

# Grievance and Disciplinary Procedures for the Health Service

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## Introduction

The Grievance and Disciplinary Procedures for the Health Service were produced by a joint union/management working group under the auspices of the HSEA. These procedures have been prepared in accordance with the Labour Relations Commission's *Code of Practice on Grievance and Disciplinary Procedures*. The procedures are, effective from 1<sup>st</sup> May 2004 and supersede all existing local procedures. Each employer is required to reproduce these procedures and specify the management levels which will be responsible for operating the various stages.

## Grievance Procedure for the Health Service

### Purpose of the Grievance Procedure

Health service employers are committed to promoting and maintaining good employee relations and fostering the commitment and morale of staff. The purpose of this procedure is to enable employees to raise any complaints concerning work-related matters so that the issue may be addressed promptly and as close as possible to the point of origin without disruption to patient/client care.

### Definition of Grievance

A grievance may be defined as a complaint which an employee(s) has concerning his or her terms and conditions of employment, working environment or working relationships. This procedure covers individual and collective grievances, i.e. complaints raised by or on behalf of a group of employees.

### Scope of the Procedure

The type of issues which are appropriate for referral under this procedure include:

- Allocation of work
- Assignment of duties
- Rostering arrangements
- Granting of all forms of leave, i.e. annual leave, compassionate leave, study leave
- Interpretation and application of national/local agreements including matters relating to pay-related benefits
- Granting of overtime
- Access to courses
- Health and safety issues
- Acting-up/deputising arrangements

- Conduct of disciplinary proceedings
- Relationships with work colleagues
- Organisational change/new working practices

*Note: This list is not exhaustive.*

The grievance procedure does not cover matters relating to improvements in pay or existing terms and conditions of employment which are of general application, i.e. matters appropriate to the collective bargaining process.

### Principles

- The grievance procedure will be communicated to all staff.
- The employee should raise complaints on an informal basis in the first instance before invoking the formal grievance procedure.
- Every effort will be made to address complaints quickly and fairly and at the lowest level possible at which the matter can be resolved.
- An employee will not be penalised in any way for making a complaint in good faith regardless of whether or not the complaint is upheld.
- The employee has the right to be accompanied by a work colleague or staff representative at all formal hearings under the grievance procedure.
- While every effort will be made to adhere to the prescribed time limits these may be extended at any stage in exceptional circumstances.
- This procedure provides a comprehensive method for the resolution of grievances in the absence of conflict. In the norm issues raised under it will be processed in accordance with the principles of full consultation and agreement during the process or following third party recommendation. In the event of a grievance arising, and where an employee(s) is/are working under protest, a meeting with senior management will be held within 3 working days of the request being received. Where the matter remains unresolved following this meeting the issue may be referred to a third party as a priority.

- In the event that a grievance is referred to a third party, both sides will co-operate fully with the proceedings in accordance with the Industrial Relations Acts, 1946-2001.
- The grievance hearing cannot be used as an opportunity to address shortcomings in the employee's work standards, conduct or attendance. Any deficiencies will be dealt with through informal counselling or under the progressive stages of the disciplinary procedure.

## Informal Discussions

Most routine complaints are capable of being resolved on an informal basis without recourse to the formal grievance procedure. Before invoking the grievance procedure the employee may raise the matter informally with his or her immediate supervisor/manager. If the complaint relates to the immediate supervisor/manager, the employee may discuss the matter informally with another manager.

If the matter has not been resolved satisfactorily through informal discussions, the employee may raise a formal complaint under the grievance procedure.

## Grievance Procedure

### Stage 1

The employee should refer the complaint to \_\_\_\_\_ (specify appropriate level of management). A meeting will be arranged to discuss the matter not later than **seven working days** following receipt of the complaint. The employee will be advised of his/her right to be accompanied by a work colleague or union representative. Following this meeting, the decision will be conveyed in writing to the employee within **seven working days**.

### Working Under Protest

*Where the grievance relates to an instruction issued by the supervisor/manager arising from a service imperative the employee is obliged to carry out the instruction "under protest". A meeting with senior management\* will be held within **3 working days** of the grievance being received.*

*\*Senior management refers to either senior line management or the human resources department. If the issue cannot be resolved at this stage, the matter may be referred to a third party.*

## Stage 2

This stage would mainly apply in health boards due to the number of management levels and may be omitted in voluntary hospital, intellectual disability and specialist agencies

If agreement cannot be reached at stage 1, the matter may be referred to (specify level of senior management). A meeting will be arranged to discuss the matter not later than seven working days following receipt of the complaint. The employee will be advised of his/her right to be accompanied by a work colleague or union representative. Following this meeting, the decision will be conveyed in writing to the employee within seven working days.

## Stage 3

If agreement cannot be reached at stage 2 the matter may be referred to the **Human Resources Department**. A meeting will be arranged to discuss the matter not later than seven working days following receipt of the complaint. The employee will be advised of his/her right to be accompanied by a work colleague or union representative. Following this meeting, the decision will be conveyed in writing to the employee within seven working days.

## Stage 4

If the issue remains unresolved after stage 3, the matter may be referred to an appropriate third party:

- Rights Commissioner
- Labour Relations Commission
- Labour Court
- Equality Tribunal

No strikes or other forms of industrial action will be initiated or threatened until all stages of the grievance procedure including third party referrals have been fully exhausted.

*Guidelines for managers on the operation of the grievance procedure are set out at Appendix 1.*

## Disciplinary Procedure for the Health Service

### Purpose of the Disciplinary Procedure

The delivery of a high quality service requires all staff to adhere to high standards of work performance, conduct and attendance. The purpose of this disciplinary procedure is to ensure that all staff maintain the required standards by making them aware of their shortcomings and identifying how the necessary improvements can be achieved.

Line managers are responsible for making employees aware of the standards of attendance, work and conduct expected from them and for dealing with shortcomings promptly and fairly. In general, the staff member's immediate supervisor/manager will deal with deficiencies on an informal basis through discussion, counselling and appropriate assistance rather than through the formal disciplinary procedure. If, following the informal counselling stage, the staff member continues to fail to meet the required standards then the disciplinary procedure should be invoked. The purpose of the disciplinary procedure is to help the staff member to achieve the necessary improvements and to prevent any recurrence.

### Scope of the Procedure

Examples of conduct which may lead to disciplinary action under this procedure include:

- Persistent poor timekeeping
- Unsatisfactory attendance record
- Poor work standards
- Breach of health and safety rules
- Bullying, harassment or sexual harassment
- Breach of internet/e-mail policy
- Refusal to obey reasonable instructions
- Negligence

*Note: This list is not exhaustive. Each agency may include other examples which are of particular relevance.*

## Principles

The following principles apply to all stages of the disciplinary procedure:

- Every effort will be made by the employee's immediate manager to address shortcomings in work standards, conduct or attendance through informal counselling without invoking the disciplinary procedure.
- While the disciplinary procedure will normally be operated on a progressive basis, the manager may bypass stages 1 and/or 2 should the nature of the employee's performance, conduct or attendance warrant such action.
- No decision regarding disciplinary action will be made until a formal disciplinary hearing has been convened and the employee has been afforded an opportunity to respond.
- The employee will be advised of his or her right to be accompanied by a work colleague or trade union representative at any meeting under the formal disciplinary procedure.
- The employee will be advised in advance of the disciplinary hearing of the precise nature of the complaint against him or her and will be given copies of any relevant documentation.
- The employee will be afforded the opportunity to state his or her case and challenge any evidence that may be relied upon in reaching a decision.
- The manager will not prejudge the outcome of the hearing and will take into account any mitigating circumstances before deciding on appropriate action.
- An employee may be put off duty with pay pending the outcome of an investigation.
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness.

- An employee may appeal against a disciplinary decision or any aspect of the disciplinary proceedings through the grievance procedure.
- In addition to the issuing of warnings, the staff member may be subject to disciplinary sanctions short of dismissal:
  - Withholding/deferral of an increment
  - Demotion
  - Redeployment (which may involve loss of premium earnings)
  - Suspension without pay

## Pre-procedure Stage – Informal Counselling

Counselling is an informal method of dealing with shortcomings in an employee's attendance, work or conduct without invoking the disciplinary procedure. The objective of the counselling interview is to alert the employee to his/her shortcomings and to decide what measures should be taken to bring about the required improvements.

The following principles apply when conducting counselling interviews:

- The employee shall be given precise details of the specific aspects of his or her attendance, work or conduct that require improvement.
- The employee shall be given an opportunity to respond to complaints and careful consideration shall be given to any explanations given.
- Having made the employee aware of deficiencies in his/her attendance, work or conduct, the supervisor/manager shall identify any measures that can be taken to assist the employee and formulate an action plan for achieving the required improvements.
- Details of the counselling interview and any follow-up action agreed shall be documented and signed by both parties.

## Disciplinary Procedure

Where an employee's conduct, attendance or work does not meet the required standards despite informal counselling, the matter will be dealt with under the formal disciplinary procedure. *Guidelines for managers on conducting a disciplinary hearing are set out at Appendix 2.*

The stages of the disciplinary procedure are as follows:

### Stage 1

#### Oral Warning

An employee whose work/conduct/attendance falls below the required standards will normally be issued with a formal oral warning by \_\_\_\_\_ (*specify job title of the appropriate manager*) for a period of **six months**. The employee will be advised of the precise nature of the complaint, the improvements required and the timescale for improvement. S/he will be advised that the warning constitutes the first stage of the disciplinary procedure and failure to improve may result in further disciplinary action under stage 2 of the disciplinary procedure. A record of the warning will be kept on the employee's personnel file and will be removed after six months, subject to satisfactory improvement during this period.

### Stage 2

#### Written Warning

If the employee fails to make the necessary improvements or if the poor attendance/work/conduct is more serious, s/he will normally be issued with a formal written warning by \_\_\_\_\_ (*specify job title of the appropriate manager*) for a period of **9 months**. The written warning will give details of the complaint, the improvements required and the timescale for improvement. The employee will also be advised that failure to improve may result in the issuing of a final written warning under stage 3 of the disciplinary procedure. The warning will be removed after **9 months**, subject to satisfactory improvement during this period.

### Stage 3

#### Final Written Warning

If the employee fails to make the necessary improvements, s/he will normally be issued with a final written warning by \_\_\_\_\_ (*specify job title of the appropriate manager*) for a period of **up to 12 months** (this period may be extended in exceptional circumstances). The warning will give details of the complaint, the improvements required and the timescale for improvement. The employee will be advised that failure to improve may lead to dismissal or some other sanction short of dismissal under stage 4 of the disciplinary procedure. The warning will be removed after the specified period, subject to satisfactory improvement during this period.

### Stage 4

#### Dismissal or action short of dismissal\*

Failure to meet the required standards of work, conduct or attendance following the issuing of a final written warning may result in a decision to dismiss by \_\_\_\_\_ (*specify the job title of the person to whom the power to dismiss has been vested*). Alternatively, the \_\_\_\_\_ may decide to impose a disciplinary sanction short of dismissal.

## Serious Misconduct

The following are some examples of offences for which the progressive stages of the disciplinary procedure would not apply and which may result in dismissal without notice.

- Theft
- Deliberate damage to property
- Fraud or deliberate falsification of documents
- Gross negligence or dereliction of duties
- Gross insubordination
- Incapacity to perform duties due to being under the influence of alcohol, unprescribed drugs or misuse of prescribed medication

\*Permanent Health Board Officers are currently covered by sections 23 and 24 of the Health Act 1970 which provides for the establishment of a Ministerial committee before effect can be given to a decision to dismiss.

- Serious breach of health and safety rules
- Serious abuse of telephone, e-mail and other facilities
- Serious breaches of confidentiality
- Serious bullying, sexual harassment or harassment against a member of staff
- Violent behaviour towards a member of staff, client or member of the public
- Sexual assault
- Downloading/disseminating pornographic material from the internet
- Circulation of offensive, obscene or indecent e-mails or text messages

*Note: The above list is not exhaustive. Each agency may include examples which are of particular relevance.*

In all cases of alleged serious misconduct, a full investigation will be carried out to establish the facts in accordance with the following principles:

- The investigation will be conducted thoroughly and objectively and with due respect for the rights of the employee to natural justice, including a presumption of innocence.
- The investigation will be governed by clear terms of reference.
- Every effort will be made to carry out the investigation without undue delay and to adhere to the agreed timescales. However, the timescales may be extended in exceptional circumstances e.g. due to unavailability of key witnesses.
- The employee will be advised of the right to be accompanied by a union representative or work colleague throughout the investigation.
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness.

The employee may be suspended with pay\* pending the outcome of the investigation. Suspension with pay is a precautionary measure and not a

\*Employers may use the term 'put off duty with pay' as an alternative to 'suspend with pay'.

disciplinary sanction. Suspension will only be imposed after careful consideration and alternative measures, such as reassigning the employee to suitable alternative duties pending the outcome of the investigation, will be considered.

On completion of the investigation, the investigator(s) will submit a written report of their findings and recommendations to senior management and the employee. If the outcome of the investigation is that there is a reasonable belief that the employee is guilty of the alleged misconduct, a disciplinary hearing may be convened under stage 4 of the disciplinary procedure to determine the appropriate disciplinary sanction.

### Appeals Procedure

*An appeals stage may be included where the Chief Executive Officer (or equivalent) has delegated the authority to dismiss. While it is highly desirable to have an appeals process, it may not be practicable in some agencies where the Chief Executive Officer cannot delegate the decision to dismiss.*

An employee who wishes to appeal against a dismissal decision may do so within seven working days of notification of the decision to dismiss. The appeal must be in writing and state the ground(s) on which the appeal is being made.

An appeal hearing is not intended to repeat the investigation process but to address specific issues which the employee feels have received insufficient consideration, such as:

- Mitigating circumstances
- Procedural deficiencies
- Severity of the sanction imposed

The appeals hearing will normally be held within ten working days of the appeal being lodged. The Chief Executive Officer (or equivalent) will hear all appeals and his/her decision shall be final.

*Note: The appeals process does not apply to permanent officers of health boards as they are covered by sections 23 and 24 of the Health Act, 1970.*



Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.

An employee who feels that s/he has been unfairly dismissed may refer a case under the Unfair Dismissals Acts, 1977-2001 within 6 months of the date of dismissal

*Note: Permanent health board officers are excluded from the scope of the Unfair Dismissals Acts.*

## Appendix 1

### Guidelines for Managers on the Operation of the Grievance Procedure

#### Introduction

It is management's responsibility to deal promptly and fairly with any complaints raised by employees either informally or under the formal grievance procedure. Managers are expected to handle all complaints in a manner that respects the right of the employee to air his/her grievances and to seek redress without fear of reprisal. If an employee feels sufficiently aggrieved to make a complaint then any attempt by a manager to trivialise the issue may result in a local issue escalating into a more serious dispute. Managers are required to address grievances at the lowest level possible and to give careful consideration to the merits of the employee's case before reaching a decision. Where a complaint is not upheld the employee is entitled to a clear explanation as to how the decision was reached.

Third party referrals should be viewed as a 'last resort' having exhausted the internal stages of the grievance procedure. In the event that an employee refers the matter to a third party, the manager must respect the employee's right to exercise his/her statutory entitlement to seek redress by co-operating fully with proceedings<sup>1</sup> and maintaining normal working relationships. Managers have a duty to ensure that no employee suffers detrimental treatment as a result of making a complaint either internally or to a third party.

The following guidelines apply to all hearings under the formal grievance procedure:

<sup>1</sup>Under the Industrial Relations Act, an employer may object to a Rights Commissioner investigation in which case the dispute will be referred to the Labour Court.

## Preparing for the Hearing

The manager conducting the hearing should establish the precise details of the complaint in advance in order to check any policies or rules relevant to the matter. Where appropriate the manager should talk to the employee's immediate supervisor and/or any other relevant person to ascertain all the facts pertaining to the issue. The manager may also need to contact the HR department to obtain advice on how best the issue might be resolved.

The manager should arrange for a colleague to attend the hearing to take notes.

Sufficient time should be set aside for the hearing and reasonable efforts made to avoid unnecessary interruptions.

The employee should be notified of the arrangements (date, time and venue) for the hearing and informed of his/her right to be accompanied by a union representative or work colleague.

## Conducting the Hearing

- The manager should begin by introducing those present and outlining the purpose of the meeting.
- The employee should be invited to state his/her case and how s/he would like to see the matter resolved. The employee may wish his/her representative to present the case on his/her behalf.
- The manager should encourage an open discussion of the issue and where appropriate explore possible options for resolving the complaint.
- The hearing should be adjourned – even for just a short period – to allow the manager to consider all the issues raised and undertake further enquiries, if necessary, before reaching a decision. A timescale for re-convening the hearing must be agreed. The manager may need to seek advice from the HR department about how the issue might best be resolved and whether there is scope for compromise. This will help to ensure a consistency of approach and avoid decisions that have repercussions for the rest of the organisation.

- The meeting should be reconvened within the agreed time limits to inform the employee of the decision. The manager must outline fully the reasons for his/her decision and afford the employee and his/her representative an opportunity to respond. If the employee is not satisfied with the outcome of the hearing, s/he should be advised of his/her right to progress to the next stage of the procedure.
- A letter should be issued to the employee (and copied to his/her representative) confirming the outcome of the hearing, the reasons for the decision and what action, if any, will be taken.
- A detailed and accurate record of the hearing and its outcome should be retained on the employee's personnel file. This documentation may be required as evidence in the event of an employee referring the matter to a third party.
- Any action agreed must be implemented without undue delay.

## Appendix 2

### Guidelines for Managers on Conducting a Disciplinary Hearing

Decisions regarding disciplinary action will only be taken following a disciplinary hearing at which the employee is afforded an opportunity to respond to the complaints and make representations. The following guidelines apply to disciplinary hearings under the:

- oral warning stage
- written warning stage
- final written warning stage
- dismissal stage

#### Notification Requirements

The employee should be notified that s/he is required to attend a disciplinary hearing under the formal disciplinary procedure. The employee should be advised of:

- the reason for the hearing
- the right to representation

The employee should be given sufficient notice of the hearing to enable him/her to arrange for representation and prepare a response.

The following information should be confirmed (preferably in writing):

- The time and place of the hearing
- The status of the meeting (i.e. that it is a formal disciplinary hearing under the disciplinary procedure)
- The precise nature of the complaint
- Copies of any documentation that will be relied upon at the hearing (e.g. attendance/timekeeping record) must be provided to the employee in advance of the hearing
- The right to be accompanied by a union representative or work colleague

#### Role of the Employee Representative

The employee representative has an important role to play in supporting the employee and is entitled to assist the employee in presenting his/her case and make representations on his or her behalf. The employee may confer privately with his/her representative if requested.

#### Conducting a Disciplinary Hearing

The purpose of the disciplinary hearing is to allow the employee to respond to the complaints before deciding whether disciplinary action is warranted. The manager conducting the hearing must not pre-judge the outcome of the hearing and is required to assess each case on its merits prior to reaching a decision regarding disciplinary action.

The disciplinary hearing should follow a structured format as follows:

- Introduce those present and confirm that this is a hearing under the formal disciplinary procedure.
- Outline the nature of the complaint and refer to any supporting evidence.
- Allow the employee to respond to the complaint and give an explanation for his/her unsatisfactory work standards, conduct or attendance.
- Invite representations on the employee's behalf.
- Close the hearing by summarising the key points emerging from the hearing and allow the employee and his/her representative to have a final say.
- Adjourn the meeting to allow for careful consideration of the facts and any explanations put forward by the employee or his/her representative.
- Reconvene the hearing and advise the employee of the decision which may include the following:

- A formal warning (and other disciplinary sanction where appropriate);
- no further action on the grounds that the employee has given a satisfactory explanation of events or there were strong mitigating circumstances;
- non-disciplinary action, e.g. arrange for the employee to receive coaching/training and set targets for improvement.
- The outcome of the hearing should be confirmed to the employee in writing.
- A record of the hearing and the outcome should be retained on the employee's personnel file.

### Issuing Warnings Under the Disciplinary Procedure

The primary purpose of a warning under the disciplinary procedure is to give the employee an opportunity to make the required improvements whilst making clear the consequences of failing to do so. A warning (oral or written) should convey the following information:

- the stage of the disciplinary procedure which has been invoked
- details of the unsatisfactory attendance, conduct or work standards
- details of the improvements required and timescale for improvement
- measures to assist the employee (e.g. training or coaching)
- duration of the warning
- what further action will be taken if the employee does not make the necessary improvements or if there are further instances of unsatisfactory attendance/work/conduct during this period

***A record will be kept on the employee's file of all warnings – both oral and written – issued under the disciplinary procedure.***

