

MEMBERSHIP COMPLAINTS AND DISCIPLINARY REGULATIONS

COMMENCEMENT

1. These Regulations were made by the Council with effect from 20th January 2022, under Articles 9 and 26(B) of the Articles of Association.
2. They came into force on that date, superseding all previous Disciplinary Regulations.

WORDS AND PHRASES

3. In these Regulations the following words, phrases and abbreviations shall, except where the contrary intention appears, have the following meaning:

Articles:

The Association's Articles of Association

Association:

The Grain and Feed Trade Association

Council:

The Council for the time being of the Association.

Member:

- (i) a Corporate Member (which may be under membership categories (A, B, C, F, G, H, J or K)
- (ii) an Unincorporated Member (which may be under membership categories (A, B, C, F, G, H, J or K)
- (iii) an Individual Member (who may be under membership categories D or E)
- (iv) Other Member (including an Honorary Member and those Members falling within membership category I)

Complaints Committee:

The Committee appointed under paragraph 12 below

Complaints Panel:

The Panel of that name appointed under paragraph 4 below

Disciplinary Committee:

The committee appointed under paragraph 39 below

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Disciplinary Panel:

The Panel of that name appointed under paragraph 4 below

Representative:

The principal correspondent for the time being of a Corporate Member or an Unincorporated Member

Reviewer of Complaints:

The Lawyer referred to at paragraph 21 below

The Trade:

The Agricultural Commodities and General Produce Trade

PANELS

4. The Director General of the Association (“Director General”) shall appoint the following Panels from which Committees shall be appointed as provided later in these Regulations:

- (i) a Complaints Panel comprising five persons, three of whom shall be Council members of Gafta (“Council Members”).
- (ii) a Disciplinary Panel comprising five persons, three of whom shall be Council members of Gafta (“Council Members”).

5. The Director General shall appoint one of the Council members of the Complaints Panel and one of the Council members of the Disciplinary Panel to act as Chair of the respective Panels.

6. Appointments to a Panel shall be for a period of not less than three years.

7. No person shall be a member of both the Complaints Panel and the Disciplinary Panel at the same time.

COMPLAINTS

8. A member may make a complaint in writing to the Director General concerning the conduct of another Member. Any such complaint must be made within 12 months of the complainants’ date of knowledge of the complaint and should not involve a complaint which has previously been determined elsewhere including, but not limited to, before an arbitration panel and/or the Courts. This procedure cannot be used in circumstances where, in Gafta’s opinion, a dispute is either a commercial one, which is best resolved directly between the parties and/or a dispute which is legal one and is best resolved by the courts.

9. The Director General can initiate a complaint of his/her own volition where he/she becomes aware of any fact or matter concerning the conduct of a Member which in his/her opinion warrants inquiry under these Regulations.

INITIAL CONSIDERATION BY THE DIRECTOR GENERAL

10. The Director General shall consider the complaint or matter initially and shall take such steps as he/she considers appropriate in an attempt to informally resolve the matter to the satisfaction of the parties involved.

11. If it is not possible to resolve the matter informally, the Director General shall, if he/she considers that there appears to be a case which should be further investigated, refer the matter to the Chair of the Complaints Panel. For the avoidance of any doubt, should the Director General consider that there is no case then the matter will not be referred with the consequence that a complaint cannot be pursued any further under the Regulations.

COMPOSITION OF THE COMPLAINTS COMMITTEE

12. Upon receipt of a referral from the Director General, the Chair of the Complaints Panel shall appoint a Complaints Committee comprising him/herself as Chair together with two others.

13. Instead of appointing him/herself as a member of the Complaints Committee, the Chair of the Panel may, with the consent of the Director General, appoint to the Committee another Council member of the Panel, who shall act as Chair.

DUTIES AND POWERS OF THE COMPLAINTS COMMITTEE

14. The Complaints Committee shall cause inquiries to be made to establish the facts and circumstances of the matter by whatever means it considers appropriate including raising questions directly with the Member concerned. Where relevant, the Member shall be informed upon the raising of any question with it/him/her that such questions are asked in connection with possible disciplinary proceedings. In raising questions with the Member, the Member shall respond in a timely fashion and shall comply with any time limits imposed by the Complaints Committee. For the avoidance of any doubt, the Complaints Committee shall have the power to strike out any complaint if the complainant fails to respond in a timely fashion and/or act in accordance with any time limit imposed.

15. The identity of the complainant (if applicable) shall be made known to the Member concerned unless the Complaints Committee determines, in its absolute discretion, that there are good reasons why the complainant should not be so identified taking into account, inter alia, the need for the Member to fully understand the case against it/him/ her.

DECISION OF THE COMPLAINTS COMMITTEE

16. Upon completion of its inquiries, the Complaints Committee shall decide (by majority vote) (i) whether or not there are good grounds for disciplinary action taking into consideration paragraphs 17 to 19 below, and

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(ii) if there are, what action (if any) it shall take in accordance with paragraph 32 below.

GROUNDINGS FOR DISCIPLINARY ACTION

17. It shall be a ground for disciplinary action if a Member commits any act of unprofessional conduct. This is defined as including, but is not limited to, a Member having:

- (i) Conducted it/him/herself in such a manner as would, in the opinion of the Complaints Committee or Disciplinary Committee as applicable
 - (a) render it/him/her unfit to remain a Member; and/or
 - (b) cause its/his/her membership to be undesirable; and/or
 - (c) be detrimental to the character or position or good standing of the Association; or
- (ii) acted in serious or repeated breach of the Articles or of any Rules, Regulations or applicable Code of Conduct made under the Articles.

18. In determining whether there are grounds for disciplinary action the Complaints Committee or Disciplinary Committee as applicable shall have regard to the Association's General Rules and Regulations, General Code of Conduct and to any other relevant Rules and Codes of Conduct.

19. The following shall be conclusive proof of unprofessional conduct under paragraph 17 above:

- (i) that a Member has, before a Court of competent jurisdiction, pleaded guilty to, or has been found guilty of, a serious criminal offence or; and/or
- (ii) that a Member has unreasonably refused to co-operate with inquiries carried out in accordance with these Regulations; and/or
- (iii) that a Member (not suffering any relevant incapacity) has repeatedly failed to reply to correspondence from the Association ; and/or
- (iv) that a Member has failed to comply with any Order made under these Regulations within one month from the date of the Order; and/or
- (v) that a Member has been censured by a regulatory body.

DECISION OF THE COMPLAINTS COMMITTEE – INSUFFICIENT GROUNDS FOR DISCIPLINARY ACTION

20. Upon a decision by the Complaints Committee that there are not good grounds for disciplinary action, the Association shall inform the Member and complainant (where applicable), drawing attention to the right of the complainant to apply to the Reviewer of Complaints for a review of that decision under regulation 21 below.

REVIEWER OF COMPLAINTS

21. The Reviewer of Complaints (who shall be an independent lawyer appointed by the Director General) shall consider an application made by a complainant for the review of a decision by the Complaints Committee that there are not good grounds for disciplinary action provided that the application is (save in exceptional circumstances at the discretion of the Reviewer of Complaints):

- (i) made in writing, clearly specifying the grounds for seeking the review, and is

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(ii) received by the Association within one month after the date of the decision complained of.

22. If, after considering an application, the Reviewer of Complaints is of the opinion that one or more of the circumstances referred to in paragraph 23 below apply, the matter shall be remitted to the Complaints Committee with a request that it shall be reconsidered.

23. The circumstances referred to in paragraph 22 above are that:

- (i) fresh evidence of a material nature has become available to the complainant since the decision of the Complaints Committee complained of; or
- (ii) the Complaints Committee failed to follow the procedure for the investigation of complaints as laid down in these Regulations; or
- (iii) there is reason to suspect bias on the part of any member of the Complaints Committee who took part in the decision complained of; or
- (iv) the decision of the Complaints Committee was not one which could reasonably have been arrived at upon due consideration of the facts and matters before it.

24. In the circumstances referred to in paragraph 23 (iii) above, the matter shall be remitted for consideration by a newly constituted Complaints Committee, not consisting of any member who took part in the decision complained of. In all other cases referred to in paragraph 23 above, the matter may at the request of the Reviewer of Complaints, but need not necessarily be, remitted for consideration by a differently constituted Complaints Committee.

25. In considering any matter remitted to it by the Reviewer of Complaints, the Complaints Committee shall have regard to:

- (i) all information and representations that were available when the previous decision was reached,
- (ii) any relevant new information and/or representations which have been made since the Complaints Committee came to its decision that there were not good grounds for disciplinary action;
- (iii) Any written reasons given by the Reviewer of Complaints for remitting the matter.

26. If, following its reconsideration of the matter, the Complaints Committee remains of the view that there are not good grounds for disciplinary action; it shall give to the complainant and to the Reviewer of Complaints, written reasons for its decision. The decision of the Complaints Committee shall be final.

27. If, in the opinion of the Reviewer of Complaints, the application for a review of a decision by the Complaints Committee is frivolous, vexatious or otherwise an abuse of process, then the Reviewer of Complaints shall order, and the complainant shall agree, that any legal costs reasonably and properly incurred by the Association in connection with the review shall immediately be reimbursed by the complainant.

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DECISION OF THE COMPLAINTS COMMITTEE – GOOD GROUNDS FOR DISCIPLINARY ACTION

28. Upon a decision by the Complaints Committee that there are good grounds for disciplinary action, it shall:

- (i) recommend a Disciplinary Order in accordance with paragraph 31 below, inviting the Member to consent in to it; or
- (ii) refer the matter to the Chair of the Disciplinary Panel for the appointment of a Disciplinary Committee (paragraph 39 below).

29. In reaching its decision under paragraph 28 above the Complaints Committee shall take into account any relevant guidelines issued by Council.

MEDIATION

30. Notwithstanding anything in the foregoing Regulations, the Director General or the Complaints Committee may also, where it considers appropriate, explore the possibility of resolving any complaint by mediation on such terms as the Director General or the Complaints Committee deem fit.

CONSENT ORDERS

31. If, upon a decision that there are good grounds for disciplinary action, the Complaints Committee is of the opinion that the matter is one that is appropriate to be dealt with under paragraph 28 (i), it shall serve written notice on the Member informing it/him/her of its decision and of the disciplinary action (if any) that it recommends, inviting it/him/her to consent to the proposed Order.

DISCIPLINARY ACTION

32. Any one or more of the following Orders of disciplinary action may be made by the Disciplinary Committee or recommended by the Complaints Committee as is considered appropriate (and on such terms and conditions and for such periods as is considered appropriate) having regard to the nature and seriousness of the unprofessional conduct, the Member's character and past record and to any other relevant circumstances:

32.1 In the case of a Corporate or Unincorporated Member (under membership categories A, B, C, F, G, H, J, K) that it:

- (i) be expelled from membership of the Association;
- (ii) have its membership of the Association suspended;
- (iii) be reprimanded and/or given a written warning;
- (iv) be fined a sum not exceeding such maximum figure as the Council may from time to time set;
- (v) give a written undertaking to refrain from continuing or repeating the unprofessional conduct in question;
- (vi) be ordered to remove its Representative and to replace him/her with another

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Representative approved by the Association.

32.2 In the case of an Individual Member (under membership categories D & E) and Other Member (including an Honorary Member and those Members falling within membership category I) that he/she:

- (i) be expelled from membership of the Association;
- (ii) have his/her membership of the Association suspended;
- (iii) have his/her authority to act as an Arbitrator, Appeal Board Member or Mediator revoked;
- (iv) be reprimanded and/or given a written warning;
- (v) be fined a sum not exceeding such maximum figure as the Council may set from time to time;
- (vi) give a written undertaking to refrain from continuing or repeating the unprofessional conduct in question.

32.3 In the case of any type or category of Member that:

- (i) no action be taken despite the fact that there are grounds for disciplinary action;
- (ii) (whether or not disciplinary action is taken), it/ he/she shall pay to the Association a sum in respect of costs, not exceeding such maximum figure as the Council may set from time to time.

32.4 In the case of expulsion under 32.1 (a) or 32.2 (a) no application may be made for re-admission to the Association for a period of 3 years beginning from the date on which the expulsion order was made in. In any event, a Member expelled under 32.1 (a) or 32.2 (a) shall only be entitled to make one application for re-admission as a member.

33. The Complaints Committee/Disciplinary Committee may also, wherever it considers appropriate, and whether or not it decides to recommend/order any disciplinary action, communicate to the Member its advice as to its, his or her future conduct on such terms as it sees fit.

34. A Member shall comply with an Order made under paragraph 32 within one month of the date of the Order. Failure to do so shall be regarded as conclusive proof of unprofessional conduct.

MEMBER'S RESPONSE TO RECOMMENDATION OF COMPLAINTS COMMITTEE

35. The Member shall respond in writing within one month from the date of the notice sent to him under paragraph 31 above, either providing its, his or her consent to the proposed Order or refusing such consent.

36. If the Member provides its, his or her written consent or does not respond within the permitted period, the recommendation of the Complaints Committee shall stand as the Order of the Association.

PUBLICATION

37. An Order made under paragraph 32 above shall be published as soon as is practicable.

REFERRAL TO DISCIPLINARY PANEL

38. If, within the period permitted, the Member refuses its, his or her consent to the proposed Order, or if the Complaints Committee decides under paragraph 28 (ii) above to refer the matter to the Chair of the Disciplinary Panel, it shall be so referred.

COMPOSITION OF THE DISCIPLINARY COMMITTEE

39. Upon receiving a referral under paragraph 38 above, the Chair of the Disciplinary Panel shall appoint a Disciplinary Committee comprising him/herself as Chair, together with two others.

40. Instead of appointing him/herself as a member of the Disciplinary Committee, the Chair of the Disciplinary Panel may with the consent of the Director General appoint to the Disciplinary Committee another Council member of the Disciplinary Panel to act as Chair.

THE LEGAL ASSESSOR

41. In cases where the Chair of the Disciplinary Committee is not legally qualified, an independent lawyer of not less than 10 years standing shall be appointed to act as Legal Assessor, to advise and assist the Disciplinary Committee in accordance with guidelines issued by Council, to be present at the hearing of any matter (but to have no vote in determining the case).

THE PROSECUTOR

42. The Director General or such other person as the Director General may nominate, shall, on behalf of the Association or complainant, present ("prosecute") the case before the Disciplinary Committee.

PROCEDURE OF THE DISCIPLINARY COMMITTEE

43. The hearing of the case shall be conducted in accordance with the following provisions except where to do so would be unjust or inconvenient when the Chair of the Disciplinary Committee may (and if he/she is not legally qualified, after consultation with the Legal Assessor) modify the procedure to the extent that he/ she deems necessary, provided that the result is fair to the Member under complaint.

NOTIFICATION OF INTENTION TO HOLD HEARING AND EXCHANGE OF INFORMATION

44. Following the appointment of the Disciplinary Committee, the Association shall serve on the Member a written notice including:

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- (i) a statement of the Association's intention to hold a hearing before the Disciplinary Committee;
- (ii) sufficient particulars of the alleged unprofessional conduct as to enable the Member adequately to understand the case against it/him/her;
- (iii) a summary of the facts and matters relied upon by the Association in presenting the case; and
- (iv) copies of any written statement and/or other document that the Association intends to rely upon;

And requesting the Member to confirm in its/his/her response whether it/he/she wishes to have the matter dealt with on paper only or at a hearing.

45. Within one month from the date of the notice referred to in paragraph 44 above, the Member shall serve upon the Association written notice giving:

- (i) particulars of any defence intended to be made;
- (ii) a summary of the facts and matters that will be relied upon in that defence; and
- (iii) copies of any written statement and/or other document that it/he/she intends to rely upon;

And confirming whether it/he/she wishes to have the matter dealt with on paper only or at a hearing.

DETERMINATION ON PAPER

46. If, within the period permitted, the Member notifies the Association in accordance with paragraph 45 above that it/he/she wishes the matter to be dealt with on paper only, or if he/she does not respond within the period permitted, the Disciplinary Committee shall proceed to determine the matter on paper and without a hearing as soon as is practicable and shall inform the Association and the Member of its decision and of any disciplinary action ordered in accordance with paragraph 32 above.

47. The Disciplinary Committee may, in appropriate circumstances at its discretion, reserve its decision as to what, if any, disciplinary action to order pending receipt of any representations the Member may wish to make in mitigation of penalty.

NOTIFICATION OF DATE FOR HEARING AND FURTHER EXCHANGE OF INFORMATION

48. If, within the period permitted, the Member notifies the Association in accordance with paragraph 45 above that it/he/she wishes to have its/his/her case dealt with at a hearing, the Association shall proceed to a hearing before the Disciplinary Committee, in accordance with the following paragraphs.

49. The Association shall, as soon as is practicable, serve upon the Member at least one month's written Notice of the date, time and place of the hearing.

50. The Association shall also indicate in the Notice referred to in paragraph 49 above any further facts, matters, written statements and/or documents not previously supplied that it intends to rely

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upon at the hearing, advising the Member of the name of any witnesses it intends to call in person to attend the hearing with an outline of what each witness is expected to say. Alternatively, the Association may inform the Member of its intention to seek a Pre-Trial direction from the Chair of the Disciplinary Committee in accordance with paragraph 52 below.

51. Within 21 days from the date of the Notice referred to in paragraphs 49 and 50 above, the Member shall serve upon the Association written notice as follows:

- (i) confirming its/his/her intention to attend the hearing together with the name of any solicitor, barrister or other Member who will be representing it/him/her;
 - (ii) indicating any further facts, matters, written statements and/or other documents it/he/she intends to rely upon;
 - (iii) advising the Association of the name and address of any witnesses it/he/she intends to call in person to attend the hearing with an outline of what each witness is expected to say.
- Alternatively, the Member may advise the Association of its/his/her intention to seek a Pre-Trial Direction in accordance with paragraph 52 below.

PRE-TRIAL DIRECTION

52. At the request of either party or at his/her own volition, the Chair of the Disciplinary Committee may (and if he/ she is not legally qualified, after consultation with the Legal Assessor) give directions for the just and convenient hearing of the matter, including directions:

- (i) for the service and/or exchange of witness statements;
- (ii) for the service of documents;
- (iii) for the preparation of an agreed bundle for use at the hearing;
- (iv) for the admission of facts before the hearing;
- (v) for the submission of outline arguments;

And may include the dates by which any directed action shall be taken (including, if necessary, an order for the adjournment of the hearing).

ADJOURNMENT

53. At the request of either party or at his or her own volition the Chair of the Disciplinary Committee may (and if he/ she is not legally qualified, after consultation with the Legal Assessor) at any time adjourn the hearing if satisfied that it is in the interests of justice so to do. An application for the adjournment of a hearing that has not begun may be agreed between the parties.

54. In the event that any member of the Disciplinary Committee is unwilling or unable to hear an entire case and the matter cannot be dealt with by adjournment of the hearing, then the Chair of the Disciplinary Panel shall appoint a new Member and the case shall be re-heard.

THE ABSENCE OF THE MEMBER

55. If, at the hearing, the Member is not present or represented by a solicitor or barrister or by another Member, the Disciplinary Committee may proceed to hear the matter in the Member's absence if it is satisfied that Notice has been served upon it/him/her in accordance with paragraphs 49 and 50 above.

JOINDER OF CASES

56. The Disciplinary Committee may hear two or more cases against a Member at the same time if it considers it appropriate and just to do so.

JOINDER OF MEMBERS

57. The Disciplinary Committee may also hear cases against two or more Members at the same time if it considers it appropriate and just to do so.

PROOF AND EVIDENCE

58.

- (i) The burden of proving the alleged unprofessional conduct shall lie upon the Association.
- (ii) The Disciplinary Committee shall not be bound by strict rules of evidence.

PUBLIC HEARING

59. The hearing shall be conducted in private unless the Chair of the Disciplinary Committee believes that there are special circumstances which would warrant it taking place in public (and if he/she is not legally qualified after consultation with the Legal Assessor).

ORDER OF PROCEEDINGS

60. The order of proceedings for the hearing before the Disciplinary Committee, unless the Chair of the Disciplinary Committee otherwise directs, shall be as follows:-

- (i) submissions by or on behalf of the Association;
- (ii) hearing of any witnesses called by the Association followed by cross examination of such witnesses by or on behalf of the Member;
- (iii) submissions by or on behalf of the Member;
- (iv) hearing of any witnesses called by the Member followed by cross-examination of such witnesses by or on behalf of the Association;
- (v) closing submissions by or on behalf of the Association;
- (vi) closing submissions by or on behalf of the Member;
- (vii) after retiring as necessary, the Disciplinary Committee shall advise the Member whether or not it finds any allegation of unprofessional conduct proven.

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61. Members of the Disciplinary Committee may themselves at any stage question witnesses, parties or representatives as they think fit.

ORDER OF PROCEEDINGS FOLLOWING A FINDING OF UNPROFESSIONAL CONDUCT

62. The Association shall, following a finding of unprofessional conduct, inform the Disciplinary Committee of any further circumstances known to it, whether favourable or adverse to the Member that might be relevant to any Order which the Committee might make.

63. The Member shall, on serving written notice to the Disciplinary Committee within one month of the date of its finding of unprofessional conduct, then be entitled to address the Disciplinary Committee in mitigation of penalty, and for this purpose may call witnesses and produce documents.

64. The Association shall only be entitled to respond
(i) at the request of the Disciplinary Committee;
(ii) in order to challenge any contested matters of fact; or
(iii) on the subject of the Disciplinary Committee's powers.

DECISION

65. The Disciplinary Committee may, following a finding of unprofessional conduct, order any one or more courses of disciplinary action in accordance with paragraph 32 above.

66. The decision of the Disciplinary Committee shall be final and there shall be no right of appeal.

NOTIFICATION OF DECISION

67. The Association shall serve on the Member written notice of the decision of the Disciplinary Committee together with any disciplinary action ordered as promptly as is practicable after the conclusion of the hearing and, whether or not the Member attended the hearing.

REASONS

68. The Disciplinary Committee shall, upon written request by the Member, provide him or her with written reasons for the decision as soon as is practicable.

RECORDING

69. The proceedings before the Disciplinary Committee shall be recorded and a transcript shall be provided upon written request by the Member and on payment by it/him/her of the costs involved.



PUBLICATION OF DECISION

70. The Association shall publish the decision of the Disciplinary Committee as soon as is practicable.

SERVICE OF NOTICES/DOCUMENTS

71. Any notice or other documents required by these Regulations to be sent to or be served on a Member may be delivered either personally or by post.

72. Where any such notice or any document is served by post, it shall be sent to the last address of the Member concerned which is recorded by him with the Association and (unless returned to the Association), it shall be deemed that wherever that address may be, to have been served on the second day following that on which it was posted unless at the place of receipt that latter day is a Sunday or a public holiday in which case service shall be deemed to have occurred on the first day thereafter which is not one of such exceptional days.

73. Costs. For the avoidance of doubt, a Member shall in all circumstances bear its/his/her own costs, legal or otherwise, incurred in respect of matters under these Regulations.

SPECIAL CIRCUMSTANCES

74. Notwithstanding any other provision in these Regulations, any Member who is a Defaulter (as defined in the Defaulters section of the relevant Gafta Rules) shall be immediately suspended from membership. The suspension shall last for such time during the membership year as the default remains unsettled. In the event of the default remaining unsettled as at the time of renewal of membership, the Member agrees that Council may, in its absolute discretion, refuse to renew membership or, should membership be renewed, impose any such restrictions on membership as it shall deem appropriate.

75. For the avoidance of doubt, during any period of suspension a Member shall forfeit all membership benefits including, without limitation; access to the Gafta Membership Directory, participation on any Gafta committee (including on Council), discounted fees for Gafta arbitrations, recognition as an approved Gafta Appointed Analyst and Superintendent, access to Gafta's Trade Policy services, discounted fees on all Gafta training and events and access to Gaftaworld and any Gafta Circular.