

Human Resources Committee

2 March 2005



Dismissal Procedures and Appeals

Report of John Lee, Acting Head of Personnel Services

Purpose of the Report

- 1 The report considers the implications of recent Government legislation on formalising an appeals process for certain types of dismissals. The introduction of this legislation may lead to an overall increase in the number of appeals being instigated by employees. Therefore, there are recommendations on allowing certain categories of appeal for areas now covered by the legislation to be heard by officers, whilst continuing to have elected members review the more principal appeals within the system.

Background

- 2 The Employment Act 2002 established a basic framework for statutory minimum dismissal, disciplinary and grievance procedures. This framework has now been reinforced by the Dispute Resolution Regulations that were implemented from 1st October 2004. These Regulations require the County Council to ensure that we follow minimum procedures in many circumstances that could result in a dismissal - some of these circumstances have not required an appeals option to be available previously.
- 3 Much of the profile on the new Regulations has concentrated on the requirement for all employers to have procedures to deal with disciplinary and grievance problems. However, of equal importance is the application of the Regulations to situations where the employer is contemplating dismissal. This can include dismissals on grounds of capability, misconduct, redundancy & some retirement cases and the non-renewal of a fixed term contract.
- 4 The legislation requires a minimum 3-step process. The manager should **write** to the employee advising about the circumstances that may be leading to the contract termination. A **meeting** must then be held to determine to discuss the situation. Finally, an employee dismissed as a result of the meeting must be offered the opportunity of an **appeal**. It is the detail surrounding this latter stage that provide the focus for this report.

- 5 Any failure to follow the minimum procedure when it is applicable will render the dismissal automatically unfair. There are some exemptions to the procedure and these are outlined through *Appendix 2*.
- 6 If the recommendations are approved it will become necessary to consider amendments to delegated powers within the Council's Standing Orders and Financial Regulations.

Current Position

- 7 Currently, the Appeals and Complaints Committee hears any appeal against a decision made by, or on behalf of the Authority. This includes appeals against decisions to dismiss employees on grounds such as misconduct or capability/sickness.
- 8 However, there are now certain types of dismissal situations where we will now have to include an appeal option and process. This is applicable to all Council employees with the exception of ad-hoc casual staff and agency workers. There are also certain occasions where the dismissal may be by mutual consent - for example, in the interest of the service efficiency - in these circumstances the 3-stage process can be waived.
- 9 Possibly most significantly, the process must be followed for employees reaching the termination of a fixed term contract where there is not likely to be a renewal. A fixed term contract includes people taken on to cover seasonal peaks or maternity and sickness cover, as well as those employed to complete a specific task. Although the legislative requirement is to apply the 3-stage procedure when the employee has completed 12 months of service, good practice suggests that the basic mechanism should be followed when a fixed term contract of more than a month is ending.
- 10 The procedure also needs to be applied in redundancy circumstances not covered by the Trade Union and Labour Relations (Consolidation) Act 1992 - see *Appendix 2*. This will include early retirements triggered by a redundancy where the employee retires before the age of 65. In addition, a termination brought about through an unsatisfactory probationary period is also likely to be covered by the Regulations.
- 11 The safest approach from the equalities perspective is that all appeals are heard using a similar process. However, this may become a difficult practical proposition if, for example, many temporary workers completing contracts can refer the matter to elected members. Therefore, one solution is to allow senior officers to hear appeals of a certain type.

Recommendations and reasons

- 12 It is recommended that elected members continue to judge the majority of County Council appeals. This includes dealing with most dismissals on the grounds of capability and misconduct.

- 13 Most employees will still have access to the full procedure available to them through the particular circumstances relevant to their dismissal - for example, a disciplinary case will be dealt with through the Council's full disciplinary process, while dismissals caused by sickness absence will be processed through the Council's corporate sickness absence mechanism.
- 14 However, where a case involves a dismissal for misconduct or capability and the employee has less than 6 months of continuous service, it is recommended that only the minimum 3-stage process be available. This would include termination of unsatisfactory probationary periods and short-term temporary contracts. It is recommended that an officer would hear such appeals. This individual must be more senior to the officer involved in the original decision to dismiss and should also have had no previous involvement in the case.
- 15 In dismissals brought about by redundancy, it is recommended that the Appeals and Complaints Committee continue to hear all appeals apart from where the redundancy is related to the natural end of a temporary contract. In these cases, the process outlined in paragraph 14 would be followed and a senior officer would handle the appeal.
- 16 Under these recommendations, this Committee will also continue to hear any appeals linked to dismissals for 'Some Other Substantial Reason' when the employee has more than 6 months of continuous service. This would include, for example, the termination of a contract for maternity leave cover because of the return of the substantive postholder to the job. However, a senior officer would deal with a 3-stage appeal process if the employee had less than 6 months of service - for example, they had been providing cover for a member of staff on sick leave. The 6 months continuous service dividing parameter would also be the determining factor in who would hear an appeal if the dismissal was brought about by some other statutory enactment, such as the expiry of a work permit.
- 17 As indicated previously, the new Dispute Regulations formally widens the entitlement for an individual to seek an appeal against their dismissal. It is anticipated that allowing senior officers to conduct appeals in the areas prescribed above will modify any increases in workload for the Appeals and Complaints Committee. *Appendix 3* highlights the recommended appeals structure in tabular format.

Background Papers

Department of Trade & Industry - New Laws for Resolving Disputes (2004);
Dispute Resolution Regulations - Government Response to Public Consultation
(January 2004);
Durham County Council Dismissal Procedures: Management Guidelines (October
2004);
Eversheds - Dispute Resolution & Tribunal Reform (Issue 3, 2004);
CIPD Employment Law Update (10 November 2004);
Dispute Resolution: New Procedures (John Anslow - June, 2004)

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Appendix 1: Implications

Finance - any failure to follow the minimum statutory dismissal process can lead a claim of automatic unfair dismissal. Awards at an Employment Tribunal can be increased by 50% in relation to a failure to complete the process.

Staffing

Equal opportunities - the revised procedures must be applied equitably throughout the County Council in a non-discriminatory way. Their application must meet the requirements of the Council's equality policies.

Accommodation

Crime and disorder

Sustainability

Human rights

Localities

Young people

Consultation - relevant consultation will take place with the trade unions.

Exemptions to the Dismissal Procedure

- Collective redundancies - where redundancies are subject to collective consultation through section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992. This relates to where it is proposed to make at least 20 redundancies at an establishment within 90 days;
- Dismissal followed by re-engagement - occurring when all employees in a particular group of staff are offered re-engagement terms before the actual end of the contract. However, if an individual employee chooses not to accept their new contract, the dismissal process will have to be met;
- Certain dismissals associated with employees involved in industrial action;
- When it is not possible for employment to continue for reasons beyond the control of either party;
- The employee cannot continue to work in their existing position without contravening a duty or restriction imposed on them by other laws.

Recommended format for hearing County Council Appeals

Type of Dismissal	Appeal to be conducted by Appeals and Complaints Committee	Appeal to be conducted by a Senior Officer
Capability - including dismissals for poor performance or as a result of sickness absence*	All employees, including temporary staff who have more than 6 months of continuous service	Any employee, including temporary staff and probationers who have less than 6 months of service
Misconduct	All employees, including temporary staff who have more than 6 months of continuous service	Any employee, including temporary staff and probationers who have less than 6 months of service
Redundancy - including compulsory and voluntary redundancies**	All employees, apart from the natural end of a temporary contract***	Any employee who has reached the natural end of a temporary contract***
Some Other Substantial Reason	All employees, including temporary staff who have more than 6 months of continuous service+	Any employee, including temporary staff and probationers who have less than 6 months of service++
Some Other Statutory Enactment+++	All employees, including temporary staff who have more than 6 months of continuous service	Any employee, including temporary staff and probationers who have less than 6 months of service

*Includes dismissals where ill-health retirement benefits are paid to the dismissed employee.

**Includes cases involving any early retirement benefits.

***For example, completion of a specific task.

+For example, the termination of a contract for maternity leave cover as the substantive person returns to duty.

++For example, the termination of a contract for sickness absence cover.

+++For example, the expiry of a valid work permit.