

The London Metal Exchange



LME Complaints Procedure

September 2017

Please respond to:-
The Complaints Officer
complaints@lme.com

Complaints Procedure

Scope

1. ~~4~~—The London Metal Exchange (the “LME” or “Exchange”) investigates complaints ~~made against the LME, its personnel, its members or its listed warehouses which may involve breaches of statutory duty, the LME rules or the proper operation of the market~~ in relation to:-
 - (a) ~~The performance by the LME of, or failure to perform, any of its regulatory functions of the Exchange~~¹;
 - (b) ~~Benchmarks~~² administered by the LME³ (with the exception of complaints relating to the LBMA Platinum and Palladium Prices, which are excluded from this complaints procedure because they are handled under the complaints procedure set out in the LBMA Platinum and Palladium (“LPP”) Prices Regulations (“LPP Regulations”⁴) and third party-provided prices used by the LME to price LME contracts (which are excluded from this complaints procedure because they are determined by third parties);
 - ~~(b) Business transacted on the Exchange;~~
 - ~~(c) Transactions cleared through the LME matching system;~~
 - ~~(d) LME contracts;~~
 - ~~(e) LME prices;~~
 - (c) ~~(f)~~—The ~~conduct of~~compliance by LME members ~~in carrying out LME business~~with the terms of the LME Rulebook as published by the LME from time to time, and any Administrative Procedures and/or Notices issued pursuant to such Rulebook (together, the “LME Rules”);
 - (d) ~~The compliance by listed warehouses with the terms of the LME’s warehousing agreement and warehousing policies relevant to listed warehouses from time to time (“LME Warehousing Rules”)~~ only where such compliance relates to: (i) the storage of LME metal on warrant, (ii) placing metal on LME warrant, and (iii) removing metal from LME warehouses; and
 - ~~(g) The conduct of warehouses listed by LME in carrying out warehousing business in relation to metal on LME warrant, metal taken off LME warrant or metal due to be put on LME warrant;~~
 - ~~(h) The suitability of a brand for listing by the LME;~~
 - ~~(i) LME warrants and the warranting of metal; or~~
 - (e) ~~(j)~~—The~~Complaints in relation to the~~ quality of LME warranted metal.

¹ As a recognised investment exchange under the Financial Services and Markets Act 2000, the LME must put in place effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions.

² As an Annex II “Commodity Benchmark” administrator under the European Benchmarks Regulation, the LME must have in place a complaints handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made about an administrator’s calculation process.

³ A full list of the benchmarks administered by the LME is set out on the LME website at <https://www.lme.com/en-GB/About/Regulation/European-Benchmarks-Regulation>, as amended from time to time.

⁴ <https://www.lme.com/Metals/Precious-metals/LBMA-pricing-governance>



2. In order to be investigated under this complaints procedure, the complaint must fall within one of the relevant heads of complaint (a) – (e) as set out in paragraph 1 above. The LME shall be under no obligation to investigate any complaint which does fall within one of these heads of complaint or which otherwise does not comply with the requirements of this complaints procedure.
3. The LME may decline to investigate a complaint made under paragraph 1 where the LME considers in its sole discretion that:
 - a. the complaint is of a frivolous or vexatious nature or amounts to an abuse of process;
 - b. there has been unreasonable delay on the part of the complainant in bringing the complaint;
 - c. the complaint is connected with a contractual or commercial dispute and is not connected in any way with the LME's regulatory functions; or
 - d. the complaint concerns:
 - i. the LME's relationship with its employees;
 - ii. the content of the LME Rules or the LME Warehousing Rules; or
 - iii. a decision against which the complainant has the right to appeal against disciplinary procedures under the LME Rulebook or the LME Warehousing Rules.
4. In addition to the grounds set out in paragraph 3, the LME may decline to investigate a complaint made under paragraph 1(c)-(e) where the LME considers in its sole discretion that a more appropriate dispute resolution forum exists⁵.
5. The LME shall not be prevented from continuing to take such action, or further action, as it considers appropriate during the investigation by the LME or the Complaints Commissioner in relation to any matter which is related to a complaint or complainant.

Registering a Complaint

All Complaints

6. ~~2-~~The complaint must be made in writing. In the event that it is made by a company, it should be signed by a director or equivalent officer.
7. ~~3-4-~~The complaint should include sufficient information to allow the LME to (a) identify the relevant heads of complaint in accordance with paragraph 1 above, (b) properly identify the ~~trade(s) or activity complained of, and~~ matter to which the complaint relates, and (c) (if relevant) establish the basis for any alleged loss or other detriment suffered by the complainant. See also paragraph 13 below in respect of complaints under head (e). If insufficient information is provided, the LME may request further information. Where a

⁵ This complaints procedure is not intended to be a private dispute resolution service for disputes between commercial counterparties.



complaint is made against more than one participant (for example, complaints against two members, or the LME and a member) separate complaints should be made against each participant, although reference may be made to background material provided with the other complaint.

8. The complaint must be sent either by post to:-

The Complaints Officer
The London Metal Exchange
10 Finsbury Square
London
EC2A 1AJ

Or by email to:-

complaints@lme.com

Marked "Complaint"

Registration Fee for Certain Complaints

9. Where the complaint falls within heads (c)-(e) of paragraph 1 above, the LME may require the complainant to pay a registration fee in order to cover the costs of the LME (and any external advisors it chooses to instruct) in investigating the complaint. The costs of the LME shall include the time cost of LME staff spent investigating the complaint. The registration fee is not intended to be profit-making for the LME, but solely to cover its costs.
10. On receipt of a complaint falling within heads (c)-(e) of paragraph 1 above, the LME shall assess the likely costs which it reasonably believes it will incur during the investigation of the complaint. Such cost figure shall constitute the amount of the registration fee payable. The LME shall inform the complainant in writing of the amount of the registration fee payable and give instructions for how to make payment. Any timescales for investigation of the complaint shall only start to run from receipt of the registration fee by the LME. The LME shall be under no obligation to investigate the complaint in the event that the complainant fails to make any payment required.
11. In the event that the LME's costs exceed the amount of the registration fee, the LME shall be responsible for any such costs, and may not call for any further sums from the complainant. In the event that the LME's costs are less than the registration fee, it shall return any unused sums to the complainant within three months following the decision. The LME shall be under no obligation to account to the complainant or any other person for the time of its staff or external advisors.
12. In the event that the complainant's complaint is upheld, the LME may apportion some / all liability for payment of the registration fee to the respondent (see below).

Complaints in relation to Metal Quality

13. ~~4~~ For complaints in relation to the quality of LME warranted metal, under paragraph 1(e) above, the complainant must provide certain additional information ~~must be provided~~ as follows: (a) a chemical analysis certificate, (b) the brand name(s) of production, (c) the



lot/batch numbers of metal, (d) the quantity of metal, (e) the name and address of the LME listed warehouse company that had taken delivery of the metal that is the subject of the complaint, (f) the relevant warrant numbers, (g) if applicable, supporting documentation accompanying delivery (i.e. certificates of analysis/conformity). The chemical analysis certificate(s) supporting a complaint referred to at (a) above must be issued by a LME listed sampler and assayer ("LSA"). The complainant must instruct a LME listed sampler and assayer to carry out sampling and assaying procedures in accordance with the LME's instructions to LSA's. These instructions refer to LSA's requirement to undertake sampling and assaying work in respect to "Brand Listing of Metals and Assay Certificates for Metals the Subject of LME Metals Contracts". Costs incurred must be borne by the complainant (and shall be in addition to any amount payable to the LME by way of registration fee as contemplated above).

~~5 Any information with the complaint or obtained from the complainant in the course of a subsequent investigation may be disclosed to third parties such as other regulatory authorities as the LME considers appropriate but subject to its normal rules and procedures.~~

~~6 The complaint must be sent either by post to:-~~

~~The Complaints Officer
The London Metal Exchange
40 Finsbury Square
London
EC2A 1AJ~~

~~Or by email to:-~~

Conduct of the Investigation of the Complaint

~~complaints@lme.com~~

~~14. All complaints received by the LME shall be recorded in a centralised complaints register maintained by the LME Legal Department. In relation to a complaint that relates to an LME benchmark, the LME Pricing & Valuations Committee shall also be notified.~~

~~15. The LME shall acknowledge the complaint in writing as soon as reasonably practicable. The Legal Department shall consider whether any registration fee is due (see above) and confirm this in writing to the complainant as soon as reasonably practicable. The complaint will be investigated in a timely and fair manner by the LME Legal Department who may act in conjunction with other LME departments as appropriate. The investigation may involve other staff at the LME or outside professional assistance as appropriate.~~

~~Marked "Complaint"~~



~~7 There is no filing fee.~~

~~8 The complaint will be acknowledged and investigated by the LME Legal and/or Compliance Department who may act in conjunction with the LME Warehousing Department and others as appropriate. The investigation may involve other staff at the LME or outside professional assistance as appropriate.~~

~~16. 9~~ The inquiry will be conducted independently of any LME personnel who may be involved in the subject of the complaint.

17. Where the LME considers that the complaint will not be investigated pursuant to this complaints procedure, it shall inform the complainant in writing as soon as reasonably practicable, and shall give reasons for its decision. The decision of the LME as to applicability of the complaints procedure shall be final, save in relation to matters relating to the heads of complaint in paragraph 1(a) above, where the complainant may ask for the matter to be referred to the Complaints Commissioner. The Complaints Commissioner may ask the Exchange to investigate the matter if he/she deems it appropriate.

~~18. 10~~ The LME will aim to complete its investigation within 3 months, or within such ~~further~~other period as the scope of the complaint would reasonably demand- taking into account (amongst other things) the circumstances of the complaint and the complexity of any investigation into it. Where the investigation is likely to take more than 3 months, the LME will inform the complainant in writing.

The Decision

~~19. 11~~ The LME will, insofar as it is consistent with applicable law, its duties in operating the Exchange and its duties of confidentiality to members or warehouses listed by the LME, advise the complainant and any other relevant parties, in writing and within a reasonable period of the ~~outcome~~conclusion of the LME's investigation, of the investigation's outcome, and in particular whether it considers that ~~there are good grounds for complaint against LME, its personnel, its members or warehouses listed by it, in relation to the business of the LME~~the complaint should be upheld, in part or in full. The LME will also advise the complainant of recommended action arising from the investigation of the complaint.

~~12 As a result of the LME Legal and/or Compliance Department's investigation, disciplinary proceedings may be instituted.~~

20. Except where specified below (Referral to Complaints Commissioner), the decision of the LME in the complaint shall be final.

21. In its decision in relation to a complaint under the heads of complaint in paragraph 1(c)-(e) above, the LME (acting reasonably in its sole discretion) may make the following recommendations (without limitation):

- a. A recommendation as to apportionment of liability for the registration fee as between the complainant and any other party;



- b. A recommendation that any member or warehouse company, or any other party, who is the subject of an adverse finding shall use reasonable efforts to settle the matter with the complainant (but without prejudice to paragraph 24 below).
22. Where the LME concludes an investigation into a complaint under the head of complaint in paragraph 1(b) above, and identifies that a correction to an LME-administered benchmark is required, the LME reserves the right at its sole discretion to issue one or more notices notifying members and the market of the correction.
23. Where the LME's decision concludes that there has been a breach of relevant LME rules or requirements by a member or warehouse company, the LME may institute disciplinary proceedings against the member or warehouse company.
24. Where the complaint falls within heads (c)-(e) of paragraph 1 above, any decision by the LME shall not constitute a legally binding determination of the respective rights and obligations of the complainant and any respondent. If the complainant and any respondent remain in dispute, then it is a matter for them to pursue appropriate dispute resolution mechanisms independently of the LME. The LME shall have no responsibility for any failure by the parties to achieve settlement between them in relation to subject matter of the complaint, and any alleged failure to settle matters shall be specifically excluded from the scope of this complaints procedure.

Referral to Complaints Commissioner

Scope

25. The following types of complaint shall, following the LME's decision, be capable of referral to an independent Complaints Commissioner:
- a. Complaints arising under paragraph 1(a) above, i.e. complaints in connection with the LME's performance of, or failure to perform, any of the LME's regulatory functions; and
- b. Complaints arising under paragraph 1(b) above, i.e. complaints in relation to benchmarks administered by the LME.
26. For the avoidance of doubt, complaints arising under paragraphs 1(c)-(e) shall not be capable of referral to the Complaints Commissioner.

Referral

27. ~~13~~ If the complainant is dissatisfied with the investigation of the complaint or with the reported outcome of the investigation, he/she may request, by notice in writing to the LME, that the LME refer the complaint ~~is referred~~ to the LME's independent Complaints Commissioner. Such written notice must be sent to the LME within the following timescales:
- a. Complaints arising under paragraph 1(a) above: on or before the date one (1) calendar month following receipt of the LME's written decision given pursuant to this complaints procedure;



b. Complaints arising under paragraph 1(b) above: on or before the date six (6) calendar months following receipt of the LME's written decision given pursuant to this complaints procedure;

28. Failure by the complainant to make such notification to the LME within these time periods will result in the complaint ceasing to be capable of referral to the Complaints Commissioner. The complainant must explain in its written notification the reasons for referral to the Complaints Commissioner.

The Complaints Commissioner

29. The Complaints Commissioner shall be an individual with no current connection to the business of the LME. The Complaints Commissioner shall be appointed by the LME and notified to the market by LME notice. If at any time the appointed Complaints Commissioner is unable to consider a complaint due to a conflict of interest, illness or other unavoidable commitments, the LME may appoint an alternate. In the event that any complaint is ongoing at the time, the complainant shall be informed of any such appointment.

Process for Investigation by the Complaints Commissioner

30. The Complaints Commissioner shall send written acknowledgement of the referral of the complaint within 10 working days of receipt to the LME and the complainant. The Complaints Commissioner shall determine whether the referral is eligible to be referred to him/her in accordance with this complaints procedure. If the Complaints Commissioner determines at any time that a complaint he/she is investigating is ineligible, he/she must cease his/her investigation forthwith and give notice to the complainant(s) and the LME of his/her determination.

31. If the complaint is eligible for determination, the Complaints Commissioner shall investigate the referral in accordance with this complaints procedure. The Complaints Commissioner will aim to conclude his/her investigations within 3 months or within such other period as the scope of the complaint would reasonably demand taking into account (amongst other things) the circumstances of the complaint and the complexity of any investigation into it. Where the investigation is likely to take more than 3 months, the Complaints Commissioner will inform the LME and the complainant in writing.

32. ~~14 The LME's independent~~ In his/her conduct of the investigation, the Complaints Commissioner has the following powers:-

- (a) to call on all appropriate documentation from all involved parties to form a view on the complaint;
- (b) to permit and/or request the complainant, any other parties to the complaint and the LME to provide written submissions in relation to any specific matters that arise;
- (c) to make further requests of all relevant parties and/or take whatever action is considered appropriate which might assist in considering the complaint; and
- (d) to conduct the consideration of the issues as is seen fit;
~~(e) to report on the result of his investigation to the LME, the complainant and any other parties to the complaint;~~



~~(f) if the original complaint or the referral to the Complaints Commissioner has arisen in connection with the performance of, or failure to perform any of the LME's regulatory functions, the Complaints Commissioner may make a recommendation, if appropriate, that the Exchange makes a compensatory payment to the complainant and/or remedies the matter complained of;~~

33. The Complaints Commissioner will ensure that, before he/she concludes an investigation and makes a report, any person who may be the subject of criticism in it is given notice of, and the opportunity to respond to, that criticism.

~~(g) to be able to publish his report (or any part of it) if he considers that it (or any part) ought to be brought to the attention of the public;~~

The Report

34. At the conclusion of his/her investigation, the Complaints Commissioner shall produce a report outlining his/her recommendations, together with reasons therefor. The report shall be sent to the LME and the complainant (and may also be sent to other interested parties, subject to the discretion of the Complaints Commissioner). The Complaints Commissioner must ensure that his/her report, apart from identifying the LME, does not mention the name of any other person or contain particulars which are likely to identify any other person unless: (i) in the opinion of the Complaints Commissioner the omission of such particulars would be likely to impair the effectiveness of the report; or (ii) taking into account the public interest and the persons involved, the Complaints Commissioner considers it necessary to mention the name of that person or to include in the report those particulars; or (iii) the consent of the person involved is given to such publication; or (iv) the information is otherwise already public knowledge.

35. In considering whether a complaint made against the LME under paragraph 1(a) only is justified, the Complaints Commissioner must consider whether the LME's conduct, in relation to its regulatory functions, amounted to, inter alia: (a) a failure to act fairly; (b) a failure to perform its regulatory functions having regard to all the circumstances of the case; (c) a lack of care or a mistake; or (d) an act of fraud, bad faith or negligence.

36. In relation only to complaints arising under paragraph 1(a) above, in his/her report, the Complaints Commissioner may make the following recommendations:

- a. that the LME takes remedial action including, but not limited to, offering an apology, taking steps to rectify the error or, if appropriate, the offer of a compensatory payment on an *ex gratia* basis, or a combination of the above;
- b. that the LME inform the Complaints Commissioner and the complainant of such steps which it proposes to take in response to the report; and
- c. that the LME publish the Complaints Commissioner's report (or any part thereof) if the Complaints Commissioner considers that such report should be brought to the attention of the public or members generally.

37. In relation only to complaints arising under paragraph 1(b) above, in his/her report, the Complaints Commissioner may make the following recommendations:



a. ~~(h) to require~~ that the LME ~~to~~ inform the Complaints Commissioner and the ~~parties to the complaint of the~~ complainant of such steps which it proposes to take in response to ~~his~~the report; ~~and~~.

~~(i) if the original complaint or the referral to the Complaints Commissioner has arisen in connection with the performance of, or failure to perform any of the LME's regulatory functions, the Complaints Commissioner may require the LME to publish the whole or a specified part of its response to the Complaints Commissioner.~~

38. In relation to complaints arising under both paragraph 1(a) and 1(b) above, the LME shall consider carefully the recommendations of the Complaints Commissioner and may act upon such recommendations where it considers appropriate, but shall be under no obligation to do so. Where it does not act upon the recommendations of the Complaints Commissioner, it shall explain its reasons in writing to the Complaints Commissioner and the complainant.

39. The LME shall be responsible for payment of the costs of the Complaints Commissioner pursuant to this section.

Confidentiality

40. Without prejudice to paragraph 41 below, the and any complainant and, where relevant, the Complaints Commissioner must each observe the strict confidentiality of the complaint and the investigation of any complaint, all information provided (to the extent it has not been made public in the Complaints Commissioner's report) and all communications made for the purpose of the investigation, save that the LME and each party to the complaint may disclose any information (a) as required by law, (b) to any regulator responsible for regulating it, (c) to members of its corporate group, (d) to its legal or professional advisors, (e) to its insurers, or (f) where necessary for the discharge of the its obligations under applicable law.

41. Notwithstanding paragraph 40 above, the Exchange and/or the Complaints Commissioner may share with or without redaction any correspondence received from the complainant / respondent / other third party with the complainant / respondent / other third party where it believes it is appropriate to do so in order to facilitate its investigation of the complaint (for example, without limitation, the Exchange will share the letter of complaint with the respondent in order to permit the respondent to respond to the allegations made by the complainant).

Record Keeping

42. The LME shall retain all documents and materials relating to complaints in accordance with its internal record keeping procedures, and in any event for not less than five years.

Liability

43. Neither the LME nor any of its affiliates shall have any liability to any complainant or any third party for any loss (direct or otherwise) damage or injury arising from any act, omission or negligence on its part arising out of or in connection with this complaints procedure, save in



the case of fraud, death, personal injury or any other liability which by law cannot be excluded.

44. The Complaints Commissioner shall not be liable to the LME or any complainant or any third party for any loss (direct or otherwise) damage or injury arising from any act, omission or negligence on his/her part arising out of or in connection with this complaints procedure, save in the case of fraud, death, personal injury or any other liability which by law cannot be excluded.



Summary report:	
Litéra® Change-Pro 10.1.0.200 Document comparison done on 25/07/2019 13:27:58	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: Doc1.docx	
Modified filename: Doc2.docx	
Changes:	
<u>Add</u>	204
Delete	86
Move From	14
<u>Move To</u>	14
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
Total Changes:	319