



An tOmbudsman Seirbhísí
Airgeadais agus Pinsean

Financial Services and
Pensions Ombudsman

FSPO Code of Ethics and Practice for the resolution of disputes using mediation techniques



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FSPO Code of Ethics and Practice for the resolution of disputes using mediation techniques

Purpose and Scope of the Code

In providing a dispute resolution process to assist the resolution of disputes the Financial Services and Pensions Ombudsman (FSPO) is committed to adhering to a high professional standard both in relation to how its dispute resolution processes are conducted and in relation to the conduct of the Dispute Resolution Officers (DROs).

It is important that there is a level of standardisation in approach to the FSPO dispute resolution process. However, every dispute resolution process is unique and its very success may depend on its retaining its flexibility. It is not possible to cover every scenario and, further, there may be occasions when the particular situation requires a different approach. If a DRO is in doubt as to how a dispute resolution process should proceed, they should seek advice from their line manager.

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

Definitions and Descriptions

A mediator means an accredited member of the Mediators' Institute of Ireland (the MII) or other recognised, accrediting body and will hold a current practicing certificate issued by the MII or other recognised body. They agree to be bound by this Code.

A trainee mediator means a person who has been trained in mediation skills. They agree to be bound by this code in so far as it can relate to them.

A Dispute Resolution Office (DRO) means either or both a mediator and/or a trainee mediator, employed by the FSPO as a full time or part time DRO, or nominated by the FSPO to be on an FSPO mediator panel.

The parties to a dispute resolution process means a party may be an individual, a corporate entity, an organisation or a group of people who are directly involved in the dispute resolution process.

The FSPO dispute resolution process means a process in which an impartial and neutral third party (the DRO) facilitates communication and negotiation and promotes voluntary decision-making by the parties to resolve a dispute and to assist them to reach a resolution.

The dispute resolution 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.

Dispute Resolution Session means the actual session(s), whether by phone, face-to-face or other forum, where the DRO is mediating to assist the parties to arrive at a resolution.

Fundamental Principles

The fundamental principles of the FSPO dispute resolution process are that: it is a voluntary process; confidentiality applies to the process; the DRO is and remains multi-partial and neutral; and the parties have the right of self-determination to decide their own solutions rather than having a solution imposed on them. The parties in the dispute resolution process and any representatives in attendance agree to treat each other and the process with respect.

Voluntary Participation

The dispute resolution process is a voluntary process. Any party to the dispute resolution process, including the DRO, may end the process at any time.

Confidentiality

The FSPO dispute resolution process is a confidential process and both the participants and the DRO are bound by confidentiality in relation to all information arising from the dispute resolution process, unless agreed otherwise by the parties and the DRO. This allows the parties to engage in conversations, both with the DRO and between each other, that they might otherwise be reluctant to engage in. There are conditions and qualifications to this confidentiality, as outlined in items 31-42 below.

Impartiality and Neutrality

The DRO must act, and be seen to act, in a multi-partial manner throughout the dispute resolution process. 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 may terminate the mediation or notify their manager so that the case may be allocated to another DRO.

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

Self-Determination

The DRO is neither a judge nor an arbitrator. While the DRO is responsible for the dispute resolution process, the parties make the decisions in relation to the outcome of the dispute resolution process, based on informed decision-making. The content and outcome of the dispute resolution process belongs to the parties.

Informed Decision-Making

The parties are asked to disclose all relevant information during the dispute resolution process and the DRO assists the parties by helping them to identify the strengths and weaknesses of their complaints, explore possible options for resolution and to reality-test those options. The DRO will also, through clarification and/or explanation attempt to remedy any imbalance in knowledge for either party to ensure fairness.

Respect

Good faith is essential to the dispute resolution process. If this respect is missing in the process and the DRO believes that the lack of respect is, or is likely to, affect the process, the DRO may end the

dispute resolution process. We expect the parties to enter the process with the genuine intention to try to resolve the dispute.

Professional Responsibility

Nature and purpose of the dispute resolution process – When the complaint is registered at the FSPO, the complainant is sent information in writing relating to the nature and principles of the dispute resolution process. Following this, as soon as practicable, the DRO will, in writing, introduce him/herself to both parties, explain the nature, purpose of and fundamental principles of the dispute resolution process, in particular that it is a voluntary process. The DRO will also contact the parties to explain how the process is to be carried out and seek their verbal or written agreement to proceed.

In the dispute resolution process the DRO shall have regard to the needs of the parties and in particular to any aspects of access or disability.

The DRO is required to be aware of the law, codes, regulations and practice relating to how they conduct the FSPO dispute resolution process. If the DRO's practice could bring them into the area of child protection, elder abuse, self-harm, abuse or welfare issues, or complainant vulnerability, the DRO must inform themselves of any appropriate policies and guidelines and inform their line manager to confirm the approach to the complaint.

The Dispute Resolution Process

The aim of the dispute resolution process is to assist the parties to resolve a dispute that has given rise to a complaint to the FSPO.

The FSPO dispute resolution process is a flexible process and it is up to each DRO to decide the most appropriate approach for each case, taking account of the general principles and practice of the FSPO dispute resolution service.

Consent to engage

The parameters and principles of the dispute resolution process will be outlined in the FSPO dispute resolution process information leaflet, registration letter and dispute resolution introductory letter. The DRO will explain the parameters and principles of the process during their preliminary contact with each party and seek verbal or written agreement to engage in accordance with these terms. Where a joint session (i.e. face-to-face) dispute resolution process is to take place, these terms will be set out in an 'Agreement to Mediate', which will be signed by each party. (See items 59 to 66 Joint Session Engagement below for further information.)

Mediated Agreement

The agreement is reached by the parties within the dispute resolution process. Subsequent to the dispute resolution process, the DRO will record the terms agreed in a mediated agreement and send it to each party. The mediated agreement must be accepted in writing by the complainant prior to implementation. The mediated agreement is confidential to the signatories. The parties may have to use the agreement to enforce a term of the mediated agreement or to seek redress in the event of a breach of the mediated agreement. In that event, the confidentiality of the mediated agreement is waived to the extent required by law.

Confidentiality

The dispute resolution process is a confidential process and the DRO is obliged to explain to the complainant and to the provider the principles of confidentiality and how the rules in relation to confidentiality operate. The confidentiality belongs to the FSPO Dispute Resolution Service, the DRO and the parties.

Confidentiality for a DRO starts at the beginning of the dispute resolution process and is an implied term, effective immediately from the start of the dispute resolution process. All dispute resolution process discussions and related communications should be treated as being “without prejudice” unless otherwise agreed or advised, except for information that would be subject to discovery, had the dispute resolution process not taken place. All matters discussed in separate meetings, phone conversations or other communication forums during the dispute resolution process are confidential to those included in those discussions except where permission has been given for all or some of the information to be shared with the other party or with another third party for the purpose of obtaining legal or other advice.

The DRO’s Notes

The DRO should explain to each party that the DRO may need to take notes. The DRO’s own notes of the dispute resolution process are the property of the FSPO Dispute Resolution Service and may not be disclosed to the parties or another third party, including as part of a Subject Access Request, except as required by law.

Data Protection Act 2018

The DRO is committed to protecting the personal data of the parties as per the Data Protection Act 2018. If requested, the DRO must inform the parties about their entitlement to access information under Data Protection legislation. Every person using our services is entitled to access to their personal data, however, there are limited restrictions to this access. Please note that this may just mean that parts of documents are redacted or some documents are withheld. The FSPO does not release certain information which is generated specifically as part of any confidential mediation process. Such information is shared with the FSPO on the basis that the information is given to us in confidence or on the understanding that it will be treated as confidential. The FSPO relies in this regard on Section 60 (3) (b) of the Data Protection Act 2018 and Section 10 of the Mediation Act 2017.

Section 60 of the Data Protection Act 2018 provides

“Restrictions on obligations of controllers and rights of data subjects for important objectives of general public interest.

The rights and obligations provided for in Articles 12 to 22 and Article 34, and Article 5 in so far as any of its provisions correspond to the rights and obligations in Articles 12 to 22—

are restricted to the extent specified in subsection (3), and

may be restricted in regulations made under subsections (5) or (6).

(2) Subsection (1) is without prejudice to any other enactment or rule of law which restricts the rights and obligations referred to in that subsection.

(3) Subject to subsection (4), the rights and obligations referred to in subsection (1) are restricted to the extent that

(b) the personal data relating to the data subject consist of an expression of opinion about the data subject by another person given in confidence or on the understanding that it would be treated as confidential to a person who has a legitimate interest in receiving the information, or”

The Mediation Act 2017 provides in accordance with Section 10

“Confidentiality Section 10.

Subject to subsection (2) and section 17, all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise.

Subsection (1) shall not apply to a communication or records or notes, or both, where disclosure—

- *is necessary in order to implement or enforce a mediation settlement,*
- *is necessary to prevent physical or psychological injury to a party,*
- *is required by law,*
- *is necessary in the interests of preventing or revealing—*
- *the commission of a crime (including an attempt to commit a crime),*
- *the concealment of a crime, or*
- *a threat to a party,*

or

- *is sought or offered to prove or disprove a civil claim concerning the negligence or misconduct of the mediator occurring during the mediation or a complaint to a professional body concerning such negligence or misconduct.*

(3) Evidence introduced into or used in mediation that is otherwise admissible or subject to discovery in proceedings shall not be or become inadmissible or protected by privilege in such proceedings solely because it was introduced into or used in mediation.”

[Exceptions to Confidentiality](#)

A DRO may have to breach confidentiality without the consent of any or all of the parties in the following circumstances:

- When there is a concern that a child or vulnerable adult may be at risk or to prevent harm to the physical or psychological integrity of a person;
- If required to do so by law;
- Where necessary for overriding considerations of public policy;

- To enable the FSPO Dispute Resolution Service or the DRO to defend themselves from a claim, complaint, disciplinary process, negligence or other proceeding against them arising from the dispute resolution process.
- Specific information required by the FSPO to fulfil its statutory and reporting requirements is exempted from confidentiality (see below for further details).

Reporting Requirements

The FSPO Dispute Resolution Service may gather information such as the following, either as part of its public service remit or as an essential processing function within the FSPO:

Aggregate information to fulfil statutory reporting requirements, for example to: the FSPO Council; the regulatory authority; the Oireachtas; the Minister for Finance, media, wider public.

Anonymised information for use in case studies for public information and education on the provision of financial services.

General information in relation to product type and type of conduct complained of to identify sectoral issues and to enable sectoral learning.

Specific information in relation to product type and type of conduct complained of to enable the complaint to be appropriately categorised and further progressed within the FSPO.

Specific information on the terms of settlements, to ensure a record exists in case of disagreement and for internal training purposes.

Information pertaining to the efficiency and effectiveness of the FSPO Dispute Resolution Service for internal training and management insight, including whether and how the issues giving rise to the complaint have been resolved in the dispute resolution process

Training and Development

Any trainer or trainee using complaints studies based on real cases for training and development purposes will ensure that the identity of the parties is protected.

Reflective Practice

Supervision/Case Consultancy/Mentoring/Sharing and Learning. DROs are obliged to improve their professional practice by reflecting on their performance in their dispute resolution 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 service. If this reflective practice occurs outside the FSPO Dispute Resolution Service, the DRO may disclose anonymised information provided that they do so in such a way 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.

Advice from Professionals

The parties are free to take whatever advice they require before and during the dispute resolution process and, in particular, before agreeing to be bound by a Settlement Agreement and the DRO will allow time for this if requested.

Conflict of Interest

The DRO must not proceed or continue with the dispute resolution process if a conflict of interest arises. If the DRO is unsure as to whether a conflict, or perceived conflict of interest exists, they should contact their line manager and explain the situation.

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.

Providing Information

The FSPO will make this code publicly available.

Record Keeping

The DRO must ensure that any dispute resolution process records are stored securely and in line with FSPO policy and procedures.

The DRO must be aware of FSPO policy and procedures relating to recording and storage of personal information, in line with Data Protection requirements.

DROs will strictly adhere to FSPO Dispute Resolution Service requirements in relation to the filing of notes and any papers arising from the dispute resolution process. The onus is on each DRO to ensure that they are compliant with FSPO policy in relation to the retention and filing of records. Please see the following link: <https://www.fspo.ie/data-privacy/>

Termination

The DRO may, on reasonable grounds, abandon an attempt to resolve a complaint by mediation as he or she considers appropriate.

Complaints

The DRO will be subject to the customary disciplinary procedures operating within the FSPO.

Continuing Professional Development

The FSPO will provide ongoing professional development to DRO's.

Fees

There is no charge for the dispute resolution process. However, if a party wishes to bring an expert, advisor or supporter to the dispute resolution process, they will be responsible for any associated fees. The DRO should inform the Parties of this in the initial communication in relation to the dispute resolution process.

Joint-Session Engagement

Where appropriate, the DRO may decide to conduct a joint-session engagement with the parties.

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 may comprise of a mix of joint sessions and meetings with each party separately.

The DRO may decide to hold preliminary meetings with each party separately before a joint-session engagement. These meetings may take place by phone, online forum or face-to-face, depending on the particulars of the case.

A party may bring a support and/or expert advisor(s) to the joint session by prior agreement with the DRO.

The DRO is obliged to explain the principles of confidentiality and how the rules in relation to confidentiality operate to the parties and any representative(s), experts or support person attending.

All participants at a joint session are required to sign an 'Agreement to Mediate' setting out the terms and conditions of the engagement at the outset, and agree to be bound by its terms.

Notes from the joint session – all involved in the joint session engagement are encouraged not to take verbatim notes. The DRO should agree at the beginning of the joint session, with all of those involved, what is to happen to any notes taken during the joint session including flip chart pages, if used.

[Agreement to Mediate and Mediated Agreements](#)

These agreements are confidential to the signatories. The parties may have to use the mediated agreement to enforce a term of the agreement or to seek redress in the event of a breach of the agreement. In that event the confidentiality over the agreement is waived to the extent required by law.