



ETHICS IN MEDIATION OF PENSION DISPUTE RESOLUTION MECHANISMS

1. Ethics refers to the moral principles and standards that guide behavior in procurement, such as honesty, integrity, fairness, and accountability.
2. Compliance refers to adherence to applicable laws, regulations, policies, and internal procedures governing procurement activities.
3. Together, ethics and compliance ensure that procurement decisions are made:-
 - (1) Objectively; (2) Transparently; and,
 - (3) In the best interests of scheme members and beneficiaries.

1. Privacy and confidentiality are core pillars of Alternative Dispute Resolution (ADR).
2. Processes like mediation and arbitration are private forums for settling disputes.
3. Unlike public court trials, mediation allows open discussion, protecting personal information and encouraging settlement.
4. This means discussions, documents, and outcomes stay within the process unless parties agree otherwise or law demands disclosure, preventing information use in future court cases.

5. Key Aspects of Privacy & Confidentiality in ADR:-

(1) Privacy of Proceedings.

ADR happens in private settings (offices, gardens, etc.), shielding sensitive matters (like family or business issues) from public view.

(2) Confidentiality of Information.

What is said in mediation or arbitration generally cannot be revealed or used as evidence later.

(3) Documents

Submitted documents are also kept confidential.

(4) Outcomes

Settlement agreements are private, though sometimes disclosure is needed for enforcement.

(5) Caucus Confidentiality

In private meetings (caucuses) with the mediator/arbitrator, information shared remains confidential unless the sharing party permits disclosure.

1. Encourages Openness

Parties feel safe to speak freely, disclose crucial details, and explore creative solutions without fear of public scrutiny.

2. Protects Reputation

Keeps personal or business issues out of the public eye, preserving relationships and reputation.

3. Facilitates Settlement

Fosters trust and communication, vital for reaching agreements. Legal Standing & Exceptions:

1. Varies by Jurisdiction

Laws differ; Some countries have strong statutory protections (like Turkey's), while others rely on rules or party agreements.

2. Party Agreements

Best practice is to have a clear confidentiality clause in the ADR agreement.

3. Exceptions

Law may override confidentiality for public safety (e.g., serious crimes), to prevent future harm, or for enforcing the final settlement.

4. Consequences of Breach

Can lead to legal penalties (fines, imprisonment in some jurisdictions),

A. Confidentiality



1. Given the sensitivity of financial information, mediators must maintain strict confidentiality.
 2. All pension statements, earnings records, and calculations must remain private.
 3. Discussions cannot be shared without consent
 4. Documents cannot be used in other proceedings unless allowed by parties.
- ❖ Confidentiality builds trust and encourages honest disclosure.

1. It is a cornerstone of Alternative Dispute Resolution (ADR):-
 - (1) Creates a safe space for open dialogue by ensuring what is said stays private;
 - (2) Encourages candid settlement talks;
 - (3) Protects parties from future prejudice;
 - (4) Applies to everything shared (discussions, documents, offers);
 - (5) Binds parties, lawyers, and mediators, though exceptions exist (like illegal activity) and legal frameworks vary globally;
 - (6) Fosters trust and enables creative solutions.
- ❖ It is enforced through professional ethics and specific rules, preventing disclosures from being used later in court.

1. Encourages Candor

Parties share sensitive information (needs, strategies) knowing it won't be used against them later, facilitating deeper engagement.

2. Protects Privacy

It ensures privacy and reduces legal risks, allowing for solutions that preserve relationships.

3. Fosters Trust

In mediation, where parties are often adversaries, trust builds necessary for meaningful interaction.

1. What is Covered

All discussions, documents, offers, proposals, and records generated during the process.

2. Who is Bound

Parties, lawyers, mediators, arbitral institutions, and staff.

3. Process

Often includes in camera (private) hearings and caucus sessions, with strict rules against recording or sharing.

1. Varies by Method

Rules differ slightly between mediation (highly consensual) and arbitration (more formal), with specific institutional governing rules.

2. Legal Frameworks

The legal basis and enforcement can vary significantly by country, with some jurisdictions having specific statutes.

3. Breaches

Breaching confidentiality can lead to sanctions for legal representatives and challenges to the process.

❖ In essence, confidentiality is the engine that drives candid settlement discussions in ADR, transforming hostile environments into productive ones.

1. A conflict of interest in dispute resolution occurs when a decision-maker—such as a mediator, arbitrator, conciliator, adjudicator, manager, or public officer—has competing personal, financial, or professional interests that could compromise or appear to interfere with their ability to make objective, fair, and unbiased decisions.
2. A conflict of interest is fundamentally a problem of compromised decision-making.
3. The core issue is that personal interest and professional duty collide, creating a situation where the person may struggle to act purely on the merits of the case.
4. In dispute resolution, neutrality is essential.
5. If a neutral party has any connection that might create bias, the process becomes unfair or invalid.

1. Personal relationships

The mediator is a friend, relative, or close associate of one of the parties.

2. Financial interests

The arbitrator stands to gain financially from the outcome.

3. Previous involvement with the parties.

4. Acting as a lawyer, consultant, or advisor to one of the parties.

4. Professional connections

Working in the same organization as one of the parties.

5. Hidden biases or prior knowledge

The neutral party has strong personal views that affect judgment.

6. Receiving gifts or favors

Accepting rewards from any party before or during the process.

1. A mediator deciding whether to push for settlement while knowing one party is a personal friend.
 2. An arbitrator who owns shares in the company they are judging.
 3. A procurement officer selecting a supplier owned by a relative.
 4. A manager evaluating an employee they are personally close to.
- ❖ In each case, personal interest directly interferes with rational and impartial decision-making.

1. They undermine trust in the dispute resolution process.
2. They affect fairness and impartiality.
2. They may lead to biased outcomes.
3. They create a perception of unethical behavior, even if no actual bias exists.
4. They can result in invalid decisions, appeals, or litigation.

1. Disclosure

Openly reveal any potential conflict.

2. Consent of parties

If the conflict is minor, parties May agree to proceed after full disclosure.

3. Withdrawal/recusal

Step aside if impartiality cannot be guaranteed.

4. Codes of ethics & professional standards

ADR institutions enforce strict rules to prevent conflicts by application of rules like “reasonable person test.”

5. Independent appointment of neutrals

Selecting mediators or arbitrators through a neutral institution reduces risks by having decisions reviewed independently.

6. Structural safeguards

Avoid sole-person decisions where conflicts exist.

1. Parties have the right to:-

- (1) Ask about the mediator's background affiliations, and previous work
 - (2) Request a different mediator if neutrality is questionable.
 - (3) Terminate mediation if a conflict appears during the process.
- ❖ This protects fairness and confidence in the outcome.

1. A conflict of interest affects decision-making because:-
 - (1) It creates divided loyalties.
 - (2) The decision-maker must choose between:-
 - (i) What is right, fair, and required vs. what benefits them personally (financially, emotionally, socially).
 2. It introduces bias—conscious or unconscious
 - (1) Even when the person tries to be fair, personal interests can subtly influence:-
 - (i) Judgement; (ii) Perception; (iii) Choices; (iv) Interpretation of facts.

3. It undermines trust in decisions

- (1) Even the appearance of a conflict can make decisions look unfair, even if they are not.
- (2) This damages credibility and confidence in the process.

4. It threatens procedural fairness

- (1) A person who has something to gain or lose may:-
 - (i) Ignore some evidence;
 - (ii) Favor one party;
 - (iii) Make a less rational or less ethical decision.

1. Conflicts of interest can lead to:-

(i) Distorted judgment; (ii) Poor reasoning; (iii) Skewed priorities (iv) Unethical choices;

(v) Compromised outcomes

❖ Research in behavioral ethics shows that people often underestimate how much their own interests influence them, which makes this a psychological problem, not just an ethical one.

1. Pension mediation deals with disputes related to:-

- (1) Retirement Benefits,
- (2) Pension Entitlements,
- (3) Contribution Records,
- (4) Fund Management; and,
- (5) Withdrawal Decisions.

❖ Because these matters are financially sensitive and often legally complex, mediators must adhere to high professional standards to ensure fairness, trust, and accuracy.

1. Impartiality and Neutrality in Pension Mediation



1. A pension mediator must remain completely neutral, avoiding bias toward either party.
 2. No personal or financial ties to the parties.
 3. No preconceived opinions about pension rights.
 4. Equal treatment of all participants.
- ❖ This ensures decisions and guidance are based on facts, not influence.

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1. Pension mediation requires technical knowledge, so mediators must be professionally competent in:-
 - (1) Pension laws and regulations.
 - (2) Retirement benefit schemes (public, private, employer-based).
 - (3) Contribution structures, vesting rules, and entitlements.
 - (4) Actuarial implications and fund management basics
- ❖ A competent mediator helps parties understand options and consequences.

1. Mediators must conduct themselves ethically at all times:-
 - (1) Avoid conflicts of interest
 - (2) Be honest, transparent, and accountable
 - (3) Uphold professional ethics codes
 - (4) Reject gifts, favors, or any influence
- ❖ Integrity protects the credibility of the mediation process.

1. All parties must enter mediation willingly and fully informed.
2. The mediator must ensure they understand:-
 - (1) The voluntary nature of the process.
 - (2) The mediator's role.
 - (3) Procedures and possible outcomes.
 - (4) Rights and responsibilities.
- ❖ This avoids coercion and ensures fairness.

1. The mediator must create an environment where both parties have equal opportunities to:-

(1) Present information.

(2) Ask questions.

(3) Express concerns.

(4) Propose solutions.

❖ Fairness promotes balanced and sustainable agreements.

1. Professional standards require:-

- (1) Clear explanation of mediation steps.
 - (2) Transparent fee structures.
 - (3) Disclosure of any limitations or constraints.
- ❖ This prevents misunderstandings and builds trust.

1. The mediator should maintain organized and secure records:-

- (1) Agreements.
 - (2) Session summaries.
 - (3) Confidential documents.
 - (4) Communication logs.
- ❖ Proper documentation ensures accountability and continuity.

1. Pension regulations change often Mediators must stay updated by:-

- (1) Attending training.
 - (2) Studying changes in pension laws.
 - (3) Engaging in professional networks.
 - (4) Updating mediation techniques
- ❖ This ensures high-quality service.

2. Mediators must prioritize:-

- (1) Long-term sustainability of agreements.
 - (2) Financial security of parties.
 - (3) Avoiding rushed or uninformed decisions.
- ❖ The goal is to reach a fair, durable resolution.

1. An ethical dilemma in a pension dispute occurs when the people involved (mediators, pension officers, employers, fund managers, or lawyers) face a situation where two or more ethical responsibilities conflict, making it difficult to choose the “right” action without compromising another ethical duty.
2. Because pension disputes involve money, long-term financial security, legal obligations, and personal information, dilemmas are common and often sensitive.

1. Balancing confidentiality vs. Transparency.

- (1) A mediator may know information that is confidential but also important for fairness.
- (2) They must choose between:-

Protecting confidentiality achieve a fair outcome. –vs- ensuring full disclosure to a fair outcome.

2. Conflict of interest

- (1) A mediator or pension officer may have ties to one party (e.g., employer or pension fund), creating tension between:-
 - ✓ Duty to remain impartial –vs- personal or organizational loyalty.

3. Protecting vulnerable parties

- (1) One party (e.g., an elderly retiree or a financially illiterate spouse) may not fully understand pension terms.
- (2) The dilemma becomes:-
 - ✓ Remaining neutral –vs- stepping in to protect a weaker party.

4. Legal duty vs. human compassion

- (1) Sometimes the law requires strict procedures, but applying them rigidly may harm a party's financial stability.
- (2) The dilemma lies in:-
 - ❓ Following the law –vs- being empathetic and fair.

4. Accuracy –vs- quick resolution.

(1) Mediators must ensure accurate pension calculations, which may require time and verification.

(2) The dilemma:-

✓ Taking time to confirm facts –vs- pressure from parties to settle quickly.

5. Pressure from employers or pension institutions.

(1) Pension officers may face pressure to protect the fund or employer reputation.

(2) The dilemma:-

✓ Duty to the organization –vs- duty to act in the member's best

1. Underpayment Discovered

- (1) A mediator discovers that the pension provider miscalculated benefits, leading to lower payments for years.
- (2) But the information came from a confidential internal source.
- (3) Dilemma:-
 - ✓ Reveal confidential information to correct injustice, or maintain confidentiality?

2. One Spouse Hides Pension Assets During a Divorce

- (1) The mediator knows one spouse has undisclosed retirement accounts.

Dilemma:-

Maintain neutrality and confidentiality, or intervene to prevent unfair settlement?

3. Mediator Worked for the Pension Fund Before

(1) A mediator previously consulted for the pension provider involved in the dispute.

(2) Dilemma:-

✓ Withdraw to avoid conflict of interest, or continue because both parties want to proceed?

4. Member With Poor Financial Literacy

(1) A retiree does not understand lump-sum withdrawal risks and is about to agree to a harmful settlement.

(2) Dilemma:-

Remain neutral, or guide them more directly, risking bias

5. Fraud Suspected

(1) A mediator suspects fraud in pension withdrawals but has no concrete evidence.

(2) Dilemma:-

✓ Report suspicion (risking confidentiality) or stay silent (risking

1. Follow codes of ethics (mediation, pension regulatory frameworks).
 2. Prioritize transparency with all parties—explain limits of confidentiality.
 3. Disclose conflicts of interest immediately.
 4. Seek informed consent from all parties before continuing.
 5. Withdraw from the case when neutrality is compromised.
 6. Document decisions and reasoning.
 7. Seek legal or professional advice where required.
- ❖ Balancing competing ethical principles is essential for fairness and trust in the pension dispute process.



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