

NFU Legal Assistance Scheme

Rules of the NFU Legal Assistance Scheme

Approved by NFU Council on 20 January 2014

General Background

1. The Legal Assistance Scheme (LAS) is a discretionary NFU scheme which was established in 1987 by the NFU to assist its subscribers ("LAS subscribers") with their legal and other professional costs associated with disputes arising from their businesses as farmers and growers. It is not a legal expenses insurance policy.
2. Funding is available on a discretionary basis to farmer and grower members who have paid an additional annual LAS subscription over and above their full farming subscription. Funding is only available to assist in cases that have arisen once a LAS subscription has been paid and continues to be paid.
3. In addition to current subscriptions the LAS has reserves in the form of an accumulated fund which has arisen from unused subscription and the investment activities of the Legal Board since the inception of the Scheme in 1987. Current subscription monies and the accumulated fund (the LAS fund) may only be used in connection with the LAS as set out in these Rules
4. The Legal Board is a body which is part of the NFU and is subject to the Constitution of the NFU.
5. The Legal Board operates under its own terms of reference in the form of the LAS Rules which the Legal Board may amend from time to time subject to the approval of the NFU Council.
6. The Legal Board is responsible for the management and strategy of the LAS and its funds.
7. The Legal Board will uphold principles of good governance and financial probity. It will maintain member confidentiality unless otherwise instructed by the member's own legal adviser. Board members must avoid conflicts of interest and where appropriate declare any personal interests in a particular case or transaction.
8. The Legal Board will agree with the NFU Governance Board on the operation of the LAS. This Operating Agreement may be amended from time to time with the agreement of both parties.
9. On behalf of Council and the LAS subscribers the Audit and Remuneration Committee (a standing committee of NFU Council) will from time to time review the operation of these Rules and the Operating Agreement to ensure that they have been applied fairly and consistently.
10. The LAS fund is held by the NFU Trust Company to the instruction of the Legal Board.
11. The LAS fund shall be clearly identified in the NFU accounts and shall not be merged with other NFU funds. The NFU annual accounts shall include an income and expenditure account and balance sheet for the LAS.
12. Only the Legal Board may make decisions on the use of LAS funds and is responsible for ensuring overall budgetary control of the LAS.
13. Terms used in these Rules (unless otherwise defined) have the meaning given to them in the Constitution.

Appointments to the Legal Board

14. The Legal Board is a body formed by NFU Council in accordance with the NFU Constitution and comprises eight members who are appointed biennially from the seven English Regions of the NFU and NFU Cymru.

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15. Appointments are made by the Governance Board from nominations by the Regional Boards and NFU Cymru in accordance with the NFU Constitution and following an open and transparent application process as detailed in the Operating Agreement.
16. Generally Board members will be in office for no longer than 6 years, however, the Governance Board of the NFU in appointing from the nominations from the Regional Boards must have regard to the balance of expertise within the Legal Board and be mindful of the need for future potential Chairmen. No member will hold the office of Chairman for more than 6 years. No member will sit on the Legal Board for more than 12 years.
17. The Chairman and Deputy Chairman of the Legal Board shall be elected by simple majority by the members of the Legal Board at the first meeting of the Legal Board following the NFU AGM for a period of 2 years starting in 2014 and thereafter biennially. The election shall be overseen by a director or senior officeholder of the NFU. In the case of a tie, the matter shall be resolved in accordance with NFU Standing Orders for the election of Commodity Board Chairmen.

Subscriptions and Eligibility

18. LAS subscribers shall pay an annual subscription and such subscription monies and other LAS funds may only be used in connection with the LAS as set out in these Rules.
19. The financial and subscription year of the LAS ("Scheme Year") shall be the same as that of the NFU.
20. The annual LAS subscription rate will be agreed with the Governance Board for approval by Council in the June immediately prior to the commencement of the relevant Scheme Year.
21. A member shall be eligible as a subscriber of the LAS only if:
 - a) he/she is a Farmer & Grower Member or Farmer & Grower Member Organisation of the NFU as prescribed in the NFU Constitution; and
 - b) he/she has paid the subscription duly fixed for the current year in accordance with the Rules of the NFU.
22. Members who are eligible as prescribed above may become subscribers to the LAS by paying the subscription duly fixed for the current year by Council. No LAS awards shall be granted towards disputes arising prior to the member subscribing to the Scheme.
23. In addition to the first free advice provided by NFU CallFirst to all NFU members, all LAS subscribers have the opportunity of having their cases referred to either the relevant LAS Adviser or legal panel firm solicitor (as appropriate) who may initially consider offering an award toward their professional costs incurred in disputes arising out of their businesses as farmers and/or growers up to a maximum prescribed by the Legal Board and in accordance with the Rules of the LAS.
24. No member shall be granted financial support under the Scheme unless he/she is and remains a subscriber.
25. Nothing in these Rules shall be regarded as constituting any commercial agreement between subscribers and the LAS.

Additional Legal Board Matters

26. The Legal Board is responsible for making awards under the LAS in group actions, cases of national importance, cases of oppression and in cases where the award needed is in excess of £10,000, having regard to the level of professional fees incurred by the applicants. The determination of

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awards in other cases shall be made in accordance with the Operating Agreement. Under no circumstances will the Legal Board or the LAS have any responsibility for any adverse costs that may be incurred.

27. The Legal Board may make awards towards actions undertaken by members of the NFU other than LAS subscribers if they consider it to be in the interest of LAS subscribers.
28. The Legal Board may with the approval of the NFU Governance Board utilise a part of its retained funds to establish initiatives for the direct benefit of its subscribers such as setting up a mediation service for subscribers or an alternative business structure as outlined in the Legal Services Act 2007.
29. The Legal Board may make such arrangements as it thinks fit with an independent firm of solicitors to seek advice for itself and for LAS subscribers and any additional expenditure thereby incurred by the NFU on behalf of the LAS shall be paid for out of LAS funds.
30. Honoraria shall be paid to each Legal Board member, as determined by the Audit and Remuneration Committee. Other expenses necessarily incurred during the course of carrying out LAS duties will be reimbursed in accordance with the NFU members' expenses policy.

Old Scheme Funds

Background

Following the introduction of the LAS in 1987, NFU members who had been subscribers to County Legal Aid Schemes became subscribers to the LAS. Although the County Legal Aid Scheme funds were under the general control of the County Executive Committee, the members of the County Legal Committee acted as constructive trustees of the pre-1987 funds. In 1998 NFU Council made changes to the NFU Constitution and the NFU County Branch was removed as a legal entity on 31st October 1999. As far as the pre-1987 funds were concerned, three options became available: wind up the Scheme; transfer to a private trust; or transfer to the National Scheme. In the event most committees transferred their funds into the National Scheme and ensured the ability to spend in circumstances identified locally but not covered under the National Scheme, i.e. the LAS, was preserved. Those funds that were transferred to the LAS from County Legal Aid Schemes are known as Old Scheme Funds.

31. Interest on Old Scheme Funds shall be calculated as a proportion of the annual income from LAS fund investments in proportion to the Old Scheme Fund capital after deduction of tax and added to the individual Old Scheme Funds for use in accordance with these Rules.
32. With the approval of Council, the Legal Board may still agree to facilitate the transfer to LAS management of any pre-1987 funds as described above.
33. Where these funds are held by the Legal Board on behalf of the former Local Legal Committee then:
 - a) an LAS Adviser (if aware of the case) shall notify the relevant NFU County Chairman of any relevant cases which could benefit from those funds. The relevant County Chairman together with the relevant NFU Council Representative may allocate those funds to those cases whether eligible under the LAS or outside the LAS to current LAS subscribers within that County at their absolute discretion with no limits save the limit of funds available;
 - b) the relevant County Chairman together with the relevant NFU Council Representative may allocate Old Scheme Funds towards costs of cases, causes or enquiries of general benefit to the local farming community subject to their agreement. For individual awards over £5,000, the current local Branch Chairman and the Honorary Treasurer must also be consulted for their votes before the final decision is made. The Regional Board should also be advised of the decision in case it could make a relevant observation.

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- c) Old Scheme Funds may be classed as part of the reserves of the LAS where former Local Legal Committees have agreed. Subject to the consent of the relevant County Chairman together with the relevant Council Representative, local Branch Chairman and the Honorary Treasurer (where applicable), those funds shall only be available to the LAS if all current LAS funds are exhausted.

Relationship with the NFU

34. On behalf of the LAS subscribers and the NFU, the Governance Board shall exercise appropriate oversight of the Legal Board through the Operating Agreement.
35. The Legal Board shall prepare a budget and monthly management accounts. The Chairman of the Legal Board shall maintain a regular dialogue with and be invited to attend Governance Board meetings to discuss these and other operational matters concerning the LAS.
36. The Legal Board, through its chairman, will formally report to Council as and when necessary but at least annually. The Legal Board will ensure the provision of an annual report of the LAS activities to each County Chairman to enable them to report to subscribers at the County AGMs. The value of any Old Scheme Funds will be included in this report. As previously, member confidentiality will be maintained unless otherwise instructed by the member's own legal adviser.
37. The NFU will act in the manner prescribed by its Constitution in order to give effect to these Rules.
38. If any of these Rules conflicts with the Constitution, then the terms of the Constitution will prevail.
39. Any difference or dispute between the NFU and the Legal Board concerning the application of these Rules shall be referred to the chairman of the Legal Board on behalf of the Legal Board and the NFU's Director-General on behalf of the NFU for resolution. Any remaining issue will thereafter be reviewed at a meeting of Council at which the chairman of the Legal Board will be present, and Council will decide how the issue is to be resolved.

Complaints

40. Any complaints regarding the operation of the LAS should be referred through the Appeals and Complaints Procedure that is attached to the Terms and Conditions of the Legal Assistance Scheme.
41. Any complaint about a member of the Legal Board should be referred to the NFU Complaints Procedure for Officeholders, available from.....

Disputes between NFU members

42. Generally the LAS does not support one member against another. Where there is a dispute between two or more members of the NFU, the NFU Inter-member Dispute Procedure (Business Guide ref;BG210), which is managed by the LAS, can apply. Costs of mediation or other forms of alternative dispute resolution, as well as Counsel's or Expert's fees may be funded by the LAS to help resolve the dispute, subject to the parties' agreement.

Dissolution

43. If the Legal Board and the Council agree to the dissolution of the Scheme, then any surplus funds after allowing for contingent liabilities shall be transferred to the NFU or disposed of under Part 21.2 of the NFU Constitution.

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44. Should the LAS be dissolved then any Old Scheme Funds held by the LAS at that time will be returned to the LAS subscribers of each County on whose behalf the funds are held and shall not form part of the surplus funds as described in para 43.