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## FEE DISPUTE RESOLUTION POLICY & PROCEDURE

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The Fee Dispute Resolution service is offered to members and clients of members at no cost.

### JURISDICTION

1. APSO will generally only adjudicate fee disputes where both parties are APSO members. In cases involving a non-member, the non-member and the client must agree to abide by the Codes before APSO will consider the matter.
2. The fee dispute resolution formula takes precedence over individual Terms & Conditions and/or any provisions in a Service Level Agreement and any such agreements may be excluded from the adjudication process.
3. APSO will not investigate:
  - 3.1. matters of a commercial nature to assist in retrieving monies or compensation as these are legal issues over which APSO has no jurisdiction. However, APSO may investigate such matters to the extent that they may also involve a breach of the APSO Codes;
  - 3.2. disputes between two non-Members;
  - 3.3. disputes that are already subject to an investigation by a regulatory authority;
  - 3.4. matters that are sub-judice;
  - 3.5. anonymous complaints;
  - 3.6. complaints not in writing.

### FEE DISPUTE ADJUDICATION

4. A panel quorum will be a minimum of three (3) individuals.
5. Fee Disputes will be governed by the following **Fee Dispute Resolution Formula** which has been in place for more than three decades and is recognised as best practice in the staffing industry:
  - 5.1. The party that completed all of the following three (3) steps will usually be regarded as the **effective cause** of the placement and therefore entitled to the fee:
    - 5.1.1.interviewed the Candidate;
    - 5.1.2.Obtained the Candidate's permission to represent them to that *specific* Client for that *specific* vacancy;
    - 5.1.3.Obtained the Client's acceptance of the Candidate as an applicant for that *specific* vacancy. The Client's acceptance is considered to have taken place when the Client acts upon the CV submitted by requesting the submitting agency to set up an interview with the relevant Candidate.

6. If neither party completed all three (3) steps, the panel shall be entitled to use its discretion in making a decision.
7. Adherence to all sections of the Codes will be taken into account when deliberating cases and arriving at decisions.

## **RESOLUTION PROCESS**

8. On receipt of a complaint Ethics will formally record the case and send a Fee Dispute Form for completion.
9. On receipt of the completed form Ethics will notify the other part in writing, send a Fee Dispute Response Form and call for their submission to be made within ten (10) working days of the notification.
10. Should the Respondent fail to make a submission, Ethics will hear the matter on the facts presented by the Complainant.
11. To facilitate adjudication, substantiating evidence must be presented in an orderly manner and indexed to clearly identify each step in the process as per the Fee Dispute Form.
12. The format of the submission must include the following:
  - 12.1. A chronological record of events and a brief explanation;
  - 12.2. A concise breakdown of each step in the formula with substantiating evidence. A general framework is provided in the Fee Dispute Form.
13. The fee dispute is adjudicated on paper and will be based on submissions made.
14. It is the sole responsibility of the parties involved to submit all relevant information and supporting documentation by the deadline. APSO will proceed with the adjudication and will not be liable to accept any late submissions.
15. The appointed panel will be entitled to use their discretion in reaching a final decision and making an appropriate award. This may include, but is not limited to seeking clarity or confirmation from the Client or the Candidate or any relevant third party.
16. Once submissions have been received, only the party that initiated the dispute has the right to withdraw the matter prior to a ruling and award being made.
17. Notwithstanding the above, if the panel suspects that a serious breach of the Code has taken place, the alleged breach may be referred separately to the APSO Ethics Committee for further investigation.
18. Decisions/Rulings will be communicated to the affected parties in writing as soon as the panel has completed its deliberations.

## **RIGHT TO APPEAL**

19. A party shall be entitled to enter an appeal of the ruling, provided it is made in writing within five (5) working days from the date of original ruling. Subject to their right of appeal and their right to initiate arbitration, Members shall comply with rulings made by APSO.
20. The written application for appeal must contain:
  - a. Detailed grounds upon which the appeal is based; and

b. Supporting evidence.

21. Grounds for consideration of appeal must fall within at least one of these categories:
  - a. Material error in facts relied upon;
  - b. Relevant new evidence raised; and
  - c. Dispute as to fairness of proceedings and/or gross irregularity;
  - d. Incorrect application or interpretation of a point of law.
22. APSO will consider the written appeal and thereafter advise the appellant within a reasonable time of its decision to grant or deny same.
23. If the appeal is denied the appellant will be advised in writing with reasons for the decision.
24. If the appeal is found to have merit the other party (respondent) will be advised and furnished with a copy of the appeal.
25. The respondent will have 5 days to respond thereto. If the respondent does not submit any further argument or evidence the appeal will proceed on the content of the appeal.
26. APSO will then place the matter before the Board who will appoint an Appeal Board.
27. A decision/ruling will be communicated to the affected parties as soon as the Appeal Board has completed its deliberations.

## **ARBITRATION**

28. The party that loses the appeal shall have the right to initiate outside arbitration. This must be done in writing by the appellant no later than ten (10) working days from the date of the ruling handed down by the Appeal Board. The South African Institute of Arbitrators will be asked to propose an arbitrator. All costs relating to this arbitration procedure shall be borne by the appellant, unless otherwise ordered by the arbitrator.
29. As a quicker and more affordable alternative to formal arbitration the party that loses the appeal shall have the right to initiate expedited private arbitration by requesting APSO to refer the matter to a recognised Dispute Resolution organization no later than ten (10) working days from the date of the ruling handed down by the Appeal Board. The dispute resolution organisation will appoint a commercial arbitrator. The arbitrator will consider the matter on written submissions from the parties. The arbitrator's decision will be final and binding on the parties. All costs relating to this arbitration procedure shall be borne by the appellant, unless ordered otherwise by the arbitrator.