

# AGENDA

IFRS Foundation Trustees meeting – Due Process Oversight Committee

Johannesburg	October 2018	Agenda Ref	1G(v)
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## Due Process Handbook Review

### Protocol for Trustee action for perceived breaches of due process

#### Purpose

1. The purpose of this paper is to
  - set out the issues around the treatment of anonymous complaints about due process;
  - set out the steps that are appropriate to ensure that all complaints, including anonymous complaints, are entertained, (except where anonymity makes it impracticable to do so), while also maintaining the Foundation’s commitment to transparency; and
  - propose some clarificatory amendments to the *Due Process Handbook (DPH)* to reaffirm the Foundation’s commitment to transparency but also set out the basis under which the Due Process Oversight Committee will consider anonymous complaints.

#### Questions for the DPOC

Do members of the DPOC agree:

- (a) To maintain the preference for public disclosure of those making complaints
- (b) To amend the *DPH* to encourage complainants to make their identities available only to the Chair of the DPOC and/or the Director of Trustee Activities if they are not prepared to disclose these publicly; and

(c) to have the discretion to consider completely anonymous complaints if they believe that the issue is serious and credible, with that discretion to be exercised as described herein?

2. The DPH includes detailed guidance and requirements on steps to be taken if there are complaints about alleged breaches of due process (DPH section 8), and the DPOC receives reports on any correspondence and complaints at every meeting.
3. In October 2017 the Foundation received a complaint about due process from an anonymous source. The complaint was investigated and addressed in accordance with the DPH requirements, and the complaint and formal response from the DPOC were posted on the Foundation's website<sup>1</sup>.
4. The DPH requires that "Each complaint, together with the name and contact details of the complainant, is posted on the DPOC webpages" (DPH 8.3). In this case the complaint was anonymous, and the complainant did not provide name and contact details (the complaint was submitted by email from a pseudonymous email address).
5. The DPOC considered the complaint in accordance with the DPH requirements and sent the letter of response to the complainant's email address. However, DPOC members had some concerns about the principle of accepting and addressing complaints from anonymous sources. This was for three reasons
  - The current DPH does not contemplate the consideration of anonymous complaints.
  - The IFRS Foundation's due process is founded on full transparency, with all meetings in public, comment letters published on the Foundation's website, and a transparent approach to complaints. Addressing an anonymous complaint could be challenging considering that commitment to transparency.
  - There could be a risk that anonymous complaints are submitted with the intent to slow progress on or otherwise disrupt high profile or controversial standard-setting projects (it should be noted that the anonymous complaint received demonstrated none of the indications of that intent; it should also be noted that a complaint from a publicly identified source could be submitted with similar intent, although there might be more potential transparency around such a motive in the case of an identified complainant)
6. DPOC members also noted the fundamental importance to the Foundation's due process of a robust and transparent mechanism for addressing alleged due process breaches. This is predicated on complainants having confidence that allegations will be reviewed objectively and independently regardless of the background, interests or motivations of the complainant.

### **Issue for the Due Process Handbook**

7. The current DPH protocol, as noted above, assumes that the complainant will provide name and contact details, and these will be published on the Foundation's website. However, there could be circumstances where the complainant prefers anonymity - for example where the complainant is well-known to the Foundation staff, or for other reasons.
8. However, it is possible that some complainants would have reason to seek complete anonymity and be unwilling to provide details of name and address to any Foundation staff or Committee members as described above.

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<sup>1</sup> <https://www.ifrs.org/groups/due-process-oversight-committee/pages/due-process-correspondence/>

9. Anonymous complaints run the risk of degrading the transparent and robust due process set out in the DPH in two ways
  - It might be difficult to assess the seriousness or credibility of a complaint without knowing its source and background.
  - If the complainant does not provide contact details it will not be possible to ascertain additional information that might be needed to give context to the complaint. (It should be noted that in the case of the October 2017 anonymous complaint the pseudonymous email address could be used to obtain additional information if needed.)
10. There may also be some concerns if the identity of the complainant is known only to the Chair of the DPOC, as other DPOC members will not be fully aware of the status and bona fides of the complainant and hence of the issue.
11. Nonetheless, the DPH notes that 'the due process requirements are built on principles of transparency, full and fair consultation...and accountability' (DPH 1.6). It would not be consistent with those principles for the DPOC not to address legitimate complaints solely because the complainant wishes to remain anonymous.
12. To address those circumstances, the DPH could be amended to encourage complainants to be publicly identified. If they choose not to do so, the DPH could be amended to encourage such complainants to provide details of their identities to the Chair of the DPOC and the Director of Trustee Activities, but otherwise to remain anonymous.
13. However, the Foundation's robust and transparent due process is an essential underpinning of the quality and acceptance of IFRS Standards, and it is important for this to be seen to be operating effectively. There is some risk to the quality of due process if complaints are made anonymously, and the DPOC needs to have regard to and public understanding of that issue of perception.

### **Staff recommendation**

14. Staff therefore propose that the DPH should be amended as follows
  - Complainants' allegations will be publicly noticed, and complainants should be encouraged to provide their names and addresses for inclusion on the website
  - Where complainants consider that the issue or their identity is sensitive they should be encouraged to provide their names and addresses to the Chair of the DPOC and/or the Director of Trustee Activities who will keep them confidential
  - The DPOC will consider anonymous complaints unless it is of the view that it is impracticable to assess the seriousness of the issues raised or the credibility of the concern, or it is impracticable to confirm any factual basis asserted in the complaint, in each case considering the anonymous nature of the complaint.