



& CDET B Craft Unions (e.g. TEEU, INPDU, UCATT and BATU)

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## REVISED MEMORANDUM OF UNDERSTANDING

# TO SUPPORT THE OPERATION OF THE NATIONALLY AGREED GRIEVANCE PROCEDURE FOR STAFF EMPLOYED BY EDUCATION AND TRAINING BOARDS

APPLICATION DATE: 15 FEBRUARY 2016

## **To the Reader**

### **Context to the emergence of a revised nationally agreed Grievance Procedure for staff employed by ETBs and supporting *Memorandum of Understanding***

The ETBI/Unions' Consultative Forum is a co-operative forum of representatives of management and trade unions at national level (i.e. AHCPS, ASTI, IMPACT, TUI, UNITE, SIPTU and the City of Dublin ETB Trade Union Group) in the ETB sector established to progress policies/procedures to promote positive workplace practice and industrial relations.

An extensive process of consultation was undertaken resulting in the first nationally agreed version of the Grievance Procedure launched in the then Vocational Education sector on 31 March 2010. Critical to the consultative process and the emergence of the Procedure was the input, advice and support provided by the then Labour Relations' Commission's (LRC) Conciliation Service.

With the enactment of the Education and Training Boards Act, the Grievance Procedure was amended in line with legislative requirements and a revised version of the Procedure issued for application in the Education and Training Boards (ETB) sector on 1 July 2013.

A review was undertaken at national level by the ETBI/Unions' Consultative Forum and a revised version of the Grievance Procedure applies in the ETB sector with effect from 15 February 2016.

The 2010 version of the Grievance Procedure was supported by a Memorandum of Understanding agreed between the parties at national level and issued in 2010. This Memorandum has similarly been revised and applies with effect from 15 February 2016.

### **Purpose of the *Memorandum of Understanding***

The Memorandum details the agreements reached by the Consultative Forum through national engagement with respect to matters concerning the operation of the Grievance Procedure and informed by training and operational experience within the sector. This *Memorandum* is formally approved by the ETBI/Unions' Consultative Forum and is presented in a question and answer format to assist the reader.

**This Memorandum should be read in conjunction with the *Grievance Procedure for Staff employed by ETBs (issued 15 February 2016) and adopted by Cork ETB on <date>*.**

The accompanying Grievance Procedure is understood to replace all existing Grievance Procedures for staff working in the ETB sector. Any future supplements/amendments to this *Memorandum of Understanding* adopted by the Consultative Forum will be advised in further supplements/revisions to the **Memorandum of Understanding** and, should be advised to any person/group requesting a copy of, or seeking to invoke, the nationally agreed Grievance Procedure for Staff in ETBs (issued for implementation, 15 February 2016).

**What is meant by grievance?**

A grievance is defined as a complaint which an employee/s has concerning any aspect of his/her/their employment, working environment or professional working relationships.

**[Agreed<sup>1</sup> 1 March 2010. Applies to revised Procedure of 15 February 2016]**

**To whom can the procedure apply?**

**The procedure is available for use as a mechanism for processing grievance/s raised by an individual or collectively (i.e. complaints raised by or on behalf of a group of employees) within an individual ETB.**

**[Agreed 1 March 2010. Applies to revised Procedure of 15 February 2016]**

**Can one bring a grievance through this process and have it simultaneously adjudicated on in another parallel forum.**

**No.** The Forum advises that if a grievance is being pursued through the nationally agreed Grievance Procedure, it should not be simultaneously adjudicated on in another parallel forum.

Once the grievance has been expedited through the procedure, the aggrieved individual/group may still have a right to pursue the issue further if required, through the relevant Forum (e.g. Workplace Relations Commission)

**[Agreed 10 February 2010. Applies to revised Procedure of 15 February 2016]**

**What does 'status quo ante' refer to in the Grievance Procedure?**

'Status quo ante' refers to and describes the position that obtained immediately prior to the decision/action/change that gave rise to the

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<sup>1</sup> All references to 'Agreed' are understood to be 'Agreed by the parties to the Consultative Forum at national level'

collective grievance involving the majority of staff affected by the proposed change. The status quo ante only applies in the case of a collective grievance involving the majority of staff affected by the proposed change but not with respect to a grievance brought forward by an individual.

***[Agreed 1 March 2010. Applies to revised Procedure of 15 February 2016]***

**What happens if my grievance is lodged in a particular stage of the Procedure and the Procedure is now updated as of 15 February 2016?**

Where a process regarding a matter of grievance has commenced under previous version/s of the Grievance procedure and is not yet concluded, that process should now continue using the revised procedure – i.e. 15 February 2016 version, from the corresponding stage.

**What is meant by “Reasonable time off (with substitution where required) should be granted to union representatives to facilitate their attendance at meetings convened and directly related to the processing of a grievance”?**

The Forum recommends that unions and management would try to work together locally in schools/colleges/offices/centres to minimise the disruption to services (whether educational, training or administrative) in terms of meeting/s concerned to hearing of a particular grievance. As far as possible, grievance meetings particularly at stages 1 and 2 (Formal) would be arranged at times where cover would not be required for those in attendance. In relation to Formal stage 3 meetings which may very likely take place externally to the particular school/centre where the grievance emanates, the view was taken that it would be a matter for management to confirm the requirement for cover and, in such cases, cover will be provided.

***[Agreed 19 April 2010. Applies to revised Procedure of 15 February 2016]***

**Union representation at each stage of the procedure**

For the purposes of this procedure, “representative” includes a colleague of the employee’s choice or a registered trade union representative/s but not any other person/body unconnected with the ETB. At any given meeting/hearing under this procedure, a single spokesperson shall be nominated to speak on behalf of each party. Commentary may also be invited from others present.

***[Agreed as per Clarification Notification 3 September 2013. Amended 19 January 2016. Applies to revised Procedure of 15 February 2016]***

**What is meant by the reference to ‘Mediation’?**

The Code states that: “Mediation if appropriate and subject to the agreement of the parties to the grievance is not excluded by way of a mechanism to resolving grievance/s at informal or formal stages”.

Provision is available the parties to a grievance, by mutual agreement only, to opt for the services of an external professional mediator. Ideally mediation would take place in the informal stage but is not precluded for use in the Formal Procedure, subject to the agreement of the parties concerned to the grievance.

In the event that mediation is used, a professional mediator<sup>2</sup> will hold a series of structured sessions (3-4 max.) with the parties to the grievance with a view to achieving a resolution of the grievance. Mediators may be drawn from a list of approved mediators issued by the Mediators' Institute of Ireland, Mediation Forum Ireland or the Mediation Service operated by the Workplace Relations' Commission.

Any information disclosed in the course of mediation must remain within the mediation process. It must not be disclosed and cannot be used with respect to any undertakings concerned to furthering a grievance through the agreed Grievance procedure and must remain confidential to the mediation process.

In the event that mediation is unsuccessful, the procedure can be re-invoked at the same stage without prejudice to the parties having engaged in a mediated process.

***[Agreed 19 April 2010. Applies to revised Procedure of 15 February 2016]***

***Websites for reference...***

**Mediators' Institute of Ireland:** <http://www.themii.ie/find-a-mediator.jsp>

**Mediation Forum Ireland:** <http://mediationforumireland.com/index.php>

**Workplace Mediation Service, Labour Relations' Commission:**

[https://www.workplacerelations.ie/en/Workplace\\_Relations\\_Services/Mediation\\_Services/](https://www.workplacerelations.ie/en/Workplace_Relations_Services/Mediation_Services/)

**When does a grievance become formal?**

**The Formal Procedure activates only when the grievance is set out in writing.**

***[Applies to revised Procedure of 15 February 2016]***

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<sup>2</sup> The HR Department in the ETB will nominate the professional mediator to be used.

### Formal Procedure Stage 3

#### Who does one correspond with at stage 3 Formal Procedure?

Formal Procedure stage 3 states that: *“If the matter has not been resolved at stage 2, the relevant trade union/branch representative should seek a meeting with the Chief Executive Officer on behalf of the aggrieved employee”*.

This means that the union or aggrieved employee (if not a member of a union) would write to the Chief Executive (CE) of the ETB concerned, seeking a meeting.

The Chief Executive may nominate a delegated officer to deal with the matter in accordance with his/her executive authority as prescribed under Section 16 of the Education and Training Boards Act, 2013.

***[Agreed 1 March 2010. Applies to revised Procedure of 15 February 2016]***

The procedure reads: *“If the grievance is resolved through a conciliated process, the matter is concluded. If the grievance is not so resolved, the Chief Executive shall adjudicate on the grievance and shall convey a decision, in writing, to the aggrieved employee and to any other party/parties concerned, within 10 working days of the hearing specified at Stage 3”*. Importantly, following the stage 3 meeting, any adjudication on the grievance (whether heard or not by a delegated officer) should issue in the name of the CE of the ETB.

***[Agreed 13 January 2010. Applies to revised Procedure of 15 February 2016]***

#### Where does the process commence for grievance against a Chief Executive?

In the case of a grievance against a Chief Executive of an ETB, the procedure should be commenced at Stage 3 by submission of the grievance in writing, to the Chief Executive. A copy of the grievance shall be simultaneously forwarded by the aggrieved party/parties to the Head of HR.

***[Agreed for application in policy 1 July 2013. Applies to revised Procedure of 15 February 2016]***

#### What happens where a grievance is raised against a CE but cites other ETB line managers?

The Procedure advises *“In the event that other ETB line manager/s are cited as part of the grievance, the Chief Executive or delegated officer so assigned for the purpose of conducting matters relating to stage 3, shall inform him/herself as appropriate, of the views of any such party/parties cited in the grievance complaint”*.

The may involve convening meeting/s prior to and/or following the stage 3 meeting and may at the discretion of the person conducting the stage 3 meeting, involve the production of a response statement to issues raised in the grievance. The person conducting the stage 3 meeting may decide to meet with the respondent party/parties referenced in the grievance, either separately or in a group, by way of informing him/herself about the views of that

particular party/parties.

***[Agreed in principle on 19 January 2016. Applies to revised Procedure of 15 February 2016]***

**Is there a potential conflict between matters that can be progressed on a statutory basis or claims appropriate to the Conciliation and Arbitration Scheme established for Teachers?**

**The Grievance Procedure operates without prejudice to the right of the employee to make a claim under statute.**

Hence, the Grievance Procedure is not the appropriate procedure for circumstances in which a claim has been initiated under statutory employment legislation. Neither would it be used where matters would be referred as claims under the (Teachers') Conciliation and Arbitration Scheme or for claims appropriate to the collective bargaining process.

***[Applies to revised Procedure of 15 February 2016]***

**Who can be present at the Stage 4 hearing for teachers and certain other grades/staff that do not currently have access to the WRC/Labour Court under the State's IR machinery?**

Stage 4 oral hearing provides for an aggrieved party to appeal the decision to a nominated appeals officer. There is a reasonable expectation that the CE would be present and there is provision for his/her accompaniment. Examples of those who might accompany the CE could include:

- the delegated officer who heard the complaint at stage 3 (HR Officer, EO etc.);
- the Principal/Head of Centre/Head of Section against whom the complaint was originally made.

***[Agreed 13 January 2010. Applies to revised Procedure of 15 February 2016]***

**What about ETBs who normally have access either on an ad hoc or procedural basis to the WRC?**

In the case of all other ETB staff, referral of the grievance beyond the conclusion of stage 3 would be to the appropriate WRC forum in accordance with normal practice.

***[Agreed by email 18 January 2010. Applies to revised Procedure of 15 February 2016]***

REF:MOUGrievanceRevised15Feb2016