

Civil Service Conciliation and Arbitration Scheme

General Council Report 1446

(Meeting/s of 9 September 2004)

Introduction of a Civil Service Code of Standards and Behaviour

Introduction of a Civil Service Code of Standards and Behaviour

1. The Official Side notified the Staff Side, at the 29 November 2000 meeting, that a draft code of conduct, being introduced as part of the Strategic Management Initiative, had been approved by the Government on 29 November 2000. Under the established SMI procedure, the Code was referred to the Civil Service unions for consideration. The Code was also referred to the Joint Oireachtas Committee on Finance and the Public Service as well as the Standards in Public Office Commission. It was agreed that a working group of General Council would be established to progress the consultation process.
2. The Official Side explained that the main objective of such a code was to set out in a single document the principles and standards which should govern the behaviour of staff in a modernised Civil Service. Additionally, the Department of Finance was required to implement a recommendation of the PAC DIRT Sub-Committee to introduce proposals to avoid any post retirement/resignation conflicts of interest.
3. Detailed discussions on each section of the Code were held by the working group in March and May 2001. The final meeting of the working group was held in July 2003 shortly after the Joint Oireachtas Committee on Finance and the Public Service (to which the Code was also referred for consideration) concluded its deliberations.
4. It was agreed that certain matters, where the Official and Staff Sides could not reach agreement, would be brought to the attention of the Government. It was also agreed that the Staff Side would be given the draft text to be included in the Memorandum for the Government.
5. Additionally, it was agreed that certain matters would be clarified by appropriate references in this General Council Report.

Staff Side's observations on certain matters to be submitted to Government

6. The Staff Side expressed a number of concerns and sought various changes.

Agreement was not reached on certain matters and the Staff Side requested that their views on those matters be brought to the attention of the Government. Those issues are set out in paragraphs 7 to 11 hereunder.

7. Section 5 – Civil Servants and Politics

The Staff Side sought a relaxation of the current rules and emphasised that their main concern is that civil servants should be allowed to contribute to public debate and express their opinions on matters of public interest where those matters are not related to their work as civil servants and are not party political issues. The Staff Side accepted the need to refrain from public comment where a conflict of interest exists.

The Official Side made it very clear that the Minister was not considering any relaxation of the rules governing civil servants and politics and was very likely to ask the Government to note that the Code did not alter the existing rules. The Staff Side asked that the sentence "*This is not intended to change existing practice.*" be included in paragraph 5.2. Having considered this request, paragraph 5.2 was redrafted and the sentence "*This section restates the existing restrictions.*" was included.

8. Section 9 – Criminal Convictions

The unions raised the inclusion of a reference to the Probation Act in the Code. There are two different ways in which the Probation Act is applied – (i) where summary proceedings for an offence under any Act are brought, the Court may decide not to proceed to conviction and allow the benefit of the Probation Act and; (ii) on conviction on indictment of an offence under any Act which is punishable by imprisonment, the Court may place the convicted person on probation rather than imprison the convicted person. Although in both cases the case against the defendant is proven, the Staff Side do not want civil servants to have to report the fact that they have been given the benefit of the Probation Act in the circumstances described in (i) above.

9. Sections 14 and 15 – Conflicts of interest

The Staff Side objected to section 14.4 of the Code (which prohibits civil servants from making representations on behalf of outside organisations, e.g. charities or sporting organisation, in relation to matters for which their Department/Office has responsibility) stating that the provision was "*far too sweeping*" and that Departmental management have the final say.

The Staff also asked that it be recorded that the reference to "financial difficulties" in the section 14.3 does not include standard mortgages on owner occupied homes.

10. Section 19 – Contracts

The Staff Side considered that, where no conflict of interest exists, a civil servant should be free to engage in contracts with Government Departments.

They proposed a process whereby (i) all officers involved in all types of contracts would declare their business activities, (ii) officers involved in Government contracts would declare the same, and (iii), where conflicts of interest are identified, restrictions would be imposed.

11. Sections 20 and 21 - Outside Appointments

The unions sought (i) an involvement in the development of the Outside Appointments Board's rules and guidelines, (ii) an appeals mechanism where an officer is unhappy with the decision of the Outside Appointments Board and (iii) one trade union representative on the Board.

12. The text containing the Staff Side's views on these matters was approved by the Staff Side and included in the Memorandum for the Government that was submitted to the Government on 1 September 2004.

Minister for Finance's response to Staff Side's observations submitted to Government

13. Regarding the request to relax the existing rules governing civil servants and politics: the Minister advised the Government that restrictions have traditionally been imposed on civil servants engaging in political activity to ensure public confidence in the political impartiality of the Civil Service. In particular, the Minister feels that involvement in political activity could lead to civil servants being compromised in the performance of their official duties in two main ways. Firstly, the relationship of trust between Ministers and their Civil Service advisors, which is essential to the running of our system of government, could be lost if the latter were identified with a particular political viewpoint. Secondly, public confidence in the impartial execution of Government policy could be lost if civil servants whose work entails, for instance, a direct service to the public (e.g. the allocation of grants) or access to confidential information were known adherents of a political party or known to have political interests. The Minister also considered that allowing civil servants to engage in politics could influence appointments and, in time, lead to a politicisation of the service. Accordingly, the Minister advised the Government that he was satisfied that the traditional reasons for restricting the freedom of certain civil servants to engage in political activity, including contributing to public debate, remain valid and that he proposed to retain the existing rules.

14. The Minister considered the request that civil servants should not have to report incidents of the Probation Act being applied where the Court decides not to proceed to conviction. The Minister advised the Government that he did not accept the staff side's views. Criminal convictions (and criminal cases that are proven and the Probation Act is applied) may seriously affect the ability of a civil servant to carry out his or her duties. Accordingly the Minister proposed that all criminal convictions and cases where the Probation Act is applied should be reported to Personnel Officers. All Probation Act cases are

proven and it is important that Heads of Departments / Offices consider the implications, if any, for officers' official positions. The purpose of the provision is to ensure that Departments and Offices are informed of criminal convictions and, where necessary, have the scope to initiate an appropriate response.

15. The Minister re-examined section 14.4 in the light of the unions' comments. He considered that it was not appropriate for civil servants to make representations to any organisation or body in relation to matters for which his/her Department/Office has responsibility and a change to the section was not warranted.

16. Regarding contracts between civil servants and Government Departments / Offices: the Minister advised the Government that he was of the view that civil servants should not be connected with outside business or activity which would in any way conflict with the interests of their Departments / Offices. It is vital that the integrity and credibility of public servants be maintained. It is also important to protect the Civil Service from any public perception that conflicts of interest could arise, even potentially. Management's right of initiative in this section of the code affords such a protection. Acceding to the staff side's request on this issue would run the risks of (i) conflicts of interest arising, (ii) giving the perception that conflicts of interest are likely to arise, and (iii) fraud occurring. Accordingly, the Minister did not propose to amend section 19.

17. The Minister considered the staff side's observations in relation to outside appointments. The Outside Appointments Board's rules, including any appeal mechanism, will be matters for the Board itself. The staff side have been advised that they may wish to consider contacting the Board when it is established. The Minister noted the request that one of the Board's members be a trade union representative and advised the Government accordingly.

Staff Side's observations on certain other matters

18. Introduction to the Code

The Staff Side sought the addition of a qualification in the introduction to the Code to the effect that additional Departmental guidance or rules would require consultation and agreement with staff interests in the Departments concerned. It was agreed that a reference to the requirement for consultation on supplementary guidance would not be included in the Code but would be set out in this General Council Report.

19. The Staff Side also sought the inclusion of a form of words to the effect that "*standards of probity are high*". This text was included in the second paragraph of the introduction.

20. Section 2 - The Requirements of the Code

It was agreed that provisions regarding "whistle blowing" cannot be reflected in the Code at this stage. The Staff Side agreed that their requirements will be met with the enactment of draft Whistleblowers Protection legislation (the provisions of the legislation will apply to all employees including civil and public servants) and the Standards in Public Office Act 2001 (the SiPO Commission will be empowered to investigate complaints involving acts or omissions of politicians and public officials where the circumstances are such as to be inconsistent with the proper performance of the functions of the office).

21. Section 3 - Application of the Code

The Official Side advised the Staff Side that the Code will apply to existing civil servants by way of its introduction under section 17 of the Civil Service Regulation Act 1956. Section 17 empowers the Minister to make such arrangements as he thinks fit for the regulation and control of the civil service including varying the terms and conditions of employment of civil servants.

22. Section 6 – Respect for the Law

The Staff Side accepted that the provisions of the the Standards in Public Office Act 2001 and the Whistleblowers Protection legislation will satisfy their requirements for this section. However, AHCPs sought the introduction of an appeal mechanism in the event that an officer's immediate superior advised that a particular course of action was legal. The Official Side stated that superior officers would normally consult the Office of the Attorney General where any doubt exists and that decisions including decisions regarding the legality of particular courses of action are taken from time to time. However, it was agreed that the Official Side would give further consideration to an appropriate appeal mechanism.

23. Section 7 - Disclosure of Information

The Staff Side suggested that section 7 establishes a conflict between the provisions of the FOI Act and the Official Secrets Act. The Official Side stated that Head 1 of the general scheme of the Criminal Justice (Protection of Confidential Information) Bill provides for disclosures of information with "lawful authority" and that FOI disclosures would be made with such authority. Such disclosures would not be contrary to the Official Secrets Act or the Criminal Justice (Protection of Confidential Information) Bill.

24. Section 8 - Dealings with the Public

The Staff Side stated that the Official Side should financially assist lower paid civil servants to dress appropriately for their work environment. The Staff Side suggested that uniforms should be provided to officers dealing with the public on a daily basis and that the reference to "personal appearance" which, the Staff Side claimed was ambiguous should be dropped. The Official Side emphasised the need for officers to dress appropriately to their work environment and agreed to remove the reference to "personal appearance".

25. Section 10 - Behaviour at Work

The Staff Side sought the exclusion of the examples - "*(such as drug or alcohol abuse)*" from the sentence concerning refraining from conduct which might impair performance. While the Official Side emphasised the unacceptability of behaviour that impaired performance, it was agreed that the examples would be removed.

26. Section 11 - Regard for State Resources

The Official noted the Staff Side's comments that liability is generally incurred inadvertently and that the authority necessary to defend such actions is often given after the event.

27. Section 12 - Relations with Colleagues

The Staff Side commented on the inclusion of the word "distress" in the context of causing "distress" to colleagues and stated that the provision had to be seen against the yardstick of reasonableness e.g. telling somebody they cannot be promoted may cause distress. An amended text for the second sentence, using "*behaviour....appropriate in the workplace*", was agreed.

28. Section 13 - Standards of Integrity

The Official Side highlighted the fact that civil servants are prohibited from using political influence to affect "decisions....pertaining to their official positions". There is no suggestion that normal union representation will be restricted.

29. Sections 16 and 17 - Gifts and Hospitality

The Staff Side suggested that these two sections of the Code need to be more specific and that it would be better to give the Secretary General the power to make decisions in each Department. The Official Side highlighted that the local rules would be subject to local negotiation as mentioned at paragraph 11 above.

30. The Staff Side also sought clarification on book tokens which are "cash or cash vouchers". It was clarified that book tokens (of modest value) would be considered gifts of modest value. It was then agreed that "*cash or cash vouchers*" would be replaced by "*cash, gift cheques or any vouchers that may be exchanged for cash*".

31. Section 18 - Payment for work on behalf of outside bodies

The Staff Side sought a slight amendment to the wording of the first sentence in section 18.1. It was agreed that "*It is not uncommon for civil servants to carry out tasks for which they receive payment*" would be changed to "*On occasion civil servants are asked to carry out tasks for which they receive payment*".

32. Section 19 – Contracts

In addition to requesting that their views (on the introduction of new

arrangments governing civil servants having contracts with Government departments) be submitted to Government, the Staff Side also sought clarification on shares. It was agreed that holding shares by civil servants, without any prospect of influencing share prices through one's official position, is entirely acceptable.

33. Sections 20 & 21 - Outside Appointments

As mentioned at paragraph 11 above, the Staff Side stated that they wanted an involvement in the development of the guidelines and that they wanted an appeals mechanism where an officer is unhappy with the decision of the Outside Appointments Board. The Official Side stated that the Government had approved the composition of the Outside Appointments Board and only the Government could change it. The Official Side also stated that it is not in a position to commit the independent Outside Appointments Board to consultation with the unions on the development of the Board's rules/guidelines but stated that the success of the Outside Appointments Board guidelines will obviously depend on their broad acceptability to staff. In that context the Staff Side should formally contact the Outside Appointments Board when it is developing its guidelines. It was agreed that the Staff Side's views would be submitted to Government.

Government decision and promulgation of the Code

34. The draft Civil Service Code of Standards and Behaviour and the observations of Jont Oireachtas Committee, the Standards in Public Office Commission and the Staff Side were considered by the Government at its meeting on 1 September 2004.

35. The Government

- (i) approved the revised text of the *Civil Service Code of Standards and Behaviour* (attached at the appendix)
- (ii) noted that the Code does not alter the existing rules governing civil servants and politics,
- (iii) approved the establishment of the *Outside Appointments Board*, and
- (iv) approved the promulgation of the Code in the Civil Service.

Next Steps

36. The Code will issue to all civil servants by circular. A copy of the circular and Code will be given to new entrants to the Civil Service. Existing civil servants and new entrants will be required to certify in writing that they have received and read the Code.

37. This report recording discussions that took place between the Official Side and the Staff Side on the introduction of the Civil Service Code of Standards and Behaviour was adopted on 9 September 2004.

Agreed report, recording discussions.

This report was adopted on 9 September 2004