



THE ASSOCIATION OF TECHNICAL LIGHTNING AND ACCESS SPECIALISTS (ATLAS)

COMPLAINTS PROCEDURE

1. Objective

The objective of the Complaints Procedure ("**Procedure**") is to ensure that each Complaint is fully and fairly investigated and resolved on behalf of all affected parties, thus upholding the objectives of the Constitution to (*inter alia*) maintain a high standard of conduct, to combat unfair practices, and to encourage safety and efficiency in the specialist access, steeplejacking, lightning protection engineering and specialist earthing industry ("**Industry**").

2. Scope of Complaints Procedure

Complaints concerning the professional or technical conduct, performance, competence and/or compliance with the requirements and recommendations contained in the Constitution, Rules and/or Codes of (a) any Member or (b) any officer or other representative of the Association acting on its behalf in an official capacity (together "**Complaints**") may be made to the Association in accordance with the Procedure.

3. Making a Complaint

3.1 Any person ("**Complainant**"), whether a Member or not (and, for the avoidance of doubt, including the Association or any of its Officers), may originate a Complaint.

3.2 No restriction is placed by the Association on the source of any Complaint, and Complaints from Members and non-Members shall be treated equally.

3.3 Each Complaint shall be made to the Association on the Complaints Submission Form (which for the avoidance of doubt does not include electronic format), shall be completed in full and include the full name, address and contact details of the Complainant (and, if the Complainant is not a natural person, of the natural person making the Complaint on its behalf), shall be dated, and shall be signed by or on behalf of the Complainant.

3.4 No Complaint shall purport to impose restrictions on its circulation within the Association.

3.5 Each Complaint submitted shall contain a summary of the alleged facts on which it is based and include all evidence which has been gathered by the Complainant.

3.6 Additional evidence will not be accepted from the Complainant unless there are mitigating circumstances which prevented the evidence being submitted at an earlier date.

4. Initiation Procedure

- 4.1 Each Complaint shall be made to the Secretary of the Association (who, and whose staff, are together referred to herein as "the **Secretariat**").
- 4.2 Following notification of a Complaint to it, the Secretariat shall write to the Complainant acknowledging its receipt and enclosing a copy of this Procedure.
- 4.3 At all material times the Secretariat shall be the exclusive point of contact between (a) the Association and the Complainant and (b) the Association and the person about whom the Complaint has been made ("**Respondent**").

5. Action to be taken by the Secretariat following receipt of a Complaint

- 5.1 Following the said acknowledgment the Secretariat, in conjunction with a senior Officer of the Association who has technical knowledge relating to the complaint and who has not been named in the Complaint, shall decide whether the Complaint requires investigation.
- 5.2 A Complaint shall not require to be investigated to the extent that:
 - 5.2.1 it falls outside the scope specified in section 2;
 - 5.2.2 it fails to comply with any applicable requirement in the Procedure;
 - 5.2.3 it relates to a matter that the Secretariat reasonably considers to be frivolous, repetitious or vexatious;
 - 5.2.4 as at the date of the Complaint and/or of occurrence of the activity about which the Complaint was made, the Respondent was not (as the case may be) a Member or an Officer or other representative of the Association acting on its behalf in an official capacity; and/or
 - 5.2.5 its subject matter has been the subject of a ruling by a judicial, arbitral, regulatory, professional or other authority of competent jurisdiction (together "**Authority**");
 - 5.2.6 its subject matter is the subject of litigation or arbitration or investigation by an Authority. The Association shall stay its investigation of any Complaint in the event that litigation or arbitration relating to its subject matter is commenced after its date, and may stay its investigation of any Complaint if an investigation by an Authority relating to its subject matter is commenced after its date.
- 5.3 In the event of a decision that the Complaint requires investigation, the Secretariat shall write to the Respondent stating:
 - 5.3.1 that a Complaint has been made;
 - 5.3.2 the identity of the Complainant;
 - 5.3.3 the nature of the Complaint; and
 - 5.3.4 the said decision.

- 5.4 In the event of a decision that the Complaint requires investigation the Secretariat shall provide to the Respondent copies of the Complaint and of all evidence submitted by the Complainant to the Association in support thereof.
- 5.5 In the event of a decision that the Complaint requires investigation the Secretariat shall
- 5.5.1 require each then member of the Council ("**Council Member**") to declare in writing to the Secretariat whether he has a conflict of interest with the Complainant and/or the Respondent *in re* the Complaint. The declaration by a Council Member of such a conflict of interest shall disqualify him from any participation in the Procedure relating to that Complaint; and
- 5.5.2 nominate an Honorary Life Vice President who has declared in accordance with section 5.5.1 that he has no conflict of interest with the Complainant and/or the Respondent *in re* the Complaint to be the person who adjudicates any Appeal pursuant to section 9 (the "**Appointed Person**").
- 5.6 All subsequent references herein to the Council and to Council Members shall be deemed to exclude (a) those Council Members who are so disqualified and (b) the Appointed Person.
- 5.7 The Secretariat shall nominate three Council Members (together "**the Panel**") to investigate the Complaint and shall notify their identities to the Complainant and the Respondent (together "**the Parties**").

6. Duties

- 6.1 It shall be a duty of each Member (whether or not it is a Party) to co-operate fully (if so required by the Secretariat on behalf of the Panel) with the Panel's investigation of any Complaint unless it is prevented from so doing by a conflict of interest in connection therewith.
- 6.2 Without prejudice to the generality of the foregoing, it shall be the duty of each Respondent fully to comply with all obligations placed on it by the Procedure.
- 6.3 The full compliance with the obligations placed on the Complainant by the Procedure shall be a condition precedent to the implementation of the Procedure in respect of its Complaint.

7. Actions to be taken by the Secretariat and the Panel in connection with the investigation of a Complaint

- 7.1 The Secretariat shall require the Respondent to submit to it by a specified date a fully-particularised written response to the Complaint ("**Response**") together with such other information as may reasonably be required for a decision to be reached by the Council on the Complaint.
- 7.2 The Secretariat shall send to the Complainant a copy of the Response (if any) and of such documentation (if any) that accompanied it, and notify to it a specified date by which it may submit the Secretariat a rejoinder thereto ("**Rejoinder**").

- 7.3 The Secretariat shall establish with both Parties whether they wish to make oral submissions to the Panel in support of their respective cases. If neither Party wishes to make an oral submission, item 7.4 will not be applicable.
- 7.4 If one or both Parties wish to make an oral submission, the Secretariat shall notify both Parties of a date on which they may make oral submissions (which, for the avoidance of doubt, shall exclude professional legal advocacy) to the Panel in support of their respective cases.
- 7.5 In order to assist it in reaching the Decision the Panel shall be at liberty to seek evidence (including expert evidence) from third parties.
- 7.6 As soon as reasonably practicable the Panel shall forward to the Council copies of the Complaint, copies of the Response, Rejoinder and evidence (if any) submitted by the Parties respectively, the Panel's report of any said oral submissions, copies of evidence (if any) as referred to in section 7.4, and the Panel's recommended Decision.

8. Decision

- 8.1 At the next scheduled Council meeting following the date of the Council's receipt from the Panel of the material referred to in section 7.4, or (at the Council's discretion) at a meeting especially convened for the purpose, the Council shall decide pursuant to the Procedure and the Constitution whether to uphold or to reject the Complaint, and shall notify to the Secretariat its decision ("**Decision**") and the reasons therefor.
- 8.2 The Secretariat shall promptly thereafter notify the Decision and the said reasons to the Parties.
- 8.3 If the Complaint is upheld and unless the Respondent files an Appeal, the Council may (in addition to its powers under Articles 6(e) and (f) of the Constitution):-
- 8.3.1 issue a letter of warning or reprimand to the Respondent;
 - 8.3.2 apply a period during which the performance of the Respondent is to be monitored;
 - 8.3.3 require the Respondent (if a Member) to remedy (if remediable) any defective work that was the subject of the Complaint;
 - 8.3.4 by notice to the Respondent, suspend its Membership for such period as it may determine; and/or
 - 8.3.5 impose any other penalty on the Respondent that it considers appropriate to the particular circumstances.

9. Appeals

- 9.1 Either Party ("**the Appellant**") may file an appeal ("**Appeal**") against the Decision.

- 9.2 Each Appeal shall be made to the Secretariat in writing (which for the avoidance of doubt does not include electronic format), shall be dated, and shall be signed by or on behalf of the Appellant.
- 9.3 Each Appeal must be received by the Secretariat within one month after the date on which the Secretariat dispatched the notification referred to in section 8.2.
- 9.4 Each Appeal shall specify one or more grounds, which shall be limited to the following:-
- 9.4.1 the Decision was based on erroneous information;
- 9.4.2 since the date of the Decision information has been obtained that, had it been known to the Council at the time of the Decision, would have resulted in a different outcome;
- 9.4.3 the Decision contravened the Constitution and/or the Procedure;
- 9.4.4 there are mitigating circumstances that justify a different Decision.
- 9.5 The Secretariat shall decide in conjunction with the Appointed Person whether the Appeal requires investigation. An Appeal shall not be investigated to the extent that any of sections 5.2.2 - 5.2.5 (*mutatis mutandis*) applies to it.
- 9.6 In the event that the Secretariat decides that the Appeal requires investigation it shall:-
- 9.6.1 notify the Council;
- 9.6.2 forward to the Appointed Person copies of the Complaint, copies of the Response, Rejoinder and evidence (if any) submitted by the Parties respectively, the Panel's report of any said oral submissions, copies of evidence (if any) as referred to in section 7.4, the Decision, the Appeal, and copies of evidence (if any) as referred to in section 9.3;
- 9.6.3 notify the other Party of the Appeal; and
- 9.6.4 notify the identity of the Appointed Person to the Parties.
- 9.7 The Appointed Person shall act with promptness and discretion in order to resolve the Appeal.
- 9.8 The decision of the Appointed Person on the Appeal (which shall be final) shall be to recommend that the Council does one of the following:-
- 9.8.1 dismisses the Appeal;
- 9.8.2 varies the Decision;
- 9.8.3 quashes the Decision and substitutes another one in its place.
- 9.9 Unless the said recommendation is manifestly erroneous or unreasonable the Council shall promptly implement it (together (where applicable and in addition to its powers under Article 6(e) and (f) of the Constitution) with any step (*mutatis mutandis*) listed in section 8.3), and the Secretary shall notify the Parties accordingly.

10. Publicity

- 10.1 The Association shall be entitled to publicise, whether in its minutes or otherwise:-
- 10.1.1 any Decision (unless it is the subject of a pending Appeal) and the reasons therefor;
- 10.1.2 the outcome of any Appeal, and the reasons therefor; and
- 10.1.3 any step taken by the Council under sections 8.3 and/or 9.9.
- 10.2 Unless (if at all) it has been publicised by the Association pursuant to section 10.1 or it has been required to be disclosed by an Authority, each Party shall accord strict confidentiality to all information in its possession relating to the Complaint and to its investigation and resolution pursuant to the Procedure and to all documentation created in connection therewith.

11. Costs

- 11.1 If a Complaint is upheld (at first instance and/or on Appeal) against a Respondent, the Association may impose upon the Respondent such costs penalty that it considers reasonably appropriate in the circumstances.
- 11.2 Subject only to section 11.1, no charge shall be levied by the Association in connection with the filing, investigation or adjudication of any Complaint or Appeal.

12. General

All references herein to sections are to the sections of the Procedure, and, unless otherwise stated herein, each defined term used in the Procedure shall be construed in accordance with the Constitution.

Agreed by ATLAS Council - 8 February 2016

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