



## ABFA CODE, PROFESSIONAL STANDARDS & COMPLAINTS FRAMEWORK

### COMPLAINTS PROCESS

A new self-regulatory framework for the asset based finance industry in the United Kingdom and the Republic of Ireland is in operation from 1 July 2013.

The framework comprises three key components:

- A revised ABFA Code and supporting Guidance;
- An independent Complaints Process; and
- A Professional Standards Council.

This document sets out how the independent Complaints Process operates. This summary document is also accompanied by a more detailed map of the Complaints Process at [www.abfa.org.uk/standards/complaintsprocessmap.pdf](http://www.abfa.org.uk/standards/complaintsprocessmap.pdf).

Further information on the framework can be found at [www.abfa.org.uk/standards](http://www.abfa.org.uk/standards). In addition, a summary overview of the framework can be downloaded from [www.abfa.org.uk/standards/overview.pdf](http://www.abfa.org.uk/standards/overview.pdf).

Links to all related documents are compiled at the end of this document.

The Members of the ABFA have supported many hundreds of thousands of businesses in the United Kingdom and Republic of Ireland over the last 50 years. The overwhelming majority of client businesses are happy with the services received from ABFA Members. In a small minority of cases, however, a client may feel that they have been treated unfairly by an ABFA Member. Where that happens it is important to have in place a clear set of principles which Members will operate in accordance with an independent process through which concerns can be investigated and adjudicated upon.

This framework provides current and future clients with further confidence in asset based financing. It is a positive evolution for the industry and is a reflection of how important the industry is in supporting the UK and Irish economies.

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## **INTRODUCTION**

The Complaints Process provides an independent system for clients<sup>1</sup> who believe they have been treated unfairly by a Member of the ABFA. The Process allows complaints to be independently investigated, considered and adjudicated upon.

The Complaints Process is designed to be:

- Independent;
- Accessible;
- Focused; and
- Effective.

There will be no charge for a Complainant to access the Complaints Process regardless of whether or not the complaint is ultimately upheld. The Ombudsman's costs associated with dealing with particular complaints will be met by the Member involved.

The Process is available to the overwhelming majority of the industry's clients and has been specifically designed to support smaller client businesses who will particularly welcome the reassurance provided by an independent system. It is currently accessible to ABFA Members' clients with annual turnovers up to £6.5 million / €7.7 million. This covers over 80 per cent of the industry's current client base.

This threshold will be subject to review, but the expectation is that in most cases larger client businesses would address any issues that they have in other ways, rather than use a dispute resolution process of this type.

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<sup>1</sup> 'Client' is the default term used in this document. However, for clarity (subject to the considerations set out in this document), the Complaints Process is open to clients, prospective clients and also the guarantors/indemnifiers of clients and prospective clients of an ABFA Member company. In addition, a complaint can be received from an authorised representative of the above. Please refer to the **Eligibility** section below for further information.



## **MEMBERS' COMPLAINTS PROCESSES**

ABFA Members are required to operate their own complaints processes. The ABFA Complaints Process complements rather than replaces these processes.

The objective of any complaints process is the successful resolution of a complaint. The Member will normally be the best-placed organisation to address the issues raised in a complaint. This is why one of the underlying principles of the independent Complaints Process is that the ABFA Member must be given an adequate opportunity to consider the complaint. Where it is not possible to resolve the complaint to the satisfaction of the Complainant, the Complainant will then be able to use the independent Complaints Process.

The following must have happened before a complaint is formally accepted into the independent Complaint Process:

- the complaint has been formally registered with the Member involved; and
- the Member has been given 12 weeks from the point of a complaint being formally made to resolve it, or the Member has issued a 'Deadlock Letter' (this is an official letter from the Member to the Complainant confirming that it has not been possible to resolve a complaint); and
- The Complainant has not already accepted a final settlement or resolution in relation to the complaint.

Once a Deadlock Letter has been issued or 12 weeks has elapsed, the Complainant can then choose to formally register the complaint with the ABFA. This should be done in writing (which can include by email). The ABFA will log the complaint, ensure that the required basic information is available, and then immediately pass the complaint file on to the independent Ombudsman.

The ABFA's role in this respect is purely administrative, to ensure that the basic information is included to allow the complaint to be progressed as quickly as possible, and to then pass the information on to the Ombudsman.

It should be noted that the 12 week time period is intended to be a maximum. It is expected that the vast majority of complaints will be either addressed and/or resolved by Members far more quickly than this. A complaint can be registered and taken to the Ombudsman prior to the end of the 12 week period if the ABFA Member confirms Deadlock.

Please see **How the Complaints Process Works** below for further information.

Within the defined thresholds, some cases may be more complex than others. In some instances, the independent Ombudsman *may* grant an extension to the 12 week period if it can be clearly demonstrated that the Member is making substantive progress in addressing the substance of the complaint and that a short extension might permit a successful resolution.



## **ABOUT THE INDEPENDENT OMBUDSMAN**



The ABFA has commissioned [Ombudsman Services](#) (legal entity: The Ombudsman Service Limited), a specialist dispute resolution organisation, to provide the independent complaints process for the industry.

Ombudsman Services provide such services in a number of industries, including the communications, energy, property and copyright licensing sectors. In addition, Ombudsman Services has a strong track record in delivering complaints services on behalf of Membership organisations, working with the Royal Institution of Chartered Surveyors, amongst others.

Founded in 2002, Ombudsman Services is a not-for-profit private company. It has robust governance structures to ensure its independence from the sectors to which it provides services. Ombudsman Services is a Member of [The Ombudsman Association](#) which recognises its credentials and independence.

Ombudsman Services' objectives when dealing with clients and guarantors of ABFA Members are to:

- Provide an independent, impartial and cost effective means of resolving disputes outside the courts;
- Give an impartial and independent review of complaints; and
- Work with the ABFA and its Members to improve the service they give to their clients, making recommendations for improvements or change within the industry.

Ombudsman Services will consider complaints relating to alleged breaches of the ABFA Code. In handling complaints, carrying out investigations, proposing resolutions and reaching final decisions, Ombudsman Services will proceed fairly and in accordance with the principles of natural justice.

Ombudsman Services will consider what is fair and reasonable in the circumstances, having regard to principles of law or judge-made decisions, good practice, equitable conduct, contractual obligations and good administration.



## **ELIGIBILITY**

### **Complainants**

The Complaints Process is available to clients and guarantors who have a complaint about an ABFA Member.

The following guidelines will apply:

- The Complainant must be, or was at the time of the action occurring: a client; a prospective client; or a guarantor/indemnifier of a client or prospective client, of an ABFA Member;
- At the point a complaint is received by the ABFA or Ombudsman Services, the company about which the complaint relates must be a Member of the ABFA; and
- The complaint must be received from an 'Officer' of the business, such as a Director or Proprietor (or an authorised representative of the same), or a guarantor or indemnifier who has directly given a personal guarantee and/or indemnity to the ABFA Member.

### **Complaints**

The objective of the ABFA and Ombudsman Services is to ensure that the independent Complaints Process is as accessible as possible.

Within a judicial system there are different levels of courts depending on the type, complexity and seriousness of the matter. Similarly, the independent Ombudsman will not be able to review and pass judgment on all types of cases.

A complaint will be eligible for this process if:

- The complaint relates to a factoring, invoice discounting and/or asset based lending facility or a proposed facility through an existing ABFA Member in the UK or the Republic of Ireland; and
- The annual turnover (revenue) of the business does not exceed £6.5 million / €7.7 million per annum (as per the last audited accounts); and
- The action or actions relating to the complaint took place on or after 1 July 2013; and
- The Complainant is not seeking a financial award of greater than £25,000 / €29,000 in relation to the dispute. This is the maximum figure that Ombudsman Services currently has authority to award. This figure will be kept under review.

It will not be possible for a complaint to be accepted if:

- The Complainant gave the ABFA Member notice of the matter which is subject to the complaint more than 12 months before contacting the ABFA or Ombudsman Services; or
- The complaint is made to the ABFA or Ombudsman Services more than six months after the Member advised the client that it is unable or unwilling to resolve the complaint to the complainant's satisfaction (i.e. a Deadlock Letter or similar was received more than six months' prior).



## The Ombudsman's Discretion

It should be noted that the independent Ombudsman retains absolute discretion to decide whether a complaint is within its jurisdiction. Specifically:

- Ombudsman Services has absolute discretion to refuse to accept (or to terminate consideration of) a complaint, if it is considered that the Complainant has no reasonable prospect of success, recovery or redress in relation to such complaint;
- Ombudsman Services will not accept a complaint that has been or is subject to court proceedings, arbitration, or other independent procedure for the resolution of the complaint or dispute (unless there is proof that the aforementioned process has been abandoned, stayed or suspended);
- Ombudsman Services will not accept a complaint if it appears that the complaint is frivolous or vexatious; or
- Ombudsman Services will not reconsider a previously handled case unless significant evidence has come to the attention of the Ombudsman that may have an impact on the previously reached decision.

## Other Complaints Bodies

As is the case with most types of commercial finance, factoring, invoice discounting and asset based lending services (referred to collectively as 'asset based finance') are not subject to statutory regulation at the present time in the UK or the Republic of Ireland.

The UK [Financial Ombudsman Service](#) will not currently consider complaints which primarily relate to these services and there are no other dedicated external processes available to consider such complaints. This is why the ABFA framework has been established.

However, depending on the nature and size of the Complainant (and a number of other factors), the Financial Ombudsman Service might consider a composite complaint which primarily relates to wider regulated financial services but which also contains an asset based finance element.

Ombudsman Services cannot accept a complaint that is subject to consideration by the Financial Ombudsman Service or any other regulatory or equivalent body.

The Complaints Process is available for complaints about the behaviour of ABFA Members only. It cannot be used for complaints which primarily relate to the behaviour of 'Third Parties' such as advisors, brokers, lawyers or insolvency practitioners. Many of these industries or professions will have their own regulatory or self-regulatory systems in place. Complaints about the behaviour of such Third Parties should be made to the appropriate representative or regulatory bodies.



## **REACHING A DECISION**

The professionals at Ombudsman Services are experts at dispute resolution. They are trained to listen and to provide a firm and fair helping hand to Complainants. Their objective is to help resolve complaints as quickly as possible with the most appropriate outcome. They do so independently of the ABFA and its Members.

There are four key factors that will be taken into account in the decision making process of all cases reviewed by Ombudsman Services. These are:

- Relevant laws;
- The contract in place between the ABFA Member and Complainant;
- The ABFA Code and Guidance; and
- Fairness and reasonableness.

Ombudsman Services will, depending on the case, aim to deliver an accelerated informal outcome to suit all parties prior to a Final Decision being made. If the informal recommendation is not acceptable to either party, a review of the complaint can be requested, provided that it relates to an error in the recommended solution or new evidence becomes available which has a material effect.

The Complainant is not obliged to accept Ombudsman Services' Final Decision. If the Complainant does accept the Ombudsman's decision it is binding on the ABFA Member and they must put in place any remedy that is required. The Complainant can decline the decision if they wish to; in that case it will not be binding on the Member.

If a complaint is upheld, Ombudsman Services has the authority to require any of the following actions from the ABFA Member:

- An apology; and/or
- An explanation of what went wrong; and/or
- A financial award (up to a maximum of £25,000 / €29,000).

Ombudsman Services has committed to complete investigations and issue either a proposed resolution, or a binding Final Decision, within 84 days of receipt of the complaint, for at least 90 per cent of complaints received.



## **HOW THE COMPLAINTS PROCESS WORKS**

This section provides a simplified explanation of the more detailed Complaints Process Map available to download at [www.abfa.org.uk/standards/complaintsprocessmap.pdf](http://www.abfa.org.uk/standards/complaintsprocessmap.pdf).

- 1) A client or prospective client (or guarantor/indemnifier of a client or prospective client) formally raises a written complaint with the ABFA Member.
- 2) The Member will manage the complaint in accordance with their own complaints process. The Member has a maximum of 12 weeks to review, investigate and - if appropriate - propose a resolution that is acceptable to the Complainant. It is expected that the majority of cases will progress to this stage more quickly than 12 weeks.
- 3) Three outcomes are then possible:
  - a) A resolution is proposed that is acceptable to the Complainant – CASE IS CLOSED; or
  - b) If no acceptable resolution is reached a Deadlock Letter can be issued summarising the situation and indicating that no resolution is possible; and/or
  - c) 12 weeks elapses since the complaint was formally registered
- 4) If b) or c) are the result, subject to the parameters noted in the **Eligibility** section above, the complaint can be entered into in the independent ABFA Complaints Process.
- 5) The Complainant should contact the ABFA to register their complaint. This should be done in writing (which includes by email).
- 6) The ABFA records the complaint, ensures that it falls within relevant parameters, compiles basic information and then immediately passes the complaint file to Ombudsman Services.
- 7) Ombudsman Services reviews evidence, requests additional documentation from Complainant and Member as required. Ombudsman Services conducts any additional investigations that are required.
- 8) If appropriate and possible, Ombudsman Services recommends an informal resolution to both parties.
- 9) If both parties accept the informal decision, the Member is bound by the decision and the CASE IS CLOSED
- 10) If the informal resolution is not accepted by either party, Ombudsman Services will complete a full investigation, and produce a report along with a Final Decision.
  - a) If the Final Decision is accepted by the Complainant the Member is bound by the decision and the CASE IS CLOSED (the Member cannot refuse to accept a Final Decision).
  - b) If the Complainant rejects the Final Decision, neither party is bound by it.



## **FURTHER INFORMATION**

Please note Ombudsman Services will not currently accept complaints about ABFA Members directly from Complainants. Please contact the ABFA in the first instance if you wish to register a complaint about a Member in the independent Complaints Process.

Please also note, to make a complaint about an ABFA Member it is necessary first to complain formally to the Member involved to allow them the opportunity to address the issues raised. Once this has been done a complaint can be registered with the ABFA and then considered under the independent Complaints Process.

For further information on the ABFA Code and Guidance, the Complaints Process and other associated elements is available at [www.abfa.org.uk/standards](http://www.abfa.org.uk/standards) or by contacting the ABFA on: +44 (0)208 332 9955.

An overview document is available at [www.abfa.org.uk/standards/overview.pdf](http://www.abfa.org.uk/standards/overview.pdf).

The ABFA Code is available at [www.abfa.org.uk/standards/code.pdf](http://www.abfa.org.uk/standards/code.pdf) and the supporting Guidance is available at [www.abfa.org.uk/standards/guidance.pdf](http://www.abfa.org.uk/standards/guidance.pdf).

Answers to some Frequently Asked Questions about the framework are available at [www.abfa.org.uk/standards/FAQs.pdf](http://www.abfa.org.uk/standards/FAQs.pdf).

The detailed map of the Complaints Process is available at [www.abfa.org.uk/standards/complaintsprocessmap.pdf](http://www.abfa.org.uk/standards/complaintsprocessmap.pdf).

Further information about Ombudsman Services is available at [www.ombudsman-services.org](http://www.ombudsman-services.org).

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## **DOWNLOADS**

[ABFA Code](#)

[Guidance](#)

[Overview of ABFA Code, Complaints and Professional Standards framework](#)

[Complaints Process Map](#)

[FAQs](#)