


BROTHERS OF CHARITY SERVICES IRELAND

GRIEVANCE AND DISCIPLINARY PROCEDURE

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These Procedures are modified from the Health Service procedures that were produced in May 2004 by a joint union/management working group and in accordance with the Labour Relations Commission's Code of Practice on Grievance and Disciplinary Procedures.

This procedure will apply retrospectively to all issues that occurred prior to its introduction.

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Grievance Procedure

1.0 Purpose of the Grievance Procedure

The Brothers of Charity Services Ireland 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 grievances 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 the services we offer to individuals with an intellectual disability.

2.0 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. grievances raised by or on behalf of a group of employees.

3.0 Scope of the Procedure

The types 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 agreement including matters relating to pay-related benefits
- 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.

4.0 Principles

- 4.1 The grievance procedure will be communicated to all staff.
- 4.2 The employee should raise grievances on an informal basis in the first instance before invoking the formal grievance procedure.
- 4.3 Every effort will be made to address grievances quickly and fairly and at the lowest level possible at which the matter can be resolved.
- 4.4 An employee will not be penalised in any way for making a grievance in good faith regardless of whether or not the grievance is upheld.
- 4.5 The employee has the right to be accompanied by a work colleague or staff representative at all formal hearings under the grievance procedure. In the event of the unavailability of a union representative a hearing may be adjourned once and once only except in exceptional circumstances and for no more than 2-3 days.
- 4.6 While every effort will be made to adhere to the prescribed time limits these may be extended at any stage in exceptional circumstances.
- 4.7 A decision by a manager may be overturned by a more senior manager.
- 4.8 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 Manager 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.
- 4.9 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.

5.0 Informal Discussions

Most routine grievances 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 grievance 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 grievance under the grievance procedure.

6.0 Grievance Procedure

6.1 Stage 1 – Line Manager

The employee should refer the grievance to his or her immediate manager. A meeting will be arranged to discuss the matter not later than seven working days following receipt of the grievance. 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.

6.2 Stage 2 – Senior Manager

If agreement cannot be reached at stage 1, the matter may be referred to the next higher level of management. A meeting will be arranged to discuss the matter not later than **seven** working days following receipt of the grievance. 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.

6.3 Stage 3 – Human Resources

If agreement cannot be reached at stage 2 the matter may be referred to the Regional Head of Human Resources. A meeting will be arranged to discuss the matter not later than **seven** working days following receipt of the grievance. 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.

6.4 Stage 4 – Third Parties

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

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.

Disciplinary Procedure

1.0 Purpose of the Disciplinary Procedure

The delivery of high quality services 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.

2.0 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.

3.0 Principles

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

- 3.1. 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.
- 3.2. While the disciplinary procedure will normally be operated on a progressive basis, the manager may bypass informal counselling and/or

stages 1 and/or 2 should the nature of the employee's performance, conduct or attendance warrant such action.

- 3.3. 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.
- 3.4. 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.
- 3.5. 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.
- 3.6. 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.
- 3.7. The manager will not prejudge the outcome of the hearing and will take into account any mitigating circumstances before deciding on appropriate action.
- 3.8. An employee may be put off duty with pay pending the outcome of an investigation.
- 3.9. It will be considered a serious disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness.
- 3.10. An employee may appeal against a disciplinary decision or any aspect of the disciplinary proceedings through the grievance procedure.
- 3.11. 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

4.0 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:

- 4.1. The employee shall be given precise details of the specific aspects of his or her attendance, work or conduct that require improvement.

- 4.2. The employee shall be given an opportunity to respond to the issues raised by management and careful consideration shall be given to any explanations given.
- 4.3. 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.
- 4.4. Details of the counselling interview and any follow-up action agreed shall be documented and signed by both parties.

5.0 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.

The stages of the disciplinary procedure are as follows:

5.1 Stage 1- Verbal Warning

An employee whose work/conduct/attendance falls below the required standards will normally be issued with a formal verbal warning by their respective Line 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.

5.2 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 after a second hearing by Line Manager for a period of 9 months. The written warning will give details of the disciplinary issue, 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.

5.3 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 following a third hearing by Line Manager for a period of up to 12 months (this period may be extended in exceptional circumstances). The warning will give details of the issues, 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.

5.4 Stage 4 –Dismissal Stage

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 a Sector/Regional Manager or equivalent. Alternatively, the Sector/Regional Manager or equivalent may decide to impose a disciplinary sanction short of dismissal.

6.0 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.

- Inappropriate behaviour, assault or any type of abuse of a person supported
- Inappropriate behaviour, verbal abuse or assault of a co-worker, subordinate or superior
- 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
- 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, person supported 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.

Allegations of serious misconduct will be dealt with as follows:

6.1 Notifying the Employee of the Allegation

Upon receiving an allegation of serious misconduct, Human Resources will arrange for the gathering of preliminary facts relating to the allegation in order for the precise allegation to be formulated. The employee against whom the

allegation is made will be requested to attend a meeting to hear the precise details of the allegation at the earliest juncture and without undue delay. The employee will be advised of his/her right to be accompanied at this meeting by a union representative or work colleague. When dealing with the allegation, management will ensure, insofar as possible, that confidentiality is maintained and rights of the employee against whom the allegation is made are upheld throughout the process.

6.2 Protective Measures

Pending the outcome of the investigation management may take whatever protective measures are necessary to ensure that no person supported or employee is exposed to unacceptable risk. These protective measures are neither disciplinary measures nor an indication of guilt and may include:

- reassigning the employee to other duties
- providing an appropriate level of supervision
- putting the employee off duty with pay

The views of the employee will be taken into consideration when determining the appropriate protective measures to take in the circumstances but the final decision rests with management.

The employee concerned will be advised that the decision to put him/her off duty is a precautionary measure and not a disciplinary sanction or an indication of guilt.

6.3 Investigation

In all cases of alleged serious misconduct, a full investigation will normally 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 serious disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness.

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.

7.0 *Dismissal Appeals Procedure*

- 7.1 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.
- 7.2 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
- 7.3 The appeals hearing will normally be held within ten working days of the appeal being lodged. The Regional Director of Services will hear all appeals and his/her decision shall be final.
- 7.4 Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.
- 7.5 An employee who feels that s/he has been unfairly dismissed may refer a case under the Unfair Dismissals Acts within 6 months of the date of dismissal.

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 grievances raised by employees either informally or under the formal grievance procedure. Managers are expected to handle all grievances 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 grievance 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 grievance 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 and maintaining normal working relationships. Managers have a duty to ensure that no employee suffers detrimental treatment as a result of making a grievance either internally or to a third party.

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

Preparing for the Hearing

- The manager conducting the hearing should establish the precise details of the grievance 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 grievance.
- 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 reconvening 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 issues and make representations. The following guidelines apply to disciplinary hearings under the:

- verbal 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 issue
- 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 issues 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 disciplinary issue and refer to any supporting evidence.
- Allow the employee to respond to the disciplinary issue 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.
- Allow sufficient time for careful consideration of the facts and any explanations put forward by the employee or his/her representative.
- 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 (verbal 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 verbal and written – issued under the disciplinary procedure.