

# Byelaws 2023

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trust in media

**DEFINITIONS**

ABC/We/Us/Our	Audit Bureau of Circulations Ltd
You	The member
ABC Advertisements	Advertisements designed and/or provided by ABC to members to use to promote awareness of ABC and/or the ABC certification of their products
ABC Data or Information	Data or information published or certified by ABC in relation to Registered Products
ABC Logo	Any official logo issued by ABC
Approved Auditor	Auditor appointed by the member and approved by ABC to conduct audit work for ABC purposes in accordance with the relevant Reporting Standards
ABC Board	Governing body of ABC as defined in memorandum and articles of association
Byelaws	These ABC byelaws as updated from time to time
Chairman/Chief Executive/Head of Compliance	ABC Chairman/ABC Chief Executive/Head of Compliance or official acting in that capacity
Fees	Any fees or charges including annual subscriptions levied by ABC
Official/ABC Official	Employee or other person acting for ABC in an official capacity
Registered Product	Publication, website, exhibition, process, associate member's service or other media product that ABC has confirmed in writing is ABC registered and has not subsequently ceased to be ABC registered through resignation, cancellation, suspension or other means
Reporting Standards	ABC rules and requirements that detail how ABC Data or Information claims are compiled, reported and audited
Return/Return Form	Submission in which circulation / distribution / attendance/other data or information are reported to ABC for certification
Trade Media	Publications and other media which provide information for persons in relation to their employment or interest in the media industry
Written/in writing	Includes communication only by post, fax or email

*Brief introductions to certain sections (shown in Italics) are for convenience only, do not form part of the byelaws and will not affect their interpretation.*

**1. CONSTITUTION**

- a) We operate according to our memorandum and articles of association, byelaws and Reporting Standards. The ABC Board approves changes to the byelaws and Reporting Standards. All of these documents are available from our website [www.abc.org.uk](http://www.abc.org.uk).
- b) It is a condition of your membership of ABC that you will comply with the relevant byelaws and Reporting Standards. Any breach of this condition will entitle ABC to terminate your membership and/or registration of any relevant Registered Product.
- c) In the event of any conflict or inconsistency between ABC Reporting Standards and any other Reporting Standards, the ABC Reporting Standards shall prevail.

**2. APPLICATION FOR MEMBERSHIP AND REGISTRATION**

- a) To apply to become a member of ABC you must submit the relevant application form and any other documentation which we may request. We cannot approve your membership application until we have received payment of the relevant fees.
- b) To register a product with ABC you must submit the relevant application form and any other documentation which we may request. We may need to inspect the relevant records/systems before registering your product.
- c) If we are not able to publish a product's first ABC certificate within 12 months of the date of registering then we reserve the right to cancel the product's registration.

### 3. PUBLICITY RULES

#### ABC Association

- a) Any claim associating an organisation, product, data or information with ABC must be a statement of fact and not be likely to materially mislead.
  - i. You can only make claims of ABC membership while a product is registered with ABC.
  - ii. You must not make inaccurate or misleading statements relating to relevant Reporting Standards, procedures or decisions, either expressly or by implication.
  - iii. Statements must not mislead by omitting information or presenting it in an unclear or ambiguous manner. Whether or not statements are likely to mislead may depend on the context and medium.

#### ABC Logo

- b) You can only use the ABC Logo when we have authorised you in writing to do so, in relation to Registered Products with an issued ABC Certificate.
  - i. You cannot use the ABC Logo in relation to a Registered Product until we have issued that product's first ABC Certificate.
  - ii. If a product ceases to be ABC registered you must stop using the ABC Logo immediately.
  - iii. If more than 18 months has elapsed since the end of the period covered by your last issued ABC certificate then you must stop using the ABC Logo.
  - iv. You must stop using the ABC Logo if we instruct you to do so in writing because a product has ceased to comply with the requirements of an ABC scheme.
  - v. You must not use or position the ABC Logo in a manner that might inaccurately or misleadingly associate an organisation, product, data or information with ABC.

#### ABC Advertisements

- c) Any use of ABC Advertisements must not be likely to convey a misleading association with ABC.
  - i. You may only publish ABC advertisements in Registered Products which have an issued ABC certificate, unless we have agreed otherwise in writing.
  - ii. You must not alter an ABC Advertisement or publish an advertisement which purports to be from or authorised by us, unless we have agreed otherwise in writing.

#### Use of ABC Data or Information

- d) ABC Data or Information must be presented in a clear and reasonable manner that is not likely to mislead.

In relation to any data or information sourced or attributed to ABC:

- i. The data or information must have been issued by us.
- ii. The nature of the data or information must be clear and not be likely to mislead. *For example if it is an extracted figure or subset of a total.*
- iii. Any description of the data or information must be accurate. *For example: 1) Copies distributed must not be described as readers. 2) When quoting a subset circulation figure, such as subscriptions, or a Monday to Friday figure, this must be stated.*
- iv. Latest ABC data or information must be included, unless the context means this is not relevant or appropriate, as soon as practical. *For example: A webpage quoting ABC circulation figures that is aimed at advertisers for trading purposes should include the latest ABC certified figure and period. However a journalist's article analysing historic figures for a given period need not include the latest data.*
- v. You must make it clear to which period the data or information relates.
- vi. If you interpret or adapt ABC Data or Information and source or attribute this to ABC, you must make clear how this has been done and what the data or information represents. *For example: If ABC certified circulation or web traffic data is aggregated in a manner that is not certified by ABC you must make clear what has been combined.*
- vii. Different data can only be aggregated if it relates to the same period. *For example you cannot combine print subscribers from the July to December 2021 period with digital edition subscribers from the January to June 2022 period. You could however combine print subscription sales for January and February and source these to ABC as relating to this period.*

- viii. You must not release or publicise any data (or trends in data) or information relating to a product that is included in a concurrent release of data, or published report, before the official release date and time set by us.

#### Use of non-ABC Data or Information

- e) If you quote non-ABC Data or Information, this must not be presented in a manner that means it could be mistaken as or confused with ABC Data or Information. Whether this is the case may depend on the context and medium.

ABC certificate or excluding it from a concurrent release

#### Claims and Statements

- f) Claims or statements based on ABC Data or Information that are attributed to ABC must be factually correct.
  - i. Where a claim appears to be contradicted by ABC Data or Information but you are using data or information from another source to support the claim then you must identify that alternative source.

#### Comparisons

- g) Comparisons using ABC Data or Information must be objective, fair and not be likely to materially mislead.
  - i. You must compare ABC Data or Information on a like for like basis or, if this is not possible, the differences must be made clear. *For example if two newspapers are being compared, one of which reports monthly and one of which reports 6 monthly but which has monthly breakouts, then either the monthly figures or six monthly figures for each must be compared, not a 6 month for one against the 1 month figure for the other.*
  - ii. The conditions under Use of ABC Data or Information section 3(d) and Use of non-ABC Data or Information section 3(e) above, also apply to comparisons.

#### Reporting Standards and other publicity requirements

- h) You must comply with any further publicity requirements stipulated under relevant ABC Reporting Standards, other publicity requirements notified by ABC or as a result of specific ABC decisions.

#### 4. AUTHORISATION AND PAYMENT OF FEES

- a) You must pay all Fees within 30 days of the invoice date. If any Fees are not paid when due we reserve the right to charge interest from the due date until payment is made in full (both before and after any judgment), at 2 per cent per annum over the National Westminster Bank plc base rate from time to time. The parties agree that this section 4(a) is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- b) A product's annual subscription will not be refunded in whole or part if its registration ceases part way through the year.
- c) If Fees remain unpaid 60 days after the invoice date we reserve the right to:
  - i. Withdraw benefits of membership for the product to which the outstanding Fees relate. This may include removing a product's information from the ABC website, withholding the issue of a product's

- ii. Cancel your membership and/or the registration of the product to which the outstanding Fees relate.

#### 5. AUDITS AND RETURN SUBMISSION

- a) All ABC audits and inspections towards ABC certification or verification will be governed by the byelaws and Reporting Standards in force for the particular membership sector.
- b) If we are to conduct an audit we will send you a letter of engagement that details both our and your duties and responsibilities, the terms of which will prevail over the terms of these Byelaws in the event of conflict.
- c) If we are not your auditor, then for ABC purposes:
  - i. You must use an auditor that has been approved by us and who is a registered auditor and member of either The Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants of Scotland (ICAS), Institute of Chartered Accountants in Ireland (ICAI) or Association of Chartered Certified Accountants (ACCA). In exceptional circumstances you may apply to us to use an auditor who is not a member of one of the above bodies, setting out the exceptional circumstances for consideration.
  - ii. If you change your Approved Auditor you must send us their details for approval.
  - iii. You must send us in advance of any audit a letter of engagement between you and your Approved Auditor. We must be satisfied this covers a number of standard terms. The Accounting bodies mentioned above may issue specific guidance for ABC audits. We cannot issue an ABC certificate until we receive this letter of engagement.
  - iv. Your Approved Auditor must submit your circulation or distribution Return Forms to us.
- d) We reserve the right to audit or inspect any Return Form before issuing the ABC certificate.
- e) If we do not receive a Return Form by an applicable submission deadline we reserve the right to charge a penalty fee for late submission and/or cancel the product's registration.
- f) If we are not able to complete an audit or inspection in relation to a product then we reserve the right to cancel the product's registration and withdraw any ABC certificates upon which an audit or inspection was not completed. Please refer to section 9b for further details.
- g) Our staff auditors must carry out the audit of products outside the UK or Republic of Ireland, and all records required for audit purposes must be in English.

## 6. TRANSFER TO ANOTHER MEMBER

We will allow a product to remain registered following its transfer to another member (who has other certified products) as long as, without undue delay, following the transfer:

- i. we are able to satisfactorily confirm the transfer has taken place
- ii. we have received all outstanding Fees
- iii. the new owner has agreed to keep the product in continuous certification and submitted the relevant registration form.

We reserve the right to audit or inspect the subsequent Return Form before issuing the ABC certificate.

If any of these conditions are not fulfilled we reserve the right to cancel the product's registration.

Note: It is the responsibility of the new owner to ensure that the records specified by the Reporting Standards for the membership category exist for the whole audit period and to make these available for audit/inspection.

## 7. TRANSFER A NON-MEMBER

- a) A product's registration will cease immediately upon its transfer to a non-member, unless it has any audits or inspections outstanding, in which case the former owner will first be given the option to complete the audit or inspection at their expense. If however we cannot complete an audit or inspection then we reserve the right to cancel the product's registration and withdraw any ABC certificates upon which an audit or inspection was not completed.
- b) The right to use an ABC Logo ceases on the date of the transfer of a product to a non-member.
- c) The non-member may apply for membership and registration of the product in accordance with section 2.
  - i. We reserve the right to decide whether a short period audit must be undertaken in addition to the normal audit

## 8. PRODUCT MERGER OR NAME CHANGE

If you merge a registered product with one or more other products or change the name of a registered product then you must apply to us, without undue delay, to keep the resultant product registered.

We will examine the circumstances surrounding the change (including any other changes to the Registered Product(s) made at the same time) and tell you in writing if the change is accepted as valid for ABC purposes.

We reserve the right to refuse the product's continued registration if we consider the changes are so extensive or such that we consider it should be treated as a new product requiring separate registration.

Below is a non-exhaustive list of other changes which, if made at the same time as a merger of products or change of name, may affect our decision.

- i. A change in format
- ii. A change in publishing frequency
- iii. A break in the continuity of issue identification
- iv. Identification of the change (e.g. 'formerly known as...' or '...incorporating...')
- v. How the change is presented/communicated in the product and elsewhere to both readers and advertisers

If you are planning a merger of products or change of name we recommend you contact us for advice as early as possible.

## 9. RESIGNATION / CANCELLATION

- a) You may resign a product's registration and/or your membership as long as there is no complaint, audit, inspection or Fees outstanding against the product.
  - i. You are expected to give a minimum of three months written notice of a request to resign.
  - ii. Any outstanding audits or inspections in relation to issued certificates must be completed within 6 months of the request to resign. This includes any certificates that had been issued at the time of the request to resign for which the audit had yet to be arranged.
  - iii. If the outstanding audit or inspection is not completed within this timescale:
    - We will withdraw the certificate(s) in question and publish a statement confirming the withdrawal for failure to complete an audit or inspection.
    - You will be liable for a cancellation fee equal to the fee for the audit or inspection that would have been carried out on the issued certificate(s).

Note: As detailed under byelaw 4b, the product's annual subscription will not be refunded in whole or part if its registration ceases part way through the year.

- b) We may cancel or suspend a product's registration and/or your membership because of non-compliance with relevant Byelaws or Reporting Standards.
  - i. Prior to cancellation, if we are unable to complete an audit or inspection on any issued certificates

(including any certificates that had been issued for which the audit had yet to be arranged):

- We will withdraw the certificate(s) in question and publish a statement confirming the withdrawal for failure to complete an audit or inspection.
- You will be liable for a cancellation fee equal to the fee for the audit or inspection that would have been carried out on the issued certificate(s).

Note: As detailed under byelaw 4b, the product's annual subscription will not be refunded in whole or part if its registration ceases part way through the year.

- c) If for strategic reasons (and in our sole discretion) we decide to withdraw our services in relation to a particular ABC product, sector or geographic region we will terminate affected registrations and/or memberships with a minimum of three months' notice. We will notify those affected of any outstanding requirements before the termination can be effected (such as the completion of an audit) which if not met may result in the termination being deemed a cancellation rather than a resignation. Subject to compliance with any outstanding requirements, members and/or products affected by a strategic withdrawal may be entitled to a pro-rata refund of membership fees and/or a refund of any fees paid for work not carried out.

## 10. RE-REGISTRATION

- a) You may apply at any time to re-register a product. We may impose such conditions as we see fit on the re-registration of a product (either to be met before acceptance of the re-registration or after). For example, these conditions may include a requirement:
- i. For us to carry out additional audit or inspection work, or require you to provide us with reports on issues related to the previous resignation or cancellation
  - ii. For you to submit a Return Form for a particular audit period or within a specified timescale, such as the first audit being undertaken within 6 months of the registration being accepted.
  - iii. For you to submit a Return Form for any audit period not reported as a result of the resignation or cancellation of the product's previous registration
  - iv. For us to complete any inspection or audit that was outstanding on an issued ABC certificate at the date the product's previous registration was cancelled.
  - v. For you or us to make particular publicity statements (or specify 'no publicity') as appropriate

- vi. To delay the re-registration of the product for a period of up to 12 months from the date of the previous cancellation as a result of the circumstances that led to that previous cancellation, and a bar on retrospective audits covering the excluded period.
- vii. That there are no fees outstanding in relation to the product (whether owing by you or a previous owner of the product).

## 11. AVAILABILITY OF RECORDS

*ABC's credibility relies on the accuracy of the data or information it certifies. Therefore it requires the following rights of access to records, in order that the accuracy of any data or information to be certified may be verified.*

You must allow us access to any records that we request for the purpose of checking the accuracy of any Return or compliance with the Reporting Standards and byelaws:

- i. whether held by you or a third-party agent
- ii. within 10 working days of our written request

## 12. COMPLAINTS PROCEDURE

*If a member or Official of ABC wishes to make a complaint that a member is not complying with the ABC byelaws or relevant Reporting Standards then this section sets out the procedure that should be followed. It is intended to allow both parties to the complaint the opportunity to make their representations and for ABC to ensure it has all the information required to make a fair and informed decision. This procedure is based on written submission only.*

### **Complaints relating to the interpretation of Reporting Standards approved and regulated by a body other than ABC:**

The following procedure applies with the exception of stage 6 (Review by ABC Board Panel) which will be replaced by referring the matter to the standard-setting body concerned. If the decision of such body is different to that of ABC then ABC may in its sole discretion agree to reconsider such complaint at such stage of the complaints procedure as it deems appropriate. Note: Rulings by a body external to ABC shall only relate to the interpretation of Reporting Standards that they set and will not act as a precedent binding on ABC in any way but can be taken into consideration by ABC in its sole discretion. Such bodies shall have no jurisdiction over ABC or its decisions on certification, membership or procedure.

### **Stage 1 - Making a complaint**

- a) If a member or Official of ABC (other than the Chief Executive or Chairman) ("the complainant") considers that a member ("the member complained of") has not complied with or is not complying with relevant Reporting Standards or the byelaws, he may make a complaint to that effect in accordance with this complaints procedure.

- b) Complaints will not be accepted under this process if:
- i. They relate to an infringement of publicity requirements that was published or distributed in material more than 6 months prior to the date of the complaint (unless the infringement continues to be published in material in the public domain – for example on a website, or in a publication still being distributed)
  - ii. They relate to the accuracy of certified data for an audit period with an end date more than 18 months prior to the date of the complaint.
  - iii. They relate to section 17 (data protection), in which case they will be subject to section 18 (governing law and jurisdiction).
- c) The complainant will send to the Head of Compliance a written notification of complaint ("the notification of complaint"), setting out the matters of which he complains accompanied by copies of any documents on which the complaint relies. ABC supplies a standard form for this purpose, which is available from the ABC website.
- d) If the complainant is the Head of Compliance then:
- i. He will send the complaint to the Chief Executive and references below in this process to the Head of Compliance from section 12(e) to section 12(m) will be read as references to the Chief Executive.
  - ii. Once the Chief Executive has made his decision per section 12(k) or 12(l) you may request a review of this decision by an ABC Complaints Panel in accordance with section 12(p), except the Chairman will not consider if the ground or grounds relied on in the request for review apply, i.e. the request for review will be passed to an ABC Review Panel for reconsideration providing the other stated requirements are met.

### **Stage 2 – Forwarding the complaint and member's right to reply**

- e) Unless the Head of Compliance considers the complaint to be manifestly ill founded, he will send a copy of the notification of complaint and any related documents to the member complained of.
- f) Within 10 working days of receipt of the notification of complaint, or within such further time as the Head of Compliance may allow, the member complained of may send to the Head of Compliance a written statement of response to the matters raised by the complainant accompanied by copies of any documents on which he relies. Where the Head of Compliance considers that a reply is required from the complainant, he will send the complainant a copy of the response, in which case section 12(g) will apply.
- g) Within 10 working days of receipt of the statement of response, or within such further time as the Head of Compliance may allow, the complainant may send to the Head of Compliance a written statement of reply

setting out his reply to the matters raised by the member complained of accompanied by copies of any documents on which he relies.

### **Stage 3 – Gathering further information**

- h) If it is contended expressly or by implication in the notification of complaint or response or reply that a decision by an ABC Official (the "Official") is not in accordance with the Reporting Standards or the byelaws the Head of Compliance may refer the statement to the Official and the Official may send to the Head of Compliance and to the parties to the complaint his written comments within 10 working days (or within such further time as the Head of Compliance may allow).
- i) After consideration of the notification of complaint, response and reply (if any) and any written comments by the Official, the Head of Compliance may require the complainant or the member complained of or the Official to provide further written information or documents relating to the matters raised, within a specified timescale.

### **Stage 4 – Complaint Decision**

- j) When the Head of Compliance considers that sufficient information and documents have been provided, he will make a decision on the complaint and will notify the complainant and the member complained of accordingly. This will normally be within 10 working days of the receipt of the information, however if there are reasons why this is not possible ABC will notify both parties as to the reason for the delay in the decision.
- k) If the Head of Compliance decides that the member complained of has complied with the Reporting Standards and byelaws, he will notify the complainant and the member complained of and, with the following exception, all parties must keep all matters relating to the complaint confidential, including all correspondence and the fact that a complaint was made. However, if the Head of Compliance decides special circumstances require it, he may issue a ruling that the complaint has not been upheld and authorise the publication of that ruling on the ABC website and/or the circulation of that ruling to other members and the Trade Media.
- l) If the Head of Compliance decides that the member complained of has not complied with the Reporting Standards or byelaws, or that a decision by an Official was not in accordance with the Reporting Standards or the byelaws he will issue a ruling to that effect, and, if no appeal is received as specified in Section 12(n), he will publicise that ruling on the ABC website and may circulate that ruling to members and/or the Trade Media and will decide on the required method (if any) to correct the information in the marketplace. If an appeal is made under Section 12(n) and/or a request for review under Section 12(o), the decision will only be publicised once the process of appeal/review is completed.

- m) Should the Head of Compliance believe that a penalty other than one set out in section 12(l) be applied, he may in addition and subject to the approval of the Chief Executive implement any or all of the following sanctions [Note: if the complainant is the Head of Compliance then, as per section 12 (d), the Chief Executive alone may implement any or all of the following sanctions):
- i. withdraw any ABC certificate already issued and issue a revised ABC certificate;
  - ii. require the member complained of to submit or resubmit any Returns;
  - iii. direct that the member complained of be expelled, temporarily suspended from membership and/or subject to the fulfilment of conditions;
  - iv. direct that the registration of the product in question be cancelled or temporarily suspended.
  - v. direct that a re-audit take place by the member's Approved Auditor or ABC (at the member's cost).

#### Stage 5 – Appeal to Chief Executive

- n) Should the complainant or member complained of disagree with a decision taken by the Head of Compliance alone under section 12(k) or 12(l), they will have the right to appeal to the Chief Executive, by giving notice in writing and detailing the grounds for appeal to the Head of Compliance within 5 working days of notification of the decision. If the Head of Compliance receives such a notice he will refer the complaint to the Chief Executive who will reconsider the complaint and decision and will normally respond to each party within 10 working days of receipt of the appeal. However if there are reasons why this is not possible ABC will notify both parties as to the reason for the delay in the decision.

#### Stage 6 – Review by ABC Board panel

- o) The complainant or member complained of may request a review of a decision on a complaint by the Chief Executive under section 12(n) or by the Head of Compliance and Chief Executive together under section 12(m) if one of the following grounds applies:
- i. Relevant evidence (which had been provided within the relevant time limit) was not taken into account;
  - ii. There is a substantial flaw in the decision or in the process which led to the decision.
  - iii. Relevant new evidence has come to light which could not reasonably have been obtained before the decision.
- p) If the complainant or member complained of wishes to exercise the right to request a review of a decision then they must give notice in writing to the Chief Executive using the official ABC Request for Review Form (available from the ABC website or on request)

within 5 working days of notification of the decision. The completed form must:

- i. Set out which of the ground or grounds stated in section 12(o) they consider applies.
- ii. Be limited to the explanation as to why the specified ground or grounds applies.
- iii. Be authorised by an individual at Director level of the member's organisation.

If the Chief Executive receives such a notice he will refer the complaint to the Chairman.

- q) If the Chairman considers that the ground or grounds relied on in the request for review apply (as to which his decision is final), he will refer the complaint for reconsideration to a panel consisting of 3 members of the ABC Board (not connected with the complainant or the member complained of or the matters raised) selected by him ("the Complaints Panel"). The Chairman may, at his discretion, fill one or more of the 3 positions on the Complaints Panel from the membership of the ABC Reporting Standards Groups.

- r) If they consider it appropriate, before reconsidering the decision, the Complaints Panel may invite the complainant, the member complained of, or the Official to make further written representations, may call on appropriate experts and may make such other further investigations as they consider appropriate. The panel must reconsider the decision within 15 working days of the Chairman receiving the notice in accordance with section 12(p), save that the Chairman may allow an extension of not more than 10 working days, in his sole discretion. The panel shall be entitled to adjourn any meeting if necessary but in such circumstances should complete their review of the decision as soon as is reasonably practical.

- s) The Complaints Panel may confirm, reverse or vary the decision of the Chief Executive and/or Head of Compliance. The decision of the Complaints Panel shall be final, except when the Complaints Panel's decision is not unanimous when their decision shall be of no effect unless and until it has been reviewed and approved by the ABC Board. Such review by the ABC Board must take place within 10 working days of the Complaints Panel's decision.

#### Complaints Procedure – confidentiality/unavailability of ABC Chairman or Chief Executive/legal proceedings

- t) For the duration of the complaints procedure, but subject to Section 12(k), the contents of the statement of complaint, the statement of response, the statement of reply and any other information and documents which have been provided will be confidential to the complainant, the member complained of and ABC.
- u) If the ABC Chairman is unavailable to carry out his actions in this procedure due to normal absences (for example holiday/business commitments) then appropriate extensions to the timescales will be made to enable him to properly fulfil his role.



- v) If either the ABC Chief Executive or ABC Chairman are unavailable to carry out their actions in this procedure due to prolonged or indeterminate absence (for example through illness or other incapacity) then the ABC Board may appoint a deputy to fulfil their role in this procedure.
- w) Matters raised under this complaints procedure cannot also be subject to an appeal under the review procedure in section 13 below.
- x) All decisions of ABC as to the interpretation of these Byelaws generally and in relation to any complaint will be final and you agree not to institute any legal proceedings in relation to any matter arising under the Byelaws or which is or was the subject of a complaint.

### 13. REVIEW PROCEDURE

*This section sets out the procedure for members who wish to contest a decision made by ABC because they believe it has not been made in accordance with ABC Reporting Standards or byelaws. This procedure is based on written submission only.*

#### **Decisions relating to the interpretation of Reporting Standards approved and regulated by a body other than ABC:**

The following procedure applies with the exception of stage 6 (Review by ABC Board Panel) which will be replaced by referring the matter to the standard-setting body concerned. If the decision of such body is different to that of ABC then ABC may in its sole discretion agree to reconsider such complaint at such stage of the complaints procedure as it deems appropriate. Note: Rulings by a body external to ABC shall only relate to the interpretation of Reporting Standards that they set and will not act as a precedent binding on ABC in any way but can be taken into consideration by ABC in its sole discretion. Such bodies shall have no jurisdiction over ABC or its decisions on certification, membership or procedure.

#### **Stage 1 – Appeal to Chief Executive**

- a) If you consider that a decision by an ABC Official (whether about a matter concerning you or another Member) is not in accordance with relevant Reporting Standards or the byelaws, you have the right to appeal against that decision in accordance with this review procedure. Note: If the decision relates to an audit or inspection, the first level of appeal will normally be to the Director of Audit – refer to the relevant Reporting Standards. However if the official making the audit/inspection decision is either the Director of Audit or the Chief Executive then the first level of appeal will be in accordance with this review procedure.
  - b) You must send your appeal in writing to ABC's Chief Executive, setting out the reasons why you believe the decision is not in accordance with the Reporting Standards or the byelaws, including with it copies of any documents on which you rely.
  - c) If you wish the implementation of the decision to be suspended pending the appeal, you must give ABC written notification of your intention to appeal before the date on which the decision is to be implemented, and your appeal must be received by the Chief Executive within 5 working days of this notification. In any event, appeals may only be brought under this Review Procedure within one month of the date of the decision.
- d) If the Official whose decision is questioned ("the Relevant Official") is the Chief Executive, then you may request a review of this decision by an ABC Review Panel in accordance with section 13(m). In these circumstances:
    - i. Section 13(c) still applies, therefore if you wish the implementation of the decision to be suspended pending the request for review you must give the Chief Executive written notice of your intention to request a review before the date on which the decision is to be implemented, and the completed ABC review form as detailed in section 13(m) must be received by the Chief Executive within 5 working days of this notification.
    - ii. The Chairman will not consider if the ground or grounds relied on in the request for review (referred to in Section 13(l)) apply. The request for review will be passed to an ABC Review Panel for reconsideration providing the other requirements in Section 13(m) are met.

#### **Stage 2 – Forwarding the appeal and response from those affected**

- e) The Chief Executive will send a copy of your appeal to the Relevant Official.
- f) If the Chief Executive considers that your appeal directly affects another member or members ("the member(s) affected"), he will also send a copy of your appeal to the member(s) affected.
- g) The Relevant Official (and any member(s) affected) must send their written statement(s) of response to the Chief Executive, setting out their submissions on the matters raised by you, including copies of any documents on which they rely.
  - i. The response(s) (if submitted) must be received by the Chief Executive within 10 working days of receipt of the appeal, or within such further time as the Chief Executive may allow.
  - ii. The Chief Executive will send the statement(s) of response (if submitted) to you.
  - iii. If no statements of response are made (or the statement(s) are 'no response') then the process will move direct to byelaw 13i.

#### **Stage 3 – Right to reply to the responses**

- h) You may send to the Chief Executive a written statement of reply setting out your reply to any matters raised by the Relevant Official (and any member(s) affected) including copies of any documents on which you rely.

- i. The reply must be received by the Chief Executive within 10 working days of receipt of the statement(s) of response, or within such further time as the Chief Executive may allow.
- ii. The Chief Executive will send your statement of reply (if submitted) to the Relevant Official (and to any member(s) affected).

#### Stage 4 – Gathering further information

- i) After considering the correspondence and documentation relating to the appeal, the Chief Executive may require you, the Relevant Official and/or any member(s) affected to provide further written information or documents relating to the matters raised.

#### Stage 5 – Appeal decision

- j) When the Chief Executive considers that sufficient information and documents have been provided, he will make his decision concerning the appeal and notify the member(s) affected. This will normally be within 10 working days of the receipt of the information, however if there are reasons why this is not possible ABC will notify the member(s) affected as to the reason for the delay in the decision
- k) If the Chief Executive decides that the decision by the Relevant Official was not in accordance with the Reporting Standards or the byelaws, he may implement any or all of the following actions:
  - i. Issue a ruling to that effect and authorise the circulation of that ruling to other members and to the Trade Media;
  - ii. Withdraw any ABC certificate already issued and issue a revised ABC certificate;
  - iii. Require you or any member(s) affected to submit or resubmit any Returns;
  - iv. Direct that a re-audit take place either by the relevant Approved Auditor or ABC.
  - v. Reverse or vary the decision of the Relevant Official

#### Stage 6 – Review by ABC Board panel

- l) Any member affected may request a review of a decision by the Chief Executive under section 13(j) if one of the following grounds applies:
  - i. Relevant evidence (which had been provided within the relevant time limit) was not taken into account;
  - ii. There is a substantial flaw in the decision or in the process which led to the decision.
  - iii. Relevant new evidence has come to light which could not reasonably have been obtained before the decision of the Chief Executive under section 13(j)

- m) If the member wishes to exercise the right to request a review of a decision then they must give notice in writing to the Chief Executive using the official ABC Request for Review Form (available from the ABC website or on request) within 5 working days of notification of the decision. The completed form must:
  - i. Set out which of the ground or grounds stated in section 13(l) they consider applies.
  - ii. Be limited to the explanation as to why the specified ground or grounds applies.
  - iii. Be authorised by an individual at Director level of the member's organisation.

If the Chief Executive receives such a notice he will refer the complaint to the Chairman.

- n) If the Chairman considers that the ground or grounds relied on in the request for review apply (as to which his decision is final), he will refer the decision for reconsideration to a panel consisting of 3 members of the ABC Board (not connected with the member or members affected or the matters raised) selected by him ("the Review Panel"). The Chairman may, at his discretion, fill one or more of the 3 positions on the Review Panel from the membership of the ABC Reporting Standards Groups.
- o) If they consider it appropriate, before reconsidering the decision, the Review Panel may invite the member or members affected or the Relevant Official to make further written representations, may call on appropriate experts and may make such other further investigations as they consider appropriate. The panel must reconsider the decision within 15 working days of the Chairman receiving the notice in accordance with section 13(m), save that the Chairman may allow an extension of not more than 10 working days, in his sole discretion. The panel shall be entitled to adjourn any meeting if necessary but in such circumstances should complete their review of the decision as soon as is reasonably practical.
- p) The Review Panel may confirm, reverse or vary the decision of the Chief Executive. The decision of the Review Panel shall be final, except when the Review Panel's decision is not unanimous when their decision shall be of no effect unless and until it has been reviewed and approved by the ABC Board. Such review by the ABC Board must take place within 10 working days of the Review Panel's decision.

#### Review Procedure – confidentiality/unavailability of ABC Chairman or Chief Executive/legal proceedings

- q) Until the completion of the review procedure, the contents of your appeal, the statement(s) of response and reply and any other information and documents which have been provided will be confidential to you, ABC and any member(s) affected.
- r) If the review procedure concludes that the decision by an ABC Official is in accordance with the Reporting Standards or the byelaws, then all parties must keep

all matters relating to the appeal confidential, including all correspondence and the fact that an appeal was made. However if the Chief Executive or Review Panel decide special circumstances require it, they may issue a ruling that the appeal has not been upheld and authorise the publication of that ruling on the ABC website and/or the circulation of that ruling to other members and the Trade Media.

- s) If the ABC Chairman is unavailable to carry out his actions in this procedure due to normal absences (for example holiday/business commitments) then appropriate extensions to the timescales will be made to enable him to properly fulfil his role.
- t) If either the ABC Chief Executive or ABC Chairman are unavailable to carry out their actions in this procedure due to prolonged or indeterminate absence (for example through illness or other incapacity) then the ABC Board may appoint a deputy to fulfil their role in this procedure.
- u) Matters raised under this review procedure cannot also be subject to a complaint or appeal under the complaints procedure in section 12 above.
- v) All decisions of ABC in relation to this review procedure will be final and you agree not to institute any legal proceedings in relation to any matter arising under the Byelaws or which is or was the subject of an appeal.

#### 14. COPYRIGHT

- a) We hold joint copyright in your product's ABC certificates with you.
- b) We have the right to use and publish without restriction all information provided to us for certification

#### 15. LIMITATION OF LIABILITY

Nothing in these Byelaws excludes or limits our liability in respect of death or personal injury caused by negligence, fraud, and/or fraudulent misrepresentation and liability which may not otherwise be limited or excluded under applicable law. The entire aggregate liability of us to you or any third party arising out of or in connection with your membership of and relationship with ABC, and whether arising from contract, tort, negligence or otherwise, shall be limited to the value of five times the Fees paid by you in the calendar year of the act or omission said to give rise to the liability. Under no circumstances shall we be liable to you or any third party for any type of special loss, indirect loss, consequential loss, loss of profits or any anticipated savings, or loss of data.

#### 16. USE OF ELECTRONIC COMMUNICATION

We each agree that we may communicate electronically with each other. The electronic transmission of information cannot be guaranteed to be secure or free from viruses or error, and consequently such information could be

intercepted, corrupted, lost, destroyed, arrive late or incomplete, or otherwise be adversely affected or unsafe to use. You and we recognise that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards but we each agree to use commercially reasonable procedures to prevent such hazards including undertaking checks for the most commonly known viruses before sending information electronically.

#### 17. DATA PROTECTION

- a) In this section 17, the following terms shall have the following meaning:

**"Audit personal data"**: has the meaning given in paragraph 17(b);

**"Data Protection Laws"**: all applicable laws relating to data protection, the processing of personal data and privacy, including without limitation:

- i. the Data Protection Act 2018;
- ii. the General Data Protection Regulation (EU) 2016/679; and
- iii. the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);

and references to **"Controller"**, **"Data Subjects"**, **"Personal Data"**, **"Process"**, **"Processed"**, **"Processing"**, and **"Processor"** have the meanings set out in, and will be interpreted in accordance with, such Data Protection Laws; and

- b) You agree and acknowledge that:
  - i. in order to provide our services (including audits/inspections) for which you have engaged us, we may have access to and Process Personal Data for which you are the Controller ("Audit Personal Data"); and
  - ii. our Processing of the Audit Personal Data will be in our capacity as an independent Controller.
- c) In Processing the Audit Personal Data, we will:
  - i. ensure all such Processing is in accordance with the Data Protection Laws and is in connection with the provision of our services to you, except to the extent that applicable law requires or permits us to Process the Audit Personal Data for other purposes including without limitation when we are dealing with requests from third parties, Court orders, for purposes connected with any restructuring or sale of our business or assets, and for own receipt of legal or other professional services; and
- d) In making the Audit Personal Data available to us, you confirm and warrant that:

- i. the collection of Audit Personal Data by you, and the disclosure of it to us, is compliant with Data Protection Laws, including by the relevant Data Subjects (whose Personal Data forms part of the Audit Personal Data) having been given fair notice of the disclosure of their Personal Data to third parties (including auditors) and any necessary consents (where relevant) having been obtained from those Data Subjects and that (where consents are not relevant) there is a lawful reason under Data Protection Laws for that disclosure to us;
  - ii. you have made available a copy of our fair processing notice (a copy of which can be found [here](#)) to all relevant Data Subjects or you have incorporated the relevant information from our fair processing notice into your own fair processing notice (or similar document), such that the Data Subjects have been given fair notice of the Processing of their Personal Data to be undertaken by us in provision of our services in accordance with the Data Protection Laws; and
  - iii. you will only disclose or otherwise make available to us that Personal Data which is necessary for us to provide our services to you and all such Personal Data is accurate and up to date.
- e) You will indemnify us, keep indemnified and hold us harmless from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which we incur or suffer, including by reason of any applicable laws or regulations (including, without limitation, the Data Protection Laws, as a result of a direct or indirect breach by you of section 17 (d).
- f) We reserve the right to return to you (or any third party acting on your behalf), and refuse to audit and/or provide any other services, in respect of the Audit Personal Data, where we reasonably consider that any Processing of the Audit Personal Data by us could cause us to be in breach of any applicable laws or regulations (including, without limitation, the Data Protection Laws).
- g) To the extent that you request and we agree to provide any bespoke services (not covered by these Byelaws), which cause us to Process Personal Data on your behalf (and at your instruction), you shall upon our request, and as a condition of us providing those bespoke services, enter into separate terms specifically in respect of the Processing of the Audit Personal Data for those bespoke services, if and to the extent we determine at our absolute discretion that we are Data Processor in respect of that particular Processing, including terms which incorporate those obligations required by the Data Protection Laws.

## 18. GOVERNING LAW AND JURISDICTION

The formation, existence, construction, performance, validity and all aspects whatsoever of the Byelaws, Reporting Standards and other regulations governing the workings of ABC as laid down by the Board and all other aspects of the relationship between you and ABC will be governed by the law of England and Wales and the courts of England and Wales will have exclusive jurisdiction to settle any disputes which may arise. ABC and you irrevocably agree to submit to that jurisdiction except that ABC may seek injunctive relief in any court of competent jurisdiction.



## Contact us

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