

Is it the end of the road for the statutory dispute resolution procedures?

A Guest Article by Nick Hine
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In the limited time that they have been in force, the statutory disciplinary, dismissal and grievance procedures (under the Employment Act 2002 (Dispute Resolution) Regulations 2004 (the "Regulations")) have managed to irritate the majority of employers at one time or another.

Therefore, the news that the procedures are likely to be abolished will come as a welcome relief to most of us!

The Regulations, which came into force in October 2004, require employers to implement formal disciplinary and grievance procedures either as a minimum requirement where no procedures previously existed or alongside their existing procedures.

The procedures were intended to be straightforward and their primary aim was to encourage employers and employees to resolve their disputes internally in the workplace, without resorting to litigation in the Employment Tribunal. The Government envisaged that there would be a significant reduction in the amount of claims being brought. However, the publication of an independent report by Michael Gibbons on 21 March 2007 revealed that the procedures have failed to achieve their desired effect.

The Gibbons Report recommendations

The report suggested that the procedures are overly complex and poorly drafted. It commented that workplace issues which could have been dealt with informally and quickly were now subject to procedures which lengthened and complicated the entire process. Furthermore, the severe penalties which accompany non-compliance have led to both employers and employees being forced to seek external legal advice which previously had not been necessary.

The principal recommendations of the report were:

- The procedures should be repealed in their entirety and replaced with simple, clear guidelines to encourage early resolution of workplace disputes;
- Incentives to comply with the new guidelines should be introduced by way of sanctions through costs orders, which would take into account the parties' efforts to resolve disputes, the reasonableness of their behaviour and the procedure followed;

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- The introduction of a new, more straightforward process to deal with financial disputes without a full Tribunal hearing (for example, for redundancy and holiday pay issues);
- The abolition of the fixed conciliation period;
- The introduction of a free mediation service to encourage early resolution of disputes, and improvement of the advice given at the outset of a dispute so that parties are clear about the reality and implications of litigating issues and are aware of the alternative options that are available to them;
- The simplification of Employment Tribunal Claim and Response forms and encouragement of the Tribunals to make better use of their case management powers.

The report's recommendations prompted the Government to launch a consultation period setting out the measures for taking the review forward, which closed on 20 June 2007. It was clear that the majority of those who responded to the consultation were in favour of repealing the procedures.

In response to the review and the subsequent consultation document, the Government published the Employment Bill on 6 December 2007. The Bill should receive Royal Assent by the summer of 2008, although it is understood that parts of the Bill will not come into force until April 2009. The overall purpose of the Bill is to strengthen and clarify key aspects of employment law and its main proposals are:

- To repeal the existing statutory dispute resolution procedures and related provisions about procedural unfairness in dismissal cases (although details of a proposed new system have yet to emerge);
- To confer on Tribunals discretionary powers to increase awards if parties have failed to comply with a relevant statutory code;
- To extend ACAS' powers of conciliation and remove the fixed conciliation periods;
- To amend Tribunals' powers by which they may reach a determination without a hearing; and
- To allow Tribunals to award compensation for financial loss in certain types of monetary claim.

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It appears therefore that the Employment Bill will introduce what we have all been hoping for – the end of the statutory dispute resolution procedures in favour of a new, clear set of guidelines for both employers and employees. However, until such time as the law is changed, we must all contend with the procedures as they are.

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If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.