

MEDIATING CONSUMER FINANCIAL DISPUTES

Financial Industry Disputes Resolution Centre's Unique House Style

The Financial Industry Disputes Resolution Centre ("FIDReC") was established in August 2005 with the purpose of providing a low-cost avenue for consumers to resolve their disputes with financial institutions. This article seeks to outline the role of FIDReC and its processes and, at the same time, seeks to define the house style of mediation that has served FIDReC well over the years. This article also highlights some of the different techniques adopted by FIDReC mediators in the course of facilitating the mediation.

Eunice **CHUA** Hui Han¹

*LLB (Hons) (National University of Singapore), LLM (Harvard);
Chief Executive Officer, Financial Industry Disputes Resolution Centre;
Research Fellow, Singapore Management University.*

Beverly **WEE** Man Chee²

*LLB (Hons) (University of Exeter);
Manager, Financial Industry Disputes Resolution Centre.*

I. Introduction

1 The Financial Industry Disputes Resolution Centre ("FIDReC") was created to provide an integrated dispute resolution scheme for the financial sector, where consumers could have an independent and affordable avenue for resolving disputes with their financial institutions.³ Its board consists of directors with industry background and non-industry background. This composition ensures its independence, fairness, accessibility and transparency. FIDReC's procedure is governed by its terms of reference ("TOR"), which is a set of rules approved by FIDReC's board of directors and the Monetary Authority of Singapore.⁴

2 At the time of writing, FIDReC offers two schemes: (a) the FIDReC Non-Injury Motor Accident Scheme ("FIDReC NIMA Scheme");

1 Eunice would like to thank her family for their continuous encouragement and the team at FIDReC, including her co-author Beverly, for their support. Without these, this article would never have been written.

2 Beverly is grateful for the support received from her family and colleagues at FIDReC, including Eunice, for this opportunity.

3 Monetary Authority of Singapore, *Financial Industry Disputes Resolution Centre (FIDReC) Consultation Paper* (P016-2004, October 2004).

4 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 7.

and (b) the FIDReC Dispute Resolution Scheme.⁵ The FIDReC NIMA Scheme helps consumers resolve motor accident disputes that do not involve bodily injury and that are claims by consumers against the other party's insurance company in which the amount claimed is below \$3,000.⁶ The FIDReC Dispute Resolution Scheme applies to all other disputes before FIDReC.

3 Both schemes essentially consist of two stages: (a) mediation; and (b) adjudication. Mediation would be attempted at the first stage and, should the dispute remain unresolved, complainants would be offered the opportunity to refer their matter to adjudication.⁷ Mediation at FIDReC may be conducted through physical meetings or through telephone, e-mail and other methods of electronic communication. Adjudication at FIDReC is often described as an informal hearing chaired by a neutral and independent adjudicator who is usually a retired judge or an experienced lawyer. FIDReC's jurisdiction in adjudicating disputes between complainants and the financial institutions is generally up to \$100,000 per claim.⁸ In the interests of providing a quick and affordable dispute resolution process,⁹ there is no appeal available from the outcome of adjudication at FIDReC and the adjudicator's decision is final.¹⁰

4 What sets FIDReC apart from other organisations is its niche specialisation in financial disputes and its standing as a low-cost avenue for dispute resolution, where complainants are required to present their own case¹¹ and both parties are not allowed to engage legal representation.¹² Decisions made at adjudication, where accepted by complainants, can bind the financial institutions although the

5 Financial Industry Disputes Resolution Centre, *Annual Report 2017/2018* at p 16.

6 See State Courts Practice Directions, Appendix C Pre-action Protocol for Non-Injury Motor Accident Cases.

7 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 20(2).

8 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 29(1).

9 Financial Industry Disputes Resolution Centre, "Response to Feedback Received – Consultation on the Financial Industry Disputes Resolution Centre (FIDReC)" https://www.mas.gov.sg/-/media/MAS/resource/publications/consult_papers/2004/Responses-to-Feedback-Received-FIDReC.pdf (accessed 15 October 2019).

10 The Adjudication Procedure and Adjudication Agreement (version 1.5) cl 6.7 (Financial Industry Disputes Resolution Centre, Terms of Reference (version 1.8, 2017), Annex 4).

11 Where complainants are not fluent in English, they may appoint a nominee to assist them. See the Adjudication Procedure and Adjudication Agreement (version 1.5) cl 2.5 (FIDReC Terms of Reference (version 1.8, 2017), Annex 4).

12 Financial Industry Disputes Resolution Centre, "Response to Feedback Received – Consultation on the Financial Industry Disputes Resolution Centre (FIDReC)" https://www.mas.gov.sg/-/media/MAS/resource/publications/consult_papers/2004/Responses-to-Feedback-Received-FIDReC.pdf (accessed 15 October 2019).

complainants are free not to accept the decision and seek recourse elsewhere.¹³

5 FIDReC's caseload has risen over the years but in recent times has fluctuated at around 1,000 complaints annually. In FY 2017/2018, FIDReC received 1,266 complaints and completed 945 complaints. Of those completed, 72% were concluded at the mediation stage and the balance after adjudication.¹⁴ FIDReC received 1,060 complaints in FY 2018/2019 and concluded 1,220 complaints. Most recently in FY2019/2020, FIDReC received 1,227 complaints and concluded 1,018 complaints.¹⁵ At the same time, the average rate of concluding cases at mediation has also improved from 72% in FY 2017/2018 to 85% in FY 2018/2019 and 81% in FY2019/2020. Prior to FY 2017/2018, this rate was 66% in FY 2016/2017 and 70% in FY 2015/2016.¹⁶

6 This improvement in the rate of concluding cases at mediation was achieved through deliberate efforts and this article serves as a way for FIDReC to take stock as well as share its experiences, with a view of contributing to discussions on mediation techniques and the professionalisation of mediation more generally. Due to the importance of maintaining neutrality, FIDReC is unable to represent either party or to give legal or financial advice.¹⁷ However, FIDReC accords its case managers, who are mediators, with a large amount of discretion in employing various techniques to effectively facilitate discussions between the parties. Over time, FIDReC's mediators have developed what may be termed a "house style" of mediation that is suited to the context of financial disputes, which are often sensitive matters that may affect the livelihood and life savings of the complainant.

II. Defining FIDReC's house style

7 Many academics and commentators have attempted to describe and categorise mediation styles.¹⁸ Most notable amongst these are Riskin's

13 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 26.

14 Thirty-three per cent of the total complaints received were against banks and finance companies, 47% against life insurers, and 14% against general insurers. For the complaints against banks and finance companies, 45% involved disputes on inappropriate advice, misrepresentation or disclosure issues, and 23% involved credit cards. For complaints against life insurers, 53% were on contractual matters while 15% were over inappropriate advice or misrepresentation or disclosures. For general insurers, the vast number of complaints, at 82%, was related to disputes on liability. Financial Industry Disputes Resolution Centre, *Annual Report 2017/2018* at p 1.

15 Financial Industry Disputes Resolution Centre, *Annual Report 2019/2020* at p 4.

16 Financial Industry Disputes Resolution Centre, *Annual Report 2016/2017* at p 1; Financial Industry Disputes Resolution Centre, *Annual Report 2015/2016* at pp 27–28.

17 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 36.

18 See Nadja Alexander, Joel Lee & Lum Kit-Wye, *Singapore Mediation Handbook* (LexisNexis, 2019) at pp 95–101 for an excellent summary.

grid approach, the original version of which considers the role of the mediator and how the problem is defined (evaluative–facilitative), and how the problem is defined (narrow–broad);¹⁹ as well as Bush and Folger’s three practice models of mediation differentiated according to the ideologies of problem-solving, relational and harmony mediation.²⁰ These have led to the common characterisations of mediation as facilitative, evaluative and transformative. Facilitative mediation takes an interest-based approach that focuses on participation by parties in the dispute and with the mediator playing the role of clarifying and enhancing communication between the parties. Evaluative mediation assumes a mediator that has substantive expertise and who guides and advises the parties on the basis of that expertise. Transformative mediation is framed within a relational ideology that focuses on the parties’ abilities to transform their relationship through empowerment and recognition so that they can communicate constructively while working towards a resolution.

8 Each of these mediation styles have their critics. Facilitative mediation, it is said, may not be suitable in the event where one party has a stronger language or negotiation ability.²¹ In the FIDReC context, this imbalance may sometimes be perceived by the complainants, who see themselves as an individual against the financial institution, a big corporation. Evaluative mediation, may be criticised for having the mediator take on too much responsibility on behalf of the parties and proposing solutions based on what they have worked with in the past rather than focusing on the unique facts of each case.²² In the FIDReC context, this risk is also present as the underlying interests of the complainant may well be to seek an apology or acknowledgement of the inconvenience caused rather than a specific solution. As for transformative mediation, this process sometimes holds the risk of putting more emotions and exchanges on the table which may pull the dispute further from settlement if the goal of mind-set transformation is not

19 Leonard Riskin, “Understanding Mediators’ Orientations, Strategies, and Techniques: A Grid for the Perplexed” (1996) 1 Harv Negot L Rev 7. See also Leonard Riskin, “Decision-making in Mediation: The New Old Grid and the New Grid System” (2003) 79 Notre Dame L Rev, Riskin revisits the original grid and replaces “evaluative–facilitative” with “directive–elicitive” in what he calls the “New Old Grid” as well as introduces a “New New Grid” that comprises a series of grids that also give attention to all the participants, including the parties and the lawyers, and also takes into account specific points of time.

20 Robert A Baruch Bush & Joseph P Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (Jossey-Bass, 2005); Dorothy J Della Noce, Robert A Baruch Bush & Joseph P Folger, “Clarifying the Theoretical Underpinnings of Mediation: Implications for Policy and Practice” (2002–2003) 3 (39) Pepperdine Disp Resol LJ 47.

21 Nadja Alexander, Joel Lee & Lum Kit-Wye, *Singapore Mediation Handbook* (LexisNexis, 2019) at pp 121–122.

22 Nadja Alexander, Joel Lee & Lum Kit-Wye, *Singapore Mediation Handbook* (LexisNexis, 2019) at pp 117–119.

achieved.²³ At FIDReC, where efficiency is important to help the parties achieve a timely resolution, the use of transformative mediation, especially where it is not conducted well, can waste a lot of time.

9 In view of the ever-changing profile of the consumer and movements in the financial landscape, FIDReC must be adaptable so as to receive and resolve disputes successfully. Accordingly, mediators at FIDReC are not confined to any particular style of mediation but are able to move among them depending on what the situation requires.

10 To promote understanding of what this may look like, this article focuses on three techniques that have emerged as mainstays in the toolkit of a FIDReC mediator and how they are deployed. These are: (a) acknowledging and managing the emotions of the parties;²⁴ (b) helping the parties communicate with and understand each other;²⁵ and (c) making suggestions where parties are at an impasse.²⁶ This present part explains broadly the rationale for these techniques before the subsequent sections give detailed illustrations of these techniques in action at FIDReC.

11 First, FIDReC caters to members of the general public, that is, individuals and sole-proprietors.²⁷ The financial disputes encountered by them often have a significant impact on their lives. For example, disputes pertaining to non-payment of a mortgage loan could lead to a potential loss of a place to live; medical insurance disputes concerning the failure to declare pre-existing conditions could lead to termination of medical insurance policy which results in one having to bear large hospital bills; even investment-related disputes could have a potential impact on someone's life savings. Accordingly, it is not uncommon for the complainant to be overwhelmed with anger, frustration and disappointment by the time the dispute reaches FIDReC. This is why it is important for FIDReC to acknowledge and deal with emotions while creating an environment to promote civil conversations. This can be done from the point an enquiry is first filed at FIDReC. Our frontline complaints centre staff are trained to be active listeners and to provide assistance to the complainant in articulating their complaints where required.²⁸ Interviews and meetings are held in simply but professionally furnished meeting rooms to promote frank conversations. There is a security officer on standby should FIDReC staff need the assistance of an external party to de-escalate a situation.

23 Nadja Alexander, Joel Lee & Lum Kit-Wye, *Singapore Mediation Handbook* (LexisNexis, 2019) at p 130.

24 See paras 15–24 below.

25 See paras 25–39 below.

26 See paras 40–54 below.

27 Financial Industry Disputes Resolution Centre, *Annual Report 2017/2018* at p 6.

28 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 12.

12 Second, apart from FIDReC's role in providing a safe space, it is also an important communication bridge. As no external lawyers are allowed in FIDReC, the complainants and financial institution representatives have to speak for themselves.²⁹ Often, these parties face difficulties in identifying the key issues in the dispute and communicating their views in a clear, concise manner. This is where FIDReC frontline staff and mediators are called upon to bring clarity to the framing of the issues and help each party understand where the other is coming from. Apart from interactions with parties over cases, FIDReC regularly organises induction courses for its subscribers, that is, the financial institutions, to enhance their knowledge of FIDReC's process and share with them positive practices (for example, proper preparation for mediation and taking note of their demeanour towards the complainants) that can encourage settlement.³⁰ FIDReC has embarked on other educational initiatives for the general public as well, including through partnerships with MoneySense and other like-minded organisations.

13 Finally, because of FIDReC's expertise in mediating financial disputes, there may be a need for mediators to make suggestions for the parties' consideration during mediation, both as to substance and process. Whether or not, when and how the mediators make such suggestions will depend on the profiles of the parties, the nature of the case, and the type of the product involved in the dispute. For example, the mediator may know from experience that a particular type of financial institution is able to repackage or restructure a certain product although the representative of the financial institution does not make such an offer and the party does not propose any other option apart from a monetary sum. In such a situation, the mediator can consider making the suggestion to the parties at an appropriate time during the mediation.

14 Although FIDReC's house style has been shaped by considerations unique to it, there may still be scope for learning for mediators in different contexts. Before delving into each of the three techniques in greater detail, it is also important to note that FIDReC mediators also have a choice in conducting the mediation through a physical meeting, telephone, e-mail or other electronic methods of communication. These techniques may be deployed in different ways depending on the medium of communication as well.

III. Acknowledging and managing emotions

15 Most of the disputes handled by FIDReC have a personal element and emotions play a big part in the process. FIDReC mediators

29 The Adjudication Procedure and Adjudication Agreement (version 1.5) cl 2.5 (Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017), Annex 4).

30 Financial Industry Disputes Resolution Centre, *Annual Report 2017/2018* at p 70.

acknowledge and manage emotions in a number of ways, including by using active listening, ensuring expectations are appropriately managed, and uncovering underlying interests. This is often first done during an initial interview with the complainant before the mediation session.³¹

A. Active listening

16 The mediator is usually able to discern from the information provided by the complainant whether there is likely to be a strong emotional element at play. In such cases, it is important to start by offering a listening ear and paraphrasing to demonstrate understanding.

17 A common scenario is one where complainants call in angry and frustrated, as they feel that the financial institution, a big corporation is bearing down on them, a single individual. One of the complainants FIDReC dealt with had a stroke and was mentally unstable. He was upset that the financial institution had commenced legal action against him and required him to vacate his property due to non-payment of his mortgage. The complainant wanted the financial institution's assistance to restructure the loan in consideration of his medical conditions and financial hardship. Knowing this background, the mediator started by listening and acknowledging the complainant's hardships and frustrations rather than explaining the financial institution's perspectives on the matter. This helped the complainant to calm down and provided the mediator the opportunity to explain FIDReC's role but still reflect acknowledgement and understanding of the complainant's troubles.³² Specifically, the mediator found it important to explain that FIDReC did not represent the financial institution and that although FIDReC could not force the financial institution to offer him the solution he wanted, FIDReC would do its best to facilitate communications between them and to explain the complainant's situation to the financial institution.³³

18 By using active listening, mediators can build rapport and trust with the complainants. This in turn helps to soften the ground to prepare the parties for a productive mediation.

B. Managing expectations

19 Complainants often begin the process with high expectations of succeeding in their claim without first objectively considering the merits of their claim. FIDReC mediators have found it helpful during the first

31 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 15(4).

32 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 7(1).

33 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 16.

interview with the complainant to focus on managing the expectations of the complainants.

20 An example of how FIDReC manages the complainant's expectations may be seen in a case where the complainant's claim against the bank was that the bank unilaterally terminated her account with no explanation. The complainant argued that when she signed up for the bank's savings account, she was not told specifically about the terms and conditions governing the termination of the account and so, she felt that the termination was not within the bank's rights. After explaining the mediation process and listening to the complainant's story, the mediator in this case took the time to explain to the complainant how the bank's terms and conditions would apply upon account opening and the significance of her agreeing to and signing the relevant legal documents.³⁴ The mediator invited the complainant to consider that should she proceed with her case at adjudication, while the adjudicator may empathise with her situation, the adjudicator would also have to review the relevant terms and conditions that she agreed to before deciding whether the bank had acted in accordance to its obligations.³⁵ The mediator also highlighted to the complainant that the bank is only bound by monetary awards made by the adjudicators and, hence, it may be difficult to enforce an order for the bank to reinstate her account.³⁶

21 The aim here is to help the complainant to develop a more realistic and informed view of the situation so that the complainant may be more open to compromise. From this point, the mediator can move on to actively facilitate discussions and negotiations between the financial institution and the complainant.

C. *Uncovering underlying interests*

22 Oftentimes, the emotions of the complainant are closely connected with their underlying interests. Meeting the complainant privately before the mediation conference may provide the opportunity for building rapport and trust so that the complainants may be comfortable enough to reveal their true interests in the matter.

23 For example, some complainants file a dispute to claim \$100,000 for inconvenience and defamation, though the principal amount in the matter is only \$1,000. In one case where there was a big disparity between the sum claimed and the principal amount, the mediator allocated time to listen to the complainant and understand the reason behind the

34 Financial Industry Disputes Resolution Centre, *Annual Report 2017/2018* at p 16.

35 The Adjudication Procedure and Adjudication Agreement (version 1.5) cl 6.1 (Financial Industry Disputes Resolution Centre, Terms of Reference (version 1.8, 2017), Annex 4).

36 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 28.

complainant's actions. The complainant later revealed that she felt the bank was not serious in handling her issue as she tried to call the bank several times to no avail and felt that she was only given a standard template response. This allowed the mediator to identify that the complainant's interest was to have due attention given by the financial institution to investigate and respond to her complainant. The mediator later arranged for a face-to-face mediation session where the complainant could express herself directly to representatives of the financial institution and to hear their responses to her. Although the financial institution was unable to come to any settlement agreement with the complainant, she did not pursue her claim further after the mediation session and declined adjudication.

24 By recognising that complainants may have interests other than monetary compensation, including a need for acknowledgement, the mediator was able to facilitate a meeting that responded to the complainant's real desire in filing a complaint.

IV. Helping parties communicate with and understand each other

25 A basic ingredient for any dispute to be resolved is that the parties must be able and willing to understand each other. At FIDReC, the mediator is often faced with the challenge of bridging the communication gap between the representatives of financial institutions – who can range from sales representatives, branch managers or supervisors, compliance officers, to customer service officers – and consumers, who can range from the illiterate and non-English-speaking elderly to the sophisticated professional. With this in mind, FIDReC mediators often go through a series of steps in facilitating communication at mediation, starting with helping complainants understand their case, transforming the mindsets of the parties, as well as summarising each party's case in a way that emphasises common ground.

A. *Helping complainants understand their case*

26 Sometimes, complainants may pursue a claim although they are not apprised of the full facts of the case. Their judgment may further be clouded by external factors such as personal grievances against the financial institution's representative, a distorted perspective of where responsibility lies due to the strong emotions they have towards the matter, or influences and opinions obtained from their friends or the Internet. This makes it difficult for them to see the bigger picture and understand the real issues of their dispute. To remove this obstacle, FIDReC mediators often rely on the initial interview session with the complainant to: (a) help the complainant verbalise and structure the complainant's thoughts; (b) help the complainant identify the relevant

issues in the dispute; and (c) streamline and crystallise the complainant's claim.³⁷

27 In a housing loan case, the complainant claimed that he had not been notified of the loan's change in interest rate before it took effect and felt that he had not been given the opportunity to refinance his loan with another bank and thus pay lower interest on his loan. The complainant felt that the financial institution should have informed him three months in advance of the expiry of his lock-in period, so that he could make the decision of either to reprice or refinance the loan without incurring the higher interest rate when the loan was out of the lock-in period. The complainant's loan with the financial institution had the following strings attached: (a) upon expiration of the lock-in period, the interest rate would increase; and (b) to redeem the loan in full, the complainant had to give the financial institution at least three months' notice in writing, and if the complainant does not give this notice, he would have to pay the financial institution an amount equal to three months' interest.

28 After speaking further with the complainant at the initial interview, the mediator realised that the complainant was confused as to the terms of the loan, such as what was required of him in order to effect redemption on the loan, although this information was stated in the letter of offer. Due to the complainant's dissatisfaction from previous encounters with the financial institution's staff, he refused to accept and understand the financial institution's explanation on why his loan could not be redeemed immediately over the phone and formed the mindset that his case had to proceed for adjudication. The mediator in this case scheduled another meeting with the complainant upon receiving the financial institution's investigation report, to explain the financial institution's position and the reason behind it. The complainant then realised that he had in fact misunderstood the terms of his loan, specifically, how to effect full redemption and what prompted him to file his complaint against the financial institution was based on the negative emotions he felt towards the financial institution's staff. This form of clarification and relational engagement satisfied the complainant and led him to close his case at FIDReC.

29 This example illustrates that, at times, the outcome of a successful mediation at FIDReC may not be a compromise between the parties, but the complainants having understood their situation better and deciding not to take further action against the financial institution.

37 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) r 15(4).

B. *Transforming mindsets*

30 Where financial disputes are concerned, the complainant often comes to FIDReC having received an unsatisfactory response from the customer care, compliance or other relevant team of the financial institution. It is common for the complainants to perceive the financial institution's own internal investigation as biased and to dismiss it altogether. With this mindset, it is unlikely that the complainant will be willing to hear the financial institution out and make the effort to understand their explanation. Accordingly, the presence of a neutral mediator has the potential to make a significant impact in transforming the mindsets of complainants and allowing them to see the situation from another perspective.

31 For example, in cases involving unauthorised transactions on credit cards, the complainants often believe that the financial institution should absolve them from all responsibility for the losses suffered because the complainants had lost their card or had it stolen and did not intend those transactions. In such instances, the FIDReC mediator has to help the complainant see the situation from the perspective of the financial institution, who was merely processing the transaction and who may not have contributed to the loss or theft of the card or could have known that the transactions were unauthorised. The mediator would often do this through a combination of posing questions and offering explanations. This helps the complainant to realise that there may not be any reason for the financial institution to be the target of the complainant's anger.

32 At this juncture, the complainant would often become more receptive to moving away from an absolute position of having the financial institution bear all liability and to recognise that a compromise may be more reasonable.

33 On the other side of the dispute from the complainants are the financial institutions. Just as there is work to be done to transform the mindsets of complainants, so it is with the financial institutions. As the complainant would have earlier approached the financial institution directly before bringing the case to FIDReC, the financial institution would come into the mediation already having made an internal decision as to how to respond to the complainant.³⁸ As such, it is not unusual for the financial institutions to seek to maintain their positions during the mediation. In some cases, the financial institutions may even refuse to attend mediation in person as they are of the view that they have already attempted to resolve the dispute previously and trying again would not make a difference.

38 Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017) rr 4(1)(v) and 4(2).

34 However, what the financial institution sometimes fails to understand is that the complainants may alter their positions and expectations after FIDReC's involvement. The FIDReC mediator often has to do some preliminary work to explain to the financial institution why mediation may still be beneficial, including that complainants may be more open-minded and be willing to listen to FIDReC, which is a neutral party, and that FIDReC can help to bridge the communications between both parties. It may also help to emphasise to the financial institutions that having the dispute resolved at mediation may also benefit them as an amicable settlement can often allow the financial institutions to retain their customers as well as avoid expending further resources on complaints-handling.

35 Mediators at FIDReC would have experienced cases where the financial institution had made an offer to the complainant before the case was filed at FIDReC. In such a scenario, the financial institution would inform the mediator that an offer had already been made and they will not budge further. FIDReC would reach out to the financial institution and explain that the complainant may change his mind if the offer was presented in person, alongside an explanation of the case, and the financial institution should not be too quick to decide that meeting the complainant would be a waste of time. Meeting in person would also provide an opportunity for the financial institution to demonstrate its sincerity in resolving the dispute.

36 After obtaining the financial institution and the complainant's full co-operation, mediators can bring parties together in an attempt to bridge the gap between them.

C. *Summarising and reframing*

37 One of the techniques to minimise the difference between parties involves summarising and reframing what has been said to emphasise the items that have already been agreed on. This encourages parties to see that the difference between them may not be as drastic as they think and builds common ground, which in turn increases the possibility of mutual understanding.

38 Mediators can ask parties to consider whether the gap between them in respect of the remaining items is important in the light of the bigger picture – such as whether it is worth going further and taking a chance at adjudication. This can be done indirectly by asking questions strategically. This also has the effect of bridging the gap between the financial institution and the complainant.

39 Inevitably, the mediation may at times be concluded without a settlement. At this juncture, summarising and reframing can also be used to enable FIDReC to help the complainant take stock of the situation while guiding the complainant to the next step in the FIDReC process,

which is adjudication. By doing so, complainants may even choose not to pursue their case further if they feel that their concerns have been addressed and that the financial institutions have made every effort to assist them by providing clarification on all the issues raised by the complainant, or, for example, by converting the outstanding owed towards the financial institution into interest-free instalment payment plans.

V. Making suggestions where parties are at an impasse

40 Discussions at mediation, no matter how effectively facilitated, can often end up at an impasse. A very common scenario that is seen at FIDReC is where the complainants are of the view that they have suffered due to the financial institution's negligence or wrongdoing. These complainants often perceive themselves as victims and form the belief that they are in a strong position. Inevitably, this leads to them becoming reluctant to compromise on their positions, even in the presence of an offer. Part of the mediator's role during this stage would be to attempt to move the parties past this impasse and into a resolution. This can be done by approaching the matter more creatively such as brainstorming multiple settlement solution options, identifying the parties' interests and the corresponding settlement methods, inviting the parties to consider the alternatives that are available to them, weighing the pros and cons, and reality testing during private sessions. Nevertheless, mediators must always keep in mind that these have to be executed with caution so as to preserve FIDReC's neutrality.

A. Creating multiple options

41 One of the key points that mediators will encourage parties to recognise is that a problem can be resolved in multiple ways. This may involve some trial and error, but it also creates a higher possibility of settling the matter.

42 In a case involving the financial institution's alleged recommendation of an insurance product that was beyond what the complainant could afford, the complainant felt strongly about her case and insisted that all her premiums be refunded to her. However, the financial institution also felt strongly that they had a good case because their representative had explained the policy to the complainant and all the necessary documentation had been signed by the complainant. The financial institution was not prepared to provide a full refund of premiums. At this juncture, after exploring these positions thoroughly and with still no movement forward, the mediator suggested that other possible options worth considering could be: (a) a partial refund to the complainant; and (b) the financial institution allowing the complainant to do a switch of product to one that better met her needs. In this case, after discussing each of the options, the parties agreed on a switch of product thereby allowing the financial institution to retain a customer while

allowing the complainant to continue enjoying the coverage of a financial product without suffering a loss.

43 When coming up with a list of multiple settlement options, the mediator often considers the needs and circumstance of each of the parties and gets feedback from the disputing parties on the viability of each the option. The mediator often asks the parties to rank the settlement options in order of their preference so that each party can clearly understand the other's expectations.

44 Proposing multiple settlement options provides the disputing parties more paths to a resolution. As the mediator handles a varying range of cases with different financial institutions and different types of complainants, the mediator can sometimes use a settlement option from one case and apply it as a viable solution to another. Oftentimes, neither of the parties in the dispute had previously considered the suggestions made by the mediator. Nevertheless, it is important that the mediator does not push any pre-determined "solution" that the mediator thinks would be the best for the parties as the mediator needs to be open to the parties proposing other options and voluntarily choosing the option that they perceive as most suited to them.

B. *Interest-based solutions*

45 When considering solutions to propose to the parties, it is important for the mediator to understand the parties' underlying interests before making any suggestion.

46 In one example, the bank's vendor had made a mistake and misplaced the complainant's title deed, causing the complainant to incur additional costs while waiting for the completion of the sale. These included the costs associated with having to pay for a longer duration of warehouse storage and rent during the waiting period. FIDReC invited the financial institution to consider that if the financial institution had notified the complainant much earlier about the issue, he could have postponed his moving-out date and would not have incurred the expenses for temporary accommodation and warehouse storage. The financial institution then requested for the complainant's temporary rental agreement with a view of offering compensation based on the amount of loss reflected in the evidence. However, the complainant was unable to produce this document as he had leased the accommodation through a verbal agreement with his neighbour. The financial institution's response was that they would not be able to compensate the complainant without proof of lease and the parties reached an impasse. The mediator in this case identified that the interest of the complainant in obtaining monetary compensation was not limited solely to the rental of temporary accommodation but also for additional warehousing expenses. As another option for the parties' consideration, the mediator suggested that the financial institution could make full compensation towards the

complainant's warehousing expenses instead of the rent. At the end of the session, the parties both agreed that this was their preferred solution and the dispute was resolved successfully at mediation.

47 This example shows that comprehensively identifying the underlying interests of the parties is an important step before being able to make suggestions that are relevant to the parties. Although the complainant did not receive the full monetary compensation that he had demanded, he was willing to compromise and accept the financial institution's offer given that it addressed a significant part of his frustrations.

C. *Considering alternatives*

48 Another type of suggestion that the mediator may make is to invite the parties to consider what their alternatives to a mediated settlement agreement would be and assist them in analysing and understanding what the best- and worst-case scenarios could be if they do not reach a settlement and how likely they may occur.

49 This is most obviously applicable to situations where there is an offer to settle made by the financial institution but the complainant finds it unsatisfactory, although there could also be a broader application beyond this scenario. The complainant could then be guided by the mediator to consider what the likely outcome would be should the case be referred to adjudication, and to assess if this would be more beneficial than accepting the offer on the table.

50 In one case, the complainant made a deposit via a cash acceptance machine. However, the deposit amount recorded in her account was inconsistent with the amount she had allegedly deposited. The financial institution in this case was sympathetic towards the complainant and made a goodwill offer to her. The complainant was reluctant to accept the offer as she was of the view that she was entitled to the full amount claimed and not just part of it. After being guided by the mediator to consider her alternative of proceeding with adjudication, the complainant realised that she did not have any evidence to show the actual amount of money deposited and there was a good chance that she could end up with nothing if she proceeded with adjudication.³⁹ Eventually, the complainant decided to accept the bank's offer as she recognised that this would likely be better than the risk of emerging empty-handed after adjudication.

51 Inviting the parties to consider their alternatives is accordingly a very helpful tool that can help break impasse in mediations at FIDReC.

39 The Adjudication Procedure and Adjudication Agreement (version 1.5) cl 6.1 (Financial Industry Disputes Resolution Centre, "Terms of Reference" (version 1.8, 2017), Annex 4).

D. Private sessions with the parties

52 Where appropriate, the mediator may take the initiative to separate the parties for private sessions so as to allow the parties some time to reflect, as well as to discuss frankly with the mediator considerations and matters that they may not feel comfortable revealing in the presence of the other party. A private session may also be a good time for the mediator to engage in reality-testing and discussing possible alternatives.

53 One example of how a private session may be used in the FIDReC context is in a case where the financial institution had documentary evidence that their staff had indeed provided the wrong information to the complainant. The complainant had relied on that incorrect information and suffered a loss. The complainant did not seem to appreciate the significance of this information and parties reached an impasse as to an appropriate compensation amount. The mediator asked to speak privately with the financial institution and invited them to reconsider their position in view of the evidence against them. The mediator chose to do so in a private session knowing that this may cause the financial institution to “lose face” and lead to a counter-productive digging-in of heels. After the private session, the financial institution decided to increase the offer to the complainant and the parties eventually reached a settlement.

E. Word of caution

54 In the experience of FIDReC mediators, parties in mediation do not like being pressured to settle. When parties feel pressured to settle, they may perceive the mediator as lacking neutrality and impartiality, and this may cause the mediator to lose control over the mediation process as well as the trust of the parties. However, a mediator can be selective in using influence, pressure, or other powers to encourage settlement without compromising the fundamental value of self-determination in mediation.

VI. Conclusion

55 Singapore has had the opportunity to observe and learn from early pioneer countries, and that has contributed to Singapore’s accelerated development in mediation.⁴⁰ Today, mediation is used extensively in various contexts, ranging from community disputes to international commercial disputes, and this has led to many conversations around what styles of mediation are suitable, with the *Asian Journal on*

40 Nadja Alexander, Joel Lee & Lum Kit-Wye, *Singapore Mediation Handbook* (LexisNexis, 2019) at pp 340–341.

Mediation hosting a number of these.⁴¹ Because of its subject-matter niche, FIDReC operates in a very specific context in the broader mediation landscape in Singapore. Nevertheless, it is hoped that this discussion of FIDReC's unique house style of mediation will be helpful to other mediation organisations and mediators that face similar types of disputes or similar types of parties. The techniques discussed, namely, acknowledging and managing the emotions of the parties; helping the parties communicate with and understand each other; and making suggestions where parties are at an impasse, are not inventions by FIDReC. But the explanations of when and how these techniques are deployed will shed some light on how mediation is practised at FIDReC, recognising that there is no one-size-fits-all approach as methods should vary depending on the case at hand. Moving forward, FIDReC will be embarking on a digital transformation project with a view to leveraging on technology to strengthen its processes and improve its effectiveness. FIDReC will also continue to collaborate with other mediation organisations and mediators in Singapore, with a view to contributing to the development of mediation as a profession.⁴²

41 Lum Kit-Wye, "The Singapore Mediation Model – Are We Facilitative or Evaluative, and How Should We Choose?" [2012] Asian JM 19; Dorcas Quek Anderson, "Facilitative *versus* Evaluative Mediation – Is There Necessarily a Dichotomy?" [2013] Asian JM 66; Eunice Chua, "Moving Beyond the 'Facilitative' and 'Evaluative' Divide: Considering Techniques That Can Further the Goals of Mediation" [2013] Asian JM 37.

42 Financial Industry Disputes Resolution Centre, *Annual Report 2017/2018* at p 70.