

Legal support policy





"I am indebted to ASCL for my current situation. ASCL can be proud of the excellent and vital work it does for its members."



Introduction

This leaflet explains how ASCL offers legal support to its members. Of course, many people progress through their professional careers without ever needing to access such advice but it is very important for members to know what support will be available should they require it. ASCL staff will also use this information when advising colleagues who may be considering requesting some advice.

Members rightly expect that the association will support them when they find themselves facing threats to their employment or conditions. It is ASCL's responsibility to provide clear information as to how decisions will be made regarding the association's involvement in their situation and the funding of the support. Association staff also need to be clear about the policy and procedures that they should follow for advising and representing members.

This leaflet sets out ASCL's policy together with practical and transparent procedures that will:

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

It is always best if members ring for advice sooner rather than later. Many situations benefit from a discussion early on and prompt action can often help to prevent future difficulties arising.

If further information or clarification is required, please contact ASCL's member support director at headquarters, on 0116 299 1122.

Policy

1 The association is committed to supporting and protecting its members¹ and to providing them with legal advice and assistance whenever possible and desirable². Full and affiliate members are entitled at the discretion of Council or of a committee of Council to receive legal advice and assistance in professional matters³ whilst other classes of members shall have such rights as Council may determine⁴.

The trustees exercise trusteeship over all the funds of the association^{5/6}. Council manages the association's affairs⁷ and has the power to institute, conduct, defend, compromise or abandon any legal proceedings by or against the association, or its officers⁸. The executive and association committees and the presidential trio receive regular reports regarding legal support matters. The presidential trio, the executive committee and

¹ ASCL *Constitution and Rules* 2007 edition paragraph 3.1

² ASCL *Constitution and Rules* 2007 edition paragraph 3.6

³ ASCL *Constitution and Rules* 2007 edition paragraphs 5.1.4 & 5.2.3

⁴ ASCL *Constitution and Rules* 2007 edition paragraphs 5.3

⁵ ASCL *Constitution and Rules* 2007 edition paragraph 15.1

⁶ Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) paragraph 12 "All property belonging to a trade union shall be vested in trustees in trust for it."

⁷ ASCL *Constitution and Rules* 2007 edition paragraph 12.1

⁸ ASCL *Constitution and Rules* 2007 edition paragraph 12.2.3

the board may be regarded as the association's 'directing mind'⁹ and take the responsibility delegated to them by the trustees, for managing the association's funds and the support of members.

- 2 The association may institute, conduct, defend, compromise or abandon any legal proceedings and such decisions will be taken with due care and diligence having sought advice where appropriate.
- 3 Requests from members for advice and legal assistance are handled directly by the member support department. The following categories of membership are entitled to hotline and legal assistance:
 - full members working in the UK
 - affiliate members
 - associate members who undertake part time supply or teaching work and who have paid for ASCL's legal and professional services
- 4 ASCL may offer advice and support to members regarding professional issues that arise provided that the member was in membership and that the membership department of ASCL was satisfied that his/her subscription was properly paid before the difficulty arose. This is made clear on the application form for membership¹⁰. Advice and support is offered within the terms of this policy.
- 5 Where an issue has arisen before a person joined ASCL and made the arrangements for the payment of his/her subscription, the association will not normally be able to offer support.
- 6 In the event of a member being in arrears with the payment of his/her subscription, ASCL may be unable to continue to offer advice and support. If these have been withdrawn in such circumstances, ASCL will decide whether it can resume advice and support with regard to the issue only when the subscription has been properly paid.
- 7 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.
- 8 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

"My field officer and the ASCL solicitor kept me going when everything seemed very depressing..."

⁹ L Sealy & S Worthington *Cases and Materials in Company Law* 8th edition 2007: "Some of the people in a company... are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company..." (Of course, a trade union is not a company – the phrase is merely illustrative).

¹⁰ "I agree to abide by the terms and conditions set out in the ASCL *Constitution and Rules* and the *Legal Support Policy* (available at www.ascl.org.uk or on request from the ASCL communications department). ... ASCL cannot give legal support for issues that arose before an individual was accepted as an ASCL member."

provided to ASCL (including data held on its database), it is used solely in accordance with the provisions of the Data Protection Act 1998.

- 9 ASCL may offer legal support with matters arising with regard to employment disputes, employment tribunal claims, representation before the GTC(E) and GTC(W), work-related breach of contract claims, contracts of employment, criminal defence arising from the member's employment (subject to advice from specialist advisers that a defence is available to the alleged criminal act or acts) and proposed litigation against the member (subject to there being reasonable prospects of success).
- 10 ASCL is not able to offer support with any legal matters or claims not arising in relation to the member's employment, with judicial review proceedings or with other matters relating to what may be considered to be an inappropriate use of association funds. ASCL may offer advice in relation to defending or pursuing defamation claims but will not offer support with legal action in that connection.
- 11 The basis of support set out in this document 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.
- 12 Where a member has admitted to criminal or other unlawful behaviour or, in the reasonable opinion of the association, has no viable defence to such a charge, or has behaved with recklessness or with a wilful neglect of his/her duty, ASCL will not normally be able to offer legal support. ASCL may be able to continue to offer personal and pastoral support.
- 13 It is not possible for ASCL to offer support to governors or schools or colleges as the association's function is to support its members.
- 14 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 professional character, status and interests and which arise in the course of their professional life. This means that ASCL must use its funds prudently in order to avoid incurring disproportionate expenditure and with due regard to the likelihood of success.
- 15 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.
- 16 Funds will not be used in order to achieve a very limited financial advantage for an individual member.
- 17 Conflict between ASCL members in the same team sometimes occurs. Each ASCL member, whatever his or her position, 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. ASCL will inform each member concerned that a



conflict of interest between members has arisen and the action that is being taken.

- 18 Advice may be given by ASCL employees including field and regional officers, in-house solicitors and specialists and also by external professional and legal practitioners. Where external advisers are engaged they will be instructed by and act under the direction of ASCL and 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 another firm of lawyers, the member will be duly consulted and informed.
- 19 ASCL funds will not be used to pay the costs of any consultations, instructions or proceedings undertaken without its specific prior consent.
- 20 In the event that the member fails to disclose, or furnishes incorrect or misleading information to ASCL or, on application for membership, fails to declare any relevant information within the member's knowledge, ASCL will not provide support, or will withdraw support, as the case may be.
- 21 The prime concern of ASCL will always be to offer members appropriate legal support and this will be in the context of the responsible 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 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.
- 22 Where employment tribunals feel it may be appropriate, judicial mediation is offered to the parties involved in a dispute. Such mediation involves a

specially trained employment judge acting as mediator. Both parties attend, usually for a day with their legal advisers, to see if they can come to an agreed settlement. If they do come to a settlement, considerable benefits are achieved for all concerned. The proceedings are entirely confidential and if agreement is not reached the parties are still able to proceed with the case. ASCL policy is to advise members to agree to judicial mediation whenever it is offered by the tribunals. If such advice is not accepted, it may be that ASCL will withdraw support.

- 23 If as a result of ASCL's involvement with a situation, the member concerned wishes to complain about the support that s/he is given at any stage, s/he may use the ASCL complaints procedure, a copy of which will be provided upon request.

Procedures

- 24 Members' requests for advice and support will normally be made in the first instance to the hotline. The hotline telephone, 0116 299 1122, is staffed by one or more duty officers from 9am to 5pm on 365 days a year and queries can also be made by letter (130 Regent Road, Leicester LE1 7PG), fax (0116 299 1123) or email (hotline@ascl.org.uk). On weekdays when the Leicester office is open, the telephone will be answered by a member of the reception staff

"The regional officer was extremely helpful and supportive at a very difficult time – his intervention was invaluable..."



who will request brief details such as membership number and name so that calls can be transferred as efficiently as possible to the duty officer. At weekends and bank holidays, the duty officers can be contacted directly by using a mobile phone number given on the ASCL answering machine.

- 25 Members who have received a first reminder of non-payment of their subscription renewal (60 days after it was due) will have access to hotline advice but not to regional officer or other referrals. If a second reminder is sent (30 days after the first reminder) no access to the hotline will be possible until the subscription has been received.
- 26 Once contacted, the duty officer will log the call on the ASCL database and deal with the matter¹¹. The duty officers are highly experienced former

school and college leaders who understand the issues involved in running education institutions and who keep up to date with education and legal issues. The duty officer's role is to offer the most helpful initial response to the member and s/he may also suggest that the matter be referred to one of the ASCL team of specialist advisers or s/he may offer to refer the member for field or regional

officer support¹². Issues of education law and related policy may be advised on by ASCL's legal consultant or another adviser or specialist and the purchase of consultancy advice from ASCL MAPS may be recommended.

- 27 Advice can usually be given within a brief call but the duty officer may suggest that the member may be contacted by an ASCL specialist via phone or email. Referrals for field or regional officer support are made by the duty officer to the regional officer who will arrange for the member to be contacted as soon as possible using the contact details provided by the member¹³.
- 28 The field or regional officer will usually contact the member by phone and arrange further contact or a meeting as the officer considers appropriate¹⁴. Contact details will be exchanged

¹¹ As with other organisations, such as the Teacher Support Network, ASCL staff will be unable to continue a call if the caller becomes threatening or abusive or appears to be under the influence of drink or drugs. All members of ASCL and all members of ASCL staff are entitled to be treated with dignity and respect.

¹² If information concerning present or past activity that comes within child protection legislation is disclosed, ASCL will have to fulfil its duty to

report matters to the relevant authorities. ASCL also reserves the right to report other potentially criminal activity to the relevant authorities.

¹³ Such contact will normally be made within 48 hours although the vast majority are in fact made within 24 hours.

¹⁴ Such meetings will be arranged at the member's place of work or at an hotel or other convenient venue but will not normally take place in the member's home.

including the member's mobile and extension numbers. The member will also receive a copy of the formal written 'letter of engagement' to outline the conditions of ASCL support (see Appendix 1)¹⁵.

- 29 The field or regional officer will log a summary record of contacts with the member on the ASCL database.
- 30 The field or regional officer may suggest that further advice be sought from senior staff at ASCL such as the department's director or a member of the in-house team of solicitors. S/he will contact these colleagues and will discuss the advice offered with the member.
- 31 Part of the field or regional officer's role is to clarify the various options which may be available to the member and to offer ASCL's advice as to the course of action which may be most beneficial to the member's present and/or future professional position. No action will be taken by the field or regional officer without the agreement of the member.

- 32 The field or regional officer may accompany the member at investigation interviews, court appearances and other meetings or represent¹⁶ the member at panel hearings. They may represent the member at GTC(E) or GTC(W) hearings although this will normally be done by an ASCL in-house solicitor.

33 Field and regional officers will always respect the normal management functions proper to the roles that members have in their schools and colleges and will not accompany members on such occasions.

- 34 All field and regional officers are able to mediate, negotiate and advise members on employment matters. They can advise on the contents and documentation of compromise agreements. They can speak with employers, governors, local authorities and others on behalf of members and they are all covered by professional indemnity insurance.

35 It is vital that the member ensures that the field or regional officer has access to all information material to the case in

"The support from ASCL was outstanding – professional, accurate and completely confidential – first class..."

order for him or her to be able to advise appropriately. All information will be treated as confidential (but see footnote 12).

- 36 ASCL staff will be unable to continue to support any member who becomes threatening or abusive either orally or in writing or who appears to be under

¹⁵ If there is any inconsistency between the letter of engagement and the Legal Support Policy document, the Legal Support Policy document applies.

¹⁶ When accompanying a member to a meeting, investigation interview or hearing, the field or regional officer will be present to give advice and personal support to the member but when representing a member s/he will speak for them and present the case on their behalf.

the influence of drink or drugs. All members of ASCL and all members of ASCL staff are entitled to be treated with dignity and respect.



- 37** If the issue continues without resolution the field or regional officer will consult the member support director and the senior solicitor for specific legal support. If ASCL considers that there is a need, an in-house solicitor may represent a member and accompany him or her to such meetings as an employment tribunal, court hearings or hearings at the GTC(E) and GTC(W) etc. The in-house solicitor will take instructions and directions from ASCL¹⁷. Meetings with the in-house solicitor may be arranged at ASCL HQ or at another convenient venue.
- 38** In certain situations, ASCL may decide to seek external legal advice from local solicitors, direct advice from counsel or from Reynolds Porter Chamberlain LLP, ASCL's London solicitors. The decision to follow this course of action will be made by the member support director in consultation with the field or regional officer, the member and the ASCL senior solicitor. At meetings with external lawyers the member will be accompanied by the field or regional officer who will give the briefing to

the external lawyers and conduct all communication with them. The external lawyers will take all instructions and direction from ASCL which will consult with the member as appropriate.

- 39** 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 local duty solicitor or other legal representation to be made available as soon as possible. It should be noted that although ASCL is not able to offer legal support to members who have admitted criminal activity, personal and pastoral support will be offered wherever appropriate.
- 40** If a member decides to seek advice from or instruct other solicitors or professional advisers (whether or not such advice is paid for), s/he must inform ASCL immediately. Members should be aware that it is not acceptable to have advice coming from more than one source¹⁸. In such an instance ASCL may discontinue offering support or legal advice to the member. However ASCL may decide that the field or regional officer is able to remain in contact to offer personal and pastoral support. If legal advice and/or support have been withdrawn in these circumstances, ASCL will not normally resume legal support of the case. Careful consideration will be given to any such situation before any decision is taken.
- 41** Whilst their case is in progress, members will not normally be expected to contribute anything to the costs of any external legal

¹⁷ See Solicitors' Regulation Authority Code of Conduct 2007 guidance note to rule 2.01 Taking on clients: "If you are an in-house solicitor you are already in a contractual relationship with your employer who is, for the purpose of these rules, your client."

¹⁸ See Solicitors' Regulation Authority Code of Conduct 2007 guidance note to rule 2.01 Taking on clients: "As a matter of good practice you should not act for a client who has instructed another firm in the same matter ..."

or professional support or advice commissioned on their behalf by ASCL. ASCL will normally settle all legal and professional bills arising from ASCL's instructions whilst the case is in progress. Should an issue of payment by an ASCL member arise for any reason, ASCL will inform the member immediately and well in advance in order to explore all possible alternative courses of action.

- 42 At all times the member may decide whether or not to accept and follow the advice of ASCL and/or the advice of external lawyers instructed by ASCL. Occasionally a member's decision may be contrary to the advice of the field or regional officer, in-house solicitors or external lawyers and in such a situation the field or regional officer will seek the views of the member support director or another senior staff member at ASCL as to whether ASCL will continue to provide legal support. It may be that ASCL will withdraw support.
- 43 No decision to withdraw ASCL support will be taken without informing the member and without the case being carefully reviewed by the department director in consultation with other senior ASCL staff. The department director will take the final decision to withdraw support and will inform the member of this decision in writing either by email or letter. If legal support is withdrawn, personal and pastoral support will be offered wherever appropriate.
- 44 If at any point a member decides to decline or not to follow advice, support or representation offered by ASCL, the association may decide not to re-offer such advice, support or representation at a later stage. Careful consideration will be given to any such situation before any decision is taken.
- 45 Should a member wish to complain against support being withdrawn after the above procedure has been followed, the member may follow the ASCL complaints procedure, a copy of which will be supplied upon request. Any complaint should be made within one month of the decision to withdraw support.
- 46 After the first stages of the complaints procedure have been followed, it may be that the ASCL legal committee will be convened upon receipt of a request, within a reasonable time, by the member or by the member support director. The legal committee will normally be drawn from the presidential trio or elected members of the finance and general purposes committee. The legal committee will take such advice as it sees fit at any time from the general secretary and it may also seek further advice from legal or other professional advisers.
- 47 The legal committee will meet in person to review the case or, if this is not possible and/or if time is of the essence, will consider the case by conference call or other electronic means. The legal committee will ask for a brief paper from the member summarising his or her views and a brief paper from the department director summarising the reasons for ASCL's course of action. Neither the member nor the member support director will attend the meeting or take any part in the committee's deliberations. The legal committee will then give a written decision as to ASCL's position and its decision will be final.

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

APPENDIX A

Dear Member

This letter comes to confirm that we shall be very pleased to try to assist you.

Your field or regional officer will do his/her best to advise you and represent you when appropriate, according to your individual requirements, and in the light of information you give him/her about your situation.

You will have a copy of the ASCL legal support document which should be read in conjunction with this letter. If your copy is not to hand, a further copy may be found on the ASCL website or obtained by requesting a copy from the ASCL member support department.

To save your contacting us about the Legal Support document or this letter, we shall assume that you are happy with them unless we hear from you to the contrary. Please contact me with any concerns within ten days of your being referred to a field or regional officer.

The basis of our work together will be that you and your field or regional officer will keep in touch with each other and s/he will offer you advice and suggestions on behalf of ASCL; however, you will always retain ownership of the issues.

At some stage it may be appropriate for us to decide to advise you that it is ASCL's view that we should seek some specific legal advice from ASCL's in-house solicitors or another legal practice. In such circumstances we shall contact our legal advisers after having obtained your consent to share with them information relating to the issue.

You should be clear that if you decide not to accept ASCL's advice or if you choose to seek advice from, or instruct, other professional advisers or solicitors, we may be unable to continue to represent you or to fund that advice.

We should like to reassure you about confidentiality. It may be necessary for your field or regional officer to share matters on a strictly confidential basis with senior staff at ASCL, in order to seek further advice on your behalf, but otherwise anything that you share with him/her will remain confidential, unless otherwise explicitly agreed. You will of course understand that that if any present or past activity that comes within child protection legislation, or potentially criminal activity, is disclosed, ASCL must fulfil its duty to report matters to the relevant authorities.

The association cares a great deal about helping members to achieve the best possible outcomes, and we shall always endeavour to offer you the most appropriate advice. We warmly welcome feedback and I enclose an evaluation form. It would be helpful if you would return it in due course to me at ASCL.

We look forward to working with you. Please do not hesitate to contact us whenever you wish.

Yours sincerely

Rosanne Musgrave
ASCL Member Support Director

