

Legal and Member Support Policy



This document explains how ASCL offers legal and member support to its members. Members rightly expect that their association will support them when they find themselves facing threats to their employment or conditions.

This document sets out ASCL's policy that:

- ensures that members receive the best and most appropriate support and advice with regard to employment matters
- ensures consistency and impartiality of service for all members
- ensures that the legal support budget is well managed
- ensures the proper use of association funds
- ensures that all stakeholders are aware of the policy and procedures
- ensures that all stakeholders are aware of ASCL's complaints policy and how to access it

This policy is in accordance with, and must be read in conjunction with, ASCL's Constitution and Rules June 2021.

"The solicitor was extremely helpful and supportive at a very difficult time – this intervention was invaluable.."



Policy

Section A: Eligibility for support

- 1 Requests from members for advice and legal assistance are handled directly by the member support directorate. The following categories of membership are entitled to hotline advice, member support and legal assistance, subject to the remaining provisions of this policy:
 - Full members working in the UK
- 2 The following categories of membership are entitled to hotline advice only but shall not be entitled to member support or legal assistance, subject to the remaining provisions of this policy:
 - Professional associate members
- 3 ASCL may offer advice and support to members regarding professional issues that arise during the course of their employment, provided that the member was in ASCL membership and that the membership department of ASCL are satisfied that his/her subscription was properly paid before the difficulty arose. Advice and support is offered within the terms of this policy.
- 4 Members who have received a first reminder of non-payment of their subscription renewal (60 days after it was due) will have access to ASCL's hotline but not to member support, legal assistance or referrals to ASCL's specialists in accordance with paragraph 5. If a second reminder is sent (30 days after the first reminder) no access to hotline will be possible until the subscription has been received.
- 5 In the event of a member being in arrears with the payment of his/her subscription, ASCL will be unable to continue to offer member support and legal assistance. If these have been withdrawn in such circumstances, ASCL will not normally be able to resume advice and support with regard to the issue when the subscription has been received, although this is a matter for ASCL's sole discretion.

Section B: Coverage

General

- 6 ASCL may institute, conduct, defend, settle or abandon any legal proceedings and such decisions will be taken with due care and diligence having sought advice where appropriate.
- 7 ASCL is committed to the proper use of its funds and to the support and protection of its members by providing them with appropriate legal advice and assistance with matters that concern their employment. This means that ASCL must use its funds prudently in order to avoid incurring disproportionate expenditure. In all cases, when determining whether to offer member support and legal assistance to a member, ASCL will have due regard to proportionality and the likelihood of success of any actual or contemplated proceedings.
- 8 Expenditure will not be made to establish a point of law unless ASCL considers that to do so will be of advantage to the membership as a whole.
- 9 Funds will not be used in order to achieve a very limited financial advantage for an individual member.
- 10 ASCL will not normally provide member support or legal assistance where the member has already instructed a solicitor, representative or other third party in connection with their case.

Period of membership

- 11 ASCL will only offer member support and legal assistance for issues originating from the period of ASCL membership, provided that the issue arises from the member's employment which is the subject of their ASCL membership. Member support and legal assistance will not be available in respect of those working in a self-employed or non-employee capacity, where members are expected to take out their own professional indemnity insurance instead.
- 12 ASCL will not be able to offer support with any legal or employment matters arising from events which took place or are alleged to have taken place prior to the member's having joined ASCL. In such a situation, ASCL may however offer pastoral support at the discretion of the Director of Member Support and/or the General Secretary.

- 13** ASCL may be able to offer advice and support to a retired member only if the issue is one that arose during the course of his/her membership or if an issue arises that originated during the course of his/her membership, subject to paragraph 12.

Nature of case

- 14** ASCL will only offer members support and assistance with matters relating to the member's personal contract of employment. ASCL will not provide advice or assistance in connection with the discharge of management duties.
- 15** It is not possible for ASCL to offer support to governors, schools or colleges as ASCL's function is to support its members in connection with their own employment.
- 16** In respect of management issues, ASCL's hotline, member support and legal assistance services are not a substitute for independent professional advice and members should obtain, and/or advise their employers to obtain, appropriate independent advice from suitably qualified and experienced professionals in such circumstances.

Conflicts of interest

- 17** Conflict between ASCL members in the same team sometimes occurs. Such situations will be carefully considered by ASCL. If a member's employment is potentially threatened by such a conflict, ASCL will offer support to him/her in order to try to resolve the issues. Each ASCL member in this situation, whatever his or her post, will receive the same high level of professional support. Should there be any conflict of interest between members, ASCL will, wherever possible, assign separate field or regional officers to advise and/or represent each party.
- 18** At all times, ASCL's staff will ensure that they have no conflicts of interest. ASCL's in-house solicitors will act in accordance with the Solicitors Regulation Authority handbook with regard to conflicts of interest.

"Thank you so much for your sound legal advice and positive support over the last few months, I am very grateful."

Section C: Claims

Claims covered and exclusions

- 19** Subject to the remainder of this policy, ASCL may offer member support and legal assistance with matters arising with regard to:
- employment disputes
 - employment tribunal claims
 - representation before the National College for Teaching and Leadership (NCTL), Education Workforce Council (EWC), General Teaching Council for Scotland (GTCS), the Disclosure and Barring Service (DBS) and such other regulatory body which ASCL determines appropriate
 - work-related breach of contract claims which arise from the member's employment
 - contracts of employment
 - criminal defence arising from the member's employment (subject to paragraphs 24 - 29 and, where appropriate, further to advice from specialist advisers that a viable defence is available to the alleged criminal act(s))
 - litigation against the member connected with their work, subject to there being sufficient prospects of success in ASCL's reasonable opinion
- 20** ASCL is not able to offer member support or legal assistance with regard to:
- any legal matters or claims not arising in relation to the member's employment
 - proceedings for judicial review (whether such proceedings are actual or contemplated)
 - proceedings for defamation (whether such proceedings are actual or contemplated)
 - civil proceedings for protection from harassment, whether the member is either a prospective/named claimant or respondent to those proceedings
 - with any other matter which ASCL does not consider to be an appropriate use of ASCL's funds

Employment tribunal and civil claims

- 21** ASCL will only offer member support and legal assistance in relation to any claims to, or defence of, employment tribunal or civil proceedings relating to a member's employment where ASCL considers such claims have reasonable prospects of success.

22 In the event that a member is a prospective or named respondent to employment tribunal proceedings, ASCL will only offer member support and legal assistance where the member's employer declines to provide the member with representation in relation to the same proceedings due to the operation of a statutory defence, or alternatively where the member's employer no longer exists and no policy of insurance or other indemnity exists to provide cover and representation for that member in the circumstances.

23 The provision of support under paragraphs 21 and 22 is subject always to the expressly excluded claims set out in paragraph 20.

Criminal cases

24 Subject to paragraphs 25 - 29, ASCL may offer member support and legal assistance to members wishing to defend criminal allegations, charges or prosecution, provided that the alleged criminal conduct arises from and is connected to the member's employment which is, or was, the subject of their ASCL membership.

25 In relation to defence of criminal allegations, charges, prosecution or appeals against convictions/sentences, ASCL will not be able to offer member support or legal assistance where any of the following provisions are met:

- The member has admitted to criminal or other unlawful behaviour or
- In the reasonable opinion of ASCL, the member has no viable defence to such an allegation/charge or
- In the reasonable opinion of ASCL, the member has behaved with recklessness or with a wilful neglect of his/her duty.

26 When considering whether ASCL can provide member support and legal assistance under paragraph 25, the case will be reviewed at the outset and at appropriate intervals during the tenure of any support provided to ensure continued compliance with the conditions of paragraph 25. Where matters

come to light during the progress of a case which effect the viability of the member's defence or which demonstrate recklessness or wilful neglect on the part of the member, ASCL will inform the member and ASCL must withdraw member support and legal assistance. In the event that a member pleads guilty to an offence/offences during the course of their criminal representation, ASCL will immediately cease member support and legal assistance in the member's case.

27 ASCL will not normally provide member support or legal assistance where the member has already instructed a solicitor in connection with the alleged offence.

28 In circumstances where ASCL decline to support, or withdraw its support, in criminal cases pursuant to paragraphs 25 - 27, ASCL may at its absolute discretion offer member support and legal assistance in relation to internal school employment processes against the member and any regulatory proceedings before the NCTL, EWC or GTC where they are connected with the incidents concerned. In such cases ASCL also retain the discretion to offer members pastoral support.

29 In the event of a member being arrested or called to a police station to be interviewed under caution, ASCL will endeavour to arrange for a duty solicitor or other legal representation which ASCL considers appropriate to be made available as soon as possible.

Personal injury

30 The basis of support set out in this policy will not apply to support given in relation to personal injury claims, in which case different arrangements will



apply. In such cases, the procedures to be followed will be discussed with the member, ASCL and any external legal advisers that ASCL may advise to be appointed.

Authorisation to offer representation and bring/defend proceedings

31 In any civil claims (excluding employment tribunal and regulatory proceedings before the NCTL, EWC and GTCs) and in all criminal cases, decisions regarding whether ASCL will offer legal assistance or any decision to withdraw such assistance will be made at first instance by the Director of Member Support and/or General Secretary. Any appeal against this decision will be considered by ASCL's Legal Committee whose decision will be final and there will be no further right of appeal or complaint regarding the decision of the Legal Committee.

Section D: Conditions of support

Members' obligations

32 Members are obliged to promptly disclose all relevant information and documents/evidence relating to their case to ASCL as soon as reasonably practicable and must cooperate fully with ASCL in respect of any preparation and/or presentation of their case. The requirement to disclose all relevant information to ASCL exists both at the outset of the member's case and in respect of any further relevant information which becomes known to the member during the tenure of their case.

33 Where a member is represented by ASCL in connection with legal proceedings, either before

proceedings have been issued/commenced or in respect of active proceedings, the member must not communicate or correspond with any other party about those contemplated or active proceedings unless and until they have sought ASCL's prior consent.

34 Any member seeking member support or legal assistance from ASCL must notify ASCL immediately upon becoming aware that they have a potential claim or dispute with their employer, face possible criminal investigation or prosecution, or where they have been referred to a regulatory body including the DBS, NCTL, EWC or GTC. ASCL may decline to support, or withdraw support, in relation to any case where ASCL considers the member has unreasonably delayed in informing ASCL of the circumstances or existence of that case.

35 Where employment tribunals feel it is appropriate, judicial mediation may be offered to the parties involved in a dispute. ASCL policy is to advise members to agree to judicial mediation whenever it is offered by the tribunals. If such advice is not accepted, ASCL may withdraw support at its discretion.

36 ASCL will be unable to continue to support any member who becomes threatening or abusive either orally or in writing towards staff (including ASCL staff and any external advisers) or who appears to be under the influence of alcohol or drugs, save for medications prescribed by a healthcare professional. ASCL's staff and any external advisers instructed by ASCL are entitled to be treated with dignity and respect; abusive and threatening conduct by a member will not be tolerated.

37 Members must cooperate with ASCL's requests for medical records and/or confirmation of the member's fitness to instruct ASCL, where ASCL consider appropriate.

External Advice

38 Advice will usually be given by ASCL employees including field and regional officers, telephone advisers, in-house solicitors and specialists. On occasion ASCL may, at its absolute discretion, feel it is appropriate

"I was listened to and I felt total confidence in the advice I was given. It was thoroughly professional, sympathetic and objective."



to engage external professional or legal advisers, including external legal advisers or counsel. In such instances any external adviser will be instructed by and act under the direction of ASCL, who will consult with the member where ASCL determines appropriate. All papers, briefs, opinions and documents connected with such cases will remain the property of ASCL. Should it be necessary for papers or other information to be passed to external advisers, the member will be duly consulted and informed.

- 39** At meetings with external advisers, the member will be accompanied by either their field or regional officer and/or one of ASCL's in-house solicitors who will give the briefing to the external adviser and conduct all communication with them.
- 40** ASCL funds will not be used to pay the costs of any external advisers or other third parties for any consultations, instructions or proceedings undertaken without ASCL's specific prior consent.
- 41** Where ASCL decides at its absolute discretion to engage an external adviser, the selection of an appropriate external adviser will be a matter solely determined by ASCL. Legal representation will always be provided at first instance by ASCL's in-house solicitors, save where there is a conflict of interest requiring otherwise in accordance with this paragraph.
- 42** If a member decides to seek advice from, or to instruct, external solicitors/legal advisers, professional advisers or other third parties (whether or not such advice is paid for), the member must inform ASCL immediately. It is not acceptable for members to have advice coming from more than one source. In such an instance, ASCL may discontinue offering member support and legal assistance to the member. If member support or legal assistance have been withdrawn in these circumstances, ASCL will not normally be able to resume legal support of the case, although it is a matter for ASCL's sole discretion.
- 43** If a member wishes to pay for a second external legal opinion regarding his/her situation, and yet retain the option of accessing ASCL's legal support, he or she should immediately contact their ASCL regional or field officer or solicitor (as the case may be) before doing so. If a member's consultation with an external adviser or other third party results in a delay with adverse consequences, ASCL will not be liable for those consequences and in such circumstances ASCL reserve the right to discontinue legal support.
- 44** ASCL will consider very carefully a written second legal opinion obtained by a member but ASCL's in-house solicitors may not share the views expressed therein and if so shall not be obliged to act in accordance with them. In such a case the member may decide to dispense with ASCL's services or to accept ASCL's advice and to reject that given in the second opinion. ASCL will not reimburse members for the cost of obtaining a second opinion.
- Costs**
- 45** Subject to paragraphs 46 - 48, members will not normally be expected to contribute anything to the costs and expenses of any legal assistance provided by ASCL staff or external professional advisers commissioned on their behalf by ASCL. ASCL will normally settle all legal and professional bills for costs arising from ASCL's instruction of external advisers and any disbursements arising in connection with any proceedings brought by ASCL, subject to the same having been approved in advance by ASCL and arising from the period of ASCL's member support and legal assistance in relation to the member's case.
- 46** The prime concern of ASCL will always be to offer members appropriate legal assistance and member support and this will be in the context of the reasonable management of ASCL funds which are derived from members' subscriptions. ASCL will be entitled to recover from the member all or any part of its expenditure on external legal and professional advice or fees (including issue fees and court fees) incurred on the member's behalf, in the event that the member recovers such expenditure as a result of action taken or supported by ASCL on the member's behalf.
- 47** Where ASCL offer support or legal assistance to a member in relation to any claim in the Employment Tribunals (including any appeals) or civil courts, ASCL will indemnify members' legal costs in the unlikely event that a costs order is made against the member. However, the member will remain liable to pay any award of compensation/damages which are either ordered against the member by a court in such proceedings or where the same form part of any settlement of the proceedings against the member agreed by the member.
- 48** ASCL's member support and legal staff spend a very significant part of their time negotiating and checking termination settlements (Settlement Agreements/

Compromise Agreements) on behalf of a very small proportion of members. Frequently this involves very substantial sums of money. ASCL therefore makes a small charge to members for this service, such charge to be determined from time to time. ASCL will always seek to recover this charge from the member's employer, in which case it is possible that it may give rise to a small tax liability on the member. If a member wishes to seek legal advice from another source, paragraphs 42 - 44 will apply.

Section E: Refusal / withdrawal of support

49 At all times the member may decide whether or not to accept and follow advice given by ASCL and/or any external advisers instructed by ASCL. ASCL will discontinue member support and legal assistance, and is not obliged to re-offer the same at a later stage, where:

- A member decides not to follow ASCL's advice or that provided by an external adviser instructed by ASCL as the case may be or
- Declines the advice, support or representation of ASCL (where offered) in relation to any part or all of their case or proceedings.

50 In the event that the member fails to disclose relevant information to ASCL during their membership, furnishes incorrect or misleading information to ASCL, or on their application for membership fails to disclose any relevant information within the member's knowledge, ASCL will not provide member support and legal assistance or will withdraw such support and assistance.

51 A member shall cease to become entitled to receive member support and legal assistance if the member's interests are in conflict with those of ASCL or ASCL reasonably believes there is such a conflict.

52 No decision to refuse or withdraw member support and legal assistance will be taken without informing the member. Any decision to refuse or discontinue member support and legal assistance will be made at first instance by the Director of Member Support and/or General Secretary. Any appeal by the member against this decision will be considered by ASCL's Legal Committee whose decision will be final and there will be no further right of appeal or complaint regarding the decision of the Legal Committee. The member will be informed of the decision.

53 Upon the decision to refuse or withdraw member support and legal assistance being communicated to the member, the member will become liable to meet any costs, expenses or disbursements connected with their case and/or the instruction of external advisers or other third parties by the member incurred following the termination of ASCL's support and ASCL shall not be liable for meeting the same. ASCL shall not be liable for meeting any costs, expenses or disbursements arising in connection with a member's case, following the communication of the Director of Member Support and/or General Secretary's decision, during any period where an appeal is made by the member against that decision and that appeal is being considered by the Legal Committee, save where it is the decision of the Legal Committee to reinstate member support and legal assistance.

Section F: Complaints about support

54 If a member wishes to complain about the member support or legal assistance that she or he has been given by ASCL at any stage, the member must follow ASCL's complaints policy, a copy of which is available from ASCL upon request. Complaints regarding the refusal to, or withdrawal of, member support and legal assistance will be dealt with in accordance with paragraph 52 and no separate right of complaint in relation to these matters exists under ASCL's complaints policy.

Section G: Confidentiality and Data Protection

55 ASCL employees and officers will maintain professional confidentiality at all times and matters will be handled with the utmost discretion. They will refrain from using any member's information for any personal or business gain and will offer only those services which they are experienced and equipped to offer. They will avoid conflicts of interest and inform the member immediately of any such potential conflicts. When data is provided to ASCL (including data held on its database) it is used solely in accordance with the provisions of the Data Protection Act 1998.

- 56** Any information, products and services requested from ASCL member support or legal staff, not specifically in respect of the member's own employment, by telephone, fax or email are provided without any representation or endorsement made and without warranty of any kind whether express or implied, including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security, completeness and accuracy. ASCL, its employees and officers will not be liable for any expense, loss or damage, including without limitation loss of data or profits arising out of or in connection with information requested from ASCL member support or legal staff unrelated to the member's own contract of employment and conditions of service.
- 57** No transmission of data over the internet can be guaranteed as totally secure. Whilst ASCL strive to protect members' information, ASCL offer no warranty as to the security of information transmitted over the internet and ASCL cannot ensure the security of any information its members' transmit to ASCL over the internet. Accordingly, any information which members transmit to ASCL over the internet is transmitted at the member's own risk.
- 58** This policy is owned by ASCL's Director of Member Support.



“My field officer and the ASCL solicitor kept me going when everything seemed very challenging...”

Contact us

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