

Association of Litigation Funders of England & Wales
A procedure to govern complaints made against Funder Members by
funded litigants.

Definitions

1. Save where otherwise provided, terms adopted herein shall have the same meaning as defined in the Code of Conduct of Litigation Funders in England & Wales, the Articles of the ALF, and the Rules of the ALF, and references to an “Article” or a “Rule” shall be construed accordingly.

2. The following terms shall have the following meanings in this procedure:

“Associated Entity” any entity for which a Member is responsible by virtue of Rule 3.4.

“Code of Conduct” the prevailing Code of Conduct for Litigation Funders in England & Wales as applies at the time of the events which are the subject of any complaint under this procedure.

“Complaint” a complaint made against a Member or any Associated Entity of the ALF pursuant to the provisions of paragraph 5 below.

“Independent Legal Counsel” a Solicitor of the Senior Courts of England and Wales holding the position of partner or equivalent in a firm in England and Wales and specialising in litigation or a Queens Counsel in self-employed practice specialising in litigation, and in each case

independent of both the parties to the Complaint and the ALF.

“Investigating Counsel”

an independent Solicitor or Queens Counsel of equivalent seniority to an Independent Legal Counsel, who has been appointed by the ALF Board to carry out the role of Investigating Counsel described in these procedures.

“Litigant”

any person or entity who has entered into a Litigation Funding Agreement with a Member or any Associated Entity.

“Previous Procedure”

means the complaints procedure of the ALF in force immediately prior to the adoption of this procedure.

“Responsible Member”

in respect of an Associated Entity, the Member which has taken responsibility for that Associated Entity by virtue of Rule 3.4.

General

3. A Funder Member, by joining the ALF, consents to the complaints procedure set out herein, and as it may be varied from time to time in accordance with the Articles of the ALF and the Rules of the ALF.
4. Wherever a period of time is prescribed below for the taking of a particular step, the Board may for the purposes of any particular Complaint abridge or extend that period of time by such length as it sees fit, where to do so appears to the Board desirable to ensure the fair and proportionate disposition of the

Complaint. Any extension of time under this provision may be granted after the original time for compliance has elapsed if to do so would be fair and proportionate.

5. This procedure shall govern any Complaint made after the adoption of this Procedure and which concerns an act or omission on the part of any Member or any Associate Entity which relates to:

(1) a dispute and/or the funding of a dispute within England and Wales in respect of which the Member or Associated Entity has entered into a Litigation Funding Agreement; and where

(2) the Litigation Funding Agreement referred to in (1) above was:

a. entered into after November 11 2013; and

b. made between the Member and/or Associated Entity and the Litigant making the complaint (provided for the avoidance of doubt that this procedure shall continue to apply regardless of whether any other person or entity is also a party to that Litigation Funding Agreement).

6. Any Complaint made prior to the adoption of this procedure by the ALF shall be resolved pursuant to the provisions of the Previous Procedure.

Instigating a Complaint

7. A Complaint is instigated by a Litigant (“**the Complainant**”):

(1) sending a letter of complaint marked Strictly Private and Confidential to the Investigating Counsel of the ALF. The Investigating Counsel shall

hold the letter of complaint confidentially, without initial disclosure to the Board; and/or

- (2) otherwise contacting the ALF in writing by any method authorised by the Board from time to time for the bringing of complaints;

(in either case **“the Initial Complaint”**).

8. An Initial Complaint should so far as possible:

- (1) identify the Member and/or Associated Entity (**“the Subject”**) in respect of which it is made;
- (2) identify and provide details of the Litigation Funding Agreement in respect of which the Complaint is made;
- (3) identify the provision or provisions of the Code of Conduct said to have been breached by the Subject;
- (4) set out, as concisely as possible, the facts and matters said to constitute such a breach; and
- (5) append any relevant documents.

save that, for the avoidance of doubt, a failure to include any or all of the matters indicated above shall not invalidate the Initial Complaint.

The Initial Complaint

9. On receiving the Initial Complaint, Investigating Counsel shall have charge of the Complaint. Investigating Counsel shall thereafter take no part in determining the Complaint save as provided for in this procedure.
10. If on receiving the Initial Complaint it appears to Investigating Counsel that the Initial Complaint fails to include any or all of the information listed in paragraph 8 above, Investigating Counsel may write to the Complainant (on as many occasions as he/she thinks fit) requiring the provision of all and any such further information as appears to Investigating Counsel to be necessary within 28 days, or such other time period as Investigating Counsel may stipulate.
11. Investigating Counsel shall, on reviewing the Initial Complaint (together with any additional information obtained pursuant to paragraph 10 above), prepare and submit a short report to the Board ("**the Preliminary Report**") identifying whether the Initial Complaint appears to disclose any breaches of the Code of Conduct.
12. In the event that Investigating Counsel is of the view (and records in his/her Preliminary Report) that the Initial Complaint, or part of it, fails to disclose any breach, or any arguable breach, of the Code of Conduct (for whatever reason, including by reason of a failure on the part of the Complainant to respond to reasonable requests for additional information) he/she may recommend to the Board that it dismisses the Initial Complaint, or part of it, summarily in accordance with paragraph 13 below. In these circumstances there will be no need for Investigating Counsel to invite a Response from the Subject pursuant to paragraph 14 below.

Summary Dismissal of an Initial Complaint

13. Where Investigating Counsel has prepared and submitted a Preliminary Report to the Board recommending summary dismissal of the Initial Complaint, or part of it, the Board may summarily dismiss the Initial Complaint, or part of it,

if it appears to the Board that the facts set out in the Initial Complaint, or part of it, cannot arguably be said to be a breach of the Code of Conduct as alleged or at all.

The Response

14. Where:

- (1) Investigating Counsel has prepared and submitted a Preliminary Report to the Board identifying a ground or grounds in the Initial Complaint on which it is arguable that a breach or breaches of the Code of Conduct has occurred; or
- (2) the Board has decided not to dismiss the Initial Complaint, or part of it, summarily,

Investigating Counsel shall immediately proceed to take the steps identified in paragraph 15 below.

15. Investigating Counsel shall write to the Subject (and where the Complaint is made against an Associated Entity, the Responsible Member) identifying the nature of the Complaint, the alleged breaches of the Code of Conduct and the facts upon which the Complainant relies and requiring the Subject, within 28 days, or such other time period as Investigating Counsel may stipulate, to respond to the Complaint in writing ("**the Response**"):
- a. admitting or denying the breaches of the Code alleged in the Complaint (and if more than one breach is alleged, specifying which alleged breaches are admitted and which are denied);

- b. agreeing or disagreeing with the facts set out in the Complaint, and, in the case of facts with which it disagrees, stating its account of the facts;
- c. setting out as concisely as possible any further factual matters which may be relevant either to whether or not it has breached the Code of Conduct or to any sanction that the Board may impose for any of the alleged breaches;
- d. appending any relevant documents; and
- e. stating what the Subject says the appropriate sanction should be in respect of any admitted breaches.

Duties of Investigating Counsel on receiving the Response

16. On receiving a Response, or once the period of time for receiving a Response has elapsed without a Response being received, Investigating Counsel shall proceed to investigate the circumstances of the Complaint and the Response, insofar as may be necessary, in order to provide the report to the Board provided for by paragraph 17 below (“**the Report on Charges**”). In order to conduct such an investigation, Investigating Counsel shall have power to:
- (1) request any information or document from either the Complainant or the Subject (and in the case of an Associated Entity, Responsible Member) which it appears to Investigating Counsel may be relevant to the investigation;
 - (2) interview witnesses in person or by telephone;
 - (3) ask the Complainant, the Subject (and in the case of an Associated Entity, the Responsible Member), or any witness any question which it appears to Investigating Counsel may be relevant to the investigation;

- (4) invite further written representations on any relevant matter (including evidence obtained during the course of these investigations) from the parties.

The Report on Charges

17. Having conducted such investigation as appears to Investigating Counsel to be necessary in all the circumstances of the Complaint, Investigating Counsel shall provide his/her Report on Charges to the Board. The Report on Charges shall identify each and every charge against the Subject which Investigating Counsel identifies in light of his/her investigation as falling for determination. In the case of each such charge the Report on Charges shall identify whether:

- (1) in Investigating Counsel's opinion, it is suitable for summary determination; or
- (2) it ought to be referred to Independent Legal Counsel.

18. A charge is suitable for summary determination if:

- (1) in the case of a summary determination to dismiss a charge:
 - a. either there is no relevant factual dispute or there is no reasonable prospect that Independent Legal Counsel would resolve any relevant factual dispute in favour of the Complainant; and
 - b. there is no reasonable prospect that Independent Legal Counsel would find that the facts alleged, including any fact which is disputed, constitute the breach of the Code of Conduct alleged in the charge.

- (2) in the case of a summary determination to uphold a charge:
- a. either there is no relevant factual dispute or there is no reasonable prospect that Independent Legal Counsel would resolve any relevant factual dispute in favour of the Subject; and
 - b. there is no reasonable prospect that Independent Legal Counsel would find anything other than that the facts, including any fact which is disputed, constitute the breach of the Code of Conduct alleged in the charge; and
 - c. the nature of the charge does not give rise to the potential for suspension or expulsion of the Subject (or in the in the case of an Associated Entity, the Responsible Member) from membership of the ALF for any period of time by way of sanction (and for the purposes of this sub-paragraph it is to be assumed that any other charge contained in the Complaint and not dismissed summarily will be determined against the Subject).

19. If Investigating Counsel intends to recommend to the Board in his or her Report on Charges that it summarily determines a charge or charges, Investigating Counsel shall write to the party against whom it intends the charge to be summarily determined informing it of that intention, giving reasons for the recommendation, and offering the opportunity to that party to make written representations within 14 days (or such longer time as the Investigating Counsel may deem appropriate in the circumstances of the case) as to why the charge should not be summarily determined. The Investigating Counsel shall take any representations made within such time into account when providing its recommendations to the Board in the Report on Charges.

The Powers of the Board following receipt of the Report on Charges

20. Having received the Investigating Counsel's recommendations in the Report on Charges, the Board shall consider each charge and shall either:
- (1) if the charge is suitable for summary determination and Investigating Counsel recommends summary determination, summarily determine the charge; or
 - (2) refer the charge to Independent Legal Counsel for determination.
21. If the Board summarily upholds a charge, it may either:
- (1) impose any of the sanctions provided for in paragraph 25 below (with the exception of suspension or expulsion) as is appropriate having regard to all relevant matters including without limitation the circumstances and severity of the charge; any other charge contained in the Complaint which is also upheld summarily; and any previous charges upheld against the Subject;
 - (2) refer the question of what would be the appropriate sanction for the charge to Independent Legal Counsel.

Reference to Independent Legal Counsel

22. Where a charge is referred by the Board to Independent Legal Counsel for determination (whether as to the substance of the charge or only as to the sanctions to be imposed) he or she shall be provided with all the material collected by Investigating Counsel (including the Preliminary Report and the Report on Charges), and shall have power to conduct his or her own investigations in accordance with any procedure which he or she deems fit and proper, provided that:

- (1) Independent Legal Counsel will without limitation have the same powers of Investigation as provided above for Investigating Counsel;
 - (2) Independent Legal Counsel will not reach a determination without offering all parties (including for the avoidance of doubt in the case of a Complaint against an Associated Entity, the Responsible Member) the opportunity to make written representations to Independent Legal Counsel.
23. Having considered the evidence, conducted any further investigations which appear necessary, and considered any representations provided by the parties, Independent Legal Counsel shall provide an opinion ("**the Opinion**") containing his or her conclusions as to:
 - (1) whether each of the charges referred to Independent Legal Counsel should be upheld or dismissed; and
 - (2) in the event that one or more of the charges is upheld, or the question of sanctions alone is referred to Independent Legal Counsel, which of the sanctions provided for in paragraph 25 below should be imposed. In determining the appropriate sanction, Independent Legal Counsel will have regard to all relevant matters including without limitation the circumstances and severity of the charge; any other charge contained in the Complaint which is also upheld whether summarily or on referral to Independent Legal Counsel; any previous Charges upheld against the Subject; and any sanctions which have already been imposed against the Subject by the Board following the summary determination of any charge contained in the Complaint.
24. Unless it is satisfied that there has been some serious procedural irregularity in the procedure adopted by Independent Legal Counsel (in which case it shall

refer the charges to a different Independent Legal Counsel), the Board will, on receipt of the Opinion, impose the sanctions recommended therein.

Sanctions available in respect of breaches of the Code

25. The following sanctions may be imposed against a Member:
- (1) a private warning (including where appropriate recommendations as to future practice);
 - (2) a public warning (including where appropriate recommendations as to future practice);
 - (3) publication of the Opinion (subject to any redactions which Independent Legal Counsel shall identify in order to ensure that no matter confidential to the parties is disclosed);
 - (4) suspension of membership of the ALF for any identified period of time;
 - (5) expulsion from membership of the ALF;
 - (6) the imposition of a fine payable by the Member to the ALF, up to a limit of £500;
 - (7) the payment of all or any of the costs of determining the Complaint.

For the avoidance of doubt, sanctions under this paragraph 25 will only be applied and (to the extent applicable) made public after the period for any appeal under clause 28 has expired, or, where an appeal has been made, it has been finally determined.

26. Any of the sanctions may be imposed individually or together with other sanctions, as is appropriate to all the circumstances of the case.
27. Where the Subject is an Associated Entity and is found to have breached any provision of the Code of Conduct, any sanction in respect of that breach shall be imposed against the Responsible Member, and the sanction imposed shall take into account the degree of control the Responsible Member has over the Associated Entity, its responsibility for any breach of the Code of Conduct, and any charges previously upheld against the Responsible Member.

Appeal against determination of a charge or imposition of a sanction

28. A party against whom a charge has been upheld by the Board and sanctions imposed pursuant to clause 25 above (“**the Appellant**”) may appeal by writing to the Board within 28 days of receipt of that decision setting out the reasons why any determination of a charge or imposition of a sanction should be set aside or varied and indicating that it is their intention to pursue this appeal procedure.
29. The Board shall forthwith write to the Appellant requiring it to undertake in writing to the ALF within 14 days that it agrees to be liable for the ALF’s costs of the appeal in the event that it is ordered to pay those costs as below (“**the Undertaking**”). In the event that no Undertaking is received in the required time, the Board may dismiss the appeal.
30. If an Undertaking is received, the Board shall refer the appeal:
 - (1) in the event of an appeal against a summary determination, to Independent Legal Counsel (not previously involved in the Complaint);

- (2) in the event of a decision reached following an Opinion, a Queens Counsel (if Independent Legal Counsel was a Queens Counsel, of greater seniority than Independent Legal Counsel¹);

(in either case, **“the Appeal Tribunal”**).

31. An appeal shall constitute a review of the original decision, and in particular an appeal against a decision reached following an Opinion shall only be granted if the Appeal Tribunal is satisfied that:

- (1) there was a serious procedural irregularity in the procedure adopted by Independent Legal Counsel which rendered that procedure unfair; or
- (2) Independent Legal Counsel erred in his or her interpretation of the Code of Conduct or otherwise erred in law; or
- (3) the conclusions of Independent Legal Counsel were conclusions which no reasonable tribunal could reasonably reach on the evidence before it.

32. If the Appeal Tribunal is satisfied that an appeal should be granted, it may recommend to the Board in a short report setting out its reasons that the Appeal be disposed of as it sees fit, including:

- (1) in the case of a summary determination by the Board:

¹ We may need to consider whether this is workable.

- a. that the summary determination be set aside in whole or in part and the charge or charges be referred to Independent Legal Counsel (not previously involved in the Complaint); and/or
 - b. that any sanction imposed be set aside or varied, or a different sanction or sanctions be imposed;
- (2) in the case of a decision reached following an Opinion:
- a. that the findings in the Opinion be set aside in whole or in part and that any or all of the original charges be referred to different Independent Legal Counsel to be re-determined;
 - b. that all or any of the charges be dismissed or upheld;
 - c. that any sanction imposed be set aside or varied, or that any sanction or sanctions be imposed, or that sanctions be referred to Independent Legal Counsel;
33. The Board shall, on receipt of the Appeal Tribunal's decision, forthwith enact its recommendation.
34. If the Board dismisses an appeal following receipt of the decision of the Appeal Tribunal, it shall (unless the justice of the case requires otherwise) order the Appellant to pay the ALF's costs of the appeal, in accordance with the Undertaking.

Confidentiality of proceedings

35. Unless otherwise provided for by this procedure or the Board, the fact of and all matters concerning any Complaint shall be kept strictly confidential by the parties. Without limitation to that, the ALF (which expression includes

Investigating Counsel for the purposes of this paragraph) shall not disclose any information provided by any party (“**the Disclosing Party**”) to the dispute to any other party (“**the Receiving Party**”) which is confidential to the Disclosing Party as against the Receiving Party without first obtaining a legally enforceable undertaking from the Receiving Party in favour of the Disclosing Party not to disclose that information to any third party without the consent of the Disclosing Party.