



## Disciplinary Regulations for Members

### 1. Commencement

- 1.1. These regulations were made by the ILPA Committee of Trustees of the Immigration Law Practitioner's Association Limited ("ILPA") on 11 September 2018 under Article 16 of ILPA's Articles of Association as inserted by special resolution passed on 21 November 2009.
- 1.2. These regulations come into force on 11 September 2018 and supersede the previous disciplinary regulations dated 18<sup>th</sup> March 2014.

### 2. Definitions

In these regulations the following words, phrases and abbreviations shall have the following meaning:

Articles	The Articles of Association of ILPA
Complaint	Any expression of dissatisfaction with the conduct of any Member of ILPA made in accordance with paragraph 3 below. A Complaint can only be made by a person directly affected by the conduct or by a person/body judged by the Complaints Sub-Committee to represent a person directly affected by the conduct, or can be initiated by the ILPA Committee of Trustees (see Para 3.4.)
Complainant	A person who initiates a Complaint in accordance with paragraph 3 below.
Complaints Officer	A person appointed from and by the Committee of Trustees to handle Complaints in the first instance. This person shall be a member of the ILPA staff.
Disciplinary Sub-Committee ("DSC")	A Disciplinary Sub-Committee shall be established and shall be made up of no less than 3 members of the Committee of Trustees (not including the Chair) one of whom shall be designated chair with a casting vote.
Committee of Trustees	As defined in Article 47 of the Articles.
Member	Any individual or organisational Member of ILPA
Reviewing Panel	A panel comprising of the Chair of ILPA (or their nominee) and two assessors who shall be appointed by the Committee of Trustees from amongst those members of the Committee of Trustees who shall not be members of the DSC.

### **3. Complaints**

- 3.1. Any Complaint must be made in writing to the Association and shall be passed to the Complaints Officer.
  - 3.1.1. Within 5 days of receiving the Complaint, the Complaints Officer shall send to the Complainant:
    - 3.1.2. an acknowledgement of receipt of the Complaint; and
    - 3.1.3. A copy of these regulations together with the attached appendix.
    - 3.1.4. A request for any further information, to be provided within 14 days including all the information set out in para 3.2.1 to 3.2.6.
- 3.2. The DSC shall not be obliged to consider a Complaint until the following information has been provided by the Complainant:-
  - 3.2.1. the name of the Member and, where appropriate the name(s) of the individual(s) working for the Member who are the subject of the Complaint;
  - 3.2.2. summary of the Complaint and the background to it;
  - 3.2.3. details (or copies) of any documentary evidence in support of the Complaint;
  - 3.2.4. details of any attempts the Complainant has made to get the Member to address the Complaint;
  - 3.2.5. details of any correspondence the Complainant may have had with the police or other bodies relating to the Complaint; and
  - 3.2.6. The Complainant's name, address and telephone number and connection, if any, with the Member.
  - 3.2.7. Confirmation that the Complainant has made use of the internal complaints procedures of the Member complained against if any, and of the results thereof
- 3.3. The ILPA Committee of Trustees (excluding members of the DSC) can itself initiate a Complaint where it becomes aware of any fact or matter concerning the conduct of a Member which in its opinion warrants inquiry under these regulations.

### **4. Grounds for Disciplinary Action**

It shall be a ground for disciplinary action if a Member is guilty of any conduct which in the opinion of the DSC is injurious to the interests of ILPA

### **5. Disciplinary Procedure**

- 5.1. The DSC will decide within 21 days of being referred the Complaint by the Complaints Officer whether to:
  - 5.1.1. take no further action;
  - 5.1.2. take interim action pending the outcome of the Disciplinary procedure. The DSC would determine what interim measures are appropriate in each case but the interim action could include suspending the membership of the ILPA member for a period of time and/or reporting the ILPA member to the relevant regulatory body;
  - 5.1.3. stay the procedure until the Complainant has made use of the internal complaints procedure of the Member complained about, if any;
  - 5.1.4. investigate the Complaint against the Member but to postpone investigation until the outcome of other disciplinary investigations are complete; or
  - 5.1.5. Investigate the Complaint to decide whether to take disciplinary action against the Member.
- 5.2. The DSC shall then inform the Complainant and the Member in writing of the decision taken under this paragraph and the reasons for the decision.

- 5.3. If the DSC decides to investigate the Complaint, within 10 days of writing to the Complainant with details of its decision to investigate the DSC:
  - 5.3.1. shall, in writing, notify the Member of the particulars of the Complaint and put any evidence directly to the Member;
  - 5.3.2. shall invite the Member to make a written response to the allegation(s) within 14 days of the date on which the Member is informed of the Complaint.
- 5.4. Further the DSC may;
  - 5.4.1. inform the Member of the identity of the Complainant;
  - 5.4.2. invite the Member and/or the Complainant for interview; and/or exchange information regarding the Complaint with other bodies.
- 5.5. The DSC shall, within 14 days of the expiry of the 14 days given to the Member to make a written response consider the complaint and the response, form a view as to whether it is established that the complaint has shown that there are grounds for disciplinary action against the Member under para 4, and consider what (if any) disciplinary action to take.
- 5.6. The DSC and Complaints Officer may extend the time limits set out in section 5 of these Regulations where they consider it expedient for the purposes of applying the Complaints procedure fairly.

## **6. Disciplinary Action**

- 6.1. Upon completion of the investigation, the DSC shall recommend in writing to the Committee of Trustees:
  - 6.1.1. whether or not there are grounds for disciplinary action in accordance with paragraph 4 above and, if there are;
  - 6.1.2. what disciplinary action (if any) should be taken in accordance with sub-paragraphs 6.3 and 6.4 below
- 6.2. In deciding what disciplinary action to recommend and take, including those actions set out in 6.4 below, the DSC and Committee of Trustees respectively shall have regard to the nature and seriousness of the misconduct, and any other relevant circumstances.
- 6.3. In disciplining a Member the DSC may recommend the Committee of Trustees, and the Committee of Trustees may decide to do any (or a combination) of the following;
  - 6.3.1. Refer the details of the Complaint to another body;
  - 6.3.2. give advice to the Member;
  - 6.3.3. publicise the results of the investigation;
  - 6.3.4. suspend the Member for such period as the DSC shall determine, including until the member complies with such conditions as the DSC may impose; or
  - 6.3.5. expel the Member.
- 6.4. The Committee of Trustees shall consider the recommendation of DSC at its next meeting and decide what action to take.
- 6.5. The DSC shall within 7 days of the Committee of Trustees deciding what disciplinary action to take, notify the Member and the Complainant in writing of the outcome.

## **7. Right of Appeal**

- 7.1. A Member shall have the right to request that any disciplinary decision taken against them shall be reviewed by the Reviewing Panel. Such a request must be made within 14 days of receiving notice of any disciplinary decision.
- 7.2. The Reviewing Panel shall upon reviewing the decision and within 14 days of having received the request for a review recommend to the Committee of Trustees the course of action it ought to adopt.

- 7.3. The Reviewing Panel may at their discretion call the Member and/or the Complainant to interview. The interview will be conducted by no less than 3 members of the Reviewing Panel. The Reviewing Panel may also require the Complainant or Member to submit additional information including documents.
- 7.4. The Reviewing Panel may extend the time limits set out in section 7 of these Regulations where they consider it expedient for the purposes of applying the Complaints procedure fairly.
- 7.5. The Committee of Trustees shall act in accordance with any recommendation of the Reviewing Panel.

## **8. Retention of Records**

ILPA shall retain a record of all complaints received by the Complaints Officer and all investigations carried out by the DSC and the Reviewing Panel for 3 years. These records may be accessed by the Complaints Officer, DSC, the Committee of Trustees and the Reviewing Panel when handling future Complaints.

## **APPENDIX 1 TO THE DISCIPLINARY REGULATIONS FOR MEMBERS.**

### **‘INJURIOUS TO THE INTERESTS OF ILPA’**

The Committee of Trustees can entertain complaints against a Member who acts in a way that is injurious to the interests of ILPA. A non-exhaustive list of examples of such actions are set out below for the guidance of the Committee of Trustees in entertaining complaints and of Members and others who are the subject of a complaint, or considering making one against a Member.

The interests of ILPA are those set out in its Memorandum and Articles of Association. Relevant extracts from the objects are set out below, with examples of how one could act in a way injurious to them. It is a requirement of membership that a Member be ‘in general sympathy with the objects of the Association’. This does not impose a positive duty to promote the objects of the Association at every turn and to do something injurious to the interests of ILPA involves more than passivity, it involves acting in a way that undermines the objects. Conduct must reach a certain degree of gravity to be injurious to the interests of ILPA. That threshold passed, the gravity of the conduct will determine the sanction imposed.

The first object begins:

To promote further and assist by whatever means the giving of advice to and assistance and representation of immigrants to any part of Great Britain, Northern Ireland, the Channel Islands and the Isle of Man from whatever part of the world whether coming or intending to come to the United Kingdom for settlement or for some more limited purpose; to promote further or assist by whatever means the giving of advice to and assistance and representation of immigrants or emigrants of whatever nationality or from any other part of the world;

It follows from this that failure to observe professional standards when advising clients can be to act in a way that is injurious to the interests of ILPA. ILPA will always urge those complaining that such standards have not been followed to make their complaint through the Members’ complaints procedure and, where appropriate, to the relevant professional body. ILPA’s own investigation of the complaint will normally be stayed behind such investigation, to avoid prejudicing the investigation by a body that has a greater range of sanctions at its disposal.

It further follows from this that attempts to undermine immigrants’ access to advice and representation, including free advice and representation where this is needed, can be to act in a way that is injurious to the interests of ILPA. An attempt to undermine immigrants’ access to advice and representation involves more than a difference of opinion about the best way to ensure such access.

It also follows from this, and from other parts of the objects that to discriminate against immigrants on the grounds of their country of origin or reason for migration can be to act in a way that is injurious to the interests of ILPA, discrimination being differential treatment without an objective justification.

The next part of the first object is to disseminate by whatever means, information and views on the law and practice of immigration and nationality in the United Kingdom and elsewhere; to enhance and expand the teaching of immigration and nationality law in the United Kingdom and elsewhere;

While this does not entail any obligation to disseminate information it does follow that a deliberate attempt to suppress information could be injurious to the interests of ILPA.

The first object continues:

to coordinate the activities and interest of immigration and nationality law practitioners, to make contacts with similar bodies in other countries and to make representations for and on behalf of immigration and nationality practitioners and to secure a non-racist, non-sexist, just and equitable system of immigration and nationality law practice in the United Kingdom and elsewhere.

These two elements need to be read together and with the rest of the objects because it is important to realise that ILPA protects the interests of practitioners insofar as these are congruent with the interests of clients and with a just and equitable, non-sexist and non-racist practice. While the ethos of ILPA has always been one of cooperation and the sharing of information, it is recognised that practitioners are both colleagues but also competitors for work in the field and that protecting and promoting the interests of their own firms and chambers is not injurious to the interests of ILPA.

Where it could become so is where it works in a way that undermines, rather than merely competes with, the interests of others striving to provide a good service to clients; where one firm or individual pursues their own interests in ways that are likely to undermine the practice of immigration and nationality law as a whole.

To act in a way that is racist, sexist, unjust or inequitable in one's practice and dealings with clients, other practitioners and third parties will be to act in a way that is injurious to the interests of ILPA.

The reference to an equitable system of practice in the objects encompasses the notion of discriminating on grounds other than those (race and gender) specifically mentioned in the objects.

This is also the case in one's actions undertaken for the ILPA, including as a representative at a meeting or conference or in speaking to the media, or more generally publicly in one's capacity as an immigration law practitioner.

The objects make reference to advice and assistance to, and representation of, immigrants rather than to third parties (e.g. employers, educational institutions, those in public services etc.) in their dealings with immigrants. An ILPA member may well be involved in advising or training such a third party on their obligations and liabilities under immigration law. This is not in conflict with the objects of ILPA. It could become so if the Member giving advice or providing training promoted racist, sexist, unjust or inequitable conduct toward immigrants, for example advising a third party to avoid any liabilities by not employing immigrants or otherwise acting in a racist, sexist, unjust or inequitable way toward immigrants.

While the other objects are more administrative some are relevant. These are summarised rather than set out in full.

Among ILPA's objectives are the acquisition of books and other publications in any medium that are desirable for the promotion of ILPA's objects and the maintenance of a bureau of information. It follows that failure to respect copyright in ILPA publications or theft of publications from the ILPA library can be conduct that is injurious to the interests of ILPA.

Another of ILPA's objectives is the organisation and promotion of courses and conference in connection with its objects. That Members provide courses and conferences on their own account is likely to further ILPA's objectives as a whole and is certainly not injurious to ILPA's interests, even where it hurts ILPA's finances. It could however be injurious to the interests of ILPA to promote one's own courses in a way that undermines, rather than merely competes with, ILPA courses and conferences. It could also be injurious to the interests of ILPA to use an ILPA course or conference to promote objects that are contrary to those of ILPA, including those that are racist, sexist, and do not promote the just and equitable treatment of immigrants.

## GUIDELINES FOR ILPA MEMBERS

1. Members of ILPA are expected to maintain the highest traditions of professional service in the conduct of activities as advisors and representatives in the field of immigration, nationality and asylum law and practice-related matters. In particular:
  - a) They must give sound advice having familiarised themselves with the law, the Rules and the principal published materials that relate to the issue in question;
  - b) They must not deceive the immigration authorities or the Courts or knowingly allow themselves to be used in any deception;
  - c) They must maintain adequate records of their professional dealings, including records of the matters set out below;
  - d) They must not charge a fee that is unreasonable in all the circumstances.
2. Where a charge is made to a client for the provision of services, the best information possible about likely overall costs is to be supplied to the client in writing with a description of the work to be done to a specified stage and the method of calculation of such fee. Where the fee is likely to exceed the estimate given or requires variation, a written revision of the estimate and mode of calculation is to be given.
3. The question of whether the client is eligible for advice under Legal Help, Controlled Legal Representation or a full funding certificate to cover representation in the Courts should be explored and discussed with the client in every instance unless it is immediately obvious from the nature of the proposed application or proceedings that the client could not qualify for publicly funded advice and assistance.
4. Where there has been a change of representative and papers relating to an outstanding application or hearing are retained by an ILPA Member, papers required for a hearing should be made available to another representative or an adjudicating body, or in the case of an unrepresented person, the client, as the case may be, subject to any right of lien or solicitor's undertaking as to costs.
5. In circumstances where a client transfers his / her case from one representative to another, members are reminded that file transfers should be effected within a reasonable period of time so as to minimize any possible prejudice to the client. Members are reminded that in publicly funded cases, the Legal Aid Agency considers seven days to be a reasonable period of time for the file to be transferred and stipulates that if by the end of that period the file is not forthcoming, the representative requesting the file should notify the Solicitors Regulation Authority (or the OISC).
6. In circumstances where the Member concludes that the client no longer satisfies the CLR merits test, in accordance with Legal Aid Agency requirements the Member shall inform the client of the CW4 procedure, namely the client's right to appeal the Member's assessment to the Legal Aid Agency's Independent Funding Adjudicator and the time limits for doing so. This advice shall be recorded on the file. If the client wishes to pursue such an appeal the Member shall complete that part of the CW4 form required of him. Members are reminded that CLR funding for an appeal should not be refused or withdrawn (subject to the means test being satisfied) unless the prospects of success on the appeal are 'clearly less than 50%'. No other criteria should be applied.

7. An ILPA Member should not normally agree to represent a client where adequate preparation of a case is not possible, but in cases of urgency can agree to act or continue to act for the purpose of applying for an adjournment. Where an adjournment is refused the member must consider whether continuing to act compromises effective standards of representation. If so, the Member should then not participate further in the hearing.

8. Where an appeal is pending and an ILPA Member ceases to act the appellate authority must be informed immediately.

9. Members should not terminate their representation of clients in any circumstances other than those permitted under the rules of professional conduct applicable to the member.

10. These guidelines should be applied by ILPA Members who have responsibility for the services provided by non-members engaged in the same firm or business as the ILPA Member.

11. These guidelines are without prejudice to any more particular requirement imposed on an ILPA Member by the terms of their employment and / or professional associations. Regard may be had to the failure to comply with these guidelines when considering whether an ILPA Member is guilty of conduct injurious to the interests of ILPA.



## **APPENDIX 2 TO THE DISCIPLINARY REGULATIONS FOR MEMBERS**

### **GUIDANCE NOTE**

These Disciplinary Regulations govern the procedure by which a complaint may be made against a member of ILPA, the ways in which the Committee of Trustees will handle such a complaint and the sanctions that may be imposed.

#### **Disciplinary Regulations and ILPA's own complaints procedure**

If a complaint is about the actions of ILPA itself (e.g. the conduct of a Member acting as an officer of ILPA, or as a representative of ILPA at an event or in a public statement) it is likely to be more appropriate to use ILPA's own complaints procedure rather than these Disciplinary Regulations.

Where a Member complained about is also an officer the attention of the complainant will be drawn to both the ILPA Complaints Procedure and these Disciplinary Regulations and the ILPA Secretariat, and where necessary the Committee of Trustees, will assist the complainant in identifying the most appropriate procedure to use. Nothing precludes a person's invoking both procedures; in such circumstances, handling of a complaint under these Disciplinary Regulations will normally be stayed pending its handling under ILPA's own complaints procedure. If a complaint against a Member is upheld under ILPA's own complaints procedure, the Committee of Trustees will always consider whether it is appropriate to invoke these Disciplinary Regulations of its own motion.

Handling expressions of concern, plus a note on ILPA's Disciplinary Regulations and the disciplinary procedures of other regulatory bodies

An expression of concern may be verbal or written and will not necessarily be formally identified by the person making it as invoking these Disciplinary Regulations. Where it is received in writing it will be dealt with in accordance with paragraph 3 of these Disciplinary Regulations. Where it is oral, the staff member or officer apprised of the expression of concern will alert the person to the existence of the Disciplinary Regulations and offer to provide a copy of them. The expression of concern will then be brought to the attention of the Complaints Officer.

Those responding to an expression of concern, be it oral or written, can explain that as a membership organisation ILPA has limited sanctions at its disposal and that other regulatory bodies (such as the Law Societies, the Bar Council or the Office of the Immigration Services Commissioner) have wider disciplinary powers. They can explain that because the regulatory bodies have greater investigatory powers and sanctions, where a complaint is pending before a regulatory body and before ILPA, ILPA will normally stay its own investigation of the complaint behind that of the regulatory body, to make sure that it does not prejudice that body's investigation. Such explanations are in no way designed to deter a person from complaining to ILPA, but instead to recognise that not everyone will want to engage with more than one complaints procedure and that ultimately this is their choice.

#### **The Disciplinary Sub-Committee's assessment of a complaint**

Once a Complaint has been passed to the Disciplinary Subcommittee (DSC) of the ILPA Committee of Trustees, they must consider what action to take in respect of the Complaint and if they decide to carry out a full investigation into the Complaint whether there is a prima facie case of acting in a way that is injurious to the interests of ILPA.

In determining the action to be taken on a Complaint the DSC will consider whether:

- (a) The Complaint is frivolous or vexatious;
- (b) The Complaint for any other reason obviously lacks substance;
- (c) The Complaint cannot be properly or fairly investigated (for reason of delay or any other reason), or the Member complained of is for any reason unable fairly to respond to it;
- (d) The Complaint or its consequences are insufficiently serious to justify further action;
- (e) For any other reason the Complaint is not apt for consideration by the DSC at all or should be stayed behind the investigation of another body as described above (e.g. where there are other more appropriate complaints procedures which the Complainant is or may pursue).

In determining whether the Complaint discloses a prima facie case of acting in a way that it is injurious to the interests of ILPA the DSC will have regard to Appendix 1 to these regulations (meaning of 'injurious to the interests of ILPA') and consider all the evidence before it including all representations made by the Complainant and the Member. The standard of proof is the ordinary civil standard i.e. balance of probabilities.

### **Confidentiality**

A complainant's desire for confidentiality will be respected, but complaints must recognise that a fair procedure is in most cases likely to require that the Member complained against understand fully the nature of the complaint against them and that this is likely to entail disclosing the identity of the complainant if the complaint is to be investigated. Where a complainant decides not to pursue their complaint because of concerns about confidentiality or for any other reason, it is open to the Committee of Trustees to investigate the member of its own motion under these Disciplinary Regulations where the Committee of Trustees has sufficient information to put to the Member to make such an investigation fair and equitable.