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Policy No. 064	Revision: 1.0
Page 1 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



1.0 POLICY STATEMENT:

Dignity is an essential component of the quality of life for all people. Sunbeam House Services (SHS) have a duty of care to protect service users and employees from any form of behaviour which violates their dignity and to maintain the highest possible standards of care.

The majority of employees working in SHS are highly motivated and caring individuals who are committed to providing the highest possible quality of care. SHS have a duty of care to provide employees with the necessary supervision, support and training to enable them to deliver a high quality service and to protect employees from situations which may leave them vulnerable to allegations of abuse or neglect.

Where allegations of abuse of service users are made against a staff member, the welfare and safety of the service user is of paramount importance. It is also acknowledged that staff members may be subjected to erroneous or vexatious allegations which can have a devastating effect on the person's health, career and reputation. SHS are therefore committed to safeguarding the rights of the employee against whom allegations of abuse are made to a fair and impartial investigation of the complaint.

SHS will discharge its corporate responsibility to protect the dignity and welfare of service users entrusted to its care and to support staff with responsibility for them through the following measures:

- Ensure insofar as is reasonably practicable that sufficient resources are available to enable best practice standards of service user care to be delivered (see Appendix 1)
- Provide safe systems of work to minimise the potential for abuse
- Provide information leaflets which set out how service users, relatives and members of the public can report concerns or complaints of abuse
- Rigorous application of recruitment and selection procedures to ensure that staff possess the required skills and attributes
- Provide induction for all new staff to ensure that they are aware of the standards of care expected from them
- Provide effective supervision, support and training for all staff so that they are aware of the standards of care expected from them and shortfalls in standards are dealt with promptly
- Communicate the Trust in Care Policy to all staff so that they are fully aware that the welfare of service users is of paramount importance and know the action to be taken if abuse is suspected or alleged
- Manage allegations of abuse against staff members promptly and with due regard for the rights of the staff member to fair procedures whilst safeguarding the welfare of service users.

2.0 WHAT CONSTITUTES ABUSE

The term 'abuse' can be subject to wide interpretation. For the purpose of this policy, abuse is considered to be any form of behaviour that violates the dignity of service users. Abuse may consist of a single act or repeated acts. It may be physical, sexual or psychological/emotional. It may constitute neglect and poor professional practice. It may take the form of isolated incidents of poor or unsatisfactory professional practice, at one end of the spectrum, through to pervasive ill treatment or gross misconduct at the other.

Policy No. 064	Revision: 1.0
Page 2 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



Repeated instances of poor care may be an indication of more serious problems within the organisation for which the individual employee cannot be held accountable.

There are four broad definitions of abuse which can be used to illustrate the type of behaviour which may constitute abuse: physical, sexual, and psychological/emotional or neglect (see Appendix 2).

3.0 ABUSE PREVENTION

3.1 INTRODUCTION

SHS is committed to promoting the well-being of service users and providing a caring environment where they are treated with dignity and respect. SHS is also highly committed to their employee's and to providing them with the necessary supervision, support and training to enable them to provide the highest standards of care. The proper operation of human resource policies helps to ensure that employees are aware of the standards of care expected from them and is protected from situations which may render them vulnerable to allegations of abuse.

Particular attention should be paid to the following:

- Recruitment and selection
- Induction
- Probation
- Employee feedback, supervision and training

SHS ensures that the Trust in Care Policy is communicated to all staff when they commence employment and that they are made aware of their responsibilities to maintain a culture of vigilance and report any concerns or complaints of suspected abuse.

3.2 RECRUITMENT AND SELECTION

SHS follows a rigorous recruitment and selection process for all job applicants to ensure that they possess the required skills, attributes and competencies for the particular job. This involves the following:

- Preparing a job description which clearly sets out the caring responsibilities of the job and a person specification which sets out the caring attributes required to perform the job to the highest standards. The job description makes specific reference to the duty of all employees to report concerns for the safety and welfare of service users.
- Using the interview process to establish if applicants have a caring disposition.
- Verifying qualifications and validating all relevant information and following-up on gaps or inconsistencies in employment history.
- Offers of employment are subject to receipt of satisfactory references which include a reference directly obtained from the applicant's current or most recent employer.
- Offers of employment should be subject to satisfactory Garda Vetting.
- Confirm the identity of the applicant by obtaining a driving licence or passport with the applicant's details together with their signature and photograph.
- Successful candidates are required to sign a declaration form which obliges them to disclose any information which might have a bearing on their suitability for the position. In the event that information comes to light which was not disclosed

Policy No. 064	Revision: 1.0
Page 3 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



and affects their suitability, this could result in the termination of the person's employment.

- Where SHS make use of volunteers who have significant and regular contact with service users, they should undertake the same checks as they would when employing paid staff.

3.3 INDUCTION

All new employee's should be required to undergo an induction process to ensure that they are clear about the standards of care expected from them and any protocols to be followed when interacting with service users. These standards and protocols should also be conveyed through a written Code of Conduct to ensure that employee's carry out their duties in a manner that is respectful of the dignity of service users.

SHS has developed its own Codes of Conduct for all employees which reflect best practice in standards of service user care.

Codes of Conduct offer protection not only to service users but also to employee's by providing a safe context within which to work and alerting them to situations which could render them vulnerable to allegations of abuse. Employees are given appropriate guidance on maintaining best practice in relation to areas such as:

- Responsive behaviour
- Personal and intimate care
- Conducting clinical examinations/assessments especially those of an intimate nature
- Appropriate physical contact
- Control and restraint
- Boundaries of social interaction with service users
- Medication
- Handling of service users' money and personal possessions

This Code of Conduct is updated in line with current best practice and be reinforced through on-going supervision, employee feedback and training.

3.4 PROBATION

Following the induction process all staff should be aware of their role and responsibilities and the standards of care expected from them. New Employees are also required to undergo a probationary/assessment period of 6 months to establish their suitability for the job. The basis for assessing performance during this period should be explained by the manager to the employee at the outset so that expectations regarding the purpose of the probationary period are common.

Managers are responsible for monitoring the employee's progress. During this period there should be regular review meetings to advise the employee whether or not the required standards are being attained. Where any shortcomings exist, training and other appropriate assistance to enable employees to reach the required standards should be provided. If the employee does not demonstrate his/her suitability despite training and other support his/her employment should not be continued.

3.5 EMPLOYEE FEEDBACK, SUPERVISION AND TRAINING

Policy No. 064	Revision: 1.0
Page 4 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



Employees who have satisfactorily completed their probationary period should continue to receive regular performance feedback, supervision and training to assist them in delivering high quality standards of care.

Managers have a duty to be vigilant and to ensure that the required standards of care are maintained. If an employee breaches SHS' rules or his/her work falls short of the required standards the manager is responsible for addressing these shortfalls and, where appropriate, operating the progressive stages of the disciplinary procedure. Early intervention is key to ensuring that poor working practices do not develop and culminate in a more serious incident.

3.6 COMMUNICATING THE TRUST IN CARE POLICY

Each employee is issued with a copy of the Trust in Care Policy on commencement of employment. The Policy is re-enforced at Team meetings to ensure that employees are aware of their obligations towards service users and know the action to take if abuse is suspected or alleged. Attendance at these team meetings for Trust in care policy briefings should be mandatory.

Employees are made aware of their role in promoting a culture of vigilance and are clearly informed that the safety and well-being of service users must take priority over all other considerations, including loyalty to work colleagues. Employees should be assured that their concerns will be treated seriously and they will be fully supported throughout the process, regardless of whether or not abuse is found to have occurred.

Employees are given appropriate guidance on behaviours which indicate that a service user may be at risk (e.g. they should be alert to anyone who is spending excessive time alone with service users or paying excessive attention to particular service users).

Employees receive guidance on dealing with complaints of abuse from service users e.g.:

- Encourage the service user to give as much detail as possible but avoid asking "leading questions", i.e. questions which suggest certain actions might have occurred or which name particular people who may have been involved. Allow the service user as much time as possible.
- Do not press the service user for details beyond that which s/he is willing to disclose.
- Do not promise to keep the information a secret.

Volunteers are informed of the policy and procedures for reporting complaints or concerns regarding the welfare of service users.

3.7 MONITORING AWARENESS AND IMPLEMENTATION OF THE POLICY

A form should be circulated to all managers at least once a year to remind them of their responsibility to ensure that all staff are familiar with the Policy and relevant Codes of Conduct and copies of the Policy and Codes are readily accessible.

4.0 PROCEDURES FOR RECEIVING A COMPLAINT OF ABUSE

4.1 INTRODUCTION

Information suggesting that abuse may have occurred can come from a variety of sources. The matter may, for example, be raised by the person who is abused, a

Policy No. 064	Revision: 1.0
Page 5 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



concerned relative, or a member of staff. It may come in the form of a complaint, it may be an expression of concern, or it may come to light during a needs assessment. Any employee who receives information, suspects or is concerned that a service user has been abused, is being abused or is at risk of abuse has a duty of care to report the matter as soon as possible to his or her manager.

The employee is not responsible for deciding whether or not abuse has occurred but is obliged to report suspicions or allegations of abuse so that appropriate action can be taken.

Employees who make a complaint or express concerns that abuse may have occurred should be reassured that:

- they will be taken seriously;
- they will be protected from the risk of reprisals or intimidation;
- complaints made in good faith are covered by the defence of qualified privilege (see appendix 1)
- they will be kept informed of action that has been taken and its outcome.

4.2 REPORTING PROCEDURES

The following reporting procedures should be followed by employees in the event of abuse being suspected or alleged. In the event that an employee feels inhibited for any reason from reporting his or her concerns to their manager or if they feel that inappropriate or insufficient action has been taken, they should raise the matter with a Senior Service Manager.

(a) *An employee receives a complaint of abuse from a service user, relative/guardian or members of the public*

An employee who receives a complaint of abuse from a service user, relative/guardian or member of the public should ensure that the details of the alleged abuse are fully documented in a written statement including dates, times and any witnesses to the alleged incident. The statement should be read back to the person making the complaint to ensure accuracy. The employee should then report the matter immediately to his/her reporting manager/ Senior Services Manager.

(b) *An employee suspects abuse of a service user*

An employee who suspects that a service user may have been abused should notify immediately his/her reporting manager without delay. The employee should outline in writing the grounds on which his/her concerns are based. This report should be submitted without delay. The employee should not question the person against whom the complaint is made.

(c) *Employee observes another employee engaging in abusive behaviour towards a service user*

An employee who witnesses another employee engaging in inappropriate behaviour towards a service user should intervene or seek help to stop the behaviour. The employee should ensure that the service user is not in any immediate danger and receives the necessary treatment and support. The employee should then immediately report the incident to his/her reporting manager / Senior Services manager and complete a written report as soon as possible (preferably before going off duty) or within a fixed timeframe.

Policy No. 064	Revision: 1.0
Page 6 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



5.0 MANAGING ALLEGATIONS OF ABUSE

5.1 PRELIMINARY SCREENING

Managers are responsible for maintaining the required standards of care within their area of responsibility and for dealing with any shortfalls in standards or reports of suspected or alleged abuse. In the event that a manager receives a complaint of abuse, a preliminary screening should be carried out to establish the facts pertaining to the complaint. When dealing with the complaint, the manager should ensure, insofar as possible, that confidentiality is maintained and the staff member against whom the allegation is made is fully protected throughout the process.

The purpose of the preliminary screening is to ascertain if it is possible that an abusive interaction could have occurred.

The preliminary screening of the complaint should be carried out by the reporting manager of the person against whom the allegation is made. Under no circumstances should the preliminary screening attempt to establish whether or not the abuse actually occurred.

The manager's role with regard to preliminary screening must include the following:

- The manager must immediately notify the staff member against whom the complaint is made of the details of the allegation and advise him/her that a preliminary screening process is being undertaken. The staff member must be advised in advance of his/her right to be accompanied at this meeting by a union representative or work colleague
- The manager must ensure that the details of the alleged or suspected abuse are documented
- The manager must arrange for a physical or psychological assessment of the service user to be carried out where appropriate
- The manager must report this to their Senior Services Manager and HR Manager before he/she makes a final decision as to whether or not an abusive interaction could have occurred.

If the manager is satisfied that an abusive interaction could not have occurred and no further action is warranted, s/he should keep a record of the decision on the employees HR file. The record should contain details of the precise nature of the allegation and state that a preliminary screening in respect of the complaint has been carried out in accordance with the Trust in Care Policy and a decision has been made by (specify names of relevant individuals) that an abusive interaction could not have occurred (giving the reasons for the decision) and therefore it is not necessary to proceed to a formal investigation. The purpose of this record is to protect the reputation of the employee concerned.

If the preliminary screening indicates that an abusive interaction could have occurred then the matter should be referred to Senior Services Manager who will decide whether the employee has a case to answer or whether the matter is capable of being dealt with at local level.

Policy No. 064	Revision: 1.0
Page 7 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



If it is decided that a formal investigation is warranted, a meeting should be arranged to advise the employee of the intention to carry out a formal investigation. The employee should be advised of his/her right to be accompanied at this meeting by a trade union representative or work colleague. The employee should be given details of the complaint at the meeting and afforded an opportunity to make an initial response if s/he so wishes. S/he should be advised as to what happens next and told not to make contact with the complainant. The employee should be advised of support and counselling services that are available.

5.2 PROTECTIVE MEASURES

At an appropriate stage in the process, management should take whatever protective measures are necessary to ensure that no service user/ or employee is exposed to unacceptable risk. These protective measures are not disciplinary measures and may include:

- providing an appropriate level of supervision
- putting the staff member off duty with pay pending the outcome of the investigation.

The views of the employee should be taken into consideration when determining the appropriate protective measures to take in the circumstances but the final decision rests with management.

Putting the employee off duty pending the outcome of the investigation should be reserved for only the most exceptional of circumstances. It should be explained to the employee concerned that the decision to put him/her off duty is a precautionary measure and not a disciplinary sanction.

5.3 CONDUCTING THE INVESTIGATION

Principles governing the investigation process

- The investigation will be conducted thoroughly and objectively in strict accordance with the terms of reference and with due respect for the rights of the complainant and the rights of the employee to be treated in accordance with the principles of natural justice.
- The investigation team will have the necessary expertise to conduct an investigation impartially and expeditiously. Where appropriate, the investigation team may request appropriately qualified persons to carry out clinical assessments, validation exercises, etc.
- Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. It is not possible however to guarantee the anonymity of the complainant or any person who participates in the investigation.
- A written record will be kept of all meetings and treated in the strictest confidence.
- The investigation team may interview any person who they feel can assist with the investigation. All SHS employees are obliged to co-operate fully with the investigation process and will be fully supported throughout the process.
- Employees who participate in the investigation process will be required to respect the privacy of the parties involved by refraining from discussing the matter with other work colleagues or persons outside the organisation.



- 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.

5.3.1 STEPS IN CONDUCTING THE INVESTIGATION

- The investigation will be conducted by the designated person(s) agreed between the parties.
- The investigation will be governed by clear terms of reference based on the written complaint and any other matters relevant to the complaint. The terms of reference shall specify the following:
 - The investigation will be conducted in accordance with the Trust in Care Policy;
 - The timescale within which the investigation will be completed;
 - The investigation team may set time limits for completion of various stages of the procedure to ensure the overall timescale is adhered to;
 - Scope of the investigation i.e. the investigation team will determine whether or not the complaint has been upheld and may make recommendations (other than disciplinary sanction) where appropriate;
 - The employee against whom the complaint is made will be advised of the right to representation and given copies of all relevant documentation prior to and during the investigation process, i.e. Complaint and Witness statements (if any)
 - The investigation team will interview any witnesses and other relevant persons. Confidentiality will be maintained as far as practicable.
 - Persons may be required to attend further meetings to respond to new evidence or provide clarification on any of the issues raised.
 - The investigation team will form preliminary conclusions based on the evidence gathered in the course of the investigation and invite any person adversely affected by these conclusions to provide additional information or challenge any aspect of the evidence.
 - On completion of the investigation, the investigation team will form its final conclusions based on the balance of probabilities and submit a written report of its findings and recommendations to senior management.
 - The staff member against whom the complaint is made will be given a copy of the investigation report and an opportunity to comment before any action is decided upon by management.

If the complaint is upheld, the matter will be referred to the designated Senior Manager who is empowered to take disciplinary action up to and including dismissal. Persons who are authorised to make decisions regarding disciplinary action are not precluded from participating on the investigation team.

5.4 INFORMING RELATIVES/GUARDIANS

Where appropriate*, the service user's immediate relatives or guardian should be notified by an appropriate member of management as soon as practicable and

Policy No. 064	Revision: 1.0
Page 9 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



advised that an investigation into the allegation is being carried out. The identity of the employee against whom the allegation is made must not be disclosed at this stage.

The relatives/guardian should also be assured that the service user has received appropriate support or treatment and that appropriate measures have been taken to ensure that no service user is at risk.

*Some service users may not wish to have the matter reported to their relatives/guardian.

Where appropriate service users should be offered the support of an advocate to act on their behalf if they wish.

5.4.1 ANONYMOUS ALLEGATIONS

Anonymous allegations on their own cannot lead to a formal investigation as there is always the possibility that they are vexatious. Notwithstanding the fact that anonymous allegations cannot be the subject of a formal investigation unless there is supporting evidence, management should assure them that the systems in place are robust and the welfare of service users is not at risk.

5.4.2 REPORTING TO PROFESSIONAL BODIES

Where a complaint has been fully investigated and evidence exists that professional misconduct may have taken place, the employee should be reported to the body or bodies responsible for professional regulation, e.g. CORU, An Bord Altranais (in the case of nurses) and other registration bodies when established.

6.0 FOLLOW-ON ACTION

6.1 ABUSE HAS OCCURED

- The service user who has been the victim of the abuse and, where appropriate, his/her family should be provided with assistance and counselling to ensure their full recovery from the trauma suffered as a result of the incident.
- Where the abuse is found to have occurred, this can have an adverse effect on staff morale. Assistance should be made available to employees who have been affected by the allegation to help them to come to terms with what has happened and to restore a normal working environment.
- The employee should be advised of what will happen next and his/her right to due process.
- A review of systems should be carried out where deficiencies have been identified.

6.2 ABUSE HAS NOT OCCURRED

- Where the complaint is not upheld, management should ensure that the reputation and career prospects of the employee(s) concerned are not adversely affected by reason of the complaint having been brought against him/her. The employee should be offered counselling and any other support necessary to restore his/her confidence and morale.
- The employee who made the complaint should be reassured that management appreciates that the complaint was made in good faith.

Policy No. 064	Revision: 1.0
Page 10 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



- A review of systems should be carried out where deficiencies have been identified.
- Where it is found that a report of abuse was brought maliciously, the employee who made the complaint should be dealt with under the disciplinary procedure.

6.3 INFORMING THE GARDAI

Even where the alleged abuse could potentially constitute a criminal offence, SHS must conduct an internal investigation into the allegation and take appropriate action in the context of the employer/employee relationship.

Where there are reasonable grounds to suspect that a criminal act has been committed, the matter must be reported immediately to the Gardaí. Where the Gardaí are notified, SHS may conduct its own independent investigation in parallel with the criminal investigation.

If the employee refuses to co-operate with the internal investigation pending the outcome of criminal proceedings, this should not necessarily deter SHS from proceeding with its investigation. The employee should be advised that if s/he is not prepared to co-operate with the internal investigation, SHS may have to form its conclusions on the basis of the information available and then proceed to take appropriate action (which could include dismissal) (Appendix 4).

It should be noted that an allegation of abuse against an employee is an employment matter which must be investigated by SHS itself. The standard of proof required in criminal proceedings (“beyond reasonable doubt”) is higher than that required in investigations carried out by SHS in the context of the employer-employee relationship. SHS must be satisfied “on the balance of probabilities” that the alleged abuse occurred but does not have to prove the case beyond all reasonable doubt. In other words, SHS must form a reasonable belief that the employee committed the alleged abuse and take disciplinary action accordingly (Appendix 5).

Policy No. 064	Revision: 1.0
Page 11 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



APPENDIX 1 DEFINITION OF 'REASONABLY PRACTICABLE'

The extent of an obligation which is said to require an employer to take reasonably practicable measures has been explored by the courts, particularly in the context of occupational health and safety law.

For example, in *Boyle –v– Marathon Petroleum (Ireland) Ltd.* [1999] 2 IR 460, the Supreme Court held that reasonable practicability creates a duty that “is more extensive than the common law duty that devolves on employers to exercise reasonable care in various respects as regards their employees. It is an obligation to take all practicable steps. That seems to me to involve more than that they should respond that they, as employers, did all that was reasonably to be expected of them in a particular situation.” (Mr Justice O’Flaherty)



APPENDIX 2 DEFINITION OF ABUSE

It should be noted that the examples given are for illustrative purposes and are not definitive. It should also be borne in mind that some forms of abuse may not be easily categorised.

Neglect

Neglect may include an act or omission, where a service user is routinely deprived of food, clothing, entitlements, warmth, hygiene, intellectual stimulation, supervision and safety, attention from staff.

Emotional/Psychological Abuse

Emotional abuse may arise in the relationship between an employee and a service user. It is a consequence of the service user's needs for affection, approval, consistency and security not being met. Examples of emotional abuse may include:

- (i) persistent criticism, sarcasm, hostility or blaming;
- (ii) unresponsiveness;
- (iii) failure to show interest in, or provide appropriate opportunities for, a client/resident's cognitive and emotional development or need for social interaction;
- (iv) use of unreasonable disciplinary measures or restraint;
- (v) disrespect for differences based on social class, gender, race, culture, disability, religion, sexual orientation or membership of the Traveller Community.

These examples are not exhaustive

Physical abuse

Physical abuse is any form of non-accidental injury that causes harm or could cause harm to a service user. It may involve:

- (i) hitting, shaking, slapping, burning or biting;
- (ii) deliberate poisoning;
- (iii) giving inappropriate medication, alcohol or illegal substances;
- (iv) suffocation;
- (v) the use of excessive force in delivering personal care e.g. dressing, bathing, administering medication.

These examples are not exhaustive

Sexual abuse

Sexual abuse occurs when a service user is used by an employee for his/her gratification or sexual arousal. Examples of sexual abuse include:

- (i) intentional touching, fondling or molesting;
- (ii) inappropriate and sexually explicit conversations or remarks;
- (iii) exposure of the sexual organs or any sexual act intentionally performed in the presence of the service user;
- (iv) exposure to pornography or other sexually explicit and inappropriate material;
- (v) sexual assault;
- (vi) sexual exploitation of a vulnerable adult, including any behaviours, gestures or expressions that may be interpreted as being seductive or sexually demeaning to a service user;
- (vii) consensual sexual activity between a staff member and a vulnerable adult.

These examples are not exhaustive.

Policy No. 064	Revision: 1.0
Page 13 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



APPENDIX 3 THE DEFENCE OF QUALIFIED PRIVILEGE

The Common Law provides a defence, in particular circumstances, to individuals who make verbal or written statements of a kind which could expose their author to a claim of defamation if such statements were made in different circumstances. The defence exists in recognition of the fact that there are circumstances in which individuals have to be able to speak freely without fear of adverse legal consequences.

In general, the privilege covers situations where the maker of the statement has a duty to speak or is obliged to protect some interest. The duty in question does not have to be a strictly legal one: a moral or social duty to make the statement or report is sufficient. The recipient of the statement must have a corresponding duty to receive the statement. The defence only applies where the individual who makes the statement is not motivated by malice in making his statement.

In circumstances where an individual has a duty to speak and does so without malice, he can be assured that the defence of qualified privilege will protect him from any defamation claim to which his statement could possibly give rise. The defence will apply, for example, when an employee reports to their reporting manager (or HR manager or some specially designated person); his bona fide suspicion that a fellow employee may have committed an act of abuse in the course of the latter's employment.

Policy No. 064	Revision: 1.0
Page 14 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



APPENDIX 4 EMPLOYEE'S RIGHT TO SILENCE?

Does an employee who is the subject of investigative/disciplinary proceedings instigated by the employer have a right to silence in the context of such proceedings?

This question has been answered in the negative by Barrington J on behalf of the Supreme Court in his judgment in *Mooney v An Post* [1988] 4 IR 288. The plaintiff in the case, who was a postman, had been tried and acquitted on a criminal charge of interfering with the postal service. Thereafter, the employer attempted to conduct a disciplinary inquiry into the said complaints. However, the plaintiff refused to cooperate with the employer's efforts in this regard. The employer proceeded with the dismissal and the plaintiff subsequently challenged the employer's decision.

The Supreme Court, in holding against the plaintiff, distinguished between the position of a defendant in criminal proceedings and that of a person who is the subject of disciplinary or investigative proceedings being carried out by his employer.

The latter proceedings are civil rather than criminal in nature. Furthermore, the Court argued, the right to silence applies only in the context of criminal proceedings but does not carry over to civil proceedings:

"It is important to emphasise that the dismissal proceedings were not criminal proceedings and it was not sufficient for a person in the position of the plaintiff simply to fold his arms and say:- "I'm not guilty. You prove it."

To attempt to introduce the procedures of a criminal trial into an essentially civil proceeding serves only to create confusion.

Policy No. 064	Revision: 1.0
Page 15 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	



APPENDIX 5 THE STANDARD OF PROOF APPLICABLE TO INVESTIGATIVE AND OTHER PROCEEDINGS IN THE EMPLOYMENT CONTEXT

The plaintiff in *Georgopoulos v Beaumont Hospital* [1998] 3IR 132 had been employed as a registrar in neurosurgery at Beaumont Hospital. Certain complaints were made against him arising out of the performance of his duties as a registrar. An investigation was conducted into those allegations and the plaintiff subsequently sought to challenge the decision arrived at by the investigators on the basis, inter alia, that the investigators had failed to substantiate the complaints against him 'beyond a reasonable doubt.'

Addressing the issue of the correct standard of proof to be applied by those charged with conducting such an investigation, the Supreme Court, per Hamilton CJ, held as follows: "The proceedings before the defendant were in the nature of civil proceedings and did not involve any allegations of criminal offences. The standard of proving a case beyond reasonable doubt is confined to criminal trials and has no application in proceedings of a civil nature.

It is true that the complaints against the plaintiff involved charges of great seriousness and with serious implications for the plaintiff's reputation. This does not, however, require that the facts upon which the allegations are based should be established beyond all reasonable doubt. They can be dealt with on "the balance of probabilities" bearing in mind that the degree of probability required should always be proportionate to the nature and gravity of the issue to be investigated.

I am satisfied that in inquiries, such as conducted in this case, the standard of proof to be applied is not the standard of proof required in a criminal case but is that applicable to all proceedings of a civil nature, namely, "the balance of probabilities"- a standard which takes into account the nature and gravity of the issue to be investigated and decided."

Policy No. 064	Revision: 1.0
Page 16 of 16	Department: 003
Full Policy ID Number : 003.064.1.0	