An tOmbudsman Seirbhísí Airgeadais agus Pinsean

Financial Services and Pensions Ombudsman

FSPO Code of Ethics for Mediation

The Financial Services and Pensions Ombudsman (FSPO) was established on 1 January 2018 by the Financial Services and Pensions Ombudsman Act 2017 ('the FSPO Act'). The FSPO provides an independent, fair, impartial, confidential, and free service to resolve complaints through either mediation, leading to a potential mediated settlement agreed between the parties, or formal investigation and adjudication, leading to a legally binding decision.

In providing a Dispute Resolution Service (DRS) to assist the resolution of complaints by mediation, the Financial Services and Pensions Ombudsman (FSPO) is committed to adhering to a high professional standard, both in relation to how the mediations are conducted and in relation to the conduct of the Dispute Resolution Officers (DROs) who mediate the complaints.

FSPO Values

The FSPO dispute resolution service will respect and adhere to the FSPO values of fairness, integrity, independence, effectiveness, and accessibility.

All DROs (FSPO staff and contractors) are governed by this Code of Ethics for Mediation except as provided by law. The terms of this Code (or any subsequent FSPO Code) apply to every FSPO mediation from the beginning of the process and apply to all DROs whether working on a complaint alone, co-mediating or supporting/advising a colleague. FSPO staff and contractors are also bound by the FSPO Code of Standards and Behaviour.

The Mediation Process

The aim of FSPO mediation process is to assist the parties to resolve a complaint which has been made to the FSPO. The FSPO mediation process is flexible, and it is up to each DRO to manage the process in an appropriate manner proportionate to the nature of the complaint and the needs of the parties.

The mediation process starts at the first contact between the DRO and the parties and ends when the DRO advises the parties in writing that the process is concluded.

Mediation by Phone

The majority of mediation in the FSPO happens over the phone in the manner of "shuttle" mediation. The DRO will generally speak to the Complainant first to get a full picture from them of their point of view of the complaint. The DRO will then speak to the Provider over the phone, passing on the Complainant's point of view and receiving the Provider's point of view which they then report back to the Complainant.

The DRO then shuttles between the parties, passing on information, asking questions, prompting thinking around possible resolutions until all avenues have been explored and

(i) the parties decide to agree to settlement terms to resolve the complaint, or

(ii) the Complainant elects to close the complaint based on information received or

(iii) the Complainant seeks an impartial third-party decision on the complaint by opting for formal Investigation and Adjudication by the Ombudsman, which will lead to the issuing of a legally binding decision.

Joint-Session Engagement

Where appropriate, the DRO may decide to conduct a joint-session engagement with the parties rather than use "shuttle" mediation. The DRO will decide how best to structure the joint-session engagement. For example, the joint session may take place with each party and the DRO present, or it may comprise a mix of joint sessions and meetings with each party separately. A party may bring a support and/or expert advisor(s) to the joint session by prior agreement with the DRO.

The DRO will explain to the parties and any representative(s), experts or support person attending, the principles of confidentiality and how the rules in relation to confidentiality operate and will seek the written agreement of all present to be bound by the FSPO mediation rules. This written permission can be sent by email from each of the participant's personal email, or in hard copy.

Access to direct contact mediation

In order to increase access to direct contact mediation where suitable, the FSPO uses conference call and video mediation, where appropriate.

Mediation Settlements

If the parties can agree a settlement that works for them all, the DRO will record the terms agreed in a formal Mediation Settlement document, sending a duplicate draft copy to each party.

The Mediation Settlement will state:

- Exactly what has been agreed between the parties
- That the settlement is legally binding on the parties
- That the settlement is bound by confidentiality except in the circumstances outlined below under "Exceptions to Confidentiality**"**

Each party will then be asked to formally acknowledge their acceptance of the Mediation Settlement. This acknowledgement can be sent by email or in hard copy. The DRO will then issue the final version of the legally binding Mediation Settlement to all parties.

Termination of Mediation

The parties to a complaint may reach a Mediation Settlement which ends the mediation process and resolves the complaint. If the parties fail to reach a settlement, the Complainant may end the mediation process, by closing the complaint with an option to re-open at a later date if new evidence comes to light. The Complainant may also choose to ask for a formal Investigation and Adjudication of the complaint. Whatever route the complaint takes, the parties will be informed in writing when the mediation process ends. The DRO may, on reasonable grounds,

abandon an attempt to resolve a complaint by mediation, if this step is considered to be appropriate.

Fundamental Principles of Mediation

Voluntary Participation

Mediation is a voluntary process. No party is forced to take part in mediation and any party to the mediation process, including the DRO, may end the process at any time.

Consent to engage

When a DRO makes their first call to the parties to the complaint, they will explain the mediation process and will seek the parties' verbal agreement to engage in the mediation, which they will record on the FSPO Complaints Management System (CMS). Consent to engage at the beginning of the process will be valid for all subsequent forms of mediation used i.e., phone mediation, face to face mediation or any other format used, unless that consent is specifically withdrawn by any party.

Respect

Good faith is essential to mediation. If respect is missing in the mediation process and the DRO believes that the lack of respect is affecting, or is likely to affect the mediation process, the DRO may end the mediation. We expect the parties to enter the mediation process with the genuine intention to try to resolve the complaint by mediation.

Impartiality and Neutrality

The DRO must act, and be seen to act, in an impartial manner throughout the mediation. This means freedom from favouritism, bias, or prejudice. The DRO must not take sides. If a DRO believes that their impartiality has been compromised, they must bring this to the attention of the Director of DRS.

The DRO must remain neutral as to the content and the outcome of the mediation. Nothing shall prevent the DRO from talking to, phoning, communicating with or meeting one party, with or without the knowledge of the other party.

The DRO will play no role whatsoever in any subsequent investigation of the complaint by the FSPO.

Confidentiality

FSPO mediation is a confidential process and all parties, including the DRO, are bound by confidentiality in relation to all information arising from the mediation process. Confidentiality starts at the beginning of the mediation process when the parties give their agreement to take part in the meditation process.

For management and training purposes and to ensure a continuity of service, a DRO may discuss the details of a mediation with another member of the Dispute Resolution Service. All DROs consulted by another DRO are bound by the same obligation of confidentiality, as if they were the mediator of that particular complaint.

If mediation is unsuccessful and a Complainant opts for Investigation and Adjudication the complaint file goes to the Investigation team showing:

- All documents originally submitted to the FSPO by the Complainant – including their FSPO Complaint Form.
- Any documents of fact that were shared during mediation for example, letters & statements/formal documents which existed before the mediation process began.

The mediator does not forward any mediation content e.g., call notes, emails exchanged during mediation, details of any admission/s made, or any document specifically created to aid the mediation, unless the person who made the admission, or to whom the document relates, consents to its admission in accordance with Section 58(5)(a) of the FSPO Act 2017.

Parties who take part in an FSPO mediation process agree that any information shared during the mediation will not be shared with anyone outside the mediation process and the Dispute Resolution Service. That means that if the matter proceeds to a formal Investigation by the Ombudsman, or to court, none of the parties may

discuss what happened during mediation including why it failed, any offers, admissions of liability, and/or apologies.

It also means that the parties to the complaint and the DRO/Dispute Resolution Service cannot share the content of the mediation process, or attempted mediation, anywhere outside of the process, except as specified below, under "Exceptions to Confidentiality" or to seek advice and, in that event, the chosen advisors must also keep the content confidential.

If a Mediation Settlement is reached, the parties are again bound by confidentiality. This duty of confidentiality is unending except under the circumstances outlined below.

Confidentiality does not however extend to documents that were **already in existence** before mediation commenced. For that reason, historical documents which were in existence prior to mediation, do not become *'off the record'* simply because mention may have been made of them during mediation or because they were submitted in the course of the dispute resolution process.

By way of example, an already existing policy schedule, submitted by one or other of the parties during mediation, will, in due course, remain visible on the FSPO formal investigation file, if the complaint is not resolved by mediation, and a formal investigation is to proceed. However, the formal investigation file will not of course include, or have access to, any comments or observations from the parties regarding that already existing policy schedule or regarding its import or meaning where such comments or observations were made, during the dispute resolution process.

Therefore, documents which were already in existence before the FSPO's dispute resolution process and did not come into being for or arise during or out of that confidential dispute resolution process, do not fall within the confidentiality of the mediation process, and they are considered to be appropriate to remain on the file for the formal investigation of the complaint.

Exceptions to Confidentiality

The FSPO may break confidentiality in the following situations:

- Where a disclosure is necessary in order to implement or enforce a Mediation Settlement
- Where a disclosure is necessary to prevent physical or psychological injury to a party

- Where a disclosure is required by law
- Where a disclosure is necessary in the interests of preventing or revealing

(i) the commission of a crime (including an attempt to commit a crime)

(ii) the concealment of a crime or

(iii) a threat to a party

- Where a disclosure is sought or offered, in order to prove or disprove a civil claim, concerning the suggested negligence or misconduct of the mediator occurring during the mediation, or in the event of a complaint to a professional body concerning such suggested negligence or misconduct.
- Where specific information is required to fulfil the FSPO's statutory function and reporting requirements

Self-Determination

Whilst the DRO is responsible for managing the mediation process, the parties decide and design the outcome of the mediation, based on their respective informed decision-making. This means the DRO will not propose settlement terms to resolve a complaint and instead the outcome of the mediation must be decided by the parties themselves.

Informed Decision-Making

A DRO has a professional obligation to ensure that the parties are making informed decisions. They will do this by encouraging the parties to identify the strengths and weaknesses of their complaints, and to explore possible options for resolution. They will also reality-check those options. The DRO also has a duty to ensure that every party has an adequate understanding of the relevant information to allow balanced negotiation. If the DRO is of the opinion that capacity to understand is an issue they may bring the mediation to an end.

Professional Advice

The parties may take whatever external professional advice they require before and during the mediation and, in particular, before agreeing to be bound by a legally binding Mediation Settlement. Any such third parties consulted for advice must be

made aware, by the party consulting them, that the details shared with them, are bound by confidentiality.

Data Protection

The DRO is committed to protecting the personal data of the parties as per the Data Protection Act 2018. For more information, please follow this link: https://www.fspo.ie/data-privacy/

Conflict of Interest

The DRO will not proceed or continue with the mediation if a conflict of interest, whether real or apparent, arises.

If the DRO or one of the parties believes that a conflict of interest might exist or may be perceived to exist, the DRO together with the parties must discuss whether it is appropriate for the DRO to continue their involvement. In such circumstances, the DRO must also discuss such potential conflicts of interest with their Director.

Training and Development

All DROs are obliged to take part in Continuous Professional Development (CPD).

Training Sessions

The FSPO seeks to ensure that all DROs receive adequate training in mediation skills and will provide regular and ongoing upskilling opportunities for DROs. Any trainer or trainee using complaint studies based on real complaints, for training and development purposes, will ensure that the identity of the parties is protected.

Reflective Practice

Supervision/Mentoring/Sharing and Learning will be used on an ongoing basis. DROs are obliged to improve their professional practice by reflecting on their performance in their mediation processes. This reflective practice can be carried out in one-to-one sessions or in group sessions at the option of the DRO and/or the FSPO Dispute Resolution Service. If this reflective practice occurs outside the FSPO Dispute Resolution Service, for example in an external professional training session, the DRO may disclose anonymised information about complaints but will ensure that they do

so in such a way that ensures that the identity of any of the parties **cannot** be ascertained from the information given. Additionally, the DRO will only share information in an environment bound by confidentiality.

Complaints about Dispute Resolution Officers

A complaint about the service provided by a DRO or by any other member of the FSPO staff can be registered by emailing feedback@fspo.ie or by ringing 01 5677000.

Reporting Requirements

In accordance with section 12 of the FSPO Act, the FSPO shall publish, information in relation to –

a) The making of complaints and

b) the handling of complaints by informal means, mediation, and formal investigation

The Ombudsman shall report on a summary of all complaints made to him during the previous financial year, reviewing trends and indicating how such complaints were dealt with and concluded. The Ombudsman may also publish reports on other matters if considered to be in the public interest to do so.

Any such report shall not divulge the identity of any complainant, nor shall anything be published in the report that may lead to the identification of any complainant unless the complainant consents in writing to such publication.

25 October 2022