

EAST AYRSHIRE COUNCIL

PERSONNEL AND PROPERTY SUB - COMMITTEE OF THE POLICY AND RESOURCES COMMITTEE - 28 SEPTEMBER 2000

ACAS CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES

Report by Depute Chief Executive/Director of Corporate Resources

1. PURPOSE OF REPORT

1.1 The purpose of this report is to:

- (a) advise the Sub-Committee of the revised Advisory Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and Grievance Procedures effective from 4 September 2000; and
- (b) recommend changes to the Council's Conditions of Service.

2. BACKGROUND INFORMATION

2.1 The Government's Employment Relations Act 1999 proposed a package of measures to support a culture of fairness at work. Amongst the proposals were the right to be accompanied in disciplinary and grievance hearings.

2.2 The proposals in the Employment Relations Act 1999 are being introduced via Regulations on a staged basis and the provisions granting workers the statutory right to be accompanied in formal discipline and grievance hearings takes effect on 4 September 2000. The right to be accompanied applies to all workers, not just employees working under a contract of employment. The term "worker" includes part-time or casual workers, agency workers and those on short-term contracts.

2.3 The new right applies where the invitation or request to a worker to attend a disciplinary or grievance hearing is made on or after 4 September 2000. The ACAS Code has been reviewed in light of the Employment Relations Act and the Code of Practice on Disciplinary and Grievance Procedures is due to come into force on the same day as the statutory right to be accompanied.

2.4 The statutory right to be accompanied arises where a worker is required or invited to attend a formal disciplinary or grievance hearing and reasonably requests to be accompanied. In these circumstances, the employer must permit the worker to be accompanied at the hearing by a single companion who can either be a trade union official or fellow worker. The person accompanying them has the right to address the hearing and to confer with the worker during the hearing, but does not have any statutory right to answer questions on behalf of the worker.

2.5 If the representative is not available to attend the hearing on the date proposed, the worker can offer an alternative time and date so long as it is reasonable. The alternative date must fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.

2.6 Failure by an employer to allow the worker to be accompanied at a disciplinary or grievance hearing or to re-arrange a hearing to a reasonable date proposed by the

worker may result in a complaint to an employment tribunal. If the tribunal finds in favour of the worker, the employer might be liable to pay compensation of up to two weeks pay as defined in statute.

3. POLICY/LEGAL IMPLICATIONS

- 3.1** The Council's Disciplinary and Grievance Procedures currently provide for employees to be accompanied in formal disciplinary and grievance procedures. The Employment Rights Act 1999 extends the right to be accompanied at disciplinary and grievance proceedings to all workers with effect from 4 September 2000.
- 3.2** The National Agreement on Pay and Conditions of Service (The Red Book) provides that Councils' disciplinary and grievance procedures should accord with legal requirements with the ACAS Code of practice and guidance. It is **recommended** that the Council's current discipline and grievance procedures are extended to cover all workers and are updated to reflect the guidance offered in the ACAS code and as described in this report.
- 3.3** In practice, the Council has generally ensured the principle of a 'fair hearing' to date by affording the right to representation to anyone involved in a disciplinary or grievance hearing.

4. FINANCIAL IMPLICATIONS

- 4.1** There are no direct financial implications associated with the new legislation.

5. RECOMMENDATIONS

- 5.1** The Sub – Committee is asked to:
 - (i) note the Council's position in relation to the rights contained in the Employment Relations Act 1999 and the ACAS Code of Practice on Disciplinary and Grievance Procedures;
 - (ii) approve the recommendation to amend the disciplinary and grievance procedures to formally reflect their extended coverage to all workers and the general guidance offered in the ACAS code and as described in this report.

Fiona Lees
Depute Chief Executive/Director of Corporate Resources
4 September 2000

LIST OF BACKGROUND PAPERS

AGENDA

- 1. The Employment Relations Act 1999**
- 2. ACAS Code of Practice on Disciplinary and Grievance Procedures**
- 3. PER Circular 16/96 – Code of Discipline, Discipline and Appeals Procedure.**

Any person wishing further information should contact Graham Haugh, Head of Personnel (extension 6092).