



**PROTOCOL FOR
DEALING WITH
GRIEVANCES OF
HEADS OF
DEPARTMENT LODGED
WITH THE PSC**

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1. PREAMBLE

Section 196(4)(f)(ii) of the Constitution, empowers the Public Service Commission (PSC) to investigate grievances of employees in the Public Service concerning official acts or omissions, and recommend appropriate remedies, either of its own accord or on receipt of any complaint.

Section 35(3) of the *Public Service Act, 1994* (as amended), provides for Heads of Department (HoDs) to lodge a grievance directly with the PSC for consideration. The procedure for lodging grievances by HoDs is contained in the Rules for dealing with grievances of members of the Senior Management Service, including Heads of Department, Chapter Ten of the Handbook for SMS members.

This protocol document is intended to facilitate the effective handling of grievances lodged directly with the PSC by HoDs by thoroughly establishing all the facts so as to amicably resolve the grievances. It is intended that grievances be resolved as expeditiously as possible and as close to their sources as possible.

2. STATUTORY PROVISIONS

This protocol is based on the following statutory provisions:

- The *Constitution of the Republic of South Africa, 1996*.
- The *Public Service Commission Act, 1997*.
- The *Public Service Act, 1994*, (as amended).
- The Rules for dealing with grievances of members of the SMS.
- The Rules for the Summoning of witnesses in connection with inquiries of the PSC (Government Gazette No. 23267 of 28 March 2002).
- The Delegations of the PSC.
- The *Promotion of Administrative Justice Act, 2000*.
- The *Promotion of Access to Information Act, 2000*.

3. PRINCIPLES

- (a) The procedure must be such that it assists and enables the PSC and the HoD to address his/her dissatisfaction.
- (b) A grievance must be lodged in writing as provided for in the Rules for dealing with the grievances of members of the SMS.
- (c) The completed Grievance Form must indicate the steps that have been taken by the HoD to resolve the grievance prior to lodging with the PSC, as well as the reasons for referring the matter to the PSC.
- (d) Proof must be submitted that the Grievance Form has been copied to the relevant Executive Authority (EA).
- (e) Grievances relating to the outcome of the evaluation of the HoD, must be dealt with in terms of the dispute resolution mechanism provided for in his/her Performance Agreement.

- (f) The PSC must ensure that a grievance which has been lodged with it is dealt with in a fair, impartial and unbiased manner, and that the rules of natural justice are observed.
- (g) A grievance of a HoD that has been lodged with and is being attended to by the Public Service Coordinating Bargaining Council (PSCBC), or the relevant sectoral council or the CCMA, will not be investigated by the PSC, on condition that evidence of the matter being attended to by the institution, has been obtained.
- (h) Each step in the procedure is subject to stipulated time frames. However, it is accepted that these time frames may be extended by mutual agreement in writing or in relation to the availability of any person involved in the investigation process.
- (i) The availability of the EA is crucial for the speedy resolution of the grievance.
- (j) All recommendations to resolve the grievance and grievance hearing decisions must be consistent with sound labour law principles and practices.
- (k) The Commissioner delegated to conduct a Grievance Hearing, may not establish or revise policies, procedures, rules or regulations. However, he/she may make recommendations on identified inefficiencies in policies.

4. PROCEDURE FOR DEALING WITH THE GRIEVANCE(S) OF HEADS OF DEPARTMENT

- (a) Upon receipt of a grievance lodged by a HoD with the PSC in terms of section 35(3)(b) of the *Public Service Act*, 1994 (as amended), the PSC should deal with the grievance within 45 days, which period may be extended by mutual agreement in writing. In lodging the grievance with the PSC, the HoD must indicate the steps which she/ he has taken to resolve the grievance prior to lodging it with the PSC, and what necessitated the direct referral of the grievance to the PSC.
- (b) A Grievance Hearing should be held by a Commissioner delegated by the Chairperson in writing, as provided for in section 13.1(b) of the *Public Service Commission Act*, 1997.
- (c) The aggrieved HoD may represent him/herself or be represented by a fellow employee during the Grievance Hearing. Neither the HoD nor the EA (or person against whom a grievance is lodged by the HoD) may be represented by a legal practitioner.
- (d) It is preferable that parties should agree on the time, date and venue for the grievance hearing.
- (e) The steps below, provide for the process to be followed to obtain information required in the investigation of grievances of HoDs lodged with the PSC:

- 4.1 The Commissioner should allow all parties to be settled, and then introduce him/herself. She/ he will then provide the parties with the background, purpose and aim of the hearing.
- 4.2 The procedure for presentations to be made by each party will be explained by the Commissioner and time allocation will be set for each party.
- 4.3 The Commissioner should confirm that all documentation to be submitted at the Grievance Hearing, have been submitted to the PSC and copies made for all parties concerned on time for scrutiny and preparations. Only the original copies should be presented for admission as evidence at the hearing and copies thereof can be made for record.
- 4.4 The Commissioner should indicate that parties may not pose questions or responses to each other and must direct all through the Commissioner.
- 4.5 Witnesses that are called by the parties will be subjected to questions seeking clarity from the Commissioner after presentation of their evidence.
- 4.6 All witnesses will only be called into the hearing when it is required of them to present their evidence.

Statement of the dissatisfaction

- 4.7 After the introductory remarks, the Commissioner should ask the aggrieved HoD to state the reasons for his/her dissatisfaction.
- 4.8 The documents, if any, relied upon for the dissatisfaction will be presented along with the other evidence.
- 4.9 The witnesses, if any, shall be called and present whatever corroboration is required in support of the aggrieved HoD's presentation.
- 4.10 The party against whom the grievance is lodged, should be provided with an opportunity to respond to the reasons given for the dissatisfaction.
- 4.11 Both parties should be given an opportunity to call relevant witnesses.
- 4.12 Both parties should be allowed the opportunity to submit additional documentation relevant to the grievance of the aggrieved HoD, to the Commissioner.
- 4.13 The Commissioner should have an opportunity to study the additional information/documentation provided to him/her at the Grievance Hearing. The Commissioner may adjourn the Grievance Hearing to study the information/documentation.
- 4.14 The Commissioner should try to find a common objective in resolving the dissatisfaction. It may be necessary to ask the parties to caucus. The Commissioner may talk to each party separately, proposing solutions, trying to resolve the matter.
- 4.15 The objective of the Grievance Hearing is to resolve the dissatisfaction of the aggrieved HoD. The Commissioner should therefore, strive to find points of agreement between the parties by exploring options and bringing about possible solutions.

5 working days

Report and Communicating Findings

5. After the finalisation of the Grievance Hearing, the Commissioner should

<p>capture the outcome of the Grievance Hearing on the Grievance Form. A report containing the Commissioner's finding(s) and recommendation(s) should be compiled by the Office and signed by the Commissioner that presided over the case. The report with letters communicating the outcome of the hearing addressed to the aggrieved HoD and EA, should be submitted by the Commissioner, to the Chairperson for his/her signature.</p> <p>6. The CD:LRI will provide administrative support to the Commissioner throughout the Grievance Hearing process.</p>	<p>9 working days</p>
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5. DEEMING PROVISIONS

- 5.1 If one of the parties is unable to attend a Grievance Hearing on the stipulated date, (s)he must submit a request for the postponement of the Grievance Hearing to the Commissioner delegated to conduct the Grievance Hearing at least two days before the date of the hearing. The request should indicate the reasons for the postponement. The other party should be informed of the request for postponement, by the requesting party.
- 5.2 The Commissioner delegated to conduct the Grievance Hearing must liaise with both parties on a new date.
- 5.3 The postponement of a Grievance Hearing is the prerogative of the Commissioner delegated to conduct the hearing. However, care should be taken that the process is not frustrated by unnecessary delays.

6. WITHDRAWAL OF A GRIEVANCE

The HoD may withdraw his/her grievance at any stage after having lodged the grievance with the PSC. Should the HoD decide to withdraw the grievance at any stage of the procedure including prior to the outcome of a hearing decision, or when the parties agree to a settlement of the grievance, the HoD must submit to the Chairperson a dated, **signed** statement clearly stating that he or she is withdrawing the grievance. The HoD should also inform the EA of the withdrawal of the grievance. Such a withdrawal statement terminates the grievance process.

If the HoD indicates verbally to the Commissioner delegated to conduct the Grievance Hearing, that (s)he withdraws the grievance, the CD:LRI should draft a letter to the relevant HoD requesting him/her to confirm the withdrawal in writing. Further, that if no response is received from the HoD within a period of 14 days, the matter would be deemed withdrawn and the file closed. The letter should be sent by registered post and e-mailed or faxed to the HoD.

7. CONCLUSION

The procedure outlined in this Protocol Document endeavours to standardise the method of resolving of individual grievances of HoDs referred to the PSC by gathering relevant facts and affording all parties involved to state their side of the story in line with

the rules of natural justice. It must be noted that each grievance should be dealt with on its own merits.