



## ABFA CODE, PROFESSIONAL STANDARDS & COMPLAINTS FRAMEWORK

### FREQUENTLY ASKED QUESTIONS

This document provides the answers to some Frequently Asked Questions about the ABFA Code, Professional Standards and Complaints framework. It will be updated as necessary and the latest version will be available at [www.abfa.org.uk/standards/FAQs.pdf](http://www.abfa.org.uk/standards/FAQs.pdf). Further information about the framework is available at [www.abfa.org.uk/standards](http://www.abfa.org.uk/standards).

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## **BACKGROUND**

### **Summary**

A self-regulatory framework for the asset based finance industry in the United Kingdom and the Republic of Ireland has been in operation since July 2013.

The framework comprises three key components:

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

The ABFA Code, together with the supporting Guidance, sets and promotes standards of best practice and professionalism for ABFA Members. Complementing the Code, the Complaints Process provides an independent mechanism available to clients who believe they have been treated unfairly by a Member of the ABFA.

The Professional Standards Council (PSC) oversees the ABFA Code, Guidance and Complaints Process and ensures that they are up to date and effective. The PSC is also charged with making appropriate recommendations to protect and enhance the reputation of the industry. The chairperson of the PSC is independent of the industry and the majority of the members of the body are also independent.

### **Further information**

Further information about the ABFA Code, the Complaints Process and the Professional Standards Council is available on the ABFA website at [www.abfa.org.uk/standards](http://www.abfa.org.uk/standards). A summary overview document can be downloaded from [www.abfa.org.uk/standards/overview.pdf](http://www.abfa.org.uk/standards/overview.pdf).



## **ABOUT THE SELF-REGULATORY FRAMEWORK**

### **Why has this been introduced?**

The framework has been put in place to support the industry's clients<sup>1</sup> and provide them - as well as other businesses that may be considering using asset based finance - with greater confidence in, and information about, the products.

The framework demonstrates the standards which ABFA Members will meet and provides an independent mechanism that a client can access if they feel they have been treated unfairly by an ABFA Member.

Asset based finance is an increasingly popular type of financing for businesses in the UK and the Republic of Ireland and has supported many hundreds of thousands of business 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 and an independent process through which concerns can be investigated and adjudicated upon. This framework delivers that. It is an important part of the industry evolving to meet the expectations of its future clients.

### **Is asset based finance regulated?**

No. Asset based finance, as a set of products, is not currently subject to statutory regulation in either the UK or the Republic of Ireland. ABFA Members provide finance to clients that are businesses rather than individuals, and the provision of such commercial finance is not generally subject to regulation at the present time.

Many of the ABFA's Members are part of, or are owned by, organisations that are subject to statutory regulation (i.e. banks). In this respect some ABFA Members do operate in a regulated context, to varying degrees. However the products are not regulated and this framework was put in place to provide an independent Complaints Process for clients.

### **Is the ABFA a regulator?**

The ABFA is not a regulator. It is a representative Member Association.

It provides a framework for its Members however, and this has been designed around an independent Complaints Process. This is provided by the specialist dispute resolution organisation [Ombudsman Services](#). Ombudsman Services will investigate, consider and adjudicate upon complaints independently from the ABFA and its Members.

In addition, a Professional Standards Council (PSC) is tasked with reviewing the Code, the Complaints Process and other related issues. The chairperson of the PSC is independent of the industry and the majority of individuals on this body are also independent of the industry.

This is a self-regulatory framework with independence hard-wired into it.

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<sup>1</sup> 'Client' is the default term used in this document, however the Complaints Process is open to clients, prospective clients and also the guarantors/indemnifiers of clients and prospective clients of an ABFA Member company.



## **SCOPE**

### **What products and services are covered?**

The framework covers factoring, invoice discounting and asset based lending (referred to collectively as 'asset based finance') and associated services.

### **What organisations are covered?**

The framework covers all of the ABFA's Members. ABFA Membership is restricted to businesses whose primary purpose is the provision of asset based finance to clients. Compliance with the ABFA Code is a condition of Membership. A full list of ABFA Members is available at: [www.abfa.org.uk/members/members.asp](http://www.abfa.org.uk/members/members.asp).

### **Does this framework cover all asset based finance providers?**

It is estimated that the ABFA represents around 95 per cent of the asset based finance industry in the UK and the Republic of Ireland, in terms of the volume of funding provided to businesses. The ABFA does not represent all asset based finance businesses. In addition, there are a number of companies providing online invoice finance trading platforms; they are not currently Members of the ABFA.

### **Can a complaint be made about a finance company that is not a Member of the ABFA?**

At present the Complaints Process is only available to clients of ABFA Members. The costs of the Complaints Process are entirely met by the Members of the ABFA and on that basis it would be difficult to open it up to clients of non-Members. Nonetheless, the ABFA would hope that all asset based finance companies would seek to meet the standards set by the ABFA Code regardless of whether they are Members or not.

### **Does the framework cover Affiliate Members of the ABFA?**

In addition to the ABFA's formal Membership, there are a number of organisations that provide professional services to the industry. These are referred to as Affiliates. The ABFA Code and Complaints Process do not directly apply to Affiliates but Affiliates are expected to support Members in meeting the requirements of the ABFA Code. The PSC can expel an Affiliate if it is considered appropriate and necessary to do so. In addition, many Affiliates will already be subject to existing regulatory or self-regulatory systems and any concerns about their behaviour can be submitted to the relevant representative or regulatory bodies.

### **Is the framework available to clients in the Republic of Ireland?**

Yes, it is available to clients of ABFA Members in the Republic of Ireland.

### **Does the framework cover ABFA Members that are part of banks?**

Asset based finance products are not currently subject to statutory regulation in either the United Kingdom or the Republic of Ireland. A complaint relating to asset based finance might be heard by the Financial Ombudsman Service (in the UK) if it formed part of a wider complaint about a



regulated institution and if the Complainant fell under the threshold for that regime (it is currently available to businesses with an annual turnover of less than £1.7 million/€2 million). Otherwise, there is no independent complaints process open to clients of the asset based finance industry. This is why the ABFA has this framework in place. In addition, this framework is available to larger businesses than those currently able to access the Financial Ombudsman Service scheme.



## **ABOUT THE ABFA CODE**

### **Where is the ABFA Code and Guidance available from?**

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

### **When is the Code in force?**

The Code covers all actions taken on or after 1 July 2013.

The Code and supporting Guidance documents were updated in January 2016. Members were required to adhere to the 2013 version of the Code and Guidance prior to 1st January 2016. In terms of the ABFA Complaints Process, complaints will be considered against the relevant Code and Guidance documents that were in place when the action(s) occurred.

### **What is the difference between the ABFA Code and Guidance?**

The Code sets out the key commitments that Members must meet in their relationships with clients, prospective clients (and guarantors/indemnifiers to clients and prospective clients). It sets out high-level principles and focuses on delivering outcomes for clients. The Code is a condition of ABFA Membership and is binding on all Members. The Guidance is more detailed and is designed to support Members in implementing those principles.

### **What are the key principles behind the ABFA Code?**

ABFA Members will always treat their clients fairly and responsibly, and will operate with integrity at all times. They will also be timely, transparent and unambiguous in their dealings with clients and each other.



## **ABOUT THE COMPLAINTS PROCESS**

### **Where is more information about the Complaints Process available from?**

A more detailed description of the Complaints Process is available at [www.abfa.org.uk/standards/complaintsprocess.pdf](http://www.abfa.org.uk/standards/complaintsprocess.pdf).

### **Who can make a complaint?**

The Complaints Process is open to any client or prospective client (or guarantor/indemnifier to the same) of an ABFA Member if that client has an annual turnover of up to £6.5 million / €7.7 million. Designated representatives are also able to make a complaint on behalf of a qualifying client.

### **How do I make a complaint about an ABFA Member?**

A Complainant needs to have complained directly to the ABFA Member involved before they can use the independent Complaints Process. In most instances the Member will be able to address the issues raised themselves. If they cannot or will not, the Complainant can then use the independent Complaints Process.

As a first step, the Complainant will need to formally submit their complaint in writing to the Member involved (they will want to ask for a copy of the Member's own complaints process, if they do not already have it). The complaint should make it clear what is being complained about, include relevant information and, if possible, provide an indication of what the Complainant believes the Member needs to do to address the issues raised.

If a Complainant has confirmation from the Member that it is not able to take a complaint raised any further (this will come in the form of a 'deadlock' letter), the Complainant should contact the ABFA to register the complaint for the independent Complaints Process. The ABFA will ensure that the required basic information is available and then immediately pass the complaint file on to the independent Ombudsman.

### **Can historical complaints be handled by the ABFA Complaints Process?**

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).

### **How much does it cost to make a complaint?**

There is no cost to a Complainant for making a complaint regardless of whether it is upheld or not. The objective is to make this process as accessible as possible and so all the costs associated with the Complaints Process are borne by the Members of the ABFA.



## **Why is the Complaints Process focused on small businesses?**

The focus in introducing the independent Complaints Process has been on what will provide the most support to the most clients.

Based on the current threshold (up to £6.5 million / €7.7 million), the Complaints Process is available to over 80 percent of the ABFA's Members' clients. A priority has been to put in place a system that is as accessible as possible for smaller businesses. Smaller businesses, in particular, may have limited time, expertise or resources to pursue concerns if they feel they have been treated unfairly.

The feedback the ABFA has received to date is that larger businesses would tend to pursue concerns via legal or other commercial means, rather than seek to use an Ombudsman-based system such as this. The threshold will be subject to review in future to ensure the Complaints Process is as accessible as possible.

## **What does the Ombudsman do?**

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

## **How does the Ombudsman reach a decision?**

Ombudsman Services will take four key factors into account in the decision-making process. These are:

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

## **Does the Ombudsman have the required technical expertise?**

Ombudsman Services are experts in dispute resolution and have experience working across a variety of sectors. Complaints in many of these sectors can involve relatively 'technical issues' and Ombudsman Services have a strong track record in managing them successfully. However where it is required, Ombudsman Services will be able to commission appropriate specialists to advise them in considering specific issues raised in complaints. Ombudsman Services will always reach their own conclusion, however.

## **Is the Ombudsman independent of the industry?**

Ombudsman Services will investigate, consider and adjudicate on complaints entirely independently from the industry. It is a specialist dispute resolution organisation and it has robust governance structures in place to ensure its independence from the sectors to which it provides services. Ombudsman Services is a Member of [The Ombudsman Association](#) (formerly the British and Irish Ombudsman's Association) which recognises its credentials and independence.

## **What powers does the Ombudsman have?**



The Ombudsman has the authority to direct an ABFA Member to put in place a number of remedies. The Ombudsman can direct the Member to apologise and provide an explanation of what went wrong and, if possible and appropriate, to take steps to put this right. In addition, the Ombudsman can direct a Member to make a financial award to a Complainant of up to £25,000. A financial award is intended to compensate for loss; it is not punitive.

### **Why is it necessary to complain to the finance provider first?**

The primary objective of any complaints process is to resolve issues as quickly as possible in a way that satisfies all the parties involved as far as possible. The quickest way for a complaint to be resolved to the satisfaction of the Complainant is to give the Member the opportunity to consider it first. They will always be best placed to address it. If no solution can be found that satisfies the Complainant they will then be able to use the independent Complaints Process at no cost to themselves.

This is the same process seen in schemes operated by bodies such as the Financial Ombudsman Service in the UK.

### **Can a complaint be made directly to the Ombudsman?**

The independent Ombudsman will not accept complaints directly. The ABFA is required to ensure that the required basic information about a complaint is available before it is passed to the Ombudsman. The ABFA's role in this regard is purely administrative to ensure that a complaint can be progressed as quickly as possible. The ABFA has no role in the consideration of complaints – the Complaints Process is entirely independent.

### **What happens if a Complainant is not happy with the decision of the independent Ombudsman?**

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, the Ombudsman will move to reach a Final Decision.

The Complainant is not obliged to accept Ombudsman Services' Final Decision. The Final Decision is only binding on the Complainant if the Complainant chooses to accept it (if the Complainant accepts it, it is automatically binding on the ABFA Member and they must put in place any remedy that is required). If the Complainant does not accept the Decision they will retain all the alternative options of seeking redress they had before taking part in the Complaints Process. These would include legal options.

### **Does a decision from the Ombudsman have any legal weight?**



The Ombudsman provides an independent, impartial and cost effective means of resolving disputes outside the courts system. The Ombudsman will consider the evidence available thoroughly and will make a Final Decision which may include elements of redress for the Complainant. If the Complainant does not accept the Decision they will retain all the alternative options of seeking redress they had before taking part in the Complaints Process. These would include legal options. The Ombudsman's decision does not, in itself, carry legal weight.

### **How long will it take Ombudsman Services to consider a complaint?**

The Ombudsman will always aim to find suitable resolutions to Complaints at the earliest stage possible. However, the complexity of cases may vary considerably, and therefore the Ombudsman has committed to providing a proposed resolution for at least 90 per cent of all cases within 84 days from first being notified.

### **How can a complaint be considered more quickly?**

There will often be a sense of urgency around complaints and Ombudsman Services and ABFA Members (as required under the Code) are committed to progressing them as quickly as possible.

Both Members and Ombudsman Services will require a period of time in order to investigate complaints properly. The time required will depend on the complexity of the issues involved in a complaint but the self-regulatory framework has been designed to set maximum time periods within which complaints will be considered. These will be subject to review but it is expected that the majority of cases will be progressed far more quickly than these maximum time periods.

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, the Ombudsman will move to reach a Final Decision.

In order to ensure a complaint is progressed as quickly as possible, a Complainant will want to make sure they retain records of all information and correspondence (both written and electronic) that may relate to the issues involved in a complaint. They will want to keep records of all contact had with a Member on a complaint, including telephone conversations. In addition, a Complainant should respond to all requests for information as quickly as possible to avoid unnecessary delay.



## **ABOUT THE PROFESSIONAL STANDARDS COUNCIL**

### **What does the Professional Standards Council do?**

The Professional Standards Council (PSC) oversees the ABFA Code, Guidance and Complaints Process and ensures that they are up to date and effective. The PSC is also charged with making appropriate recommendations to the ABFA to protect and enhance the reputation of the industry. The chairperson of the PSC is independent of the industry and the majority of the members of the body are also independent.

### **Is the Professional Standards Council independent of the industry?**

The Professional Standards Council operates independently from the ABFA. It is comprised of individuals from within and outside the asset based finance industry and it has a majority of 'lay members' from outside the industry. In addition, its chairperson will always be an independent member.

The PSC members from within the industry represent the industry as a whole. They do not represent their respective organisations. They sit on the Council to provide context and insight from the industry and, ultimately, to allow the PSC to perform its functions effectively.

### **What powers does the Professional Standard Council have?**

Where it is appropriate to do so, the PSC can impose a range of sanctions regarding the conduct of ABFA Members under the ABFA Code and Guidance. These sanctions will be kept under review and they currently range from warnings to expulsion from the ABFA. The PSC can also require an ABFA Member to change its procedures, documentation and practices. In addition, the PSC considers and approves applications for Membership and Affiliate membership of the ABFA. It has the power to expel both Members and Affiliates.

### **Who are the members of the Professional Standards Council?**

The ABFA has confirmed that the senior business woman, Lucy Armstrong, has been appointed the first chair of the PSC. Further members will be confirmed in due course.

### **Can a complaint be made to the Professional Standards Council?**

The Professional Standards Council does not consider individual complaints directly. These are considered by the independent specialist Ombudsman Services. The PSC's role is to ensure the ABFA Code, Guidance and Complaints Process are up to date and effective. It is also charged with making appropriate recommendations to protect and enhance the reputation of the industry.