

**Circular Title: Civil Service Disciplinary Code**

**File Reference: DPE200–006-2016**

I am directed by the Minister for Public Expenditure and Reform to say that the following will apply in relation to arrangements for disciplinary matters in the Civil Service:

Circular Number: 19/2016

Purpose: To set out the arrangements for dealing with disciplinary matters in the Civil Service

Circular Application: To all civil servants (except new entrants serving in a probationary capacity)

Relevant Law: Civil Service Regulation Acts 1956 – 2006

Public Service Management Act 1997

SI No. 146/2000 - Industrial Relations Act 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order 2000

Effective From: 01 September 2016

This Circular revokes Circular 14/2006, Civil Service Disciplinary Code revised in accordance with the Civil Service Regulation (Amendment) Act 2005.

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15 August 2016

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## **Part 1: Purpose and principles**

### **1.1 Purpose**

The purpose of this Code is to set out the arrangements for dealing with disciplinary matters in the Civil Service. It is also to ensure that all civil servants are aware that if there is a failure to adhere to the required standards of conduct, work performance and attendance, the disciplinary procedure set out in this Circular will apply. This procedure will be initiated where a concern arises about the conduct, work performance, and/or attendance of a civil servant. This procedure will provide a fair and efficient process for dealing with any such concern. This Code will apply to all civil servants other than new entrants serving in a probationary capacity.

### **1.2 Principles**

The Civil Service is committed to providing efficient and well managed services. All civil servants shall comply with the Code of Standards and Behaviour and all policies relating to terms and conditions of employment. In circumstances where a concern arises about the conduct or performance of an individual it may be necessary to take disciplinary action. Where such circumstances arise, all civil servants must 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.

Line managers are responsible for making civil servants aware of the acceptable standards of attendance, work performance and conduct expected from them and for dealing with shortcomings promptly and fairly. In general the line manager will deal with any concern on an informal basis through discussion and appropriate assistance rather than through the formal disciplinary procedure.

All civil servants must comply fully with any disciplinary process. This obligation extends to any civil servants involved in a disciplinary process as a witness, or in any other capacity. A civil servant who fails to comply with a disciplinary process without reasonable cause will be in breach of his/her terms of employment and will be subject to disciplinary action.

There is an obligation on all parties to comply with all the provisions of the disciplinary procedure in accordance with law.

## **Part 2: The disciplinary procedure and use of the Code**

### **2.1 The disciplinary procedure**

The disciplinary procedure set out in this Civil Service Disciplinary Code (“the Code”) will be commenced where concern has arisen, or an allegation has been made, that misconduct may have occurred on the part of a civil servant.

### **2.2 Misconduct**

Misconduct encompasses any type of behaviour that breaches acceptable standards in the workplace. Misconduct also includes a failure to improve performance where a Performance Improvement Plan (PIP) has been in place but has not resulted in the required improvement. Any reference to misconduct in this Circular shall also be a reference to a failure to improve performance in accordance with a PIP and any reference to conduct shall include performance issues.

Misconduct may also include inappropriate behaviour outside the workplace which has an impact, or could reasonably be likely to have an impact, within the workplace.

Examples of misconduct and serious misconduct are provided in Appendix A.

### **2.3 Frustration of the disciplinary procedure**

It is the duty of all civil servants to participate in the disciplinary procedure when required to do so. Where a civil servant fails or refuses (without reasonable cause) to do so, then the relevant manager may make a decision in the absence of the civil servant’s full participation. Where there is a repeated pattern of non-participation (without reasonable cause) the relevant manager should:

- continue with the disciplinary procedure;
- advise the civil servant accordingly; and
- inform the civil servant of each step as it is reached.

The relevant manager should give the civil servant the opportunity to participate in subsequent steps of the procedure. The relevant manager may draw an adverse inference from the non-participation of a civil servant in any part of the disciplinary procedure.

## **2.4 Relevant manager**

Any reference to 'relevant manager' shall mean the line manager, a more senior manager or a HR Manager as appropriate to the specific situation.

Each Department or Office may determine who the relevant manager is in respect of disciplinary matters and may issue appropriate guidance on such matters. It is generally expected that the line manager will administer level one verbal warnings and level two written warnings. A senior manager, with the advice of the HR Unit, may administer a final warning and more serious sanctions where appropriate.

The civil servant will be advised of the identity of the relevant manager at the outset of the process. There may be situations where it is necessary for a change to the relevant manager. In such situations the civil servant will be advised of the change.

## **2.5 Implementation**

Responsibility for implementation of this Code lies with the Appropriate Authority or a person designated by the Appropriate Authority. Clear and effective designation of responsibility and accountability is necessary in order for the provisions of the Code to be effectively and fairly implemented.

## **2.6 Timelines**

It is in the interest of all parties that matters are progressed in a timely and efficient fashion, in compliance with the timelines in the procedure. However, it is recognised that on occasion it may be necessary to extend timelines to ensure all parties can participate fully in the process. All references to days within the timelines refer to working days.

## **2.7 Transitional Arrangements**

Disciplinary cases which have commenced under the Circular 14/2006 shall continue under Circular 14/2006 until completion. Any new disciplinary cases which are commenced after 01/09/2016 shall be progressed under this Disciplinary Code (Circular 19/2016).

### Part 3: The disciplinary procedure

#### Step 1

- Commence the process

#### Step 2

- Investigation: Establish the facts

#### Step 3

- Prepare for the disciplinary meeting

#### Step 4

- Disciplinary meeting

#### Step 5

- Outcome of the disciplinary meeting

#### Step 6

- Decide the appropriate disciplinary sanction

#### Appeals

- Internal and external

## Step 1

### • Commence the process

- 3.1 Where concern arises about a civil servant's conduct and where the use of informal measures to resolve the behaviour is considered inappropriate or has proven unsuccessful, the relevant manager will commence the disciplinary procedure in accordance with the following steps. (See section 2.4 for information about the relevant manager.)



## Step 2

# • Investigation: Establish the facts

- 3.2.1 The nature of any investigation under this Code, and the identity of the appropriate investigator, will depend on the complexity and seriousness of the issue and will be a matter for the relevant manager to determine.

### **Gathering information**

- 3.2.2 A relevant manager may gather available information prior to commencing an investigation or undertaking a disciplinary meeting. Relevant managers may need to complete some preliminary information-gathering before informing the civil servant of any concerns. This may arise where there is a question about whether there is anything worth investigating; or where there is ambiguity about the extent of the investigation; or where there is ambiguity about who should be investigated. A civil servant should not normally be the subject of a prolonged information-gathering process without his or her knowledge. The civil servant should be informed without delay as soon as the relevant manager decides that an investigation should be commenced or a disciplinary meeting should be undertaken.

### **Nature of the fact finding/ investigation (one stage or two-stage process)**

- 3.2.3 In cases where the facts are not complex and where the suspected misconduct is not serious, the fact finding exercise may take place as part of the disciplinary meeting (described in Steps 3 & 4).
- 3.2.4 In all other cases, an investigation (whether an investigation under Step 2 of this Policy or a separate workplace investigation such as an investigation under the Dignity at Work Policy) will be completed prior to any disciplinary meeting taking place (described in Steps 3 & 4).

### **Identity of the investigator(s)**

- 3.2.5 In cases where the facts are not complex and the suspected misconduct is not serious, it is generally expected that the line manager will investigate the concern about the civil servants conduct.
- 3.2.6 In all other cases, where the facts of the matter have not been established through a previous workplace investigation, the matter should be referred to HR who will arrange for an investigation to take place.
- 3.2.7 If a matter initially appears to be neither complex nor serious (such that the investigation was commenced by the line manager) but in the course of the investigation it becomes clear that the matter may be complex or serious, the investigation should be transferred to HR who will arrange for an investigation to take place.

3.2.8 Where a matter is referred or transferred by the line manager to HR for investigation, the entire file on the matter should be sent to HR including any and all evidence gathered by the line manager. This information can be used in any investigation of the matter and should, where relevant, be provided to the civil servant under investigation.

**General principles that apply to investigation processes:**

3.2.9 As stated in Part 1, all civil servants must be treated in a fair and equitable manner in accordance with appropriate fair procedures, which will normally include:

- the right of a civil servant to be informed of any concern about his or her conduct and to be provided with appropriate detail to allow the civil servant reply in respect of that concern;
- the right to be provided with copies of all relevant documentary evidence that is being considered by the investigator, or relevant manager, except where it is inappropriate to disclose certain information taking into account all the circumstances of the case and any legal requirements (such as the requirements of the Data Protection Acts 1988 to 2003 or the Protected Disclosures Act 2014);
- 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.

**Furthermore**

3.2.10

- investigations will be carried out without undue delay and where practicable will adhere to agreed timescales;
- witnesses may be interviewed;
- appropriate notes will be taken at any investigation meetings and copies of those notes (either typed or handwritten) will be provided to the civil servant in good time (normally within 3-5 days) after each meeting;
- neither the civil servant nor his or her representative may record meetings on an audio, visual or other recording device except where (and as) agreed in advance with the investigator(s);
- a civil servant will always be made aware where meetings are being recorded on an audio, visual or other recording device;

- it will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness or to attempt to obstruct the investigation process in any way;
- the investigator may make findings on the basis of the evidence available in the event that the civil servant fails or refuses (without reasonable cause) to participate;
- appropriate confidentiality will be maintained and information will only be disclosed where it is necessary for the investigation of the concern, where it is required by law or for other legitimate reasons.

### **Investigation of complex or serious matters**

3.2.11 In all other cases, for example where the facts are complex or where there is a possibility that serious misconduct may have occurred, the matter should be referred to HR to initiate an investigation as described in paragraph 3.2.6 above.

3.2.12 The general principles expressed at paragraph 3.2.9 will apply in all cases. In cases where the matters being investigated are complex and/or serious, the application of those principles will normally mean that the investigation will be more formal and will be governed by clear terms of reference. These should set out:

- that the investigation is being carried out under the auspices of the Disciplinary Code, and may, where appropriate, lead to disciplinary action;
- the matters that are to be investigated;
- the timescale for the investigation;
- the findings that can be made;
- the identity of the person(s) to whom the investigation report is to be sent.

3.2.13 On completion of the investigation, the investigator(s) will come to a conclusion based on the balance of probabilities and will submit a written report of the findings to the person identified in the terms of reference for that purpose.

3.2.14 The civil servant under investigation will be given a complete copy of the investigation report except where it is inappropriate to disclose certain information taking into account all the circumstance of the case and any legal requirements (such as the requirements of the Data Protection Acts 1998 to 2003 or the Protected Disclosures Act 2014). Where any part of the investigation report is redacted or otherwise withheld from the civil servant, the civil servant will be informed of this fact and of the reason or reasons for the redaction or withholding of information.

3.2.15 The relevant manager, having considered the investigation report, may convene a disciplinary meeting in the manner described in this Code.

#### **Protective Measures**

3.2.16 Pending the outcome of the investigation and any subsequent disciplinary process, management\* may take appropriate protective measures. Protective measures should only be taken after consideration of the necessity of those measures. Such measures are not disciplinary actions, nor are they an indication of wrongdoing. Protective measures may include:

- Reassigning the civil servant to other duties;
- Providing an appropriate level of supervision or oversight to the civil servant; or
- Placing the civil servant off duty with pay.

The relevant manager should inform the civil servant of the protective measures and summarise the reason for the measures. The relevant manager should consider the matter in light of any response provided by the civil servant or his or her representative.

3.2.17 Placing the civil servant off duty with pay will normally be reserved for cases of alleged serious misconduct.

\* Section 3 of the Civil Service Regulation Acts 1956 -2006 provides for the Suspending Authority.

### Step 3

## • Prepare for the disciplinary meeting

- 3.3.1 The purpose of the disciplinary meeting will be to put any concerns (including, where appropriate, any investigation report) to the civil servant and allow the civil servant to respond.
- 3.3.2 The civil servant is entitled to receive reasonable notice of a disciplinary meeting (normally 3 - 5 working days' notice in advance of the meeting).
- 3.3.3 A copy of this Code should be sent to the civil servant along with notice of the disciplinary meeting.
- 3.3.4 The notice of the disciplinary meeting should state:
- the purpose of the disciplinary meeting with a clear statement of the matter(s) which is/are the subject of the disciplinary meeting;
  - that it is necessary to comply with this Code and attend the meeting;
  - that the civil servant has a 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;
  - that the relevant manager may make a decision on the basis of the evidence available in the event that the civil servant fails or refuses (without reasonable cause) to participate and may draw an adverse inference from such non-participation;
  - that the outcome of the disciplinary meeting may be disciplinary action.
- 3.3.5 All relevant evidence should be provided to the civil servant in reasonable time in advance of the disciplinary meeting. If the disciplinary meeting was preceded by a separate investigation, it will not be necessary to duplicate evidence which has already been provided to the civil servant during that investigation or as part of the investigation report.

- 3.3.6 The relevant manager should consider the report of any separate investigation and any findings made in respect of the civil servant before proceeding to a disciplinary meeting. In the event that the investigation in question was not under Step 2, but was under a separate workplace investigation process, the relevant manager will normally be entitled to take such findings into account as part of the disciplinary process. However, the relevant manager should consider whether adequate fair procedures (consistent with the general principles set out in paragraph 3.2.9) were provided to the civil servant during any separate investigation process and before those findings were made. As part of this consideration, the relevant manager should allow the civil servant comment on the investigation report prior to the disciplinary meeting and should consider such comments if they are provided.
- 3.3.7 If the relevant manager is not satisfied that adequate fair procedures were provided to the civil servant before those findings were made, then the relevant manager may decide to undertake a separate investigation under Step 2 before any decision is made to arrange a disciplinary meeting, or may determine that a fact finding exercise will take place as part of the disciplinary meeting (as suggested in paragraph 3.2.3).

## Step 4

# • Disciplinary meeting

- 3.4.1 The disciplinary meeting (or meetings) will be conducted by the relevant manager.
- 3.4.2 As stated at Step 2, where the facts are not complex and where the suspected misconduct is not serious, an investigation may take place as part of a disciplinary meeting. In such cases, the relevant manager will:
- establish the facts as part of the disciplinary meeting;
  - determine if misconduct has occurred; and
  - decide on the outcome of the meeting.
- 3.4.3 If there has been a prior investigation, whether under Step 2 or under a separate workplace investigation (for example under the Dignity at Work Policy), it will not generally be necessary to establish the facts again at the disciplinary meeting, subject to the requirements of paragraphs 3.3.6 and 3.3.7. In such cases, the relevant manager will:
- determine if misconduct has occurred; and
  - decide on the outcome of the meeting.
- 3.4.4 The civil servant will be given an opportunity to respond to any concerns raised at the meeting (including, where appropriate, the opportunity to respond to any investigation report) and to answer appropriate questions.
- 3.4.5 Appropriate notes will be taken at all disciplinary meetings and copies of those notes (either typed or handwritten) will be provided to the civil servant in good time (normally 3 - 5 days) after each meeting.
- 3.4.6 Neither the civil servant, nor his or her representative, will be allowed to record meetings on audio, visual or other recording device except where (and as) agreed in advance with the relevant manager chairing the disciplinary meeting.
- 3.4.7 Where a civil servant fails to attend a disciplinary meeting (without reasonable cause) or fails to answer questions or otherwise cooperate with the conduct of the meeting (without reasonable cause) then the relevant manager may make a decision on the basis of the evidence available and may draw an adverse inference from such non-participation.

## Step 5

# • Outcome of the disciplinary meeting

- 3.5.1 It is important to ensure that decisions are fair and consistent and that the facts of each case are considered carefully. If establishing the facts, the relevant manager is required to consider whether, on the balance of probabilities, the concern about the civil servant's conduct is proved, whether this amounts to misconduct and, if so, the appropriate outcome.
- 3.5.2 A decision on the outcome will be made by the relevant manager. The following outcomes are possible:
- a finding that no misconduct occurred;
  - a finding that further investigation is required to ensure all facts are being considered, in which case the relevant manager will make appropriate arrangements for such further investigation;
  - a finding that misconduct occurred but no disciplinary action will be taken in respect of this instance of misconduct;
  - a finding that disciplinary action is appropriate, in which case one of the actions specified in Table A will be taken or recommended, in line with Step 6 below.
- 3.5.3 The relevant manager should notify the civil servant of the outcome of the disciplinary meeting and the reasons for the decision that has been reached.



## Step 6

# • Decide the appropriate disciplinary sanction

### 3.6.1 Factors to consider in deciding what disciplinary action is appropriate

The disciplinary actions that can be taken (up to and including dismissal), and the decision maker who can take the respective actions, are set out in Table A below. The following should be taken into account when reaching a decision on what disciplinary action is appropriate:

- the nature and seriousness of the misconduct;
- any active disciplinary warnings issued to the civil servant;
- the explanation provided by the civil servant;
- any mitigating circumstances presented by the civil servant; and
- any other matters which, in all the circumstances, are relevant.

A relevant manager may consider prior misconduct where such misconduct is relevant and such consideration is reasonable and appropriate in the circumstances of the case.

### 3.6.2 Management of discipline in a progressive manner

The disciplinary procedure will often be operated on a **progressive basis**, i.e. moving through the process of discipline and escalating the level of disciplinary actions, from written warnings up to and including dismissal, in a reasonable timeframe if conduct does not improve to the required level. The primary consideration when establishing timeframes for improvement in conduct is that they are reasonable in the circumstances. This approach is particularly appropriate where the objective is behavioural change and/or performance improvement. However, a progressive approach may also be applied to cases which involve misconduct.

### 3.6.3 Serious misconduct

Serious misconduct may justify more serious disciplinary action up to and including dismissal even where no earlier warning has issued or where earlier warnings have become inactive.

**Table A: Range of disciplinary actions and decision-maker**

	Sanction	Relevant Manager	Appropriate Authority
1	Level 1 Verbal Warning	•	
2	Level 2 Written Warning	•	
3	Level 3 Final Written Warning	•	
4	Extension of the period of validity of a warning	•	
5	Deferral of an increment	•	
6	Debarment from competitions or promotions for a specified period of time	•	
7	Withdrawal of concessions	•	
8	Reassignment to a different location or different duties	•	
9	Withdrawal of allowances		•
10	Placing the civil servant on a lower rate of remuneration (including the withholding of an increment)		•
11	Reducing the civil servant to a specified lower grade or rank		•
12	Suspending the civil servant without pay		•
13	Dismissal		•

#### 3.6.4 Written warnings (actions 1-3 in Table A)

- **Level One Verbal Warning:** normally applied for a first incident or minor breaches of discipline and conveyed in writing. If there is repetition of misconduct, or if there is no immediate, sustained and satisfactory improvement, then further disciplinary action and a *level two written warning* may be appropriate.
- **Level Two Written Warning:** normally applied if the misconduct is of a serious nature, where there has been a repetition of misconduct, or where a *level one verbal warning* has not resulted in an immediate, sustained and satisfactory improvement in behaviour. If there is repetition of misconduct, or if there is no immediate, sustained and satisfactory improvement, then further disciplinary action and a *level three final written warning* may be appropriate.
- **Level Three Final Written Warning:** a *level three final written warning* may be considered where the misconduct is considered to be more serious in nature, or where there has been a continuation of behaviour which has led to previous warnings. If there is repetition of misconduct, or if there is no immediate, sustained and satisfactory improvement, then further disciplinary action up to and including dismissal may be appropriate.

While it is likely that many disciplinary matters will be dealt with in the progressive manner outlined above, relevant managers are not prohibited from issuing a level two or level three written warning for a first offence where the misconduct is sufficiently serious.

There may also be circumstances where a disciplinary matter has been addressed by issuing a warning to a civil servant, but that warning has expired. In such cases managers are not prohibited from issuing a level two or level three written warning (or other disciplinary actions up to and including dismissal where a level three written warning had been issued) where the matter is sufficiently serious taking all relevant circumstances into account. -In some cases a written warning may be combined with another type of disciplinary action, e.g. deferral of an increment or debarment from competition for a specified period of time.

### **3.6.5 Other disciplinary actions up to, and including, dismissal (actions 4-13 in Table A)**

Other disciplinary actions up to, and including, dismissal may be considered appropriate for cases involving serious misconduct, or where previous warnings have not produced the required improvement in standards or behaviour.

### **3.6.6 Warnings active for the following periods**

Written warnings will be kept on an individual's file and, subsequent to satisfactory improvement, will become inactive after the time frames set out below:

- Level One Verbal Warning – 6 months
- Level Two Written Warning – 12 months
- Level Three Final Written Warning – 24 months

### **3.6.7 Taking any of the disciplinary actions identified at 1- 8 in Table A**

Where the relevant manager has decided that any of the disciplinary actions identified at 1-8 in Table A is/are appropriate s/he may proceed to take that disciplinary action. The civil servant should be informed of the disciplinary action being taken and the reasons for the decision. If a warning is issued then the civil servant should be informed of the period of validity of the warning, the improvement required, the timescale for improvement, the consequences of failure to improve and the right to appeal the decision in accordance with the appeal section of the disciplinary procedure.

### **3.6.8 Taking any of the disciplinary actions identified at 9-13 in Table A: the Relevant Manager's Report**

The ability to take more serious disciplinary actions (listed at 9-13 in Table A above) rests with the Appropriate Authority in each organisation. The Appropriate Authority will normally only take such action where:

- a relevant manager has, after following the appropriate steps set out in this Part of the Policy, formed a view that more serious disciplinary action is appropriate (i.e. any of the actions identified at 9-13 in Table A), and
- a relevant manager has recommended the taking of serious disciplinary action to the Appropriate Authority.

A recommendation from a Relevant Manager to the Appropriate Authority that serious disciplinary action should be taken will be contained in a report, called "the Relevant Manager's Report".

- The Appropriate Authority should consider the Relevant Manager's Report before taking any of these disciplinary actions. The Relevant Manager's Report should outline the recommended course of action, and should describe in an appropriate level of detail all the circumstances of the matter that are relevant to his or her recommendation.
- A copy of the Relevant Manager's Report should be sent to the civil servant, who may either:
  - (i) make a submission to the Appropriate Authority within 10 working days of the sending to him or her of the Relevant Manager's Report; or
  - (ii) lodge an appeal against the Relevant Manager's Report with the Disciplinary Appeals Board in accordance with the timelines set out in the Appeals structure in Section 4.5.
- If the civil servant does not lodge an appeal the Appropriate Authority should consider the matter, in particular the Relevant Manager's Report and the civil servant's submission (if any), and make a decision as to whether, and if so what, disciplinary action should be taken. Any action taken by the Appropriate Authority will be final.
- The Appropriate Authority should convey his/her decision to the civil servant and the relevant manager together with the reasons for that decision.

### 3.6.9 **Disciplinary appeals**

Any action taken by a relevant manager other than a *level one verbal warning*, and any recommendations made in a Relevant Manager's Report to an Appropriate Authority, may be appealed by the civil servant in accordance with the appeals process, set out in Part 4 of this Code.

# • Appeals Process

## 4.1 Appeals structure

Civil servants have a right to appeal any of the disciplinary actions listed from 2 - 13 in Table B below. The identity of persons to whom appeals can be made under this Code is set out in Appendix B of this Code.

**Table B**

	Sanction	Internal Appeal	Appeals Board	External Appeals Officer
1	Level 1 Verbal Warning	N/A	N/A	N/A
2	Level 2 Written Warning	•		•
3	Level 3 Final Written Warning	•		•
4	Extension of the period of validity of a warning	•		•
5	Deferral of an increment	•		•
6	Debarment from competitions or promotions for a specified period of time	•		•
7	Withdrawal of concessions	•		•
8	Reassignment to a different location or different duties	•		•
9	Withdrawal of allowances		•	
10	Placing the civil servant on a lower rate of remuneration (including the withholding of an increment)		•	
11	Reducing the civil servant to a specified lower grade or rank		•	
12	Suspending the civil servant without pay		•	
13	Dismissal		•	

## 4.2 Grounds for appeal

A civil servant may lodge an appeal on one or more of the following grounds, providing specific details of each ground relied upon:

- the provisions of this Code 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;

- the civil servant could not reasonably have been expected to have understood that the behaviour alleged would attract disciplinary action;
- the disciplinary action (or, as the case may be, the recommendation in the Relevant Manager's Report) was disproportionate to the misconduct alleged.

#### 4.3 Where to make an appeal

- The notice of the disciplinary sanction (or, as the case may be, a decision of an Internal Appeals Officer) may specify the appropriate person to whom an appeal should be lodged.

#### 4.4 How to make an appeal

- A civil servant may request an appeal following a decision of a relevant manager to take any of the disciplinary actions 2-8 or a recommendation of a relevant manager that the Appropriate Authority take any of the disciplinary actions 9-13.
- In the case of a decision to take any of the disciplinary actions 2-8, an appeal shall be made to an Internal Appeals Officer. A further appeal shall be available from a decision of an Internal Appeals Officer to an External Appeals Officer subject to the provisions of section 4.8 below.
- The appeal should specify, in writing, the grounds on which the appeal is being made, providing specific details of each ground relied upon.
- The information should be submitted to the Internal Appeals Officer, External Appeals Officer or Secretary to the Disciplinary Appeals Board (as appropriate) in accordance with the timelines listed in Section 4.5.

#### 4.5 Timeframes for lodging an appeal

##### **Internal Appeal (Sanctions 2-8)**

- Notification of the intention to appeal the disciplinary actions at 2-8 (Table B) must be made to the Internal Appeals Officer, and copied to the relevant manager, in writing no later than five working days from the date of notification of the disciplinary action.
- All documentation relevant to the appeal should be submitted to the Internal Appeals Officer, and copied to the relevant manager, in writing not later than seven working days from the date of the notification of the intention to appeal.

##### **External Appeal (Sanctions 2-8)**

- Notification of the intention to further appeal the outcome of a decision of an Internal Appeals Officer must be made to the External Appeals Officer, and copied to the relevant manager, in writing no later than five working days from the date of notification of the outcome of the decision of the Internal Appeals Officer.

- All documentation relevant to the appeal should be submitted to the External Appeals Officer, and copied to the relevant manager, in writing not later than seven working days from the date of the notification of the intention to appeal.

#### **Disciplinary Appeals Board (Sanctions 9-13)**

- Notification of an appeal of any of the disciplinary actions at 9-13 (Table B) must be made to the Secretary to the Disciplinary Appeals Board, and copied to the relevant manager, in writing no later than five working days after the sending of the Relevant Manager's Report.
- All documentation relevant to the appeal should be submitted to the Secretary to the Disciplinary Appeals Board, and copied to the relevant manager, in writing no later than ten working days from the date of notification of the intention to appeal.
- A counterstatement by the relevant manager should be submitted to the Secretary to the Disciplinary Appeals Board, and copied to the civil servant, in writing no later than ten working days from receipt by the relevant manager of all documentation relevant to the appeal.

#### **4.6 Outcome of the Appeal Process**

The outcome of the appeal process shall be one of the following:

- Appeal unsuccessful - uphold the disciplinary action;
- Appeal successful - determine that no disciplinary action shall be taken;
- Appeal partially successful - take another, more suitable, disciplinary action, except that the recommendation shall not include reassignment of the civil servant to another location or other duties;
- Appeal identifies the need for the case to be reconsidered by the relevant manager to remedy a specified deficiency in the disciplinary proceedings.

The outcome of an appeal to the Disciplinary Appeals Board Process (Sanctions 9-13) will be a recommendation to the Appropriate Authority. Ordinarily, it is expected that the recommendation of the Disciplinary Appeals Board will be taken into account.

#### 4.7 **Effect of disciplinary actions that have been appealed**

- For Sanctions 2 – 8 the decision of the Internal Appeals Officer shall, subject to section 4.8 below, be final.
- For Sanctions 9 – 13 the decision of the Appropriate Authority, following consideration of the Relevant Manager’s report together with the recommendations of the Disciplinary Appeals Board, if any, shall be final.
- Written warnings will take effect immediately following the decision of the relevant manager.
- All other types of disciplinary action will take effect at one of the following points in time, as appropriate:
  - The date of expiration of the timeframe to lodge an appeal to an Internal Appeals Officer without any such appeal being made or
  - Where an appeal to an Internal Appeals Officer is made, the date of the decision of the Internal Appeals Officer.

#### 4.8 **External Appeals Process**

- A civil servant may refer a case which has previously been subject to a decision by an Internal Appeals Officer to an External Appeals Officer.
- This option applies where the decision of an Internal Appeals Officer is to take (or to uphold the taking, by a relevant manager, of) any of the disciplinary actions 2-8.
- An External Appeals Officer will make a recommendation to the management (at an appropriate level) of the Department or Office in which the civil servant works. The recommendation will be in like form to one of the four options specified at section 4.6. Ordinarily, it is expected that the recommendation of the External Appeals Officer will be taken into account but management is not obliged to accept any such recommendation.
- Management will consider the recommendation of the External Appeals Officer, in conjunction with the decision of the relevant manager and the decision of the Internal Appeals Officer, and will promptly inform the civil servant of its decision.
- This section is without prejudice to the provisions of section 4.7.

##### **Further matters relating to appeals**

- Nothing in this Code affects the right of a civil servant who has been dismissed (and who is otherwise qualified to bring a complaint of unfair dismissal) to make such a complaint to the Director General of the Workplace Relations Commission for investigation.
- Further information can be obtained from your organisation’s HR Unit.



## **APPENDIX A – Examples of misconduct and serious misconduct**

These examples are for illustrative purposes and are not an exhaustive list. Examples that are listed as misconduct issues can also be classified as serious misconduct and examples that are listed as serious misconduct may, in certain circumstances, be classified as misconduct.

### **1 Misconduct**

Misconduct is conduct that is considered to be unacceptable or inappropriate in the workplace. It is behaviour that falls below acceptable standards, but which is not considered to be serious misconduct. Misconduct can be a single act, or a series of acts. What constitutes misconduct may vary depending on the particular circumstances of the Department/Office and the work that the civil servant is carrying out.

The following examples of behaviour, which are non-exhaustive, may lead to disciplinary action and, if repeated, may progress through the stages of the Code and lead to dismissal. More serious instances of the following types of misconduct may amount to serious misconduct.

- Poor timekeeping;
- Unsatisfactory attendance record or unauthorised absences;
- Poor work performance;
- Behaviour which could bring the organisation into disrepute, subject to the provisions of the Protected Disclosures Act 2014;
- Inappropriate use of social media.

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

### **2 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.

Examples of serious misconduct include, but are not limited to:

- More serious and/or ongoing instances of the types of misconduct listed above;

- 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;
- Engaging in prohibited activities;
- 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.

## **APPENDIX B**

### **Identity of persons to whom appeals may be made further to this Code**

#### **Internal Appeals Officers**

- An Internal Appeals Officer shall be a manager of a grade not less senior than the grade of the relevant manager who made the decision to take the disciplinary action in question.
- Where reasonably practicable, an Internal Appeals Officer should be a manager of a grade more senior than the grade of the relevant manager who made the decision to take the disciplinary action in question.
- An Internal Appeals Officer may be a manager within the same Department or Office as the civil servant or a different Department or Office.
- A manager may be appointed to act as an Internal Appeals Officer in relation to a single appeal by an individual civil servant or may be appointed to act in respect of a grade, group or category of civil servants.

#### **External Appeals Officers**

- An External Appeals Officer is a person recognised by the Department of Public Expenditure and Reform as being an External Appeals Officer for the purposes of this Code.
- No serving civil servant shall be recognised as an External Appeals Officer for the purposes of this Code.
- Any External Appeals Officer who becomes a civil servant shall immediately be deemed to be no longer recognised as an External Appeals Officer for the purposes of this Code.

#### **Disciplinary Appeals Board**

The Civil Service Disciplinary Code Appeal Board (the Board) shall comprise:

- i. a Chairperson or Chairpersons appointed by the Minister for Public Expenditure and Reform with the agreement of the General Council Staff Panel;
- ii. a panel of serving (or former) civil servants appointed by the Minister for Public Expenditure and Reform, as are considered by the Minister to be necessary for the proper conduct of the Board's business; and
- iii. a panel of serving (or former) civil servants or whole-time officials of recognised trade unions nominated by the General Council Staff Panel and appointed by the Minister for Public Expenditure and Reform.

A Secretary to the Board will be appointed. The Secretary will be responsible for the management of the work of the Board on the advice and instruction of the Chairperson of the Board.

The composition of a Board shall be the Chairperson (or a Deputy Chairperson), a member of the panel appointed by the Minister for Public Expenditure and Reform and a member of the panel appointed by the Minister on the nomination of the General Council Staff Panel. The allocation of appeals to different compositions of the Board shall be a matter for determination by the Chairperson in consultation with the Secretary.

No member shall be appointed to the Board to consider a case referred to the Board who has had any prior interest in or dealings with that particular case.