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

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# ETB COMPLAINT PROCEDURE

A PROCEDURE FOR PROCESSING COMPLAINTS MADE BY PARENTS/GUARDIANS OF STUDENTS OR ADULT LEARNER(S) CURRENTLY ENROLLED IN AN ETB SCHOOL/CENTRE AGAINST A STAFF MEMBER EMPLOYED BY AN EDUCATION AND TRAINING BOARD (ETB)

**Nationally agreed for implementation 19 April 2018**

## **1. Introduction**

### **1.1 Context**

Procedures are necessary to ensure fair treatment for all. It is necessary that procedures be agreed, known and observed in the interest of good relations in the ETB learning and working environment.

The national *Code of Practice for Dealing with Complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by <Named> Education and Training Board (ETB)*<sup>1</sup> was introduced on 1 March 2011. The *Code* was revised in line with the enactment of the Education and Training Boards' Act and re-issued on 1 July 2013.

### **1.2 Application**

This ETB Complaint Procedure applies to **all** ETB staff. It replaces the previous *Code of Practice*. It is used for processing complaint(s) lodged on or from the implementation date.

Where matters have commenced under the previous 2013 version of the *Code of Practice*, the ETB concerned shall determine the appropriateness of moving to the utilisation of this Complaint Procedure having regard to the stage at which the complaint is in process. The decision of the ETB will be final in this regard.

In all circumstances where a complaint is at Informal Stage and is to escalate to the Formal Stage, this procedure should be used.

A *Guidance Note for ETBs* is available as an operational resource for use by ETBs.

### **1.3 Provision for review**

The responsibility to review this procedure rests with ETBI and union parties to this procedure.

## **2. Purpose of the Procedure**

### **2.1 Purpose**

Set against the context of the proposed obligations on schools to have a *Parent and Student Charter*, this procedure provides a standard approach for use by ETBs in processing complaints made by parents/guardians of students or adult learners-currently enrolled in an ETB school/centre against an ETB staff member which may arise from time to time.

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<sup>1</sup> Hereinafter referred to as the *Code of Practice/Code*

This procedure emphasises the resolution of complaints at the earliest opportunity through informal means without recourse to the more formal stages of the procedure. Where a complaint arises, the parties involved are encouraged to strive to understand the other party's position and should seek, as far as possible, a mutually acceptable solution through informal means.

## **2.2 Definition and Scope**

### ***Definition of a complaint in this procedure***

A complaint is a grievance made by a parent(s)/guardian(s) of a student(s) or adult learner(s) currently enrolled in an ETB school/centre about an ETB staff member which relates to the staff member's work in the ETB learning/working environment or in work-related approved activities.

### ***Scope***

This procedure aims to provide a responsive, fair, transparent and consistent approach to processing complaints and to do so in a manner that affords all concerned full rights in accordance with natural justice.

## **2.3 Exclusions**

Complaints:

- considered to be frivolous, vexatious or malicious
- appropriate to another code of practice/procedure
- which do not relate to the ETB staff member's work in the ETB learning/working environment or in work-related approved activities
- of alleged child abuse which are dealt with under separate guidelines and procedures issued by the Department of Education and Skills
- which are the subject of legal proceedings
- that are anonymous
- where the same complaint has previously been dealt with under this procedure and has been resolved or adjudicated upon.

**2.4** The complainant will be informed by the CE or his/her nominee if the complaint is amenable to processing within the terms of this procedure and if not, the reasons for this decision.

## 3 GENERAL PRINCIPLES

- 3.1 Parameters of procedure:** The procedure is intended to resolve complaints outside of recourse to legal process. In circumstances where legal proceedings are invoked, the provisions of this procedure terminate.
- 3.2 Accompaniment/Representation:** The right to be accompanied/represented as provided for at the various stages of the procedure is recognised.
- 3.3 Commitment:** Complaints will be handled with minimum delay and in accordance with principles of natural justice and fair procedure having due respect to the rights of both complainant and staff member.
- 3.4 Timeframes:**
- Every effort will be made to adhere to the time limits prescribed in the procedure.
  - Every effort will be made by management to facilitate and address the complaint through scheduling meetings.
  - The procedure shall not operate during periods of approved leave unless by agreement of the parties to the complaint.
  - In a school context, “working days” are understood to be counted as days on which the school is open for student/learner instruction.
  - The time limits in the Formal Procedure may be extended by mutual agreement of the parties concerned, or by the person(s) appointed to manage/investigate the complaint, provided the grounds for extending the time limits are reasonable. The final decision with respect to amending the time limits rests with the ETB.
- 3.5 Communication:** Throughout this procedure, all communication between the staff member, parent/guardian/adult learner and other person(s) associated with the processing of this complaint, must take place in an atmosphere that is calm, dignified and in a climate that respects the viewpoint of either party to this procedure.
- 3.6 Confidentiality:** All those participating in the complaint procedure are expected to maintain confidentiality throughout the process.
- 3.7 Administration:**
- Where complaints are made orally or in writing, these will be shared and/or copied to the staff member against whom the complaint is made.
  - **“Notice” of proposed meetings/hearings under this procedure:** Notice counts from the next working day directly after the date the notice is issued.
  - All complaints received will be entered in a complaint file. Where the complaint is withdrawn, a note to this effect will be entered in the file.
  - A complaint(s) may be withdrawn at any stage of the procedure.
  - **Record retention:** Documentation in respect of the complaint will be treated as confidential and retained in accordance with ETB’s Data Protection Policy, retention schedule and statutory requirements.

## 4 MEDIATION

Mediation, if appropriate, and subject to the agreement of the parties to the grievance, is not excluded by way of a mechanism to resolving complaints at informal or formal stages. Importantly, any information disclosed in the course of mediation must remain within the mediation process. It must not be disclosed and cannot be used in furthering a complaint through this procedure or any other process and must remain confidential to the mediation process.

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

Further information on mediation is available from the ETB HR Department or staff trade unions. The *Guidance Note for ETBs* provides an exemplar statement of outcome to mediation<sup>2</sup>.

## 5. THE PROCEDURE

### INFORMAL

Parties are encouraged to raise their complaint informally in the first instance. Complaints, whether verbal or in writing, should be processed informally through stages 1, 2 and where necessitated; stage 3.

Communication between the parties to the complaint must take place in an atmosphere that is calm, dignified and in a climate that respects the viewpoint of either party to this procedure. It is envisaged that the overwhelming majority of complaints will be resolved to the satisfaction of the parties to the complaint without recourse to progressive stages in the procedure.

#### **Informal Stage 1 – Engagement with the ETB Staff Member**

- 1.1 A parent/guardian/adult learner who wishes to make a complaint should make an appointment to discuss the matter with the staff member concerned with a view to resolving the complaint. There is no requirement to submit a complaint in writing.
- 1.2 The parties concerned are encouraged to strive to understand the other party's position and should seek, in as far as possible, a mutually acceptable solution through informal means.
- 1.3 A parent/guardian/adult learner may normally be accompanied by a friend or someone unconnected to the complaint. A staff member may normally be accompanied by a colleague at meeting/s convened under this stage of the procedure.

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<sup>2</sup> *Guidance Note for ETBs - Template A*

- 1.4 In this context, more than one meeting may be required to achieve resolution on the matter.
- 1.5 In circumstances where the parties having already engaged directly, cannot reach a successful resolution to the matter, the complainant has the right to refer the complaint, within ten working days to stage 2. The line manager at stage 2 in a school context is the Principal/Deputy Principal. In a centre/office context this person is normally the Section/Department Manager or Assistant Manager.
- 1.6 A copy of the procedure should be made available at the earliest possible juncture, to the parent/guardian/adult learner.

### **Informal Stage 2 - Facilitation meeting/s at school/centre/section level**

- 2.1 The line manager will meet with the parties to the complaint. The meeting should ideally occur within a further ten working days.
- 2.2 A parent/guardian/adult learner may normally be accompanied by a friend or someone unconnected to the complaint. A staff member may normally be accompanied by a trade union representative or colleague at meeting/s convened under this stage of the procedure.
- 2.3 The line manager may also convene a meeting or number of meetings separately and/or jointly with the parties to the complaint to facilitate a resolution to the matter. The discretion as to the conduct of this stage rests with the line manager.
- 2.4 In all circumstances where a complaint is raised, parties are encouraged to strive toward the successful resolution of the matter.
- 2.5 Mediation may also be considered as an option for the parties in seeking to successfully resolve the matter.
- 2.6 When the line manager determines that the matter has reached conclusion or there is no further scope for resolution, s/he will communicate the outcome in a statement<sup>3</sup> to both parties.
- 2.7 In circumstances where the parties having already engaged directly, cannot reach a successful or mediated resolution to the matter, the complainant has the right to refer the complaint, to stage 3, within a maximum of ten working days. The line manager will advise to whom the referral should be made in the ETB.

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<sup>3</sup> *Guidance Note for ETBs – Template B - Statement of Outcome to Stage 2 facilitation meeting/s at school/centre/section level*

### **Informal Stage 3 - Facilitation meeting/s with a member of the ETB Senior Management**

- 3.1 If the complaint remains unresolved, the complainant should raise the matter with the relevant Director in the ETB. A facilitation meeting will be arranged within a further fifteen working days by a member of the ETB senior management team with the parties to the complaint with a view to resolving the complaint. Meeting/s may be undertaken separately or collectively. The discretion as to the conduct of this stage of the process of facilitation rests with the facilitator.
- 3.2 Where a complaint is made against a Principal, Centre Manager or Head of Section/Department in an office context, the facilitation meeting will involve the parties to the complaint and/or other persons as the facilitator deems necessary to resolving the complaint. Meeting/s may be undertaken separately or collectively. The discretion as to the conduct of this stage rests with the facilitator.
- 3.3 A parent/guardian/adult learner may normally be accompanied by a friend or someone unconnected to the complaint. A staff member may normally be accompanied by a trade union representative or colleague at meeting/s convened under this stage of the procedure.
- 3.4 Where the facilitation reaches an agreed resolution, the parties are requested to sign a statement to the effect that the matter is concluded to the agreement of the parties concerned<sup>4</sup>. A copy shall be provided to both parties to the complaint.
- 3.5 Where the facilitation does not result in an agreed resolution, the parties are requested to sign a statement to the effect that the matter is not resolved<sup>5</sup>. A copy shall be provided to both parties to the complaint. The complainant has the option of moving the matter formally onto stage 4.
- 3.6 Where the matter moves to formal stage 4, the statement of outcome to facilitation will be prepared by the facilitator detailing the issues raised at stage 3 and will be admissible, along with any documentation from previous stage/s.

## **FORMAL**

### **Stage 4 - Formal investigation of the complaint by an independent investigation team**

- 4.1 To activate stage 4, the complainant must submit their original complaint in writing within a maximum of ten working days of the issue of the stage 3.5 outcome.
- 4.2 The ETB should formally acknowledge receipt of the written complaint.
- 4.3 A copy of the complaint should be supplied to the other party/parties to the complaint advising that the ETB is convening an investigation and that further details will be

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<sup>4</sup> *Guidance Note for ETBs – Template C1- Statement of Outcome of Stage 3 where resolution is reached*

<sup>5</sup> *Guidance Note for ETBs – Template C2- Statement of Outcome of Stage 3 where resolution is not reached*

advised concerning the date, time, venue etc. of the investigation meeting/s.

- 4.4 An investigation team nominated by the employer<sup>6</sup> comprising two investigators drawn from the nationally agreed panel<sup>7</sup>, in addition to an impartial recording secretary drawn from within or outside the sector, will be convened by the employer for the purposes of conducting an official investigation of the complaint.
- 4.5 The investigation team shall conduct the investigation in accordance with the specified terms of reference (appendix B herein refers).
- 4.6 Accompaniment/representation is confirmed under the terms of reference (appendix B herein refers).
- 4.7 Following the conclusion of the investigation, the investigation team will provide a written report within ten working days to a Director nominated by the Chief Executive (CE).
- 4.8 Upon receipt, the Director will furnish a copy of the report to the parties to the complaint.
- 4.9 The Director so nominated shall, within fifteen working days of issuing the report to the parties, review the report furnished by the investigation team and conduct the following:
- 4.9.1 Regarding the Staff Member:
- Determine whether it is necessary to meet with the staff member concerned.
  - Determine a plan of action based on the investigators' report. Such action may include a variety of options e.g. restorative/supportive/other options. It may also include determining whether the relevant disciplinary procedure for the staff member concerned will be initiated.
  - Advise, in writing, any recommendations to be implemented by the ETB to assist the restoration of relationships between the parties.
- 4.9.2 Regarding the Complainant:
- Determine whether it is necessary to meet with the complainant party concerned.
  - Advise, in writing, any recommendations to be implemented by the ETB to assist the resolution of the matter.
  - Where it is determined that a complaint made by a student or adult learner/s against a staff member is frivolous, vexatious or malicious, the matter will be processed through the Code of Behaviour.
- 4.10 The decision of the Director shall be final with respect to this procedure.
- 4.11 This concludes the *ETB Complaint Procedure*.

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<sup>6</sup> All practical arrangements for the conduct of the investigation herein referenced at stage 4 will be arranged by the HR Department in the ETB

<sup>7</sup> Refer *Guidance Notes for ETBs – Template D*



## **5. PROTECTION AND SUPPORT**

The ETB is committed to providing a healthy working and learning environment in its schools, colleges, centres and offices. Victimisation of any party during the processing of a complaint will not be tolerated.

## APPENDIX 1

### Information on the national panel of investigators available to conduct formal investigations under Stage 4 of the Procedure

#### **General information:**

A national panel is established comprising approved nominees from management and unions in the ETB sector endorsed by the ETBI/Unions' Consultative Forum in its capacity to act as independent investigators for the purpose of investigation at Stage 4.

Importantly, the role of the investigator is not an advocacy role but an independent investigation role irrespective of the body nominating them.

The ETB is responsible for establishing an investigation committee drawn from the panel.

**Conflict of Interest:** There is no provision for the complainant (i.e. parent/guardian/adult learner/s) or the staff member who is party to a complaint proposed for investigation at Formal Stage 4, to reject a nominee proposed from either or both panels (Panel A or B) save in the very exceptional circumstance where an individual drawn from a panel is related to, or a personal friend of, either the complainant or the staff member concerned to the complaint. In such circumstances, it is the responsibility (whether complainant or staff member) to disclose such interests by contacting the ETB Human Resources Department by phone/email/in writing prior to any investigation commencing to facilitate the selection, by the ETB as employer, of an alternative investigator to conduct the Formal Stage 4 investigation.

## APPENDIX 2

### Terms of Reference for the conduct of an investigation at Formal Stage 4

#### Scope of Investigation

This complaint is made under the *ETB Complaint Procedure (A procedure for processing complaints made by parents/guardians of students or adult learner(s) currently enrolled in an ETB school/centre against a staff member employed by an Education and Training Board (ETB)).*

The independent investigation to be conducted by *<name of investigators>* will cover the specific complaint of *<nature of complaint>* made by *<name of Complainant(s)>* against *<name of ETB staff member/s>*.

The investigation is an information gathering exercise to establish the facts.

#### Investigation Procedure

##### General

1. The investigation will at all times adhere to the principles of natural justice and fair process.
2. During the investigation, all parties are required to respect the privacy of all others involved and to treat all aspects relating to it with total confidentiality. The investigators will assure all parties of the confidentiality of the investigation insofar as is practicable for the proper and fair conducting of the investigation or save where the investigators are required to disclose any information pursuant to an order of the Court or the provision of Data Protection legislation.
3. On commencement of the investigation, the investigators will be in sole control of the process and shall be the final arbitrators on any matters of procedure raised with them. During the investigation, the investigators will maintain contact with a nominated representative within the ETB and may seek relevant information from and/or the assistance of that person in line with the demands of the investigation. For this investigation the liaison person will be *<insert name of member of HR team>*.
4. The investigators may seek any information or raise any issue with the parties, which the investigators consider relevant to investigating the complaint.
5. **Accompaniment/Representation:** The right to be accompanied/represented at this stage of this procedure is recognised.
  - A parent/guardian/adult learner may normally be accompanied by a friend or someone unconnected to the complaint.
  - A staff member may normally be accompanied by a trade union representative or colleague at meeting/s convened under this procedure.

- Investigators should be informed of the names of any person/s accompanying/representing the staff member or complainant **three days prior to the first investigation meeting/s.**
6. Refusal or failure to co-operate by any party with the investigation will not prevent the investigators issuing a report based on the information available.

### **Investigation Process**

7. The complainant will provide a written statement of the complaint and any supporting documentation they may wish to rely on to support their case.
8. The staff member will be furnished with this documentation and advised (by covering letter) of a date by which their written response should be remitted to the investigators.
9. In the course of the investigation, the investigators will meet with the complainant, the respondent, witnesses nominated by the parties and, in so far as is practicable, other additional relevant person(s) whom the investigators may consider useful to processing the investigation. The investigation team may decide to convene a meeting/s with more than one party present.
10. A record of all meetings will be taken by an impartial recording secretary drawn from the ETB or commissioned/contracted by the ETB as it determines appropriate.
11. On completion of all interviews, each party to the complaint will be provided with a copy of the minutes of all interviews conducted (including interviews with witnesses).
12. As appropriate to determining the facts of the allegation, the investigator may need to interview other persons named in statements referenced during the course of investigation meetings or indeed re-interview anyone previously interviewed (over the course of investigation meeting/s) with a view to determining whether there is a case to be answered.
13. If deemed appropriate by the investigator/s, meet the complainant in relation to matters arising which require further clarification.
14. If deemed appropriate by the investigator/s, meet the respondent in relation to matters arising which require further clarification.
15. If, during the course of the investigation, the investigator is presented with additional matters relating to the original complaint, the investigator should notify the parties to the complaint of any such information or evidence and provide an opportunity for the parties to the complaint to respond. No new complaints may be entered into this investigation.
16. It is essential that detailed accurate minutes are taken at all investigation interviews conducted over the course of the investigation.
17. Close investigation.

18. A draft report will be prepared by the investigation team so appointed. The parties to the complaint will be provided with an opportunity to propose specific amendments (in writing) on matters of accuracy or fact to the draft investigation report. The investigator will determine the timeframe within which such submissions should be supplied.
19. Only documentation and statements gathered during the course of the investigation which are relevant to the complaint shall be taken into consideration.
20. Having considered the written submissions (if supplied), the investigation team will review and provide a rationale as to the acceptance or rejection of the items raised in a proposed submission.
21. The decision to accept/reject such items in a submission from either party to the complaint is a matter for the investigation team.
22. **Prepare final investigation report.** Investigation reports must include, but is not limited to the following information, as appropriate to the specific circumstances:
  - a. A copy of the original complaint
  - b. The staff member's written response to the complaint
  - c. Documentation relating to previous stages of the procedure (e.g. statements of outcome etc.)
  - d. Evidence gathered / other statements of relevance
  - e. Final witness statements (if applicable) and where witnesses or leads provided by the parties were not interviewed/pursued, an explanation as to why not.
  - f. The rationale as to the acceptance or rejection of the items raised in submissions on the draft report.
  - g. Other relevant information.
  - h. The **facts** as determined by the investigators through the course of the investigation.  
**Note:** It **may** provide for recommendations, however any such recommendations may or may not be accepted by the ETB as being appropriate for the resolution of the complaint.
23. This concludes the investigation.
24. The ETB Director or staff member nominated by the CE will be responsible for furnishing a copy of the final investigation report to the parties to the complaint.