

# Irish Employment Law Training Programme

1. Workplace Disputes
2. Grievances
3. Protected Disclosures

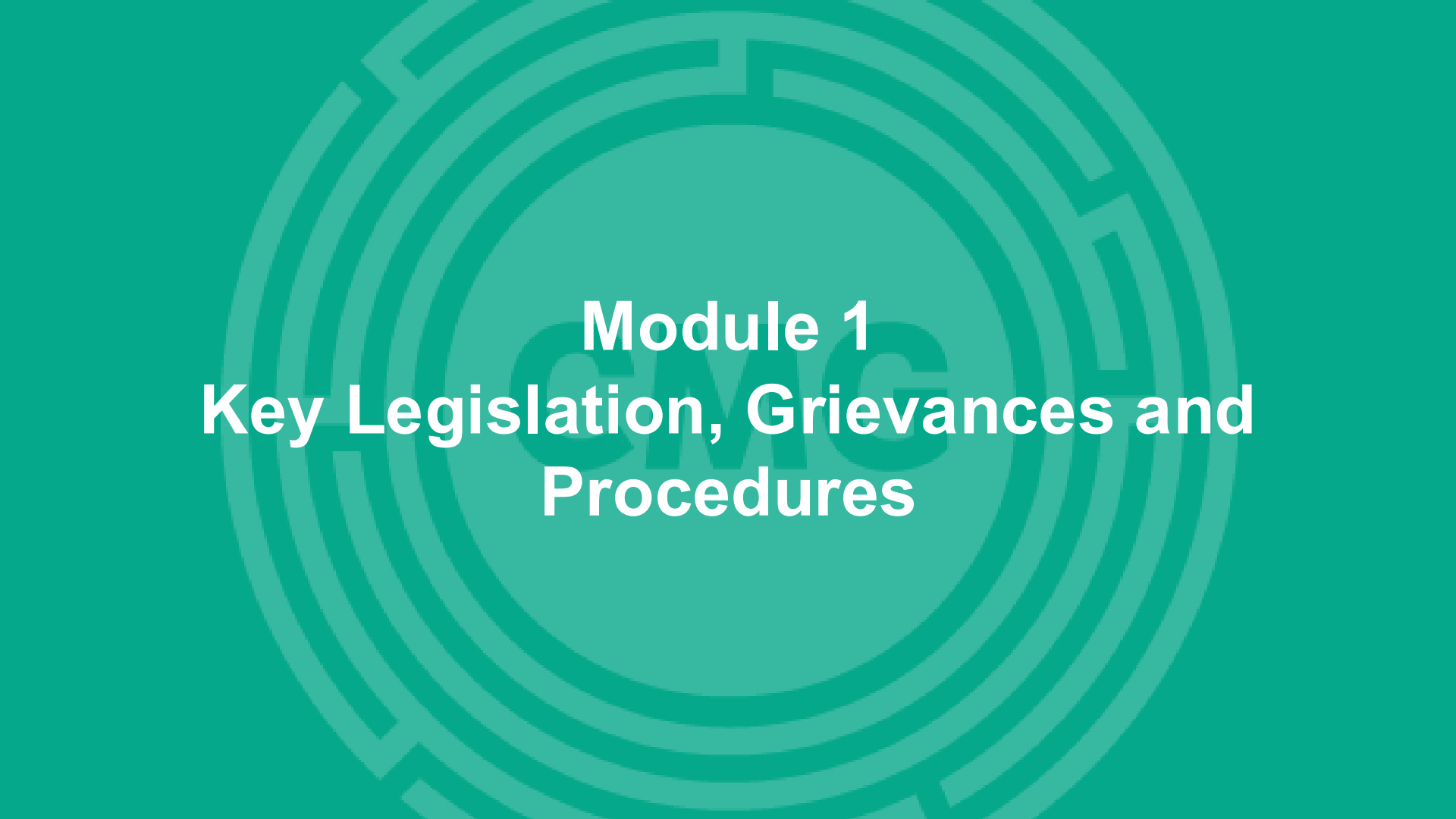
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# Programme Overview

09:30 to 11:00	Module 1	Key Legislation and Grievance Procedures
11:00 to 11:15	Break	
11:15 to 12:45	Module 2	Protected Disclosures (Whistleblowing)
12:45 to 13:30	Lunch	
13:30 to 15:00	Module 3	Workplace Dispute Resolution
15:00 to 15:15	Break	
15:15 to 16:30	Module 4	Disciplinary Procedures and Investigations



**Module 1**  
**Key Legislation, Grievances and**  
**Procedures**

# Overview: Key Irish Legislation and Codes of Practice

- Workplace Relations Act 2015: established the WRC as the single enforcement body; sets out referral process and time limits
- WRC Code of Practice on Grievance and Disciplinary Procedures (SI 146/2000): the minimum legal standard for all employers
- Industrial Relations Acts 1946 to 2015: collective bargaining and dispute resolution framework
- Employment Equality Acts 1998 to 2015: prohibits discrimination across nine grounds
- Protected Disclosures Act 2015 (as amended 2022): whistleblowing protections; mandatory internal reporting channels
- Safety, Health and Welfare at Work Act 2005: employer duty of care including psychosocial risks
- Note: Employment law evolves frequently. Always verify the current position before acting.

# Workplace Relations Act 2015: Key Provisions

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- Established the Workplace Relations Commission (WRC), replacing four previous bodies
- WRC functions: conciliation, mediation, adjudication, inspection and enforcement
- WRC Adjudication Officers hear individual disputes and issue legally binding decisions
- Employees must generally exhaust internal procedures before referring a claim to the WRC
- Labour Court: appellate body; its decisions are binding and enforceable as court orders
- Time limits: most claims must be referred within 6 months of the alleged breach (12 months in exceptional circumstances)
- Key takeaway: robust internal procedures significantly reduce the risk of WRC referrals

# WRC Code of Practice on Grievance and Disciplinary Procedures (SI 146/2000)

- Sets out minimum standards of fairness that all employers must follow
- A breach of the Code is admissible as evidence before the WRC or Labour Court
- Core requirements: written procedures; right to be represented; right to respond to allegations; right of appeal
- Grievance procedures must be separate from disciplinary procedures
- Procedures must be communicated to employees in writing and applied consistently
- Natural justice underpins the Code: no person should be judged without a fair hearing
- The Code is not optional. It is the minimum legal standard, not simply best practice.

# Protected Disclosures Act 2015 (as amended 2022): Overview

- Provides legal protection for workers who report wrongdoing in the workplace
- The 2022 Amendment Act implemented the EU Whistleblowing Directive (2019/1937) and significantly expanded the scope of protection
- Mandatory internal reporting channels required for organisations with 50 or more employees since December 2023
- A protected disclosure is a disclosure of relevant information that a worker reasonably believes tends to show a relevant wrongdoing
- Protection applies from the moment of disclosure and is not dependent on whether the disclosure is ultimately proven correct
- Penalisation of a worker for making a protected disclosure is unlawful; remedies include up to 5 years remuneration
- Full detail on Protected Disclosures is covered in Module 2

## De-escalating a Grievance Before It Becomes a Complaint

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- The earlier a concern is addressed, the less likely it is to become a formal complaint
- Intervene at the first sign of an issue. A 20-minute conversation early can prevent a 6-month formal process.
- Active listening: acknowledge the employee's perspective without prejudging or defending the organisation
- Clarify and confirm: restate what you have heard to ensure mutual understanding
- Explore options: ask the employee what a good resolution would look like to them
- Agree actions and follow up. Even small gestures, such as acknowledging a misunderstanding, can prevent escalation.
- In unionised environments: early engagement with TU representatives is best practice, not a sign of weakness
- Where informal resolution is not possible, move promptly to the formal process. Delay makes things worse.

# Understanding Grievances: What Is a Grievance?

**A grievance is a concern, problem or complaint that an employee has about their work, working conditions, management decisions, treatment at work or relationships with colleagues.**

- A grievance does not require inappropriate behaviour by another person. It can arise from a workplace decision alone.
- Common triggers: workload allocation, management decisions, management style, terms and conditions, interpersonal conflict
- Key distinction: the focus of a grievance is on a situation or decision the employee wants changed
- Grievances are different from Dignity at Work complaints and protected disclosures. Classification matters enormously.
- Several participants are dealing with staff who are labelling grievances as bullying or DAW complaints. We will work through this.
- Early intervention prevents escalation. The most costly grievances are those left unaddressed.

# Informal versus Formal Grievances

## INFORMAL

- Employee raises concern verbally with their line manager
- Manager listens, acknowledges and tries to resolve promptly
- No written record required initially, though advisable
- Aim to resolve within 5 to 10 working days
- Prevents escalation and preserves working relationships
- The ideal first step for most workplace concerns

## FORMAL

- Triggered when informal resolution fails or is inappropriate
- Employee submits a written complaint to HR or the designated person
- Investigation conducted; written outcome letter issued
- Right of appeal must always be offered
- Timeline must be reasonable; undue delay may itself be actionable
- Full documentation required at every stage

# Common Workplace Grievance Scenarios

## Management Style

Perceived unfair treatment, micromanagement, exclusion from meetings, inconsistent application of rules.

## Terms and Conditions

Disputes over pay, hours, annual leave, flexible working requests, role changes.

## Interpersonal Conflict

Breakdown in a working relationship between colleagues. Not automatically a bullying complaint.

## Dignity at Work vs Grievance

Staff labelling grievances as bullying or harassment is one of the most common HR errors. Correct classification is essential.

## Performance and PIPs

Grievances arising from perceived unfair performance management. A frequent and complex area.

## Organisational Change

Restructuring, redundancy consultation, role changes. Each can give rise to grievance rights.

# Grievances Relating to Performance Improvement Plans (PIPs)

- A PIP must be fair, proportionate and supported. It must not be used as a precursor to dismissal.
- Employees often grieve PIPs on the grounds of: lack of prior feedback; unrealistic targets; inadequate support; discriminatory application
- Legal risk: if a PIP is perceived as constructive dismissal groundwork, it may trigger a WRC referral
- Best practice: ensure ongoing documented feedback before a PIP is introduced
- A PIP must contain: clear measurable targets; support mechanisms; review dates; and the consequence if targets are not met
- The employee should be offered the right to have a colleague or trade union representative present at all PIP meetings
- A grievance raised during a PIP does not automatically suspend the PIP but must be investigated

# Best Practice in Handling Grievances: Step by Step

- 1 Receive: Acknowledge in writing within 2 to 3 working days
- 2 Clarify: Meet the employee; understand the complaint; classify it correctly
- 3 Investigate: Gather facts impartially; interview relevant parties; review documentation
- 4 Formal Meeting: Employee has the right to be accompanied by a colleague or TU representative
- 5 Outcome: Written decision with reasons; any remedial action clearly stated
- 6 Appeal: Right of appeal to a more senior, uninvolved person must be offered
- 7 Document: Contemporaneous notes; outcome letters; appeal decisions, all stored securely

# Roles and Responsibilities: Managers and HR

## LINE MANAGER

- First point of contact for informal grievances
- Listen without prejudice; take all concerns seriously
- Attempt early informal resolution where appropriate
- Escalate to HR when the formal process is required
- Participate in the investigation if called upon
- Implement remedial actions arising from the outcome

## HR

- Maintain the policy; ensure it is applied consistently
- Guide managers through the formal process
- Lead or oversee formal investigations
- Ensure natural justice and fair procedures at all stages
- Issue outcome letters and manage the appeals process
- Maintain records; identify patterns; report to senior management

# Natural Justice and Fair Procedures

## Natural Justice – The right to know the case against you

Hear both sides. The accused must be informed of all allegations and given a genuine opportunity to respond.

## Right to Representation

In formal proceedings the employee has a statutory right to be accompanied by a colleague or trade union representative.

## Right of Appeal

Every formal decision must carry a right of appeal, to be heard by a more senior, uninvolved person.

## Due Process & Fair Procedures

No manager / person should judge their own case. The decision-maker must be impartial and free from bias. The process must be completed fairly.

## Right to Reasons

Any decision must be communicated in writing with reasons. A bare outcome without reasoning may be challenged.

## Proportionality

Any sanction or outcome must be proportionate to the issue. Excessive responses are regularly overturned by the WRC.

# Grievance versus Dignity at Work: What Is the Difference?

## GRIEVANCE

- A concern, problem or complaint about work, working conditions, management decisions, treatment at work or relationships with colleagues
- Does not require inappropriate behaviour by another person. It can arise from a workplace decision alone.
- Examples: disagreement with a promotion decision; dissatisfaction with workload; concerns about management style; issues with annual leave, flexible working or pay
- The focus is on a situation or decision the employee wants changed
- Handled under the grievance procedure
- Resolution does not require a finding of wrongdoing against another person

## DIGNITY AT WORK (DAW)

- A complaint concerning allegations of bullying, harassment, sexual harassment, discrimination or victimisation
- The focus is on the behaviour of another person and whether that behaviour breaches the employee's right to dignity at work
- Bullying requires repeated, inappropriate conduct. A single incident or a management decision the employee dislikes does not meet the threshold.
- Examples: repeated shouting, belittling or humiliation; offensive comments related to gender, age, race, disability or religion; exclusion or intimidation
- Handled under the Dignity at Work or Anti-Bullying policy
- Requires a formal investigation; findings of fact are made; a named respondent is involved

# Grievance versus Dignity at Work: A Simple Test and Common Mistakes

- Simple test — ask two questions before deciding which process to use:
- Is the employee unhappy with a workplace decision or situation? That is usually a grievance.
- Is the employee alleging inappropriate behaviour by another person that undermines their dignity? That is usually a Dignity at Work complaint.
- Common mistake: an employee says my manager is bullying me because she will not approve my annual leave. That is not necessarily bullying. Disagreement with that decision is a grievance.
- Likewise: I was not appointed to the promotion and I feel disrespected. That is generally a grievance.
- However: since I applied for the promotion, my manager has repeatedly mocked me in meetings and humiliated me in front of colleagues. That could be a Dignity at Work complaint.
- Many complaints contain elements of both. Identify the behavioural allegations (DAW) and the workplace decisions being challenged (grievance) separately. Address each through the correct procedure.
- An employee using the word bullying does not make it bullying. The substance determines the correct process.

## BREAKOUT SESSION

# Breakout Session: Grievance versus Bullying and Harassment

### Scenario:

An employee tells their manager they feel they are being bullied. Their supervisor keeps pointing out mistakes in front of the team, has placed them on a PIP they consider unfair, and excluded them from a team lunch. The employee wants to make a formal complaint.

### Your task:

1. Which elements are a potential grievance and which, if any, may be a Dignity at Work complaint?
2. What is the correct first step the manager should take?
3. What are the risks of misclassifying this complaint?
4. Would your approach differ if this employee is a trade union member?

# Breakout Session: Handling a Bullying Complaint Under Dignity at Work

**Scenario:**

A senior employee, Aoife, submits a formal written complaint to HR. She states that her line manager, Donal, has over the past 6 months: shouted at her in team meetings, told her in front of colleagues that her work is not good enough, excluded her from a key project without explanation, and sent emails to the team copying her out of important decisions and allegedly made multiple derogatory comment about her country of origin football team in the World Cup in front of a team member on a night out. Aoife says she is now on sick leave due to stress and anxiety caused by Donal's behaviour. Donal says he is simply managing performance and denies any wrongdoing.

**Your task:**

1. Based on what Aoife has described, does this meet the threshold for a Dignity at Work investigation? If so, what factors lead you to that conclusion?
2. What immediate steps should HR take before any investigation begins? Consider: Aoife's wellbeing, Donal's position, the team, and documentation.
3. Should Donal be suspended? If so, on what basis and what should be communicated to him?
4. What are the risks if HR decides to treat this as a grievance rather than a Dignity at Work complaint?

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**Coffee Break**



## Module 2

# Protected Disclosures (Whistleblowing)

# What Constitutes a Protected Disclosure Under Irish Law?

- A protected disclosure is a disclosure of relevant information made by a worker who reasonably believes it tends to show a relevant wrongdoing
- Categories of relevant wrongdoing under s.5 of the Protected Disclosures Act 2015: criminal offence; failure to comply with a legal obligation; miscarriage of justice; danger to health or safety; damage to the environment; misuse of public funds; cover-up of any of the above
- Key test: the worker must have a reasonable belief. They do not need to be correct, but the belief must be genuine.
- The 2022 Amendment Act significantly expanded the scope, implementing the EU Whistleblowing Directive (2019/1937)
- Mandatory internal reporting channels are required for organisations with 50 or more employees since December 2023

# Who Is Protected Under the Act?

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- Workers protected: employees; agency workers; contractors; trainees; volunteers; job applicants
- Protection also extends to facilitators (those who assist the worker) and persons connected to the worker who may face retaliation
- The 2022 Act extended protection to third parties in some circumstances
- Protection applies regardless of whether the disclosure is ultimately proven to be correct
- Protection applies from the moment of disclosure, not retrospectively
- A worker who suffers penalisation may bring a claim to the WRC; compensation of up to 5 years remuneration is available
- Note for SMEs: even organisations with fewer than 50 staff have obligations. Legal advice on your specific structure is recommended.

# Internal versus External Reporting Channels

## INTERNAL

- Preferred first channel under the 2022 Act
- A Designated Person must be appointed and must be appropriately senior
- Acknowledgement within 7 calendar days; outcome within 3 months
- Channel must be secure, confidential and accessible
- Should accept written and oral reports; anonymous reports if possible
- SMEs under 50 employees: a shared Designated Person function may be used

## EXTERNAL

- Used when the internal channel is inadequate or retaliation is feared
- Prescribed Persons: relevant regulators, government departments
- Office of the Protected Disclosure Commission  
HSA, Revenue, Central Bank, Garda Síochána, depending on subject matter
- Worker need not exhaust the internal channel first if it is reasonable to go external
- Disclosure to media:
- Always seek legal advice before making an external disclosure

# Employer Obligations Under the 2022 Act

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- Organisations with 50 or more employees: must establish and maintain a formal internal reporting channel
- The channel must be secure, confidential, accessible and capable of receiving written and oral reports
- Appoint a Designated Person or function: senior, trained, independent
- Acknowledge receipt of a disclosure within 7 calendar days
- Provide feedback on action taken within 3 months of acknowledgement
- Keep records of all disclosures securely; accessible only to those with a genuine need to know
- Annual reporting obligation for larger organisations to the relevant Minister
- For SMEs: the minimum is one designated person, a written policy and a secure channel

# Receiving and Responding to a Protected Disclosure

- Step 1: Receive. Acknowledge receipt formally within 7 days. Do not share the identity of the worker without their consent.
- Step 2: Assess. Determine whether the disclosure falls within the scope of the Act. Seek legal advice if uncertain.
- Step 3: Investigate. Conduct a fair, proportionate investigation. Communicate timelines to the worker.
- Step 4: Outcome. Inform the worker of the outcome and any action taken within 3 months.
- Step 5: Follow up. Monitor for any sign of penalisation and take protective steps.
- Important: the investigation of the disclosure is entirely separate from any HR process involving the discloser.
- Hearsay: distinguish between direct knowledge and hearsay. Both may be relevant to assess but hearsay alone is rarely sufficient to act on.

# Confidentiality and Anonymity

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- The identity of the discloser must be kept confidential. Disclosure without consent is a criminal offence under the 2022 Act.
- Anonymous disclosures: the Act does not require investigation of all anonymous reports, but best practice is to assess and act where the report is credible
- Limited exceptions: identity may be disclosed where strictly necessary for the investigation or where required by law
- All internal communications about a disclosure must be on a strictly need-to-know basis
- Records must be stored securely: encrypted digital files or locked physical records with an access log
- Anonymous or unverified reports should be documented and their evidential weight assessed carefully with HR and legal input

# Protection from Penalisation: Can Disciplinary Action Be Taken Against the Discloser?

Penalisation of a protected discloser is unlawful under the Protected Disclosures Act 2015 as amended.

- Penalisation includes: dismissal; demotion; suspension; reduction in pay; harassment; transfer against the worker's will; coercion or intimidation
- Burden of proof: once a worker establishes a prima facie case of penalisation, the employer must prove the action was unconnected to the disclosure
- Disciplinary action is permitted only where there is a genuinely separate and documented reason unconnected to the disclosure
- Critical risk: if disciplinary action follows shortly after a disclosure, timing alone can be powerful evidence of penalisation
- Best practice: any disciplinary action against a protected discloser should be reviewed by legal counsel before proceeding
- Remedies: the WRC may award up to 5 years remuneration; reinstatement or re-engagement is also available
- Even a worker who made a false disclosure in good faith retains some protection. Only bad faith removes it entirely.


# Record-Keeping and Reporting Requirements

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- All disclosures, whether acted upon or not, must be documented securely
- Records should include: date of disclosure; nature of the wrongdoing alleged; action taken; outcome; any follow-up
- Retention: a minimum of 5 years is recommended. Seek legal advice on the exact period for your sector.
- Annual reporting: public sector bodies have obligations to report aggregate data to relevant authorities
- Data protection: disclosures may contain personal data. GDPR applies and the Data Protection Officer should be informed.
- For SMEs: a simple log with the above fields is sufficient. Consistency matters more than complexity.
- Audit trail: in any WRC or court challenge, the absence of records is treated as evidence against the employer

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**Lunch Break**



**Module 3**  
**Workplace Dispute Resolution**

# Why Disputes Escalate: Root Causes

## Poor Communication

Assumptions, lack of feedback, one-way communication. The most common precursor to formal disputes.

## Delayed Response

Concerns left unaddressed grow into grievances. Grievances grow into WRC claims.

## Perceived Unfairness

Inconsistent application of rules or perceived favouritism destroys trust rapidly.

## Misclassification

Treating a grievance as a DAW complaint triggers the wrong process and wastes time.

## Lack of Manager Training

Untrained managers inadvertently escalate issues. A key goal of today's training.

## Structural Issues

High workload, poor resourcing and unclear roles often underlie disputes that look interpersonal.

# Role of Managers in Early Resolution

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- Managers are the first line of defence and the first line of resolution
- Early resolution principle: a concern addressed informally rarely becomes a formal complaint
- Manager obligations: take all concerns seriously; do not dismiss or deflect; follow up promptly
- Psychological safety: employees must feel safe raising concerns. Managers set that tone.
- In unionised environments: early engagement with TU representatives is best practice
- Avoid common errors: do not investigate informally without HR; do not promise outcomes you cannot deliver; do not delay
- Document even informal conversations: a brief note of the date, the issue discussed and the agreed action protects everyone

# Difficult Conversations and Communication Skills

- Prepare: clarify your purpose before the meeting; gather relevant facts; choose a private neutral setting
- Open without judgment: 'I wanted to talk about something you raised or something I have noticed...'
- Active listening: give uninterrupted time; reflect back what you hear; use open questions such as 'Can you tell me more about that?'
- Separate behaviour from the person: 'The impact of this on the team has been...' rather than 'You are...'
- Acknowledge emotion without being derailed: 'I can see this is difficult. I want to understand your perspective.'
- Focus on resolution: 'What would a good outcome look like for you?' Invite solutions.
- Close with clarity: agree next steps, timelines and who is responsible; confirm in writing if the process is formal

# Formal Resolution Options and De-escalation Techniques

- Option 1: Internal mediation. HR-facilitated; voluntary; confidential; can resolve without findings of fact.
- Option 2: Mediation; voluntary; confidential; a mediated agreement is binding; no public record.
- Option 3: WRC Mediation Conciliation. Available for collective and trade union matters.
- Option 4: WRC Adjudication. Formal hearing; legally binding decision; public record; last resort.
- De-escalation principle: match the intervention to the stage. Do not jump to adjudication if mediation is available.
- WRC Mediation is free, confidential and significantly faster than adjudication. It is widely underused, particularly by SMEs.
- Industrial Relations Complaints – Object or Proceed
- Note: mediation is not appropriate in all cases, for example where there is a significant power imbalance or criminal conduct is alleged

# Role of HR and Third Parties in Dispute Resolution

- HR's role: advisor, process guardian and documentation keeper. Not an advocate for either party.
- HR must remain impartial. Perceived bias toward management is one of the most common WRC criticisms.
- External investigators: consider appointing one where senior management is involved, there is a conflict of interest, or the organisation is small
- Employee Assistance Programme: refer early and often. Mental health support prevents disputes from becoming crises.
- Legal counsel: involve early in complex cases, protected disclosures, or where dismissal is a possible outcome
- Occupational health: essential where a grievance or dispute has a health, safety or wellbeing dimension
- WRC Mediation Service: contact at [workplacerelations.ie](http://workplacerelations.ie). Free, confidential and effective.

# WRC Mediation Services

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- The WRC Mediation Service is a free, voluntary and confidential service available to employers and employees in dispute
- Mediation is facilitated by a trained WRC mediator who is neutral and independent. They do not make decisions or findings of fact.
- The mediator helps both parties reach a mutually agreed resolution. Any agreement reached is binding on both parties.
- There is no public record of WRC mediation. Unlike adjudication, outcomes are not published.
- Mediation is significantly faster than adjudication. Most cases are resolved within weeks rather than months. If Mediation fails – moves to Adjudication
- Suitable for: interpersonal disputes, grievances that have become entrenched, relationship breakdowns, and disputes where both parties want to continue the working relationship
- Not suitable for: cases involving criminal conduct, significant power imbalance, or where a clear legal ruling is needed
- How to access: either party can apply directly at [workplacerelations.ie](http://workplacerelations.ie). Both parties must consent to participate.

# Breakout Session: Resolving a Workplace Conflict Scenario

**Scenario:**

Two employees in the same team, a senior and a junior, have a breakdown in their working relationship. The senior has complained informally that the junior is undermining them. The junior has now submitted a formal grievance alleging bullying. Both are in the same open-plan office. There are no prior HR records for either employee.

**Your task:**

1. What immediate steps should HR take? Consider separation, communication and process.
2. How do you determine whether this is a grievance or a Dignity at Work complaint?
3. At what point, if any, would you recommend Mediation, and why?
4. What documentation should exist at the end of this process?

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**Coffee Break**



**Module 4**  
**Disciplinary Procedures and**  
**Investigations**

# Minor versus Gross Misconduct

## MINOR MISCONDUCT

- Examples: persistent lateness; minor insubordination; low-level rudeness
- Process: verbal warning then formal verbal then written warning then final written then dismissal
- Progressive discipline must be followed unless conduct warrants skipping a stage
- Each sanction must be documented and communicated in writing
- Warnings: typically 6 to 12 months live on file. Confirm this in your policy.
- Right of appeal at every single stage

## GROSS MISCONDUCT

- Examples: theft; physical assault; serious breach of confidentiality; fraud; gross negligence
- May justify summary dismissal without notice, but the process must still be followed
- Suspension with pay pending investigation is permissible and may be appropriate
- A full investigation is required before any decision to dismiss
- The employee must be informed of allegations in writing and given the opportunity to respond
- Right of appeal is mandatory, including in cases of summary dismissal

# Suspension: When and How

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- Suspension must be: (a) with pay; (b) for the minimum period necessary; (c) treated as a neutral act, not a punishment
- Appropriate where there is a risk to persons or property; the employee's presence may impede the investigation; or the allegations are sufficiently serious
- The employee must be told: why they are suspended; that it is a neutral act; and the expected duration. Keep record of the decision to suspend, who made it and why?
- Review suspension regularly. Prolonged suspension may itself give rise to a constructive dismissal claim.
- Avoid placing suspended employees in situations of public humiliation, such as being escorted from the building in front of colleagues
- Employment rights continue during suspension: sick pay, pension and normal communications must continue

# Disciplinary Hearings: Running a Fair Hearing

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- Advance notice: the employee must receive written notice of the hearing, the allegations and all evidence in advance
- Right to representation: a colleague or TU representative must be facilitated at the hearing
- Conduct of the hearing: the chairperson must be impartial; notes must be taken; the employee must be given a full opportunity to respond
- New evidence: if new evidence emerges at the hearing, consider adjourning rather than deciding on incomplete information
- Decision-maker: must not be the same person who conducted the investigation
- Outcome: communicated in writing with the sanction, reasons and the right of appeal clearly stated
- Timelines: aim to conclude within 4 to 6 weeks of the hearing; communicate any delays in writing

# Sanctions and Proportionality

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- Sanctions must be proportionate to the misconduct. A disproportionate sanction is one of the most common WRC appeal grounds.
- The WRC applies a reasonableness test: would a reasonable employer have reached the same conclusion?
- Mitigating factors must always be considered: length of service; clean prior record; personal circumstances; remorse
- Aggravating factors: breach of trust; previous warnings; deliberate or repeated conduct
- Consistency: have similar cases been treated similarly? Inconsistency is a powerful WRC argument.
- Do not predetermine the outcome. The investigation and hearing must be a genuine process.

# Right of Appeal

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- A right of appeal is mandatory in all formal disciplinary processes. It cannot be waived.
- The appeal should be heard by a more senior person not involved in the original investigation or hearing
- Specify in your policy whether the appeal is a full re-hearing (de novo) or a review of the procedure followed
- New evidence: generally should not be introduced at appeal unless it was unavailable at the original hearing
- Outcome: the appeal decision is final internally. The employee may then refer to the WRC if dissatisfied.
- Timing: appeals should be heard promptly. The live warning period typically does not begin until the appeal is determined.
- The appeal outcome letter must be as detailed and reasoned as the original decision letter

# Common Pitfalls: Procedural Errors That Lose WRC Cases

- No written procedures in place, or procedures not communicated to staff
- No Employee Handbook or Policies in place
- Not Following own internal Policies
- Failure to give adequate advance notice of the allegations or the evidence
- The investigator and the decision-maker are the same person
- No right to representation offered or facilitated
- Predetermined outcome: the investigation is a formality rather than a genuine inquiry
- Excessive delay between the allegation and the outcome
- Disproportionate sanction, for example dismissal for a first offence of minor misconduct
- No right of appeal offered, or appeal heard by someone involved in the original decision
- Poor documentation: no written record, or meeting notes, no written outcome letters
- Inconsistent treatment of similar cases across the organisation

# Documentation and Record-Keeping

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- If it is not written down, it did not happen. This is especially true in WRC proceedings.
- What to document: all investigation notes; hearing notes; outcome letters; appeal notes and outcomes; suspension letters
- Contemporaneous notes are worth more than reconstructed notes. Write them up on the day.
- Secure storage: employee records are sensitive personal data. GDPR applies. Restrict access to those with a genuine need to know.
- Retention: disciplinary records are typically retained for 1 to 3 years after the warning expires. Seek legal advice for your sector.
- Diarise warning expiry dates and inform the employee in writing when a warning has lapsed
- Use a standardised documentation template. It reduces errors and ensures consistency across the organisation.



# Thank you

## Questions and Discussion

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