

# Independent Complaints Process for the Invoice Finance and Asset Based Lending Industry

## Scheme Rules

These rules apply to application forms received by Centre for Effective Dispute Resolution (“CEDR”) on or after 1 January 2021.

CEDR is committed to providing appropriate accessibility for everyone that it deals with. If you require this document in an alternative format, please contact CEDR for further details.

### 1 General

- 1.1 The Independent Complaints Process for the Invoice Finance and Asset Based Lending Industry (“the Scheme”) is administered by Centre for Effective Dispute Resolution (CEDR). The Scheme provides an informal and independent way of adjudicating unresolved disputes between an eligible “complainant” and a UK Finance IFABL Member company (an “IFABL Member”).
- 1.2 An eligible “complainant” is, or was at the time of the action occurring, a client, a prospective client, a guarantor/indemnifier of a client or prospective client, or a former client, of an IFABL Member.
- 1.3 To make a complaint about an IFABL Member, the complainant must first complain formally to the IFABL Member involved to allow them the opportunity to address the issues raised. Once this has been done a complaint must be registered with UK Finance. The Scheme cannot accept complaints about IFABL Members directly from a complainant.
- 1.4 The complainant’s complaint must be made by an ‘Officer’ of the complainant’s business in position at the time that the issue(s) complained about took place, such as a Director or Proprietor (or an authorised representative of the same), or a guarantor/indemnifier who has directly given a personal guarantee and/or indemnity to the IFABL Member.
- 1.5 Use of the Scheme is mandatory for IFABL Members where an eligible complaint has been referred to it by a complainant.
- 1.6 Decisions under the Scheme are taken by independent adjudicators appointed by CEDR. An adjudicator appointed under these Rules will make a decision on the dispute by considering the information and evidence received from the complainant and the IFABL Member, as well as the relevant law. A Final Decision made by an appointed adjudicator is binding on both parties if the complainant chooses to accept that Final Decision within 20 working days of it being sent to them.
- 1.7 Any decision made by an adjudicator appointed under these Rules applies only to the dispute pursuant to which the decision was made. Adjudicators will take a consistent approach in reaching their decisions but every dispute will be decided on its own facts and a decision made by an adjudicator in one dispute will not establish a precedent for future cases.

### 2 Scope of the Scheme

- 2.1 The Scheme can be used to resolve disputes between complainants and IFABL Members where all of the following criteria are met:

- 2.1.1 The complaint relates to a factoring, invoice discounting and/or asset-based lending facility or a proposed facility through an existing IFABL Member of UK Finance; and
- 2.1.2 The action or actions relating to the complaint took place on or after 1 July 2013; and
- 2.1.3 The complainant is not seeking a financial award in excess of £50,000.00 in relation to the dispute. For complaints where the action or actions relating to the complaint took place prior to 1 January 2021, this figure is £28,000.00.
- 2.2 The Scheme cannot be used to adjudicate disputes that fall into one or more of the following categories:
  - 2.2.1 Complaints that do not meet all of the criteria set out at Rule 2.1 above;
  - 2.2.2 Complaints made by someone who does not fall within the definition of an eligible "complainant" under Rule 1.2 above;
  - 2.2.3 Complaints which have not been made by an 'Officer' of the complainant's business in position at the time that the issue(s) complained about took place, such as a Director or Proprietor (or an authorised representative of the same), or a guarantor/indemnifier who has directly given a personal guarantee and/or indemnity to the IFABL Member;
  - 2.2.4 Complaints that are made against a company which is not an IFABL Member of UK Finance at the point that the dispute is received by CEDR;
  - 2.2.5 Complaints which have not been first formally raised with the IFABL Member and then registered with UK Finance after the IFABL Member has either (a) had a period of 12 weeks (unless this period has been extended by either UK Finance or CEDR) from the point at which the complaint was made to achieve a resolution, or (b) issued the complainant with a 'Deadlock Letter';
  - 2.2.6 Complaints where the complainant gave the IFABL Member notice of the matter which is subject to the complaint more than 12 months before contacting UK Finance;
  - 2.2.7 Complaints registered with UK Finance more than six months after the IFABL Member advised the complainant that it was unable or unwilling to resolve the complaint to the complainant's satisfaction (i.e. the Deadlock Letter was received by the complainant more than six months prior to the complaint being registered with UK Finance);
  - 2.2.8 Complaints that have been or are the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such court proceedings or alternative procedure have been abandoned, stayed or suspended);
  - 2.2.9 Complaints which are more appropriately dealt with by a court, regulatory body, or other formal process;
  - 2.2.10 Complaints which are frivolous and/or vexatious;
  - 2.2.11 Complaints which have been previously agreed by the parties to be settled, unless the terms of that settlement have not been fulfilled;
  - 2.2.12 Where dealing with such a type of complaint would seriously impair the effective operation of CEDR.
- 2.3 If the dispute does not fall within the scope of the Scheme as expressed above, the parties can nevertheless agree to use the Scheme.
- 2.4 The power to determine whether a dispute falls within the scope of the Scheme rests with CEDR. The decision of CEDR as to the eligibility of a dispute is final.

### 3 Applying to use the Scheme

- 3.1 To apply to use the Scheme, the following criteria must be fulfilled:

- 3.1.1 The complaint has been formally registered with the IFABL Member involved; and
- 3.1.2 The IFABL Member has had a period of 12 weeks from the point of a complaint being formally made to achieve a resolution (this period can be extended where it can be clearly demonstrated that the IFABL Member is making substantive progress in addressing the complaint), or the Member has issued the complainant with a 'Deadlock Letter' (i.e. an official letter from the IFABL Member confirming that it has not been possible to resolve the complaint); and
- 3.1.3 The complainant has not already accepted a final settlement or resolution in relation to the complaint.
- 3.2 Once the criteria set out at Rule 3.1 above have been fulfilled, the complainant is eligible to formally register the complaint with UK Finance. This should be done by contacting UK Finance directly. UK Finance will log the complaint, ensure that the required basic information is available, and then pass the complaint file to CEDR.

#### 4 **The Adjudication Procedure**

- 4.1 Within two working days of CEDR's receipt of the complaint file from UK Finance, CEDR will contact UK Finance, the complainant and the IFABL Member to acknowledge receipt of the complaint file.
- 4.2 Within five working days of CEDR's receipt of the complaint file from UK Finance, CEDR will appoint an adjudicator to resolve the dispute.
- 4.3 The adjudicator may, via CEDR's administration team, contact the parties by phone, letter or e-mail to ask for further documents or information that the adjudicator may need to assist in its review of the dispute. If the parties do not provide the extra information within the time the adjudicator sets, the adjudicator may decide the dispute by considering only the information already provided. The Scheme will copy to the other party any additional documents or information supplied in response to such a request.
- 4.4 An adjudicator appointed under these Rules will be fair and unbiased at all times, and will make a decision taking into account the following:
  - 4.4.1 The information and evidence contained within the complaint file (as well as any additional information and evidence submitted by the parties in response to a request for such under Rule 4.3 above);
  - 4.4.2 Any relevant laws;
  - 4.4.3 The contract in place between the IFABL Member and the complainant;
  - 4.4.4 The UK Finance Invoice Finance and Asset Based Lending Code; and
  - 4.4.5 Fairness and reasonableness.
- 4.5 If the adjudicator upholds the complaint in full or in part, they can direct the IFABL Member to provide the complainant with any one or more of the following remedies:
  - 4.5.1 An apology;
  - 4.5.2 An explanation of what went wrong;
  - 4.5.3 An appropriate remedial action;
  - 4.5.4 A financial award up to a maximum of £50,000.00. For complaints where the action or actions relating to the complaint took place prior to 1 January 2021, the maximum award is £28,000.00.
- 4.6 Within 40 working days of their appointment, the adjudicator will produce a written proposed conclusion to the dispute alongside reasons for that proposed conclusion ("the Proposed

Decision”). CEDR will send the Proposed Decision to the complainant and the IFABL Member and will invite their comments thereon within 10 working days. Any comments must be restricted to points that have already been raised in the case and must not introduce any new complaints or evidence.

- 4.7 Any comments that the complainant and/or IFABL Member have on the Proposed Decision will be forwarded to the adjudicator, who may or may not take such comments into account. The adjudicator has the power to make any amendments he or she considers appropriate to the Proposed Decision before producing the Final Decision. The adjudicator will usually produce the Final Decision within five working days of receipt of the parties’ comments on the Proposed Decision.
- 4.8 Once CEDR receives the Final Decision from the adjudicator, it will send copies to both the complainant and to the IFABL Member simultaneously. A copy of the Final Decision will also be sent to UK Finance.
- 4.9 The Final Decision will only be binding on the complainant and the IFABL Member if the complainant notifies CEDR in writing that they accept the Final Decision in full. The complainant has 20 working days of the Final Decision being sent to them to notify CEDR of their acceptance.
- 4.10 If, during the time period specified at Rule 4.7 above, the complainant advises CEDR that they reject the Final Decision, or that they do not accept the Final Decision in full, or if the complainant fails to contact CEDR during the time period, the Final Decision will not be binding on either party. The Final Decision cannot be accepted at a later date.
- 4.11 Adjudicators’ decisions are final. They cannot be reviewed or appealed under any circumstances.

## 5 Compliance with the Decision

- 5.1 If the Final Decision directs the IFABL Member to provide the complainant with one or more of the remedies set out at Rule 4.5 above, the IFABL Member must provide the remedy or remedies within 20 working days from the date of publication of the Final Decision, unless the adjudicator has directed an alternative timescale for compliance.
- 5.2 If the IFABL Member is for any reason unable to provide the directed remedy or remedies within the timescale at Rule 5.1 above, the IFABL Member must advise the complainant and CEDR why that is before the above timescale expires. At the same time, the IFABL Member must specify a substitute date by which the remedy or remedies will be provided to the complainant.
- 5.3 CEDR is unable to enforce compliance with decisions, nor is CEDR able to apply penalties or sanctions to an IFABL Member for failing to comply with an adjudicator’s decision.

## 6 Powers of the Adjudicator

- 6.1 During their appointment, the adjudicator has the power to take any of the following actions:
- 6.1.1 Request further information and/or evidence from either or both parties, and set time limits in which the parties must provide such information and/or evidence;
- 6.1.2 Proceed with the adjudication if either the complainant or the IFABL Member does not keep to these Rules or any instruction or direction made pursuant to these Rules;
- 6.1.3 Consult any relevant evidence not presented by the parties (but the adjudicator must tell the parties about such evidence and give them an opportunity to provide comments);
- 6.1.4 End the adjudication if, in the adjudicator’s opinion, the entirety of the claim falls outside the scope of the Scheme (there is no appeal if the adjudicator decides to end the adjudication);

- 6.1.5 End the adjudication if the parties settle the dispute before a Final Decision is made;
- 6.1.6 Determine whether or not the IFABL Member has complied with the Final Decision, in the event that a dispute arises between the parties regarding compliance.

## 7 **Costs**

- 7.1 CEDR's costs will be paid by the IFABL Member involved. There will be no charge for a complainant to access the Scheme, regardless of whether or not the claim is upheld.
- 7.2 The complainant and the IFABL Member must pay their own costs of preparing their cases. By using the Scheme, each party agrees not to take any legal action against the other to recover such costs.

## 8 **Confidentiality**

- 8.1 No party involved in the adjudication will give details of the adjudication or the decision (including the reasons for it) to any person or organisation (other than UK Finance) not directly involved in the adjudication, unless this is necessary in order to enforce the decision.
- 8.2 By using the Scheme, the parties agree that CEDR and UK Finance may gather, retain and publish statistics and other information in relation to cases whilst preserving the anonymity of the parties.

## 9 **Other Rules**

- 9.1 CEDR will appoint a substitute adjudicator if the adjudicator originally appointed is unable to deal with the dispute for any reason. CEDR will inform the parties if such an appointment is made.
- 9.2 With the exception of amending a decision following any minor error and providing clarification on a specific point regarding the adjudicator's decision, neither CEDR nor the adjudicator will enter into correspondence relating to any decision.
- 9.3 If the complainant or the IFABL Member has a complaint about the quality of service provided in the course of the administration of a CEDR case, the complaint should be made through CEDR's published complaints procedure, copies of which are available from the CEDR website. The complaints procedure cannot be used to challenge the content or outcome of an adjudicator's decision, the decision process adopted by an adjudicator, or the contents of these Rules.
- 9.4 If either the complainant or the IFABL Member requires their original documentation to be returned to them, they must make such a request within 20 working days of the date of the adjudicator's decision being sent to them. If no such request is made, CEDR will dispose of the documents securely.
- 9.5 Any reference in these Rules to working days by definition excludes Saturdays, Sundays and bank/public holidays celebrated in England and Wales.
- 9.6 The Scheme, including these Rules, may be updated from time to time. Disputes will be determined according to the Rules in force at the time a complaint file is referred to CEDR by UK Finance.