the complainant are informed of this decision. The complainant is also informed of the reasons for the decision and the right to appeal against this decision with 30 days.
 - 2.5.1. If the complainant appeals against the decision of the investigator, the Chairman will appoint an independent reviewer to review the decision. The reviewer must be independent of NAFEMS.
 - 2.5.2. The independent reviewer will review the decision of the investigator and determine if the case should undergo a preliminary investigation or the decision of the investigator is upheld. The Chairman and the complainant are informed of this decision. If the decision of the investigator is upheld, the complainant is also informed that there is no further right of appeal.
 - 2.5.3. If there is no appeal within the time limit or an appeal is not upheld, the PSE Board is informed and records of the complaint should no longer be maintained.

3. Preliminary Investigation

- 3.1. The subject of the complaint should be informed and kept informed of developments. The investigator assembles the evidence to assess the validity of the complaint. Evidence submitted by the complainant shall be disclosed to the subject and vice versa. The 'case to answer' should be framed in detailed and particular terms, clearly related to the Code of Conduct, such that the subject can understand the allegation.
- 3.2. If the investigator determines there is a 'case to answer', the Chairman, the subject and the complainant shall be informed and the case must be heard by a Disciplinary Panel. If the subject has any related court proceedings likely or under way the disciplinary process must not proceed until court proceedings, including any appeal, are complete, since the court proceedings might otherwise be prejudiced.
- 3.3. If the investigator determines that there is no 'case to answer', the Chairman, the subject and the complainant are informed of this decision. The subject and the complainant are also informed of the reasons for the decision and the complainant of the right to appeal against this decision with 30 days.
 - 3.3.1. Should the complainant appeal against the decision of the investigator, the Chairman and the subject are informed. The Chairman will appoint an independent reviewer to review the decision. The reviewer must be independent of NAFEMS.
 - 3.3.2. The independent reviewer will review the decision of the investigator and determine if the case should proceed to a Disciplinary Panel or the decision of the investigator is upheld. The Chairman, the subject and the complainant are informed of this decision. If the decision of the investigator is upheld, the complainant is also informed that there is no further right of appeal.
 - 3.3.3. If there is no appeal within the time limit or an appeal is not upheld, the PSE Board is informed and records of the complaint should no longer be maintained.

4. Disciplinary Panel

- 4.1. The Chairman will appoint a Disciplinary Panel of not fewer than three senior, experienced and trained members. Panel members must be sufficiently independent of NAFEMS to avoid any real or perceived bias or conflict of interest, and so should never include current members of NAFEMS Council or employees of NAFEMS. A person who has participated in a Preliminary Investigation must not act as a member of the Panel for the same case. The Disciplinary Panel should have a Chairman who reports directly to the NAFEMS Council. The Panel acts as impartial assessors of the complaint.
- 4.2. The Investigator continues the collection, examination and clarification of evidence. The complainant and the subject shall have timely access to evidence and responses. Where the allegation relates to matters of a specialised nature the Panel should consider engaging an independent expert witness.
- 4.3. The Disciplinary Panel will meet (physically or electronically) to consider all evidence. The burden of proof is the civil standard of proof, that is, the “balance of probabilities”.
- 4.4. The Panel may make a decision after examining the written evidence or may decide to hold an extended hearing to which all parties are invited. The parties to the case are the presenter of the complaint (on behalf of NAFEMS) and the subject. The presenter is a person appointed by NAFEMS for the purpose. Parties involved are entitled to invite to the hearing either:
 - 4.4.1. a lawyer, whom they may pay to represent them, including to speak on their behalf; or
 - 4.4.2. a non-lawyer “McKenzie Friend”¹, who may support, quietly advise and take notes for them but may not speak on their behalf.Either party is required to give reasonable advance notice if they intend to be legally represented, so that the other party can arrange legal representation if considered necessary.
- 4.5. If the Panel determines there has been no breach of the Code of Conduct, the Chairman, the PSE Board, the subject and the complainant are informed of this decision. Records of the disciplinary process are produced and maintained.
- 4.6. If the complaint is admitted or upheld, the Panel determines which section of the Code of Professional Conduct has been breached. The Chairman, the subject and the complainant are informed of this decision. The subject is informed that mitigating evidence can be provided to the Panel within 14 days.
 - 4.6.1. Having received mitigating evidence from the subject or not received mitigating evidence within 14 days, the Panel will decide on the sanction. Sanctions may be; withdrawal of the PSE certificate; suspension of the PSE certificate; reprimand; or retraining.
 - 4.6.2. The Chairman, the subject and the complainant are informed of the sanction. In the case of withdrawal of the PSE certificate the subject is informed of actions that could be taken to regain PSE certification. In other cases the subject is informed of any actions that must be taken and timescales for those actions in order to retain PSE certification. In all cases the subject is informed of the right to appeal against the decision or the sanction within 30 days.
 - 4.6.3. The PSE Board are informed of the decision and records of the disciplinary process are produced and maintained.

¹ As defined at <http://courtwithoutalawyer.co.uk/mckenzie-friends.html>

5. Appeals Panel

- 5.1. The Chairman is informed of a request for appeal against a Disciplinary Panel decision. The Chairman appoints a panel of three members, who have not been involved with the case, to consider whether there are grounds for appeal.
- 5.2. The grounds for appeal are:
 - 5.2.1. Jurisdiction (whether the alleged misconduct is within the scope of the provisions of the code of conduct);
 - 5.2.2. Procedure (was not followed);
 - 5.2.3. Perversity (the decision was perverse in the light of the evidence);
 - 5.2.4. New evidence (which could not reasonably have been produced for the Disciplinary Panel).
- 5.3. For an appeal against a sanction, additionally:
 - 5.3.1. Proportionality (the sanction was disproportionate to the gravity of the breach)
- 5.4. The argument under each ground must stand on its own. Leave to appeal may be granted on two or even more grounds, but shall not be granted in response to an accumulation of individually insufficient arguments under two or more grounds.
- 5.5. If the panel decides there are no grounds for appeal, the Chairman and the subject are informed of the decision and the subject is informed there is no further right of appeal. Records of the disciplinary process are produced and maintained.
- 5.6. If there are grounds for appeal the Chairman is informed and will convene an Appeal Panel comprising at least three senior persons (not current members of NAFEMS Council or employees of NAFEMS) including one lay person independent of NAFEMS. It shall be as independent of the Council as is practical bearing in mind the need to understand and weigh specialist subject matter.
 - 5.6.1. The Appeal Panel will consider all the evidence available to the Disciplinary Panel and any new evidence.
 - 5.6.2. The Appeal Panel shall follow the same principles as the Disciplinary Panel, modified to suit the accepted grounds for appeal
 - 5.6.3. If the Appeal Panel decides the appeal is not upheld, the Chairman and the subject are informed of the decision. The subject is also informed there is no further right of appeal. Records of the disciplinary process are produced and maintained.
 - 5.6.4. If the appeal is upheld the Appeal Panel may reverse the decision of the Disciplinary Panel or uphold its decision but reduce the sanction.
 - 5.6.4.1. The Chairman, the subject and the complainant are informed of the decision of the Appeal Panel. In the case of withdrawal of the PSE certificate the subject is informed of actions that could be taken to regain PSE certification. In other cases the subject is informed of any actions that must be taken and timescales for those actions in order to retain PSE certification. In all cases the subject is informed there is no further right of appeal. The PSE Board are informed of the decision of the Appeal Panel and records of the disciplinary process are produced and maintained.

6. Record and Publish Outcome

- 6.1. Records that are to be maintained following the disciplinary process will be archived and retained for a minimum of 10 years. Records to be retained comprise:
 - 6.1.1. A copy of all written evidence submitted;
 - 6.1.2. In the case of a hearing, a summary of the oral evidence in support of the alleged breach and in rebuttal or mitigation, including any salient points elicited in cross-examination;
 - 6.1.3. A summary of the Panel's reasons for its decision.
Summaries should contain sufficient detail for a reviewer to understand the issues and to be able to judge whether the proceedings had been fairly and properly conducted.
Summaries of hearings should not be written by a person who has played any other part in any stage of the proceedings, and should be approved by the Panel chairman.
- 6.2. Where the Disciplinary Panel finds the subject in breach of the Code of Conduct, the section of the Code of Conduct breached and the sanction are recorded on, and remain on, the PSE register.
- 6.3. Where the Disciplinary Panel finds the subject in breach of the Code of Conduct, that fact together with any sanction imposed will be published in such a manner as the Council may deem necessary or desirable with a view to furtherance of the objectives of NAFEMS. This may extend to publishing, at the request of the subject, notification that a complaint has not been upheld.
- 6.4. The findings of the Appeal Panel will, as a minimum, be published in the same manner as the findings of the Disciplinary Panel.
- 6.5. If the subject is known to be a member of any other professional body, NAFEMS shall inform the professional body of any expulsion or other sanction.