

EAST AYRSHIRE COUNCIL

CORPORATE GOVERNANCE COMMITTEE - 21 SEPTEMBER 2004

NEW DISPUTE RESOLUTION PROCEDURES

Report by the Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1** The purpose of this report is to advise the Committee on the new Workplace Dispute Resolution Procedures that will come into effect on 1 October 2004 in respect of Local Government Employees, Chief Officers and Craft employees. Teaching staff have their own policies established in these areas.

2. BACKGROUND INFORMATION

- 2.1** The Policy and Resources Committee (Personnel) Sub - Committee at its meeting on 21 March 1996 approved a Code of Discipline, Discipline Procedure and Appeals Procedure and at its meeting on 22 April 1996 approved the Grievance Procedures.
- 2.2** Part 3 of the Employment Act 2002 established a framework for promoting the resolution of employment disputes in the workplace. The detail of how the procedures would operate in practice is set out in secondary legislation, the Employment Act 2002 (Dispute Resolution) Regulations 2004.
- 2.3** The Act sets out minimum procedures that must be followed in cases involving discipline, dismissals or grievances along with a number of supporting provisions. Both the remaining provisions of Part 3 of the Act and the Regulations will come into force on 1 October 2004. The new provisions only affect questions of procedural, not substantive, fairness. The employer still has an obligation to prove a potentially fair reason for dismissal and to show that dismissal was within the 'band of reasonable responses'.
- 2.4** The Regulations establish the basic discipline, dismissal and grievance procedures (DDPs) which are all being made up of three stages: written notification, meeting and appeal with a modified procedure where the employee has already been dismissed or otherwise left the employment. There is also a range of 'general requirements' that apply to any procedure, such as the requirement to allow both sides to put their case.

3. DISCIPLINE AND DISMISSALS PROCEDURES

- 3.1** With regard to discipline and dismissals there are two procedures, a standard procedure applicable to the vast majority of dismissals and all relevant disciplinary action and a modified procedure which is applicable only to a small minority of dismissals.
- 3.2** The standard dismissal and disciplinary procedure will apply when the employer is contemplating dismissal including dismissal on the grounds of capability, conduct, redundancy, non-renewal of a fixed term contract and retirement.
- 3.3** The procedure will also apply when the employer is contemplating any disciplinary actions short of dismissal in relation to an employee, wholly or mainly by reason of an employee's conduct or capability. However, it will **not apply** to actions which are themselves part of a workplace procedure i.e. warnings (oral or written) and suspension on full pay.
- 3.4** There are certain categories of dismissals to which the procedures do not apply at all. These are dismissals in which the individual characteristics of the employee will play no or no real role in the decision to dismiss which are often collective dismissals; dismissal then re-engagement in certain circumstances; industrial action dismissals; constructive dismissals; some dismissals where the employer's business suddenly ceases to function and all employees are dismissed and dismissals where continued employment would contravene a legal duty or restriction.
- 3.5** The modified (two-step) Dismissal Procedure applies only in very narrow circumstances e.g. it must be a dismissal without notice on the grounds of conduct; the employer must be entitled to dismiss the employee without notice (or pay in lieu) by reason of that conduct; the dismissal must take place at the time the employer became aware of the conduct or immediately thereafter and it must be reasonable in the circumstances for the employer to dismiss the employee before enquiring whether further into the circumstances in which the conduct took place .
- 3.6** The key issue in establishing whether the modified (two-step) Dismissal Procedure applies is that it must be reasonable in the circumstances not to make any enquiries before dismissing.
- 3.7** Failure to follow the standard dismissal and disciplinary procedure when it applies will make any dismissal automatically unfair. Further, any compensation which is payable can be raised by between 10 and 50 per cent in any case in which an employer has failed to complete a procedure.

4. GRIEVANCE PROCEDURE

- 4.1** In respect of grievances there are also two procedures, a standard procedure applicable to the majority of grievances and a modified procedure which is applicable when the standard grievance procedure would otherwise apply but where the employment has ended.
- 4.2** The Regulations define a grievance as “a complaint by an employee about action which his employer has taken or is contemplating taking in relation to him”. This definition also covers the actions of a third party e.g. a colleague in cases where the employer could be vicariously liable for those actions.
- 4.3** The statutory grievance procedures do not apply where an employee makes a protected disclosure within the meaning of the Public Interest Disclosure Act 1998 unless the employee actually intended the making of the disclosure to constitute the raising of the grievance. The provisions of the PIDA will always take precedence. This effectively gives the employee the right to choose whether to raise a concern as a grievance or as a protected disclosure.

5. EXEMPTIONS WHERE THE DISCIPLINARY AND GRIEVANCE PROCEDURES DO NOT APPLY

- 5.1** The following exemptions may apply to all the statutory procedures – if one party reasonably believes there is a significant threat, harassment or it is not practical to go through the procedures within a reasonable period or there are issues of national security involved.
- 5.2** In addition, there are a number of other exemptions that specifically apply to either the dismissal and disciplinary procedures or the grievance procedures.

6. IMPACT OF EXISTING COUNCIL DISCIPLINARY AND GRIEVANCE PROCEDURES

- 6.1** The Council's existing Disciplinary and Grievance Procedures promote fairness and consistency in the treatment of individuals and currently allow employees the right of appeal against all levels of disciplinary action taken them and with regard to grievances have been designed to enable them to be settled fairly, speedily and as near to the point of origin as possible.
- 6.2** The impact on the Council's existing Disciplinary and Grievance Procedures of the framework for promoting the resolution of employment disputes in the workplace will be minimal as they currently exceed the new standards in a number of areas e.g. the Council's Disciplinary Procedures applies to all levels of disciplinary action including warnings and there are potentially 4 stages for dealing with employees' grievances.

- 6.3 However, a modified two-step grievance procedure will now require to be introduced in circumstances where the standard grievance procedure would apply but where employment has ended. Accordingly a review of the current procedures will be undertaken to ensure that they meet all the new requirements and where it is established that the current Council's procedures exceeds the new standards then the existing arrangements will remain in place.
- 6.4 There is nothing to stop employers operating a more comprehensive procedure provided it includes all the steps contained in the relevant statutory grievance procedures and fulfils all the general requirements.
- 6.5 The existing corporate training courses on discipline and grievance will be updated to reflect any changes in the current procedures following the review.

7. FINANCIAL IMPLICATIONS

- 7.1 Any financial implications associated with the implementation of the new procedures will be met from within existing departmental budgets.

8. POLICY / LEGAL IMPLICATIONS

- 8.1 Any proposed amendments to the Discipline and Grievance Procedures will ensure that the Council continue to meet its legal obligations under the appropriate employment legislation.

9. TRADE UNIONS

- 9.1 Any updating of the current policies and procedures will be discussed with Trade Unions.

10. RECOMMENDATIONS

- 10.1 The Corporate Governance Committee is asked to note the contents of the report.

Elizabeth Morton
Depute Chief Executive/Executive Director of Corporate Support
6 September 2004

LIST OF BACKGROUND PAPERS

1. The Employment Act 2002.
2. The Employment Act 2002 (Dispute Resolution) Regulations 2004 SI 2004/752.
3. Report on Code of Discipline, Discipline Procedure and Appeals Procedure by the Director of Personnel Services to the Policy and Resources (Personnel) Sub - Committee of 21 March 1996.
4. Report on Grievance Procedures by the Director of Personnel Services to the Policy and Resources (Personnel) Sub - Committee of 22 April 1996.

Anyone wishing further information should contact Martin Rose, Head of Personnel (Telephone 01563 576092).