

Circular Title: **Disciplinary procedures for new entrant civil servants serving in a probationary capacity**

In accordance with Section 17 of the Civil Service Regulation Acts 1956 – 2005, I am directed by the Minister for Public Expenditure and Reform to say that the following will apply in relation to arrangements for disciplinary procedures for new entrant civil servants in a serving in a probationary capacity:

Circular Number: 04/2019

Purpose: To set out the arrangements for dealing with disciplinary matters for new entrant civil servants serving in a probationary capacity

Circular application: To all new entrant civil servants serving in a probationary capacity

Relevant Law: Civil Service Regulation Acts 1956 - 2006
Public Service Management Act 1997

Effective from: 25/02/2019

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CSHR Policy Unit
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1. Purpose

- 1.1 The purpose of this Circular is to set out the procedures to be followed where concern has arisen, or an allegation has been made, that serious misconduct¹ may have occurred on the part of a new entrant civil servant serving in a probationary capacity to whom the Civil Service Disciplinary Code Circular 19/2016 (or that Code as amended or replaced) does not apply.
- 1.2 It is expected that lower levels of misconduct will be dealt with through the probation guidelines.

2. Definitions in this Circular

“Relevant manager” means a manager conducting a disciplinary process in respect of a new entrant civil servant serving in a probationary capacity. The relevant manager may be the civil servant’s line manager, a more senior manager or a HR Manager as appropriate to the specific situation.

3. Principles

- 3.1 All new entrant civil servants serving in a probationary capacity who are in a disciplinary process will be treated in a fair and equitable manner in accordance with the principles of natural justice which will normally include:
- The right of a civil servant to be informed of any concern about his or her conduct;
 - The right of reply to any such concern;
 - The right to be represented by a serving civil servant or by an official employed by a trade union holding recognition from the relevant Department or Office in respect of civil servants at that grade or rank; and
 - The right to a fair and impartial determination of the matter after all relevant facts have been considered.

4. Disciplinary Procedures

- 4.1 The following procedures should be followed.

Step 1:

- 4.2 The civil servant will be informed of the allegation(s), or concerns about his or her conduct in writing and requested to attend a disciplinary meeting. A copy of this Circular should be sent to the civil servant along with notice of the disciplinary meeting.

¹ Examples of serious misconduct are provided at Appendix A.

Step 2:

4.3 The civil servant will be advised:

- (a) of his or her right to be represented by a serving civil servant or by an official employed by a trade union holding recognition from the relevant Department or Office in respect of civil servants at the grade or rank of the civil servant;
- (b) of the right to be provided with copies of all relevant documentary evidence that is being considered, except where it is inappropriate to disclose certain information taking into account all circumstances of the case and any legal requirements (such as the requirements of the Data Protection Acts 1988 to 2018 or the Protected Disclosures Act 2014);
- (c) that, in the event of a civil servant failing or refusing (without reasonable cause) to participate in this disciplinary procedure, the relevant manager may make a decision on the basis of the evidence available;
- (d) that the outcome of the disciplinary meeting could result in termination of the contract by the appropriate authority.

Step 3:

4.4 The disciplinary meeting will be conducted by the relevant manager. The relevant manager will normally establish the facts as part of the disciplinary meeting, though he or she may have regard to the facts established in any prior investigation process (such as an investigation under the Civil Service Dignity at Work Policy) or may make such alternative arrangements as he or she believes are necessary to establish the relevant facts.

4.5 The civil servant will be given an opportunity to respond to concerns raised at the meeting and to answer appropriate questions.

4.6 Neither the civil servant, nor his nor her representative, may record meetings on audio, visual or other recording device except where (and as) agreed in advance with the relevant manager conducting the disciplinary meeting.

4.7 The relevant manager may, with the agreement of the civil servant, make an audio, visual or other recording of a meeting. If such a recording is made a copy of the recording will promptly be made available to the civil servant.

4.8 Arising from the disciplinary meeting, the relevant manager will determine if serious misconduct has occurred, and decide on the outcome of the disciplinary meeting.

Step 4:

4.9 Following the meeting, the civil servant will be advised in writing of the outcome. The following outcomes are possible:

- (a) A finding that no serious misconduct occurred;
- (b) A finding that serious misconduct occurred and a recommendation that the termination of the contract is appropriate.

Step 5

4.10 The decision to terminate a probationary contract rests with the appropriate authority in each organisation. A recommendation from the relevant manager to the appropriate authority that the probationary contract should be terminated will be contained in a report, called “the Relevant Manager’s Report”.

5. Appeal Procedures

5.1 The civil servant will be advised of his or her right to appeal the recommendation to the appropriate authority to terminate the probationary contract to an Internal Appeals Officer.

5.2 A civil servant may make an appeal to an Internal Appeals Officer (sending a copy to the relevant manager) not more than five working days from the date of notification of the recommendation to the appropriate authority.

5.3 When making an appeal, a civil servant should provide specific details of the grounds of appeal being relied upon and any supporting documentation. The civil servant may lodge an appeal on one or more of the following grounds, providing specific details of the grounds relied upon:

- the provisions of this Circular were not adhered to;
- all the relevant facts were not ascertained;
- all the relevant facts were not considered, or not considered in a reasonable manner;
- the civil servant was not afforded a reasonable opportunity to answer any allegation, suspicion or other concern arising about him or her.

5.4 The Internal Appeals Officer may meet with the civil servant (and any other relevant person) and will consider any information that is relevant to the appeal.

5.5 At such a meeting, the civil servant has the right to be represented by a serving civil servant or by an official employed by a trade union holding recognition from the relevant Department or Office in respect of civil servants at the grade or rank of the civil servant.

5.6 Where the recommendation to the appropriate authority is being appealed, the outcome of the appeal will be one of the following.

- Appeal unsuccessful – forward the Relevant Manager’s Report to the appropriate authority with the opinion that the relevant manager’s recommendation be followed.
- Appeal successful – forward the Relevant Manager’s Report to the appropriate authority with the opinion that no disciplinary action be taken.
- Appeal identifies the need for the case to be reconsidered by the relevant manager to remedy a specified deficiency in the disciplinary proceedings.

5.7 Where the outcome of the appeal results in the matter being referred to the appropriate authority, the appropriate authority shall consider the matter and may take any appropriate action up to and including the termination of the probationary contract of the civil servant.

Appendix A

Serious Misconduct

Serious misconduct is misconduct which is sufficiently serious to warrant dismissal or other serious sanction. It is a serious breach of the Civil Service rules and procedures, or of recognised and accepted standards and behaviour which results in a breakdown of the relationship of trust and confidence between the Department or Office and the civil servant. Some examples of serious misconduct are listed below but it should be noted that this list is for the purpose of providing examples only and is not exhaustive.

- A breach of trust and confidence;
- Theft, fraud, irregularity, embezzlement, misappropriation of funds, bribery or corruption; data protection breaches, lack of due care for State resources;
- Failure to comply with Civil Service Policies, Codes of Practice, Circulars etc.;
- Refusal to comply with reasonable management instructions;
- Falsification of records, violation or misuse of confidential information or organisational property, material or equipment;
- Unauthorised entry/access to computer and/or other records/files;
- Non-adherence to organisation's e-mail, internet, IT, telephone policy;
- Serious breaches of health and safety rules; assault on another person in the course of employment;
- Reporting to or attending at work while being under the influence of alcohol, illegal drugs, or legal medication which have been used otherwise than further to a prescription; possession and/or sale or use of illegal drugs;
- Disruptive behaviour;
- Discrimination, bullying, harassment, sexual harassment;
- Victimisation or penalisation;
- Misrepresentation or misuse of authority;
- Serious unauthorised absence;
- Serious non-compliance with sick leave regulations;
- Failure to disclose conflicts of interest;
- Improper influence to make personal/family gain or acceptance of improper gifts/hospitality;
- Engaging in political activity contrary to Civil Service rules;
- Disrespect for the law, e.g. illegal activity /criminal conviction that has implications for the Officer's employment whether it relates to an alleged wrong inside or outside the employment;
- Bringing the Department / Office / Civil Service into disrepute, subject to the provisions of the Protected Disclosures Act 2014

Serious misconduct can also include inappropriate behaviour outside the workplace which has an impact or could reasonably be likely to have an impact within the workplace.