



# Guidelines for Best Practice re: Disputed Fee Reference

This Guideline applies in cases where all parties agree that a disputed fee claim should be referred via a process of **Mediation/Arbitration** for resolution and does not imply that any party has acted in a matter that is other than lawful, ethical and professional.

These guidelines are provided to assist parties to assess their respective positions if they should wish to refer a disputed fee reference for **Mediation/Arbitration**. They are also intended to give guidance to the **Mediator/Arbitrator** as to the principles that ought to be applied in determining any disputed fee reference. Parties are encouraged to attempt first to resolve all such disputes by process of negotiation.

1. A disputed fee reference may be as to:
  - a. the identity of the agency entitled to receive payment of the fee;
  - b. any other matter in relation to a dispute fee that parties agree to submit for resolution.
2. In any Mediation/Arbitration of a disputed fee reference involving a question as to the identity of the agency that is entitled to receive payment of the fee, the principal for the guidance of the Mediator/Arbitrator, that applies when arbitrating such a disputed fee reference may usually be stated as:

*The agency that created the interview that led to the job offer in respect of which the fee is claimed is entitled to the fee provided that it has not acted unlawfully or unfairly.*

3. For the purpose *only* of determining whether a party has acted unlawfully or unfairly, the Mediator/Arbitrator may have regard to some or all of the following matters:
  - a. the entitlement of any person to represent the candidate;
  - b. whether and when the client sought out the services of the agency with regard to the position in the filling of which gave rise to the claim or claims for payment of a fee (“the position in question”);
  - c. whether and when the agency provided details of the position in question to the candidate;
  - d. whether and when the agency obtained the consent of the candidate to put the candidate forward for the position in question;
  - e. whether and when the agency submitted the candidate’s resume in connection with the position in question;
  - f. whether and when the agency made arrangements for any interview of the candidate by the client with regard to the position in question;
  - g. the contractual entitlement of the agency to claim payment of the fee;
  - h. such other matters (including matters of law) as the Mediator/Arbitrator shall think fit.

**EXPLANATORY NOTE: For the purposes of removing doubt, the above sub-paragraphs (a) to (h) are not intended to create separately enforced ethical duties of their own right; but are intended merely for the purposes of providing guidance to the *Mediator/Arbitrator* as to matters that may bear upon the question of whether particular conduct is unlawful or unfair.**

4. Upon completion of the Mediation/Arbitration, the **Mediator/Arbitrator** will award the fee (in an amount no greater than the higher of the fees respectively claimed by the agencies) in such manner as the Mediator/Arbitrator shall think fit. This may include a split fee determination.

The RCSA’s Business Solutions Centre has providers available to assist in these disputes as a **fee for service**.



CODE CENTRE

RCSA Code for Professional Conduct  
Key Reference