



DOCUMENT TITLE: REVIEW OF MEDIATED SETTLEMENTS POLICY

ISSUANCE DATE: JULY 24, 2023

COMES INTO EFFECT ON: JULY 24, 2023

DOCUMENT DISTRIBUTION: [DSO WEBSITE](#)

1. PURPOSE AND SCOPE

As part of its [complaint management process](#), Abuse-Free Sport offers parties to a Complaint (defined below) the opportunity to mediate, where appropriate. Mediation is a confidential and informal process overseen by the Safeguarding Tribunal of the Sport Dispute Resolution Centre of Canada (the "**Tribunal**") in which each party undertakes, in good faith, to negotiate with the other party with the assistance of a mediator, with a view of reaching a possible settlement prior to the completion of the formal Complaint process.

Pursuant to its authority granted by Abuse-Free Sport, in the event that parties reach a consensual settlement agreement through the Abuse-Free Sport mediation process (a "**Settlement Agreement**"), the Director of Sanctions and Outcomes of Abuse-Free Sport, the Deputy Director of Sanctions and Outcomes or their respective delegate(s) (hereinafter, the "**DSO**") is obligated to review the terms of the Settlement Agreement and must approve the terms of the agreement before it can take effect. A review of Settlement Agreements ensures an added means of protection and fairness for the parties involved in a mediation process, and promotes confidence in mediation as a process for resolving Complaints brought before Abuse-Free Sport.

The purpose of this Policy is to outline the principles observed by the DSO in its review of a Settlement Agreement.

2. DEFINITIONS

"**OSIC**" means Office of the Sport Integrity Commissioner of Abuse-Free Sport.

"**Code**" means the Canadian Sport Dispute Resolution Code.

"**Complaint**" means a duly completed and submitted complaint intake form, the receipt by the OSIC of information expressly deemed by the OSIC to constitute a complaint, or a complaint initiated by the OSIC in accordance with its policies & procedures, in each case regarding an alleged violation of the UCCMS.

"**Mediator**" means an independent mediator duly assigned by the Tribunal to a Complaint mediation process.

"**Report**" means a duly completed and submitted report intake form, the receipt by the OSIC of information expressly deemed by the OSIC to constitute a Report, or a Report initiated by the OSIC in accordance with its policies and procedures, in each case regarding an alleged violation of the UCCMS.

"**UCCMS**" means the Universal Code of Conduct to Prevent and Address Maltreatment in Sport.

3. ROLES AND JURISDICTION

(a) Role and Jurisdiction of the Mediator

The Mediator will have authority over the mediation and conduct the process in accordance with Article 4 of the Code, including with respect to assisting parties in reaching a possible Settlement Agreement.

(b) Role and Jurisdiction of the DSO

The DSO is responsible for reviewing the terms of the Settlement Agreement to determine whether to approve, reject or propose amendments to a Settlement Agreement according to the principles in this Policy. The DSO must approve all Settlement Agreements before they become final and binding on the parties. For clarity, the DSO does not have jurisdiction over settlement agreements or terms reached outside of the Abuse-Free Sport process.

The DSO's role in this respect is not as an investigator, a mediator, or a finder of fact, but is rather to apply the UCCMS and Abuse-Free Sport policies and procedures, and to determine whether the Settlement Agreement is reasonable, fair and consistent with the principles specified in this Policy.

4. PROCESS FOR REVIEW OF SETTLEMENT AGREEMENT

The following process will be observed by the parties, the mediator, and the DSO with respect to a proposed Settlement Agreement.

(a) Mediation

When parties agree to mediation, the DSO will be added administratively by the Tribunal as an observer party, and will have full access to all notifications and administrative notices pertaining to the mediation.

The DSO will make contact with the mediator (via any appropriate method and with the administrative assistance of the Tribunal, as needed) for the purpose of clarifying the DSO's role and this Policy.

The DSO will attend the first administrative session with each party and the mediator to ensure that all parties are familiar with the DSO and the Settlement Agreement approval process under this Policy.

The DSO may, but is not obligated to, attend other sessions of the mediation with notice to the Tribunal and the mediator. The DSO will consult with the mediator to understand how the mediation process is unfolding, and whether the DSO's participation is warranted and/or necessary in accordance with the principles of this Policy. While the DSO is permitted to observe mediations, they may not interfere in the process of an ongoing mediation. For clarity, the DSO may communicate with parties through, or with the presence of the mediator as necessary to receive any information or clarification required to understand the proposed terms of settlement, but cannot seek to influence the outcome of a mediation while in progress.

(b) Review Process

A proposed Settlement Agreement will be submitted to the DSO by the Mediator as soon as reasonably practicable following the completion of the mediation process. The Mediator is permitted, but is not obligated to submit earlier proposed drafts of the Settlement Agreement to the DSO for review and discussion prior to the conclusion of a mediation.

Upon receipt of a proposed Settlement Agreement, the DSO may communicate with the parties through, or in the presence of the mediator as needed in their review of the Settlement Agreement, and is permitted to ask questions and seek clarification with respect to the proposed terms of settlement, at the DSO's discretion. Such communication will be subject to the OSIC Confidentiality Policy, and will show deference to the Mediator's role as the primary party responsible for the mediation process and outcome.

(c) Principles of Review

The DSO will review Settlement Agreements in accordance with the principles of this Policy and make a determination as to whether to approve and reject the terms of settlement. The DSO may approve the proposed Settlement Agreement in whole or in part, in their sole discretion.

In its review process, the DSO will ensure that the Settlement Agreement is complete and consistent with this Policy, using the guiding framework in the checklist at Appendix "A". In no event will a Settlement Agreement be approved if it does not meet all of the criteria at Appendix "A".

A Settlement Agreement may be rejected by the DSO, in whole or in part, if all or part of the agreement:

- i. Is in violation of any applicable law;
- ii. Is in breach of public policy;
- iii. Is discriminatory;
- iv. Would bring Abuse-Free Sport into disrepute;
- v. Is in conflict with the principles of the UCCMS and/or Abuse-Free Sport;
- vi. Is coerced or involuntary; or
- vii. Creates a significant risk to the safety of one or more individuals.

(each, a "Ground for Rejection" and collectively, the "Grounds for Rejection").

(d) Communication of Outcome and Next Steps

As soon as reasonably practicable following completion of its review process, the DSO will confirm to the mediator, in writing, whether or not the Settlement Agreement has been approved, rejected, approved subject to conditions, or with recommended amendments.

If a Settlement Agreement satisfies a Ground for Rejection or raises compelling concerns for the DSO, the DSO will notify the mediator of the concerns, with reasons. The DSO's notification may include the following:



- i. Request for clarification of the terms of the Settlement Agreement;
- ii. Suggested changes, additions or deletions from the Settlement Agreement; or
- iii. Approval of the Settlement Agreement, subject to identified conditions, such as the addition, deletion or amendment of specific term(s).

In the event the DSO notifies the mediator of any deficiency in the Settlement Agreement, the parties will be provided an opportunity to resolve the concerns, with the assistance of the mediator. If such process results in a revised Settlement Agreement, the revised agreement will be reviewed by the DSO for approval in the same manner as the original agreement.

In the event that the parties are unable to reach a Settlement Agreement, or the DSO ultimately does not approve the Settlement Agreement, the matter will be remitted back to the OSIC to resume the Complaint management process. In such an event, any future steps in the Complaint management process that involve the DSO will presumptively be handled by the Deputy Director of Sanctions and Outcomes or their relevant delegate(s) (or, where the Deputy Director of Sanctions and Outcomes was involved in the mediation, the Director of Sanctions and Outcomes or their relevant delegate(s)).

When a final Settlement Agreement is approved by the DSO, the DSO will provide a copy of the final Settlement Agreement to the OSIC for its records, and so that it may conclude the Complaint in accordance with relevant policies and procedures.

5. NON-DISCLOSURE AND CONFIDENTIALITY TERMS

This Policy recognizes the need to balance the rights of individuals to agree to confidential mediated resolutions of disputes, while also acknowledging that any contract, policy, procedure or other action that restricts a person's ability to exercise their rights or access available protections, at law or otherwise, may not be in keeping with the principles of Abuse-Free Sport or the UCCMS.

This Policy, and the DSO's authority thereunder will be applied in a manner consistent with the OSIC Confidentiality Policy. At all times, the contents of any Settlement Agreement, discussions, and correspondence regarding the same will be kept confidential by the DSO and all parties, unless otherwise agreed.

A non-disclosure agreement ("NDA") or any other confidentiality provision entered into as part of a Settlement Agreement does not prevent a Report or Complaint from being admissible to the OSIC, any other report to relevant authorities, or, only if applicable, the inclusion of a party on the Abuse-Free Sport Sanctions Registry. A Settlement Agreement will not void a record of a Complaint or Report having been made to the OSIC. Further, in the event the parties agree to sign an NDA or include confidentiality provisions in a Settlement Agreement, if a party breaches the Settlement Agreement, the NDA is not prohibitive to a Report or a Complaint of such breach in accordance with the Abuse-Free Sport Complaint management process.

6. ENFORCEMENT OF SETTLEMENT AGREEMENTS

The parties may contemplate possible consequences of a breach of a Settlement Agreement as part of its terms, including the possibility of a further mediation.



Without limiting any other remedies that may be available to a party, a breach of a Settlement Agreement may be reported to the OSIC as a Complaint or Report in accordance with relevant policies and procedures. A breach of a Settlement Agreement may also constitute a violation of the UCCMS, or be considered an aggravating circumstance for the purposes of sanctioning considerations under the UCCMS.

7. CONFIDENTIALITY

This Policy will be applied in a manner consistent with the OSIC Confidentiality Policy.

8. DOCUMENT REVIEW & DISCLAIMER

This Policy may be amended and updated from time to time in accordance with the applicable procedures of Abuse-Free Sport. This Policy will be applied and interpreted by the DSO in its reasonable discretion.



APPENDIX A: MEDIATED SETTLEMENTS REVIEW CHECKLIST

- Both parties have freely consented to the Settlement Agreement (i.e. that it is not coerced or involuntary).
- Both parties have confirmed their understanding of the terms of the Settlement Agreement.
- The Settlement Agreement is not in violation of any applicable law or public policy.
- The Settlement Agreement is not discriminatory.
- The Settlement Agreement does not bring the Abuse-Free Sport program into disrepute.
- The Settlement Agreement is not in conflict with the principles of the UCCMS and/or Abuse-Free Sport.
- The Settlement Agreement does not create a significant risk to the safety of one or more individuals.
- The Settlement Agreement reasonably resolves the dispute.