

Workplace Dispute Resolution: The Future

It is fair to say that the statutory dispute resolution procedures (i.e. the 3 step standard grievance procedure, the modified grievance procedure; the 3 step standard dismissal procedure and the modified dismissal procedure) have never been popular with employers and indeed many employees. There were concerns expressed from a wide variety of sources, prior to the introduction of the procedures in October 2004, that they would be unworkable in practice and would ultimately lead to more employment tribunal litigation rather than resolving disputes in the workplace, which was their intention.

Two and a half years on, we now have confirmation that those concerns were well founded and that the procedures have failed. An independent review of the procedures, which was recently published by the DTI, concluded that there was a need for a radical overhaul of the current approach to resolving workplace disputes. While the review recognised the good intentions behind the current statutory procedures, it viewed them as having 'had unintended consequences that outweighed their benefits'. The main recommendations from the review were:

- The statutory dispute resolution procedures should be repealed and replaced with clear, simple, non-prescriptive guidelines from the DTI for both employers and employees on grievances, discipline and dismissal in the workplace. Compliance with the new guidelines will be encouraged by maintaining and expanding the discretion of employment tribunals to take into account reasonableness of behaviour and procedure when making awards and cost orders.
- Greater use of use of in-house mediation.
- Create a free early dispute resolution service (including mediation) before a tribunal claim is lodged to the employment tribunal and incentivise the service by giving tribunals the discretion to take into account the parties' efforts to settle the dispute, when making awards and cost orders. There is no guarantee, at this stage, that the service will be provided by ACAS although they would seem the obvious choice.
- Introduce a new, simple process within the tribunal system to settle monetary disputes on issues such as wages, redundancy and holiday pay, without the need for tribunal hearings.
- Abolish the fixed periods within which ACAS must conciliate.
- Unify the time limits on employment tribunal claims and the grounds for extension of those limits.

- Consider whether the employment tribunals have appropriate powers to deal with weak and vexatious claims and whether the tribunals use them consistently.

In response to the review, the DTI has issued a consultation entitled 'Resolving disputes in the workplace'. This seeks views on a wide range of issues arising out of the recommendations. More information can be obtained from the DTI website at <http://www.dti.gov.uk/consultations/page38508.html>. The closing date for responses to the consultation is 20 June.

Abolition of the procedures will require primary legislation and we have been told that the DTI plan to do nothing about abolition until an alternative legislative framework is in place for resolving disputes in the workplace. Furthermore, any change must be cost neutral so it is likely that we will have to wait until the next financial year (2008/09) before any changes are implemented. Accordingly, the rather unsatisfactory outcome is that we are likely to be wrangling with these flawed and discredited procedures for some time to come!

This e-briefing is sent to you by Anderson Strathern's [Employment Department](#). We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact [Chris McDowall](#), or any other member of [our team](#).