



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

REVISED MEMORANDUM OF UNDERSTANDING

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

APPLICATION DATE: 24 February 2023

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, INTO, 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.

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 24 February 2023)* and adopted by Donegal ETB on April 3, 2023.

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, 24 February 2023).

What is meant by grievance?

A grievance may be defined as a complaint which an employee/s has concerning practices, proposals, decisions, acts, or omissions of management that affect their employment conditions and/or roles and/or responsibilities.

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.

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.

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

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

What happens if my grievance is lodged in a particular stage of the Procedure and the Procedure is now updated as of 24 February 2023

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 conclude using the previous process, 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.

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.

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 mediator¹ will hold a series of structured sessions with the parties to the grievance with a view to achieving a resolution of the grievance. Mediators will 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.

¹ The HR Department in the ETB will nominate the professional mediator to be used.

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.

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.workplacelrelations.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.

Formal Procedure Stage 3

Who does one correspond with at stage 3 Formal Procedure?

Formal Procedure stage 3 states that: *"If the matter is not resolved at the preceding Stage (1 or 2 as applicable), the individual/trade union may seek a meeting with the Chief Executive/Delegated Director, as respondent, on behalf of the aggrieved employee. All relevant documentation from all previous stages will be provided to both parties and to the Chief Executive in advance of the meeting"*. 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.

The procedure reads: *"At this meeting both parties, the aggrieved party and the Chief Executive or delegated officer, shall seek a mutually acceptable resolution of the grievance. If agreement on a resolution is achieved, a written statement of outcome setting out the resolution shall*

be prepared by the Chief Executive or delegated officer (so assigned for the purpose of conducting matters relating to Stage 3) for signing off by both parties.

If resolution is not so achieved the Chief Executive/Delegated Director shall adjudicate on the grievance and shall convey a determination in writing to the aggrieved employee and her/his representatives and to any other relevant 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.

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.

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 Managers are cited as part of the grievance, the Chief Executive or delegated officer shall inform her/himself of the views of any such parties cited in the grievance, as appropriate, in considering a determination.”*

This 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.

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.

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 the nominated Independent 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 include:

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

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.