

Reference No: E109/77/83 ; **Date:** 21/05/86

Circular 5/1986:- Assaults on Staff

A Dhuine Uasail,

I am directed by the Minister for the Public Service to state that he has accepted an agreed recommendation made by the General Council under the scheme of conciliation and arbitration for the civil service, regarding the procedures to apply where staff are assaulted in the course of (or in connection with) carrying out their official duties (Report 1047).

2. While Departments will, of course, continue to take appropriate measures to prevent, as far as possible, staff being assaulted in the course of their duties, it has been decided to issue some general instructions on the procedures to be followed when such assaults do occur. It has been agreed, in particular, to introduce a standard report form for cases of alleged assault. A copy of this report form is attached at Appendix A.

3. Officers should be advised that the onus is on them as individuals to report cases of alleged assault to the Gardai and/or their employing Department as appropriate. Officers should be facilitated in this regard by the grant of time off where necessary. The importance of furnishing such reports as soon after the event as possible should also be brought to their notice. Departments themselves may, of course, report such cases to the Gardai where they consider it appropriate, e.g. where the individual concerned is unable, for some reason, to do so.

4. It is important that the approach adopted by Departments in dealing with cases of reported assaults be as helpful and as positive as possible. Officers assaulted while acting bona fide in the execution of their duties are entitled to expect their Department not only to advise them fully of any benefits to which they might be entitled (e.g. sick leave and recoupment of medical expenses), but also to adopt a supportive attitude in any legal action of a criminal nature which they decide to pursue.

5. Departments should, in addition, regularly review and if necessary improve their existing preventive measures in the light of any cases of assault reported to them.

6. For ease of reference, a summary of the benefits available to civil servants who are assaulted in the course of their duties is attached at Appendix B. A short note on the legal position in relation to assaults is also attached at Appendix C.

7. Some of the provisions referred to in Appendix B to this circular may also be applied in situations where officers are not on duty at the time of an assault, where it is claimed that the assault arose as a direct result of the nature of the officer's employment. Details of any such cases should be submitted to the Department of the Public Service.

8. Any enquiries from Departments about this circular should be made to Room 3.22, Department of the Public Service, South Frederick Street, Dublin 2 (Telephone 779601, Ext 444). Personal enquiries should be made to the Personnel Unit of the employing Department.

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

Mise le meas,

William P Smith
Deputy Secretary

Appendix A - Report Form

Assault on Staff Member while on Official Duties

This report form should be completed and submitted as soon as possible after the alleged assault.

Department/Office/Service

1. Employee's Name _____
Home Address _____
Phone No. _____
Grade _____
Branch _____
Phone No. _____

2. Name of alleged assailant _____
Address _____
Day _____
Date _____
Time _____
Place _____
Name of Witness (1) _____
Address _____
Name of Witness (2) _____
Address _____

3. Please give details of incident (including details of personal injuries received and damage to official or personal property, if any).

4. Are you making a claim for compensation. Yes or No. If "Yes" give details.

- Have you taken, or do you propose to take, legal action. Yes or No. If "Yes" state action.

5. The above replies are correct to the best of my knowledge and belief.
Signed _____ Date _____

Appendix B - Summary of provisions governing occupational injuries suffered by civil servants

General

1. The purpose of this summary is to outline in broad terms the existing provisions in regard to injuries or other damages suffered as a result of assaults on staff in the course of their official duties (such injuries would normally be classed as occupational injuries). The summary is intended to act only

as a general guide to these provisions, most of which are set out in detail in a number of DPS circulars. Copies of the relevant circulars may be obtained on request from the Personnel Unit of the employing Department.

Injury Warrant

2. The benefits payable to civil servants or their dependents under the Injury Warrant 1946 (as amended by the Injury Warrant 1978) may be summarised as follows:

Persons injured in the actual discharge of their duties and not by their own default by an injury specifically attributable to the nature of their duties who have to retire may be paid an annual amount ranging from one-eighth of salary (or of the difference between salary and superannuation award, if the latter is payable) if they are slightly impaired up to a half if totally impaired.

In the case of persons who die within 7 years of their injuries and as a direct result thereof, annual allowances (in addition to the death gratuity) of the following proportions of salary and emoluments at the date of injury may be paid to the following:

Relations	Proportion of salary and emoluments
The widow	50%
Each child, where the deceased leaves a widow to whom an award is granted	13 1/3rd%
For one child, where the deceased does not leave a widow to whom an award is granted	26 2/3rd%
For two or more children where the deceased does not leave a widow to whom an award is granted	40%
The dependent mother, where the deceased leaves a widow, but no children	5 5/9th%
The dependent mother, where the deceased leaves a child or children but no widow	11 1/9th%
The dependent mother, where the deceased leaves neither a widow nor any children	33 1/3rd%

The aggregate of children's allowances may not exceed 40% of salary and emoluments.

Any contributions already paid under the civil service Spouses' and Children's Pension Scheme are refunded (as the pension under that scheme is not payable).

3. The Injury Warrant 1974 (as amended by the Injury Warrant 1975) applies only to persons who are injured (in the discharge of their duties) while travelling by air or injured by an injury directly attributable to war, civil commotion or the like. A special gratuity of up to £20,000 or three and one half times the amount of the annual salary and emoluments, whichever is the greater, is payable where persons die as a result of the injury or lose a limb or an eye or suffer total disablement rendering them unable to follow their employment. Where a person suffers temporary disablement a special allowance in respect of loss of earnings may be paid for 104 weeks. The special allowance together with sick pay (including Social Welfare benefits) must not exceed 5/6 of the person's weekly pay and emoluments at

the date of the injury. Any person to whom the Warrant applies may get vouched expenditure up to a total of £1,000 in respect of medical, surgical or hospital expenses etc. Any award under this Warrant is in addition to that under the 1946 Warrant or to any award under the Superannuation Acts.

4. Circular 20/46 and Circular Letters 3/74, 8/75 and 10/78 should be consulted for further details.

Sick Leave

5. Officers who are unfit for work as a result of having been assaulted in the course of their official duties are, of course, covered by the normal sick leave arrangements outlined in Circular 25/78. Moreover, in accordance with the terms of Circular 1/82, periods of sick leave due to occupational injury will not normally be combined with periods of "ordinary" sick leave provided the officer concerned has not been negligent. In assessing officers' sick absence records for the purposes of promotion certain categories of absences need not be reckoned against the prescribed limits (paragraph 3.4 of Circular 34/76 refers).

Occupational Injuries Act, 1966

6. Civil servants who pay the full Class A rate of PRSI contribution are fully covered by the Social Welfare (Occupational Injuries) Act, 1966 and are entitled to various benefits under this Act. Established officers (who pay the Class B rate of PRSI contribution) are only partially covered by the 1966 Act but the reduced benefits payable are supplemented as necessary by the employing Departments to ensure that the aggregate payments are no less than such officers would receive if fully covered. Circular 25/75 should be consulted for further details.

Medical Care

7. Claims in respect of the cost of medical care incurred as a result of an occupational injury should be made direct to the Department of Social Welfare in the case of officers who are fully covered by the Occupational Injuries Act, 1966 (see paragraph 6 of Circular 25/75). Established officers should submit such claims to their employing Department (see paragraph 14 of Circular 25/75).

Loss or damage to property

8. Civil servants are not liable for any loss or damage to official property as a result of being assaulted in the course of their official duties provided, of course, that there is no question of negligence on the part of the officer concerned.

9. While the State accepts no liability for personal property lost or damaged in the course of employment, ex gratia payments may be made in certain circumstances. Details of any such cases should, therefore, be reported to the Personnel Unit as soon after the event as possible.

Scheme of compensation for Personal Injuries Criminally Inflicted

10. While this scheme is not particular to the civil service, officers may wish to note that it provides for the payment, subject to certain conditions, of ex gratia compensation in respect of personal injury where the injury is directly attributable to a crime of violence or to circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life. Full details of the scheme may be obtained from the Criminal Injuries Compensation Tribunal, 26 Pembroke St Upper, Dublin 2, but two important points to note are

(a) Applications should be made as soon as possible and normally not later than 3 months after the event giving rise to the injury

(b) To qualify for compensation it normally has to be shown that the offence giving rise to injury has been the subject of criminal proceedings or that it was reported to the Gardai without delay.

Conclusion

11. In order to ensure that claims in respect of any of the above are dealt with promptly it is in officers' own interests to give notice and full details of any occupational injury to their Personnel Units as soon as possible.

Appendix C - Notes on the legal position in relation to assault

Important: It must be stressed that the purpose of these notes is to outline in broad terms and in a highly simplified form the legal position in relation to assault. These notes have no legal standing whatsoever and the onus is on officers themselves to seek the necessary professional advice.

Definition of Assault

1. The word assault is commonly used to signify the two offences of assault and battery. Although not the only difference between these two offences, an important distinction is that in an assault there is no actual bodily injury, while in a battery the causing of actual bodily injury or harm is the essential ingredient. Thus, striking at another person with a stick and missing is an assault whereas if the stick had hit the other person it would be a battery.

The Civil and Criminal processes

2. Crimes are offences against the State; in this they differ from civil wrongs (i.e. Torts which are either solely or primarily wrongs to individuals). The aim of the criminal process is to determine whether an offence has been committed and to punish the offenders or to ensure that, as far as possible, a climate is provided in which their offences will not be repeated. In a civil action one party (the "Plaintiff") makes a claim against another party (the "Defendant"); the object of civil proceedings is to determine the rights of the parties and to satisfy the claim of the injured party (e.g. by way of damages or an injunction). Since crimes are offences against the State, the State takes the initiative in prosecuting criminals. The State has no function in civil cases however beyond ensuring that, so far as is possible, justice is done between the parties and the taking of a civil action is therefore a matter for the individual concerned.

Assault - a Crime and a "Tort"

3. The same set of facts can, in law constitute both a crime and a civil wrong. Both assault and battery are misdemeanours at common law (i.e. the body of "case" law which has evolved over time as opposed to statutory law) and are also statutory offences under the Offences Against the Person Act, 1861 and the Criminal Justice Act, 1951. In addition, however, assault and battery are regarded as a "tort" (i.e. a civil wrong which entitles a person who is injured by its commission to claim damages for his loss) and may, therefore, give rise to a civil action as well as a criminal prosecution.

4. As already indicated (paragraph 2 above) the initiative for taking a civil action rests with the aggrieved person. A criminal prosecution, on the other hand is normally taken by the State on foot of a complaint made by the aggrieved party although private persons may initiate a prosecution and in the case of less serious (summary) offences may conduct it as well to a conclusion.