

IN THE APPEALS COMMITTEE OF THE COUNCIL FOR THE BUILT ENVIRONMENT

In the matter between:

PETER KANE

Appellant

and

**ENGINEERING COUNCIL OF SOUTH AFRICA
(ECSA)**

First Respondent

RONALD BEEBY

Second Respondent

APPEALS COMMITTEE DECISION

APPEAL COMMITTEE:

Adv. M.I.E Ismail (Chairperson)

Mr. P. Pillay – Professional Engineer (Civil – Structural)

Mr. M. Pencharz – Professional Architect

In attendance: Ms M. Chilwane- CBE Representative

1. INTRODUCTION

This matter concerns an appeal lodged by the Appellant against the decision of the Engineering Council of South Africa (ECSA) [the first Respondent] dated 21 May 2025, in which ECSA declined to institute disciplinary proceedings against Mr R.E. Beeby the second Respondent, a registered professional engineer, arising from allegations of conflict of interest, bias, and procedural impropriety.

2. HEARING

Appellant appeared in person at the Hearing. First Respondent (ECSA) was represented by Attorney Jassat from M.F Jassat- Dhlamini Inc. attorneys, while second Respondent was represented by attorney Daniel Kidd from Everingham's attorneys both of whom attended the Hearing virtually.

3. JURISDICTION

This Appeal Committee derives its authority from section 21(1)(d) and section 21(4) of the *Council for the Built Environment Act 43 of 2000* ("the CBE Act"), read together with section 33(5) of the *Engineering Profession Act 46 of 2000* ("the EPA"). In terms of these provisions, the Committee is empowered to confirm, set aside, amend, vary, or

substitute a decision of the Engineering Council of South Africa (ECSA), or to remit a matter to ECSA with appropriate directions.

The Committee confirms that the appeal is properly before it under s21 of the CBE Act, the Appellant is not seeking judicial review but a merits-based appeal, questioning whether ECSA's finding of "*no misconduct*" was sound.

4. ROLE OF THE COMMITTEE

The Committee's role is administrative and supervisory rather than adjudicative: it ensures that decisions of the professional council are lawful, reasonable, and procedurally fair, consistent with the principles of the *Promotion of Administrative Justice Act 3 of 2000* ("PAJA") and the right of access to information under the *Promotion of Access to Information Act 2 of 2000* ("PAIA"). In performing this oversight function, the Committee may also issue corrective or institutional directives, including recommendations to strengthen procedural compliance or governance practices.

5. APPEAL CONTEXT

This matter concerns an appeal lodged by Dr Peter Kane (Appellant) against the decision of the Engineering Council of South Africa (ECSA) dated 21 May 2025, wherein ECSA resolved not to charge Mr R.E. Beeby (Second Respondent) with improper conduct under the Engineering Profession Act, 46 of 2000.

The Appellant contends that ECSA's investigation was procedurally deficient and substantively irrational, contrary to sections 3, 5, 6(2)(e)(iii), 6(2)(f)(ii), 11, and 23 of the

Promotion of Administrative Justice Act (PAJA) and inconsistent with the transparency principles in section 11 of the Promotion of Access to Information Act (PAIA). The appeal further raises a substantive ethical question, whether Mr Beeby's non-disclosure of his concurrent role as a member of the Institute of Loss Adjusters created a reasonable perception of conflict of interest in contravention of Rule 3(2)(f) of the ECSA Code of Conduct.

ECSA and the Second Respondent oppose the appeal, maintaining that no dual mandate existed, that the investigation was procedurally fair, and that the decision not to charge was rational and within ECSA's discretion.

6. COMPARATIVE SUMMARY OF POSITIONS

(a) Conflict of interest

The Appellant contends that Mr Beeby acted in a clear conflict of interest by serving both as an engineer and effectively as a loss adjuster for Santam. The Appellant asserts that this dual capacity was never disclosed and that Mr Beeby's report improperly included conclusions favouring the insurer, thereby demonstrating bias.

ECSA, as the First Respondent, rejects this contention and maintains that Mr Beeby was appointed solely in his professional capacity as an engineer. It argues that no dual mandate existed, that no prejudice was shown, and that the complaint amounts to dissatisfaction with an insurer's repudiation rather than evidence of misconduct. ECSA submits that its decision was rational, procedurally proper, and sufficiently reasoned.

The Second Respondent, Mr Beeby, acknowledges that he holds dual professional affiliations, as a registered engineer and as a member of the loss adjusters' association, but asserts that he acted exclusively as an engineer in this instance. He denies any conflict of interest or bias, stating that the insurer independently made its decision and that his report reflected an impartial technical assessment of the structural defects.

(b) Procedural fairness

Regarding procedural fairness, the Appellant argues that ECSA failed to furnish adequate reasons for its decision and refused access to records, contravening the Promotion of Access to Information Act (PAIA) and Promotion of Administrative Justice Act (PAJA). The Appellant contends that this lack of disclosure undermined transparency and deprived him of the right to meaningfully respond.

ECSA disputes this, maintaining that sufficient reasons were provided through its closure letter and investigator's report, and that its internal deliberations are privileged. It further argues that its decision did not have a direct, external legal effect on the Appellant, and therefore did not trigger the procedural fairness obligations under PAJA.

Mr Beeby did not address the PAIA or PAJA issues in detail, aligning himself with ECSA's process and asserting his full cooperation during the investigation.

(c) Rationality and lawfulness

Finally, concerning rationality and lawfulness, the Appellant argues that ECSA's decision was irrational, arbitrary, and unsupported by the evidence, contrary to section 6(2)(f)(ii)

of PAJA. ECSA and Mr Beeby maintain that the decision was rationally connected to the information before the Council and consistent with administrative reasonableness.

The Appellant seeks an order setting aside ECSA's decision, refunding the appeal fee and costs, and directing a new investigation. Both respondents request that the appeal be dismissed and the ECSA decision be confirmed.

7. EVALUATION METHODOLOGY

The Appeal Committee has considered the record of proceedings, the submissions by all parties, and the expert and documentary evidence, including the additional materials provided to the Committee. The following issues are central to the appeal: The independence and objectivity of the Beeby report; the alleged conflict of interest and non-disclosure of dual roles; the procedural adequacy of ECSA's decision-making process under PAJA and PAIA; and the appropriate remedial outcome.

8. ANALYSIS

8.1 The Beeby Report

(a) On the Nature and Independence of the Beeby Report

The Committee observed that Mr Beeby's report was not independent, as he was privy to a previous insurer-commissioned report and adopted significant portions of its content and conclusions. While the technical findings in clauses 1 to 5 appeared sound, the tone, phrasing, and evaluative style of clauses 6 to 11 bore clear hallmarks of a loss-adjusting assessment rather than a neutral engineering opinion.

In particular, the quantification of loss and estimation of repair costs (approximately R660 000) pointed to Mr Beeby having advanced conclusions on behalf of the insurer rather than providing a purely technical opinion. The inclusion of claim valuations and insurer-aligned phrasing suggests a blending of technical evaluation and claims analysis inconsistent with a purely independent engineering report.

The Committee agrees that this creates at least a reasonable perception of dual capacity, which ECSA failed to interrogate. Although this does not prove actual bias, it raises a legitimate question as to independence, particularly given Mr Beeby's simultaneous professional affiliation with a loss adjusting body.

(b) Conflict of Interest and Non-Disclosure

It is common cause that Beeby is both a registered engineer and a member of the loss adjusters' association. The failure to expressly disclose this dual capacity to either the complainant or ECSA constitutes a material omission under Rule 3(2)(f) of the ECSA Code of Conduct, which requires members to avoid any situation that could reasonably be perceived as a conflict of interest.

Rule 3(2)(f) of the *ECSA Code of Conduct for Registered Persons* (published under section 27(1) of the Engineering Profession Act 46 of 2000) states:

"A registered person shall not undertake work in circumstances where a conflict of interest is likely to arise."

Definitions:

“Conflict of interest” means any situation where the engineer’s professional judgment could be influenced, or reasonably be perceived to be influenced, by a personal, financial, or other interest.

The rule focuses not only on *actual* conflict, but also on the likelihood or reasonable perception of conflict.

Clearly the Rule means that if an engineer has any possible dual role or prior involvement, they must disclose it to all affected parties upfront. Failure to disclose amounts to a breach of the Code, even if no actual bias or misconduct is proven.

(b) Application to this case:

Second Respondent’s dual association as a professional engineer and a member of the Institute of Loss Adjusters, created a context in which a conflict of interest was reasonably likely to arise. His engagement by Santam in a matter directly affecting the insured party gave rise to at least a *perception of partiality*, which demanded full and transparent disclosure to all affected parties.

The Committee accepts that no direct evidence of dishonest intent or personal gain was established. However, under Rule 3(2)(f), the duty of disclosure is triggered by the likelihood or perception of conflict, not only by proven bias. The Second Respondent’s failure to disclose his concurrent professional affiliation and the potential overlap of roles therefore constitutes a technical breach of the Code, undermining the appearance of independence required of a registered professional.

This omission breached both the spirit and purpose of Rules 3(2)(e) and 3(2)(f) of the ECSA Code of Conduct, which require full transparency where a professional's impartiality could reasonably be questioned. The Committee finds that the Second Respondent's dual association, as a professional engineer and as a member of the Institute of Loss Adjusters, created a context in which a conflict of interest was reasonably likely to arise. His engagement by Santam to assess structural damage to the Appellant's property, which directly informed the insurer's repudiation decision, gave rise to a perception of partiality.

Even if the Second Respondent did not act dishonestly or receive dual remuneration, the duty of disclosure arises from the likelihood or appearance of conflict, not only from proven bias. His failure to disclose this concurrent affiliation and the potential overlap of functions thus constitutes a technical breach of Rule 3(2)(f) and reflects a lapse in professional judgment.

9.2 ECSA'S Role

Such non-disclosure, even absent proof of intentional bias, gave rise to a reasonable perception of conflict, and ECSA's investigation failed to address this perception or to request written clarification from Mr Beeby, amounting to an incomplete evaluative process inconsistent with the principles of administrative fairness in sections 5, 11, and 23 of PAJA and the access-to-information obligations of PAIA(c) Procedural Fairness under PAJA and PAIA. Also, it raises legitimate concerns of procedural fairness under section 6(2)(e)(iii) of PAJA, which requires an administrator to consider all relevant information before making a decision.

(a) Standards prescribed

ECSA's handling of the complaint fell short of the standards prescribed in sections 3 and 5 of PAJA. The Council did not provide adequate written reasons explaining how it concluded that no conflict existed, nor did it ensure full and timely disclosure of records to the complainant under section 11 of PAIA.

These omissions rendered the process procedurally unfair and inconsistent with the principles of openness and accountability underpinning both PAJA and PAIA. The failure is further compounded by ECSA's omission to consider the reasonable perception of bias arising from Beeby's dual affiliations.

(b) Rationality

The decision is not entirely irrational but is materially incomplete. In terms of section 6(2)(e)(iii) and section 6(2)(f)(ii) of PAJA, a decision taken without considering relevant facts or failing to take into account a material consideration, such as potential conflict, may be set aside. ECSA's failure to engage this central aspect undermines the rational connection between its findings and the information before it.

The Committee notes that the Appellant's grievance lies not primarily in the engineering findings but in the procedural transparency of the investigation. This distinction is material: the dispute concerns fair process, not scientific correctness. ECSA's emphasis on the absence of technical fault obscured the true nature of the complaint, namely, the failure to ensure independence, disclosure, and transparency in the evaluation of a professional's conduct.

The Committee finds that ECSA's process fell short of the procedural fairness obligations envisaged by sections 3(1), 5(1), 6(2)(e)(iii) and 6(2)(f)(ii) of PAJA. The Appellant was not provided timely access to critical records, including internal communications and the Beeby report, thereby limiting his ability to make effective representations.

While ECSA contends that such disclosure is governed by PAIA, the Committee holds that administrative fairness under PAJA operates concurrently, especially where the outcome directly affects the Appellant's right to a transparent and credible investigation. The lack of full disclosure undermined the appearance of impartiality and fell below the standard of fairness required of a statutory body exercising quasi-disciplinary powers.

ECSA's internal investigation did not sufficiently interrogate the implications of the Second Respondent's dual role, nor did it consider the reasonable perception of conflict as required by Rule 3(2)(f). By focusing narrowly on proof of actual dishonesty, ECSA applied an unduly restrictive standard inconsistent with its own Code and the administrative duty to act fairly and transparently.

This omission amounts to an institutional oversight and a procedural deficiency within the meaning of section 6(2)(e)(iii) of PAJA, namely, that the action was taken because of a failure to consider relevant factors. The Committee therefore finds that the Appellant's complaint was mischaracterised and prematurely dismissed, rendering ECSA's decision procedurally deficient and institutionally incomplete.

9. RULING AND FINDINGS

On the evidence, Mr Beeby's dual involvement and reliance on prior reports created a reasonable perception of bias and constituted a breach of the duty to disclose prior involvement as required by Rule 3(2)(f) of the ECSA Code of Conduct. While no proof of actual bias or dishonesty was established, the omission to make disclosure undermined the appearance of independence expected of a registered professional engineer.

ECSA's investigation and conclusion were unduly narrow. The Council failed to apply the proper ethical standard that considers not only actual misconduct but also the reasonable perception of compromised independence. This constitutes a procedural and evaluative lapse in ECSA's decision-making process.

However, the Committee is not persuaded that the technical findings in Mr Beeby's report are invalidated by this omission. The report's substantive engineering content remains credible and technically sound. The breach therefore lies in professional ethics, not in the technical integrity of the work.

However, given that the record and the parties' submissions have now been comprehensively ventilated before this Committee, further *remittal* to ECSA would not serve a practical or corrective purpose. The deficiencies have been effectively cured at this level through full argument, disclosure, and independent evaluation.

10. REMEDIAL OUTCOME

Having regard to the above findings, the Committee determines that:

ECSA's investigation process was procedurally deficient in its handling of the conflict of interest issue. This defect has, however, been addressed and remedied through this appeal.

A formal censure is issued against ECSA for its institutional failure to identify and address the potential conflict of interest in accordance with its own Code of Conduct oversight obligations.

Mr Beeby's failure to disclose his prior involvement amounts to a breach of Rule 3(2)(f) of the Code. In the absence of evidence of actual bias or improper motive, and given the limited prejudice to the Appellant, the Committee finds that a declaratory finding of breach and admonition constitutes an adequate and proportionate outcome.

The appeal succeeds in part, specifically in establishing procedural irregularity and breach of professional disclosure duties, but fails in respect of the substantive findings of Mr Beeby's report, which remain valid and unaffected.

The Committee notes that the Appellant has requested an award of costs. While the Appellant has succeeded in part in establishing procedural and ethical deficiencies, the appeal does not result in a reversal of the substantive outcome. In the interests of fairness, and having regard to the statutory nature of ECSA as a public body, the Committee declines to award costs. Each party is to bear its own costs of this appeal. The focus of this ruling is on the corrective measures, censure, and strengthening of administrative and ethical procedures, rather than financial compensation.

11. CONCLUSION AND ORDER

For the reasons set out above:

A. The appeal succeeds in part.

B. A formal finding of breach and admonition is entered against Mr Beeby under Rule 3(2)(f), and a censure is directed to ECSA in respect of its deficient oversight process.


C. No order as to costs.

12. SUGGESTED REMEDIAL ACTION TO ENGAGE WITH INSURERS

In respect of the broader concerns raised during this appeal regarding the interface between insurers and consulting engineers, the Committee recognises that these dynamics fall outside the formal jurisdiction of the CBE. Nevertheless, the Committee considers it appropriate to encourage ECSA, in the exercise of its statutory mandate, to engage with relevant insurance industry bodies and the Ombudsman where necessary, with a view to developing clear and practical guidance on disclosure obligations under Rule 3(2)(d) in circumstances where engineers are appointed and remunerated by insurers. Such engagement would assist in promoting transparency, consistency and the protection of the public interest, without purporting to regulate insurers directly

APPEAL COMMITTEE (17/11/2025)

M. I.E ISMAIL:

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(CHAIRPERSON)

P. PILLAY (MEMBER)

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N. PENCHARZ (MEMBER)

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