

# APPLICATION FORM FOR APPEAL OF CRITICAL ILLNESS DECISION

***This form should be completed by an applicant who wishes to appeal the decision of the HR Manager not to grant Critical Illness Provisions (CIP). Submitting this form invokes the Civil Service Grievance Procedure (Circular 11/2001).***

The Critical Illness Protocol and the Grievance Procedure **must be read in full prior to submitting this form** (both attached).

1. In order to appeal the CIP decision Applicants must complete and submit this form to their HR Manager within 30 days of receipt of the original CIP decision. The HR Manager will contact the applicant with a view to resolving the matter informally.
2. If the matter is not resolved and the CMO's **medical advice** is appealed, the case will be referred to the Chief Medical Officer (CMO) who will refer the case to an external Specialist Occupational Physician (SOP) for review<sup>1</sup>. Medical advice can only be appealed in relation to the nature of an applicant's medical condition and if it has at least one of the following characteristics:
  - a) Acute life threatening physical illness
  - b) Chronic progressive illness, with well-established potential to reduce life expectancy<sup>2</sup>
  - c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
  - d) In-patient hospital care of two consecutive weeks or greater<sup>3</sup>.
3. The HR Manager will review the CIP decision following receipt of advice from SOP.
4. If the matter is not resolved and the use of **management discretion** (as per para 3.3 of the Protocol) is appealed, a Reviewer will review the original decision based on the reasons for appeal provided below. The Reviewer will, generally, be the Manager of the HR Manager.
5. If relevant, the case may be forwarded to the external Grievance Procedure Mediation Officer. Following receipt of the Mediation Officer's recommendation, the Reviewer will consider the case and make a decision on whether or not to award CIP.
6. The HR Manager will write to the applicant to inform them whether they have or have not been granted access to CIP and will provide reasons for the decision.

## PERSONAL DETAILS<sup>4</sup>

<b>Name</b>		<b>PPSN</b>	
<b>Date of Birth</b>		<b>Grade/Job Title</b>	
<b>Department</b>		<b>Method of communication</b>	<i>(all options can be selected and may be used for communications with you)</i>
<b>Business Unit (include Address)</b>		Postal Address <input type="checkbox"/> Email Address <input type="checkbox"/> Phone Number <input type="checkbox"/> (mobile and/or home)	

<b>REASON FOR APPEAL:</b>	<b>Date of original CIP decision by HR Manager:</b> _____
<b>Medical Advice</b> <input type="checkbox"/> <b>Management Discretion</b> <input type="checkbox"/> Tick relevant box(es)	

**GROUNDS/BASIS FOR APPEAL: Provide all relevant information/evidence to support why you consider CIP should be awarded**

*Do not attach medical documentation to this form. You should retain this documentation as it may be requested by the CMO/SOP. If additional space is required please attach additional paper.*

## APPLICANT DECLARATION

I have read the Critical Illness Protocol and the Grievance Procedure. I wish to invoke the Grievance Procedure to appeal the decision by the HR Manager not to grant access to CIP.	
Applicant Signature:	
<i>Where an employee is too ill to make an appeal, a third party may do so on their behalf</i>	
Date:	

<sup>1</sup> Appeal of medical advice by SOP will ordinarily be a file only review. The SOP fee will be paid in full by the Department/Office with half the fee to be reimbursed by the applicant to the Department/Office. If the applicant is successful in his/her appeal, s/he will be reimbursed by the Department/Office.

<sup>2</sup> In circumstances where there is no medical intervention.

<sup>3</sup> In the case of pregnancy-related illness (natural or assisted pregnancy), the requirement for hospitalisation of two consecutive weeks will be reduced to two or more consecutive days of in-patient hospital / clinic care.

<sup>4</sup> Information provided on this form will be used for the sole purpose of processing the CIP appeal by the applicant. It will not be used for any other purpose.

# CRITICAL ILLNESS PROTOCOL

## 1. INTRODUCTION

1.1 It is recognised that public service bodies, as employers, need to continue to provide support for their employees who may be incapacitated as a result of critical illness or serious physical injury. Therefore when an individual becomes incapacitated as a result of critical illness or serious physical injury, and has supporting medical evidence for an extended period of sick leave, the individual may, on an exceptional basis, be granted paid sick leave extended as follows:

- A maximum of 183 days on full pay in the previous rolling one-year period
- Followed by a maximum of 182 days on half pay in the previous rolling one-year period
- Subject to a maximum of 365 days paid sick leave in the previous rolling four-year period.

1.2 **The granting of exceptional extended paid sick leave is a decision of management** having considered the occupational medical advice.

1.3 These arrangements will exclude individuals whose illness relates to an occupational injury/illness and who have access to an occupational injury/illness scheme.

## 2. CRITERIA FOR AWARD OF EXTENDED PAID SICK LEAVE

2.1 In determining whether an individual may be granted access to exceptional extended paid sick leave the following criteria apply:

- 2.1.1 The employee should ordinarily be under the current or recent clinical care of a consultant either as an inpatient or outpatient. This excludes employees attending primarily for report preparation or medico legal purposes.
- 2.1.2 The case must be referred by the employer to its Occupational Health Service for medical advice.
- 2.1.3 The responsibility lies with the employee to furnish any treating doctor's medical reports requested within an appropriate time-frame to avail of the exceptional extended paid sick leave. A treating consultant's specialism must be appropriate to the critical illness for which the employee is making a claim.
- 2.1.4 The Occupational Physician, from the employer's Occupational Health Service, will advise whether, in their opinion, the following criteria are met:

- i. The employee is medically unfit to return to his or her current duties or (where practicable) modified duties in the same pay grade
- ii. The nature of this medical condition has **at least one** of the following characteristics:
  - (a) Acute life threatening physical illness
  - (b) Chronic progressive illness, with well-established potential to reduce life expectancy<sup>5</sup>
  - (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
  - (d) In-patient hospital care of two consecutive weeks or greater<sup>6</sup>.

2.1.5 The Occupational Physician will consider the information provided by the treating doctor, and may confer with them with consent if they feel this would be helpful. It is not an absolute requirement that a definitive final diagnosis has been made. The Occupational Physician may accept a presumptive diagnosis on a case by case basis.

### **3. DECISION TO AWARD**

3.1 The decision on whether to award extended paid sick leave is a management decision having consulted with the relevant line manager. Whilst management must primarily consider the Occupational Medical advice, management should consider all the circumstances of the case.

3.2 Thus, although an employee may not meet the medical criteria outlined above, management may still make a decision to award in exceptional circumstances.

3.3 In exercising this discretion management must demonstrate the reasons why they are awarding an extended period of paid sick leave although the individual does not meet the requirements set out at 2.1.4(ii) above. In this regard management should in particular consider the following:-

- the individual's sick leave record;
- the potential impact of an early return on the workplace efficiency and effectiveness;
- it has not been possible to make an accommodation to facilitate the return to work of a person with a disability-related illness or condition.<sup>7</sup>

Management should also confer with the Occupational Physician in such cases.

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<sup>5</sup> In circumstances where there is no medical intervention.

<sup>6</sup> In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of two consecutive weeks will be reduced to two or more consecutive days of in-patient hospital / clinic care.

<sup>7</sup> Management are required in the case of an employee with a disability-related illness take all reasonable steps in terms of making an accommodation to facilitate the employee's return to work consistent with, for example, specialist occupational health advice and service requirements.

#### **4. APPEAL OF THE MEDICAL DECISION**

4.1 The advice of the Occupational Physician may be appealed to either a single appeal Specialist Occupational Physician or a panel of Specialist Occupational Physicians. This can be decided on a sector by sector basis as to which is the most appropriate approach. This appeal will ordinarily be a file only review.

4.2 In the case of an appeal to a single Specialist Occupational Physician, an individual may arrange to meet with the Specialist Occupational Physician on the basis of an appropriate cost sharing arrangement to be determined within each sector.

4.3 The final decision on any appeal lies with the employer, having considered the medical advice.

#### **5. APPEAL OF THE MANAGEMENT DECISION**

5.1 The mechanism for appeal of the management decision will be decided on a sector by sector basis with access given to those appeal mechanisms which are already in place in each sector. For example, the management decision may be appealed using the Grievance Procedure in the Civil Service.

5.2 Should there be a delay<sup>8</sup> in the employer referring an employee to the Occupational Health Service of the organisation, or a delay<sup>9</sup> in being seen by this Occupational Health Service, there will be no financial loss to the employee if they are later awarded the exceptional extended paid sick leave. Where, in these circumstances, an employee moves on to half pay and it is later found that access to exceptional extended paid sick leave should have been granted, pay will be restored appropriately.

#### **6. RETURN TO WORK**

6.1 There will be no financial loss to an employee in circumstances where the employee has fully engaged with the process around the management of sick leave and their own consultant has certified fitness to return to work, but the employee has not been able to return to work because there is a delay in the employer referring the employee to the Occupational Health Service of the organisation, or a delay in being seen by this Occupational Health Service. Pay will be restored appropriately.

#### **7. TEMPORARY REHABILITATION REMUNERATION**

7.1 In advance of the termination of the payment of Temporary Rehabilitation Remuneration (TRR), following payment of paid sick leave and TRR for a period not exceeding two years, local management shall secure expert specialist occupational health advice on whether there is any reasonable prospect of the employee returning to

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<sup>8</sup> Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

<sup>9</sup> Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.

work within a foreseeable timeframe. Where a reasonable prospect of return to work is confirmed by the Occupational Health Specialist the payment of TRR may be continued subject to review at six-monthly intervals for a further period not exceeding two years.

## **8. REVIEW OF THE OPERATION OF THE PROTOCOL**

8.1 There will be a review of the operation of this protocol following 1 full year after its introduction.

## **DEFINITIONS**

### **Current or recent Clinical Care**

This means that the employee has received medical investigations and treatment ordinarily under the direct care / supervision of a hospital consultant. They may be either a hospital inpatient or outpatient. It excludes referrals that in the opinion of the Occupational Physician are primarily for report preparation purposes/medico-legal purposes.

### **Hospital Consultant**

This is a medical doctor who is on the relevant specialist register, and holds a HSE / Voluntary Hospital / NHS hospital consultant appointment or has admission rights to a recognised private hospital.

### **Occupational Physician**

This is a medical doctor registered with the Irish Medical Council who has a postgraduate qualification in Occupational Medicine / Occupational Health, or who is on a specialist training scheme in Occupational Medicine.

### **Specialist Occupational Physician**

This is a medical doctor registered with the Irish Medical Council in the specialist division of Occupational Medicine.

### **Limitation of Life Expectancy**

This refers to the condition and not the individual person. It must be well established in the peer reviewed medical literature that the medical condition results in a reduction of life expectancy.

## **Sample Critical Illness Cases**

### **Case 1:**

Mary works as a healthcare professional. She has a recent diagnosis of invasive breast cancer, detected at routine breast cancer screening. She was admitted to hospital for 2 weeks and had a partial mastectomy, and is now half way through a six month course of outpatient chemotherapy.

The Occupational Physician considers Mary is unfit for work due to chemotherapy side effects, and has an acute life threatening physical illness.

She meets medical criteria 2.1.4(i), 2.1.4(ii) (a) for a critical illness. Management decide to award critical illness pay.

### **Case 2:**

John works in a clerical role. He has a longstanding diagnosis of paranoid schizophrenia, and is under the longstanding care of the mental health services. He has been well for an extended period of time, but has suffered a recurrence due to bereavement. He is acutely unwell and has been attending the psychiatric day hospital under the care of a consultant psychiatrist.

The Occupational Physician considers John unfit for work due to his mental state. He has a well-documented chronic progressive condition that has the potential to significantly limit life expectancy.

He meets medical criteria 2.1.4(i), 2.1.4(ii) (b) for a critical illness. Management decide to award critical illness pay.

### **Case 3**

Paul works in a manual occupation. He has been involved in a serious Road Traffic Accident. He has sustained several rib fractures, a fractured pelvis and femur (long bone of the leg). Both the pelvic fracture and the femoral fracture have required internal fixation (surgical stabilisation). He has been an inpatient on the orthopaedic ward for over four weeks.

The Occupational Physician considers Paul unfit for work due to significant physical injuries. He has had both major physical trauma and hospital inpatient care in excess of 2 consecutive weeks.

He meets medical criteria 2.1.4 (i), 2.1.4 (ii)(c) and (d) for a critical illness. Management decides to award critical illness pay.

### **Case 4:**

Clare works at sedentary office employment. She has a longstanding diagnosis of Chronic Fatigue Syndrome and is now absent from work.

Her GP feels that she is unfit for work but the Occupational Physician considers her fit for work with work accommodations. She does not have an acute life threatening physical illness, this condition is not considered to significantly affect life expectancy, and she has not required hospitalisation

She does not meet the medical criteria for a critical illness. Management decide not to award critical illness pay.

### **Case 5**

Brigid works as a lecturer for the last 10 years. Her long-time partner has died suddenly. Brigid has had almost no sick leave during her employment, and management report that her colleagues are seriously concerned for her wellbeing. Her GP has referred her to a local HSE consultant, diagnosed new onset depression, commenced her on anti-depressants, and referred her for counselling. Her GP considers her unfit for work and the Occupational Physician concurs fully with this. She meets medical criteria 2.1.4(1) but does not meet any of the medical criteria in 2.1.4(ii)a-d for a critical illness. The HR manager considered the facts of the case.

- Brigid had until that point had an exemplary attendance record, Brigid was responsible for a team of 5 staff and had responsibility for delivery of key outputs within demanding time frames.
- The occupational physician considered at this time that she may not be able to cope with the demands of such a busy role and it may compound issues
- The HR manager decided that if Brigid returned to work it could have a negative impact on workplace performance and could potentially slow down her full return to fitness to work.

On the basis of the above Critical Illness Pay was granted by the HR manager.

# Revised Grievance Procedure

1. The Grievance Procedure is a process that seeks to deal in a fair, prompt and impartial manner with the complaints of individual members of staff which are within the scope of the procedure but which are not appropriate for discussion under the Conciliation and Arbitration Scheme.
2. Complaints by officers about acts or omissions of management which affect their official positions and which are not appropriate for discussion under the Conciliation and Arbitration Scheme shall be dealt with in the following manner:

## Stage I

- 1) The complainant and the officer whose act or omission is complained of shall discuss the matter with a view to resolving it informally.
- 2) If it is not possible to resolve the matter informally, the complainant shall outline the complaint in writing to the officer whose act or omission is complained of (and shall send a copy to that officer's superior), indicating (a) that s/he is invoking the grievance procedure and (b) the corrective action sought. The officer complained of shall reply in writing within two weeks.
- 3) A complainant who is not satisfied with the response by the officer complained of may refer the matter in writing to the Personnel Section. Within two weeks of such referral, the Personnel Section shall arrange a meeting of those directly concerned including, if s/he so wishes, the complainant's union representative.
- 4) Should it not be possible to resolve the matter by agreement, the Personnel Section shall make a decision on the complaint and shall convey that decision, together with the reasons for it, to the parties in writing.

## Stage II

3. A complainant who is dissatisfied with the decision of management on the complaint may make a written request to the Personnel Officer that the dispute be referred to a Mediation Officer appointed by the Minister for Finance with the agreement of the General Council Staff Panel. Any such request shall be dealt with on the following basis:
  - (a) complaints concerning the following shall not be referred to the Mediation Officer:
    - disciplinary action taken in accordance with the provisions of the disciplinary code
    - selection for promotion, whether by way of competition or normal course promotion;
    - selection for assignment to a post carrying an allowance or to a post abroad, or for placement on higher scales of payment under restructuring agreements;
    - exclusion from competitions or from consideration for promotion on grounds of health or sick leave record;
  - (b) Subject to (a) above, the Personnel Officer shall not refuse to refer a complaint to the Mediation Officer where the complainant has suffered an immediate and direct loss of earnings as a consequence of the action complained of or where a complaint refers to the redeployment of staff in the circumstances set out in appendix 1.
  - (c) In any other case the complaint shall be referred to the Mediation Officer if the Personnel officer considers the matter appropriate for such reference. Where the Personnel Officer considers that a complainant's case is not appropriate for reference to the Mediation Officer, s/he shall state the specific reasons for his or her decision, in writing, to the complainant.
4. The Mediation Officer shall investigate any matter referred to him/her and mediate between the parties with a view to resolving the dispute amicably. Where such resolution is not possible, the

Mediation Officer may make such recommendation as s/he considers appropriate. Where the action complained of is defended on the grounds that it was required by the needs of the work, the Mediation Officer shall accept that the definition of the needs of the work is a matter for management but may uphold the complaint on the grounds that the action complained of was arbitrary, improperly discriminatory or otherwise inconsistent with good management practice.

In any case referred to him/her, the Mediation Officer shall accept that the interpretation of general regulations, circulars or agreed reports of General Council or Departmental Councils is not a matter for mediation. However, this does not preclude him/her from making a recommendation in respect of the day to day practical application of such general regulations, circulars, etc., in an individual case at issue.

5. Each Personnel Officer shall provide a report each year to the Mediation Officer on the operation of the grievance procedure in his or her department. The report will detail:
  - the number and nature of cases dealt with under Stage I of the procedure;
  - the number and nature of cases where complainants requested a referral to the Mediation Officer and such request was refused;
  - the reasons for the refusal of requests for referral to the Mediation Officer.

Each Personnel Officers shall include with such report copies of letters from complainants invoking the grievance procedure where:

(a) such cases have been resolved under Stage I of the procedure; or

(b) requests for referral to the Mediation Officer have been refused under Stage II

6. The Mediation officer will publish a report each year on his or her activities and the operation of the grievance procedure generally.

### **Notes:**

- (i) During the above procedure the complainant will continue to work normally, in compliance with the instructions of his/her supervisor(s).
- (ii) The time limits and arrangements set out above are meant as a guide and should be interpreted by all parties in a reasonable manner. However, all parties should try to ensure that complaints are dealt with in a prompt and efficient manner.
- (iii) While provision is made in the above procedure for formal union involvement at Stage I (3), the involvement of the appropriate local union representative at an earlier stage is not precluded, provided the complainant so requests.
- (iv) Any difficulties which arise within a Department regarding the detailed implementation of this procedure should be resolved at Departmental level.

## Appendix 1

1. The right of management to deploy staff as the work and the exigencies of the service demand, is recognised and accepted by the Staff Side. In exercising its right to deploy staff and consistent with its responsibility to ensure that work is carried out in an effective and efficient manner, management will have regard to such matters as the needs of the work, staff development and earning potential. The official side indicated that it would agree to a position where in any case in which an officer had been in a post with significant associated overtime working, shift allowance and/or travel and
  - (i) the officer had been serving in the post for more than four years;
  - (ii) the officer was transferred from the post at short notice;
  - (iii) there was scope available to management to allow a greater degree of forewarning (i.e., the needs of the work did not dictate the requirement for an immediate transfer); and
  - (iv) in cases involving travel, the officer concerned had purchased a car less than twelve months old within the twelve month period immediately prior to the notification of the proposed transfer a Personnel Officer would not refuse to refer the case to the Mediation Officer.
  
2. In the case of travel the Mediation Officer shall take account of:
  - (i) the residual value of the officer's car on the date of notification of the transfer of the officer; and
  - (ii) the amount of official mileage undertaken by him/her as a proportion of total mileage in the period between the date of purchase of the officer's car and the date of notification of his or her transfer or the period of twelve months prior to the date of notification of his or her transfer to other duties, whichever period more accurately reflects the norm of the pattern of travel associated with the post,

in making a determination on any case so referred.