



Federation of International  
Civil Servants' Associations

Neha Dubey  
Partner, Modulaw

## Tips and Information Newsletter for International Civil Servants

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### The Four Ws of Informal Dispute Resolution: What, Why, When and Who

#### In Brief

As a staff member, you will no doubt be concerned to resolve your dispute quickly, efficiently and with as little compromise to your position as possible. This article provides you with a guide to informal dispute resolution so that you know the procedures available for you to engage in this form of dispute resolution, whether it is suited to your type of dispute, and how you can use it to your best advantage.

#### The issues

It should come as no surprise that the ultimate arbiters of our disputes, being the Tribunals or the organisations themselves, highly value and promote the auspices of informal resolution. The ILOAT has said that “[i]t is now almost universally recognised that the settlement of legal disputes is, in many cases, a preferable outcome than the full ventilation of legal and factual issues in contested litigation to be resolved by the adjudication of a court of justice” (see Judgment No. 3900, Consideration [11] and authorities cited therein). This is why the ILOAT, prior to taking up a case in their decisional sessions, requests the parties to first advise whether a settlement has been reached. The UN Office of the Administration of Justice has prepared a [Staff Member's Guide to Resolving Disputes](#) which similarly states that staff are strongly encouraged to resolve disputes informally on the basis that “informal dialogue is often less stressful than formal legal action, offers more control of the outcome and often creates mutually beneficial solutions.”

This begs the question: what can staff members of international organisations do to settle legal disputes outside of the formal processes?

#### *What is informal dispute resolution?*

There are three broad categories of informal resolution. At a preliminary or early stage of a dispute, when it first arises, discussions can provide a way to reach a common

understanding between the parties. This will generally be recorded through meetings in person and actions but not necessarily in writing.

Conciliation or mediation is when an independent third party is brought in to facilitate discussions and help the parties reach a solution, which is usually recorded in a formal settlement agreement.

Arbitration is like a private court proceeding where an arbitrator acts like a judge and makes an arbitral award. This procedure is generally available to consultants rather than staff.

Staff should refer to their organisations' rules and regulations to see whether their organisation prescribes any specific procedures and time limits. Even if there is no mention of informal resolution, this does not prevent staff from making approaches to relevant people in the organisation to try and reach an alternative solution.

### ***Why use informal resolution?***

This will always depend on the facts of your dispute— indeed, informal resolution is generally not appropriate for cases of misconduct, harassment, or any situation that requires extensive fact-finding.

However, informal resolution provides a good forum for airing grievances regarding personal working relationships, where there is a clear legal principle involved, or simply because it may lead to a much faster resolution of the dispute with less emotional strain. It allows the parties to voice all of their concerns in a confidential setting, draw a line in the sand, and decide whether they can reach a compromise or continue with formal proceedings.

### ***When to raise informal resolution***

This also depends on the facts of your dispute, but generally, the sooner the better. Check your organisations' rules and regulations to see whether attempting informal resolution is mandatory or if it can be requested at a particular stage of the dispute. In many organisations, the recourse to, and encouragement for, informal resolution is embodied in these rules (see for example, UN Staff Rule 11.1). Remember that engaging in informal resolution does not suspend any other deadlines, but this can be requested.

### ***Who can use informal resolution?***

There are no prescribed legal requirements for informal resolution, but a fundamental feature is that it must be voluntary, and with the consent of both parties— it cannot be forced. In some cases, this may make the process appear futile, but it never hurts to make the suggestion in good faith if there is any prospect of an amicable solution.

### **Comment**

Taking a pragmatic approach, there are many advantages to informal resolution: it is faster, it is confidential, it can be without prejudice (which means that you can make different compromises compared (?) to what you may do in a formal dispute), and if no outcome is reached, you can always resort to the formal appeal procedures.

However, the potential for success of this process is predominantly dependent on the parties themselves. In other words, it is for both the staff member and the organisation to maintain a level of sensibility and reasonableness. Overly aggressive or emotional personalities that cannot step outside of themselves will find it much harder to reach a solution and may not properly appreciate the litigation risk of their dispute. It will be the task of the mediator/ conciliator to explain this, but the ultimate direction of discussions will be each party's responsibility. It should also be remembered that while organisations may be concerned with the reputational risk of a formal appeal, they should also be driven by the need to maintain a consistent position in the appeal process, and that they cannot agree to a settlement that is contrary to law. If you do reach a settlement agreement, ensure that you receive independent legal advice on what it means— such agreements carry a heavy burden of confidentiality and are generally reached in exchange for the staff member waiving their right to raise a formal appeal.

Just like a doctor shouldn't treat themselves and a lawyer should not run their own defence, consider getting advice from your staff association, FICSA, and legal counsel to get an objective assessment of the strengths and weaknesses of your position. This will not only give you realistic expectations about your case, it will also arm you with the best information about which points to insist upon and which to compromise in any informal resolution. In the end, it may be better to bend a little rather than to break.

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