

Reference No: E107/15/88; **Date:** 03/02/92

Circular 1/1992:- Procedures for dealing with grievance and disciplinary problems

A Dhuine Uasail

I am directed by the Minister for Finance to say that he has accepted an agreed recommendation by the General Council under the Scheme of Conciliation and Arbitration for the Civil Service (Report 1224) on the improvement of formal procedures for dealing with grievance and disciplinary problems.

2. The procedures are set out in the two appendices to this circular, as follows:

Appendix 1: Grievance procedure

Appendix 2: Disciplinary code

3. The amended grievance procedures will apply in all cases where the conduct complained of occurs not earlier than the date of this circular. The amended disciplinary procedures will apply in all cases where an allegation of misconduct is made after the date of this circular.

4. This circular supersedes circular 9/84, except for Section 3 of the Appendix to the Report which was attached to that circular.

5. Any enquiries from Departments about this circular should be made to the Department of Finance, Agriculture House, Kildare St., Dublin 2 (Telephone 01-767571, Ext. 3543). Personal enquiries should be made to the Personnel Unit of the employing Department.

6. Please bring this circular to the attention of all officers in your Department.

J McGovern,

Assistant Secretary

Appendix 1 - Grievance Procedure

Claims affecting individual officers are, in general, excluded from the scope of the Conciliation and Arbitration Scheme. In the event, therefore, of an individual officer or group of officers having a complaint affecting their official position which is not appropriate for discussion under the Conciliation and Arbitration Scheme, and in order that such a complaint can be dealt with promptly and satisfactorily, the procedure set out below shall be followed:

Stage I: Any complaint which arises should (where appropriate) first be the subject of discussion between the complainant and his/her appropriate superior.

Stage II: If the matter cannot be resolved by informal discussion the complainant should outline his/her complaint in writing to his/her superior, indicating (a) that s/he is invoking the grievance procedure and, if possible, (b) the corrective action sought.

Stage III: The superior should reply in writing to the complainant within two weeks.

Stage IV: If the complaint is not resolved at Stage III, the complainant should (within two weeks) refer the matter in writing to the appropriate level of management above his/her superior.

Stage V: The manager will endeavour to resolve the complaint by informal agreement. If these efforts are unsuccessful, s/he will arrange a meeting with the parties concerned. The meeting should be held within two weeks of the complaint being formally referred to the manager.

Stage VI: If the matter is not resolved within a further week, it will be referred in writing by the complainant to the Personnel Section. (This Stage will still be appropriate where the complaint arises within the Personnel Section itself). Within two weeks of referral to Personnel Section, a meeting will be held between the Personnel Section and those directly concerned including, if s/he so wishes, the complainant's union representative.

Stage VII: The decision of management on the complaint and the reasons for the decision will be conveyed in writing within 2 weeks of the meeting referred to in Stage VI.

Stage VIII: A complainant who is dissatisfied with the decision of management on the complaint may make a written request to the Personnel Officer that the dispute be referred to a Mediation Officer appointed by the Minister for Finance with the agreement of the General Council Staff Panel. Any such request shall be dealt with on the following basis:

(a) Complaints concerning the following shall not be referred to the Mediation Officer:

- disciplinary action taken in accordance with the provisions of the disciplinary code;
- selection for promotion, whether by way of competition or normal course promotion, or selection for assignment to a post carrying an allowance;
- exclusion from competitions or from consideration for promotion on grounds of health or sick leave record;
- the interpretation of general regulations, circulars or agreed reports of General Council or Departmental Councils.

(b) Subject to (a) above, the Personnel Officer shall not refuse to refer a complaint to the Mediation Officer where the complainant has suffered an immediate and direct loss of earnings as a consequence of the action complained of.

(c) In any other case the complaint shall be referred to the Mediation Officer if the Personnel Officer considers the matter appropriate for such reference.

The Mediation Officer shall investigate any matter referred to him/her and mediate between the parties with a view to resolving the dispute amicably. Where such resolution is not possible, the Mediation Officer may make such recommendation as s/he considers appropriate. Where the action complained of is defended on the grounds that it was required by the needs of the work, the Mediation Officer shall accept that the definition of the needs of the work is a matter for management but may uphold the complaint on the grounds that the action complained of was arbitrary, improperly discriminatory or otherwise inconsistent with good management practice.

Notes:

- (i) During the above procedure the complainant will continue to work normally, in compliance with the instructions of his/her supervisor(s).
- (ii) The time limits and arrangements set out above are meant as a guide and should be interpreted by all parties in a reasonable manner.
- (iii) Whereas provision is made in the above procedure for formal union involvement at Stage VI, the involvement of the appropriate local union representative at an earlier stage is not precluded, provided the complainant so requests.
- (iv) Any difficulties which arise within a Department regarding the detailed implementation of this procedure should be resolved at Departmental level.

Appendix 2 - Disciplinary Code

1. General

1.1 The objectives of this disciplinary code are

- to ensure that officers against whom allegations are made are dealt with in a fair and equitable manner, and
- to provide an adequate means by which impropriety can be dealt with effectively and the highest standards of conduct can be maintained.

1.2 All matters of discipline shall be dealt with by management in a manner that protects the dignity of the employee and shall not be administered by management in the presence of other officers or the general public.

1.3 All officers shall co-operate fully in the investigation of allegations of impropriety, for example, by providing such explanations as are sought in the course of the investigation.

1.4 The provisions of this code shall not apply to officers serving in a probationary capacity.

1.5 The existence of this code does not imply that the Government have surrendered or can surrender their liberty of action in the exercise of their constitutional and legal authority and the discharge of their responsibilities in the public interest.

2. Disciplinary action

2.1 For the purposes of this code, the term "disciplinary action" shall comprise

(a) any of the following actions where such actions are taken by reason of or as a direct consequence of a finding that the officer concerned has been guilty of misconduct, irregularity, neglect or unsatisfactory behaviour, the deferral of an increment, debatement from competitions or from specified competitions or from promotion for a specified period of time, transfer, the withdrawal of concessions or allowances.

(b) the withholding of remuneration in respect of a period of suspension in accordance with the terms of Section 14 of the Civil Service Regulation Act, 1956 following the suspension of an officer under Section 13 of the Civil Service Regulation Act, 1956,

(c) reduction in pay and/or reduction in rank in accordance with the terms of Section 15 of the Civil Service Regulation Act, 1956,

(d) dismissal from the civil service in accordance with the terms of Section 5 of the Civil Service Regulation Act, 1956,

and shall not include

- suspension under the terms of section 13 of the Civil Service Regulation Act, 1956;
- warnings or admonitions, whether oral or written:
- the deferral of an increment for irregular attendance;
- any of the actions set out in (a) to (d) above when such actions are taken for reasons other than that the officer concerned is guilty of misconduct, irregularity, neglect or unsatisfactory behaviour, for example, on grounds of unsatisfactory work performance (not involving culpable misbehaviour) or on grounds of health or sick leave record.

3. Procedure

Where an allegation of misconduct, irregularity, neglect or unsatisfactory behaviour warranting disciplinary action is made against an officer the following procedure shall apply:

(1) The Personnel Officer shall cause an investigation or such further investigation as s/he considers necessary to be held to ascertain the facts of the case.

(2) Where the Personnel Officer is satisfied, on the basis of the investigation, that the alleged conduct may have occurred and that such conduct, if it occurred, would warrant disciplinary action, s/he shall furnish the officer concerned with

- a statement of the allegation(s) which s/he considers may be substantiated by the investigation;
- a statement of all the evidence supporting the allegation(s) which s/he will take into account in arriving at a decision;
- a statement of the penalty which, having regard to the breach(es) of discipline alleged and the evidence considered to date, s/he considers would be warranted if the allegation(s) were substantiated;
- a copy of this disciplinary code.

(3) The officer concerned shall submit a response to the allegations in writing within 14 days of receipt of the material referred to at (2) above. However, the Personnel Officer may give effect to the procedure set out below notwithstanding non-compliance by the officer concerned with this requirement.

(4) The officer concerned may include in his/her response a request for a meeting with the Personnel Officer to consider the allegation(s). In the event of such a request the Personnel Officer shall

arrange a meeting. The officer concerned may be accompanied at any such meeting by a serving civil servant of his/her choice and/or by a wholetime official of the union holding recognition for his/her grade.

(5) Having considered any response by the officer concerned and any written or oral representations made by or on behalf of the officer concerned, the Personnel Officer shall decide whether the allegations have been substantiated and, where s/he is satisfied that conduct warranting disciplinary action has been established, shall inform the officer concerned in writing

- that it is proposed to recommend to the relevant decision-making authority that specified disciplinary action be taken, and
- that s/he may
- make representations in writing to the decision making authority or
- seek a review of the disciplinary proceedings by the Appeal Board (see paragraph 4 below).

(6) Where the Appeal Board has issued an opinion concerning a recommendation, the Personnel Officer shall, within 14 days of the issue of the opinion, inform the officer concerned of the action, if any, which s/he proposes to take in the light of the Appeal Board's opinion. Where no further action is to be taken the allegations will be deemed to have been withdrawn.

(7) Where, following the issue of an opinion by the Appeal Board, the Personnel Officer proposes to make a recommendation to the relevant decision-making authority that disciplinary action be taken, the officer concerned shall be given an opportunity to make representations to the decision-making authority within 14 days of the receipt of the notification referred to at (6) above.

(8) A recommendation submitted to a decision-making authority shall be accompanied by any representations made by the officer concerned and any opinion delivered by the Appeal Board.

4. The Appeal Board

4.1 The Board shall comprise

- a Chairperson appointed by the Minister for Finance with the agreement of the General Council Staff Panel;
- a serving civil servant nominated by the Minister for Finance;
- a serving civil servant or whole-time official of a recognised trade union nominated by the General Council Staff Panel.

No member shall be appointed to the board to consider a case referred to the Board who has had any prior interest in or dealings with that particular case.

4.2 An officer who has been notified by a Personnel Officer that it has been decided to recommend to the relevant decision making authority that disciplinary action be taken against him/her may, within 14 days of the Personnel Officer's notification, request in writing that the disciplinary proceedings be reviewed by the Board.

4.3 An officer may seek a review of disciplinary proceedings on one or more of the following grounds:

- that the provisions of the disciplinary code were not adhered to;

- that reasonable steps were not taken to ascertain the relevant facts;
- that all the relevant evidence was not considered or was not considered in a careful and unbiased fashion;
- that the officer concerned was not afforded reasonable facilities to answer the allegation(s);
- that the officer concerned could not reasonably be expected to have understood that the behaviour alleged would attract disciplinary action;
- that the sanction recommended is grossly disproportionate to the offence.

4.4 Where an officer requests that disciplinary proceedings be reviewed by the Board the following submissions shall be made

(a) a written statement by the officer concerned of the grounds on which the review is being sought, to be furnished to the Board and the Personnel Officer within 14 days of the submission of the request referred to at paragraph 4.2 above;

(b) a written counter statement by the Personnel Officer, to be submitted to the Board and the officer concerned within 14 days of receipt of the statement by the Personnel Officer;

(c) any further or other submission which the Board may request from the officer concerned and/or the Personnel Officer, to be furnished in such form and within such time as the Board may specify in its request.

4.5 The Board may reject a request for a review of disciplinary proceedings where

(a) the officer concerned fails to make a submission required under paragraph 4.4 above within the prescribed time limit, or

(b) the Board, having considered any submissions made under paragraph 4.4 above, is of the opinion that the case made by the officer concerned is frivolous, vexatious or without substance or foundation.

Where a request is rejected under the terms of this paragraph, the Personnel Officer may proceed in accordance with the terms of this code as though the request had not been made.

4.6 The Board may invite any person to give evidence orally or in writing at the request of either side or on its own initiative.

4.7 The officer concerned is entitled, if s/he so wishes, to make oral submissions to the Board either in person or through a serving civil servant of his/her choice, a whole-time official of the union holding recognition for his/her grade or such other person as the Board agrees may be present for that purpose.

4.8 Where the Board meets for the purpose of taking oral evidence or hearing oral submissions the following are entitled to be present:

- the officer concerned,
- any person who is entitled to make submissions on behalf of the officer concerned,

- the Personnel Officer,
- a serving civil servant designated to assist the Personnel Officer,
- any other person whom the Board agrees may be present.

4.9 Proceedings before the Board shall be informal.

4.10 Having made such enquiries as it considers necessary and having considered any submissions made or evidence given, the Board shall form an opinion as to whether or not a case has been established on one or more of the grounds set out in paragraph 4.3 above. Where the opinion is to the effect that such a case has been established, it shall contain a recommendation that

- no further action should be taken in the matter, or
- the recommendation which the Personnel Officer proposes to submit to the relevant decision-making authority should be amended in a specified manner, or
- the case should be referred back to the Personnel Officer to remedy any deficiency in the disciplinary proceedings (in which event the provisions of this Code shall continue to apply).

4.11 The Board's opinion shall be conveyed, in writing, to the Personnel Officer and the officer concerned. The matter shall be processed further in accordance with the provisions of this Code (see paragraphs 3(6) to 3(8) above).

5. Miscellaneous

5.1 An officer against whom an allegation has been made may authorise the union which holds recognition for his/her grade to make any submission provided for in this Code on his/her behalf and may authorise the Personnel Officer and/or the Board to send to that union copies of any documents furnished to the officer in accordance with the provisions of this Code.

5.2 The time limits provided for in this Code may be extended by the Personnel Officer or, in the case of limits provided for in paragraph 4 of the Code, by the Chairperson of the Appeal Board where, in the opinion of the Personnel Officer or the Chairperson of the Appeal Board, as the case may be, there is good reason for doing so.

5.3 Any functions assigned to the Personnel Officer under the provisions of this Code may be performed by another officer nominated for this purpose by the Head of the Department or the Personnel Officer.