

# AM08 - Disciplinary Procedures

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## 1. Purpose and aim of policy

### 1.1 Defining the purpose and aim

- 1.1.1 The purpose of this policy is to set out disciplinary procedures for members of the Bacra Energy Performance Certificate (EPC) Scheme for dwellings, referred to as the 'Bacra Scheme'. It puts into effect the Bacra Code of Conduct (SP01), referred to as 'Code of Conduct'.
- 1.1.2 The aim is to ensure that the standards required by Scottish Government are upheld.

## 2. The Scottish Government Operating Framework for Approved Organisations

### 2.1 The requirements of the operating framework

- 2.1.1 The Scottish Government has entered into protocols with a number of organisations to deliver Energy Performance Certificates (EPC). These organisations have been "approved" by the government and are therefore called "Approved Organisations" (AOs). The list of protocols is called the "Operating Framework".
- 2.1.2 Among other things, the framework requires a disciplinary procedure to be in place to cover upheld complaints, the composition of disciplinary panels and processes for corrective action.

## 3. Commitments and Responsibilities

### 3.1 Operating with fairness and consistency for all members

- 3.1.1 Disciplinary rules and procedures ensure that the Bacra Scheme operates, and is seen to operate, with fairness and consistency in the treatment of individuals.
- 3.1.2 The disciplinary procedure is to ensure that all cases are handled consistently, fairly and impartially, and expeditiously, based on principles of natural justice.

3.1.3 This procedure will be initiated when either:

- a) a complaint has been upheld against the member;
- b) there has been a proven breach of the Bacra Code of Conduct;
- c) false or knowingly untrue information has been given to Bacra;
- d) important and relevant changes to membership details have not been provided timeously to Bacra; for example, criminal convictions that breach the Code Of Conduct (SP01) or the Fit & Proper Person (NE03) policy;
- e) a failure to improve performance as previously requested by Bacra;
- f) a breach of discipline has been established through another process such as an audit; and/or
- g) a potential breach of discipline has been alleged.

## 4. The Disciplinary Process

### 4.1 Informing of a potential disciplinary procedure against a member

- 4.1.1 Anyone accused of an offence of a disciplinary nature will be informed of the complaint against them if they have not already been informed. This notification should contain sufficient information about the nature of the breach and its possible consequences to enable the member to answer the case.
- 4.1.2 Whilst this process is underway, EPCs submitted by the member will be scrutinised. Should there be concern that repeated breaches of the Code of Conduct or disciplinary matters are continuing, temporary suspension from the Scottish EPC Register could be enacted.

### 4.2 Potential disciplinary breach - not yet investigated

- 4.2.1 Allegations will be investigated before disciplinary action is taken. The purpose of the investigation is to establish the facts and collate evidence.
- 4.2.2 The member will be given the opportunity and 14 days to respond to the allegation before any decisions are taken.
- 4.2.3 If the breach is found not to have occurred or be too minor, then the process stops.
- 4.2.4 If a breach has been established then the process continues from Section 4.3 below.

### 4.3 A disciplinary breach established

- 4.3.1 Breach will have been established as a result of any of the following:
  - A complaint via the Complaints Procedure (SP02);
  - A breach of the Code of Conduct (SP01);
  - A failed Membership Audit (QA02);

- A failed EPC Audit (QA01).

4.3.2 If the member has not already had the chance to, the member will be given the opportunity and 14 days to respond before any decisions are taken.

#### **4.4 Deciding whether disciplinary action is justified or not**

4.4.1 At this stage, Bacra will have been provided evidence from either an investigation or a process as in Section 4.3, will have already informed the member, and received a response from the member.

4.4.2 Bacra may also ask for further clarification from the member and other individuals considered relevant to the case.

4.4.3 If the alleged transgression is of such a serious nature that it compromises the member's ability to produce accurate EPCs, or adhere to the Code of Conduct, then the member may be suspended from the Scottish EPC Register of Assessors for the duration of the disciplinary process. It will be made clear that this suspension is not to be considered a disciplinary action.

4.4.4 After considering all the evidence available, Bacra will then decide whether or not disciplinary action is justified.

4.4.5 If Bacra decides that disciplinary action is not justified, the member will be informed of it in writing or by email within 5 days, and the process will end.

4.4.6 However, if Bacra decides that disciplinary action is justified:

- a) disciplinary penalties will be determined, with the severity related to the seriousness of the breach;
- b) the disciplinary penalty will be communicated to the member within 5 days;
- c) the member has 7 days to appeal against any disciplinary penalty (as outlined in Section 6), although if the penalty is to permanently remove the member from the Scottish EPC Register and the Bacra Scheme, then the member may request a hearing within 7 days.

4.4.7 Should the penalty not be appealed, then the sanction will be enacted and a monitoring programme put in place.

## **5. Disciplinary Penalties**

### **5.1 Severity of discipline**

5.1.1 Depending on the seriousness of the transgression, there are three courses of action open to Bacra in respect of disciplining a member of the Bacra Scheme:

- 1) advice and requirement to improve performance;

- 2) temporary removal from the Scottish EPC Register of Assessors in Scotland; or
- 3) permanent removal from the Scottish EPC Register of Assessors in Scotland & the Bacra scheme.

5.1.2 These are described in detail below.

## **5.2 Advice and Requirement to Improve Performance**

- 5.2.1 In cases where the assessor admits the transgression for which he/she has been disciplined and Bacra considers the case to be relatively minor, Bacra may opt to discipline the assessor through advice and a requirement to improve behaviour and/or performance without temporarily removing the assessor from the Scottish EPC Register of Assessors.
- 5.2.2 In cases where Bacra considers the disciplinary matter to be relatively minor, it may offer the member advice on the nature of the breach and issue the member with notification of requirements for improvement in behaviour, practice or both.
- 5.2.3 Bacra may also require the member to undertake training, re-training or other learning as a condition of continued membership of the Bacra Scheme.

## **5.3 Temporary Removal from the Scottish EPC Register of Assessors in Scotland**

- 5.3.1 Where considered reasonable and appropriate, Bacra may temporarily remove an assessor for a defined period of time from the Scottish EPC Register of Assessors, and prevent him or her continuing to issue EPCs.

## **5.4 Permanent Removal from the Scottish EPC Register of Assessors in Scotland & the Bacra scheme**

- 5.4.1 Where satisfied that there has been a serious breach of the Code of Conduct, Bacra may remove a member from the Scottish EPC Register of Assessors and end his or her Bacra Scheme membership.
- 5.4.2 Breaching of the Scheme Code of Conduct or discipline by a member of the Scheme on several occasions may be considered to amount to a serious breach of the Code even where the individual breaches are not in themselves considered to be serious breaches.
- 5.4.3 Where a member has been permanently removed from the Scottish EPC Register, Bacra is obliged under the Scottish Government Operational Framework to report this to all Approved Organisations. The procedure for undertaking this is outlined in the Bacra document *AM09 Sharing Data with other EPC Schemes*.

## **5.5 Hearing**

- 5.5.1 In the case of permanent removal from the Scottish EPC Register, the member has 7 days to request a formal hearing. At this hearing, the member has a right to be accompanied
- 5.5.2 The hearing will normally take place within 14 days of the request, or at the earliest opportunity thereafter. The hearing normally takes place by telephone or via the internet, such as video conferencing. On occasions, if agreed by all parties, it can be a physical meeting.
- 5.5.3 At this hearing Bacra will reiterate the nature of the breach against the Member, and go through the collated evidence. The member will be allowed to set out their case and answer any allegations that have been made. He/she will also be given a reasonable opportunity to ask questions, present evidence and call on relevant witnesses. He/she will also be able to raise points about any information provided by witnesses. Where either party intends to call relevant witnesses they should give advance notice that they intend to do this.
- 5.5.4 If Bacra decides that the penalty is not justified, then an alternative penalty, or no penalty, can be determined. This will be clearly communicated to the member, and then the process ended.
- 5.5.5 If Bacra decides that disciplinary action is justified, then the decision regarding the declared penalty stands. In this case, the member has a further 7 days to request the right to appeal against this decision as outlined in Section 6.

## **6. Appeals against Disciplinary Action**

### **6.1 Discerning a case for appeal or not**

- 6.1.1 If the disciplinary hearing resulted in a requirement for an improvement in working practice only, there is no case for appeal.
- 6.1.2 If the disciplinary hearing resulted in a suspension, temporary or permanent, from the Scottish EPC Register of Assessors, then the member has 7 days in which to lodge an appeal.
- 6.1.3 The main case for an appeal should be on the grounds of:
  - a) unreliable and inaccurate evidence relied upon to reach that decision; and/or
  - b) that the conduct of the member did not breach the Code of Conduct.

### **6.2 Initiating the appeals process**

- 6.2.1 Should the member feels that an appeal is required, these the procedure to follow is:
  - a) the Appeal must be made in writing or email by the member and clearly marked

as 'appeal';

- b) the Appeal must clearly explain the action or decision which is being appealed, and the grounds for the appeal, including any reference to Bacra policies if appropriate; and
- c) the appeal must contain documents or other supporting evidence that the Appellant wishes to be taken into account.

6.2.2 The Appeal is first passed to a Director of Bacra in writing or by email who will:

- a) ascertain whether or not legitimate and reasonable grounds for an appeal have been provided by the appellant;
- b) determine if other avenues to resolving the dispute remain that could be pursued before an appeal is referred to the Appeals Panel;
- c) May seek further information from the appellant, Bacra Scheme staff or others with involvement in the case and also advice from others that do not; and
- d) Notify the Appellant of the within 14 days whether permission is granted for the appeal to be heard by the Appeals Panel.

6.2.3 Where permission for a hearing is not granted the Director shall explain his or her reasons for refusing permission. This decision will be final and the appeals process will end at this point and the original action or decision of the Scheme that was the basis of the appeal will stand.

### **6.3 Referring the matter to the Appeals Panel**

6.3.1 The matter will then be passed to the Appeals Panel and the member advised. An appeals fee must be paid (as shown in the Fee Schedule AM06), which is refundable in the event of the appeal being resolved in favour of the Appellant.

6.3.2 Bacra will maintain a list of suitably experienced persons from whom to select the members of an Appeals Panel. A number of these persons will be invited to form the panel on receipt of an appeal from an Assessor. Panel members will be selected with the intention of avoiding conflicts of interest. They are external to Bacra and will include representatives of the Scottish Government's Building Standards Division.

6.3.3 The Appeals Panel will review the appeal and attempt to resolve in a manner which upholds the integrity of the Scheme. The Appellant or other relevant individuals may be invited to make a representation to the panel. The Panel will then deliberate whether to uphold, set aside the decision or substitute a different action or decision. If the Panel finds in favour of the Appellant, the certification is reinstated and the appeals fee is refunded.

6.3.4 Should the Panel members not reach a unanimous verdict, then a final determination can be reached by a simple majority of the members.

6.3.5 The response to the Appellant provided by the Appeals Panel shall be a definitive

response that will represent the end of the Bacra Scheme disciplinary process in respect of that breach.

6.3.6 It would be expected for the Appeals panel to reach a decision within 21 days and the result passed to the Appellant shortly thereafter.

6.3.7 The Appeals Panel may offer a review of the disciplinary process and or other policies to improve them in the light of this complaint.

## 7. Any potential revision to timescales

### 7.1 Revising the timescale

7.1.1 Occasionally some matters may require more than the aggregated target of 21 working days allowed for under the procedures outlined above. This would be the case which include complex matters that require more careful consideration and detailed investigation.

7.1.2 If it becomes apparent to Bacra that the response to the Member will be delayed beyond the normal timescales, Bacra shall advise the Member of this as soon as possible.

7.1.3 Bacra will advise the member in writing or email of the revised timescale for providing a response and final decision.

## Appendix A: Links with other policies and documents

SP01 Bacra Code of Conduct	NE01 Bacra EPC Assessor Scheme
SP02 Complaints Policy	NE02 Scheme Application form
	NE03 Fit and Proper person

## Appendix B: Glossary of Terms

**Appellant** – the person who is appealing

**Approved body** – a general term to describe those who have been accredited outwith Scotland to produce Energy Performance Certificates (EPC). In Scotland the legal terminology is an ‘Approved Organisation’, this is described below.

**Approved Organisation** – organisations approved by the Scottish Ministers who have a membership trained and qualified to produce energy performance certificates and recommendations reports. This is defined within The Energy Performance of Building



(Scotland) Regulations 2008, as amended, Regulation 8(1).

**Bacra membership** –membership of the EPC scheme run by Bacra as an Approved Organisation

**Bacra Scheme/the Scheme/BEPC** – the scheme for training, registering, assessing and monitoring the practice of EPC assessors in Scotland managed by Bacra as an Approved Organisation.

**Disciplinary matter and ‘potential breach of the Code’** are treated interchangeably in this document

**Energy Performance Certificate (EPC)** – A certificate produced by a member of an Approved Organisation which reflects the asset rating of the building using Government approved software which includes recommendation on how to improve the energy efficiency of the property. In order to be a legal document this must be lodged on the approved Government database, in accordance with Regulation 6 of The Energy Performance of Building (Scotland) Regulations 2008, as amended.

**Scottish EPC Register** - the statutory database for the lodgement of EPCs and associated data, and which also holds a list of EPC Assessors.

**Members/Assessors** – Member of the Bacra Scheme identified as having the education, training and expertise required to carry out and issue and EPC.

### Review History (from 2017)

Reviewer & changes	<b>A Beal – Sept 2022</b> <i>No change</i>
	<b>N Ellis – November 2024</b> Addition of paragraph 5.4.3
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