



DERBY CITY COUNCIL

PERSONNEL COMMITTEE
14 OCTOBER 2008

ITEM 10

Report of the Director of Corporate and Adult Services

Review of the Council's "Settling Disputes Procedure"

RECOMMENDATION

- 1 To note the outcome of the review of the "Settling Disputes Procedure" attached at Appendix 3 and agree the proposals contained within it.

SUPPORTING INFORMATION

- 2.1 The Disputes Resolution Sub Committee met on 1 August 2008 to consider the dispute with Unite T and G over bonus removal. This meeting was reconvened following adjournment on 5 August 2008.
- 2.2 As part of its findings the Sub Committee recommended that the Council's "Settling Disputes Procedure" should be reviewed in order to address some concerns which members had about how disputes arose and how the procedure operated.
- 2.3 The current procedure is attached at Appendix 2. The results of the review are attached at Appendix 3 along with proposals to address the issues raised by the Sub Committee.

For more information contact:	Dave Parnham on 01332 258432 or by e-mail to dave.parnham@derby.gov.uk
Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Current Procedure Appendix 3 – Review of the Councils "Settling Disputes Procedure"

IMPLICATIONS

Financial

1. None directly arising.

Legal

2. None directly arising.

Human Resources

3. The trade unions are likely to be resistant to removal of the reference to East Midlands Regional Joint Council at Stage Three of the procedure.

Equalities impact

4. None directly arising.

SETTLING DISPUTES – CURRENT PROCEDURE
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1. INTRODUCTION

This procedure is to:

- provide a way of resolving disputes fairly and speedily.
- make recommendations to the Council on issues about which officers and trade unions have not been able to reach agreement.

It explains:

- the general principles
- issues which may be referred to the Dispute Resolution Sub Committee
- exclusions
- how the process operates
- the Sub Committee will be made up of three members from the Licensing and Appeals Committee.

2. GENERAL PRINCIPLES

- an acceptance that there is a responsibility on all parties to seek an acceptable resolution to the dispute through the internal procedure
- to resolve, through this procedure, any dispute in a fair and speedy way
- to try and resolve the dispute at the earliest stage of the procedure
- the trade union(s) involved in the dispute will not take part in any official or unofficial industrial action until **all** the stages in this procedure have been completed. The Council will not take part in any direct or indirect lock out which involves all or any of the employees covered by the Provincial Council until the Provincial Council has had the opportunity of investigating the circumstances of the dispute.
- if either side wish to refer a matter to the Dispute Resolution Sub Committee, they must lodge their dispute with the Director of Corporate Services within 20 working days of a Stage 1 hearing. If Stage 1 was not appropriate, the dispute must be lodged within 20 working days of the action taken that brought about the dispute.

3. **ISSUES WHICH MAY BE REFERRED TO THE DISPUTE RESOLUTION SUB COMMITTEE**

The Panel will make recommendations to the Council on issues placed before it.

An issue may be declared a dispute when:

- following consultation and/or negotiations, the Council states its intention to proceed with a particular proposal

and

- the relevant trade union(s) do not accept the decision and wish to make further representations

and

- both sides agree that further discussions at officer level will not resolve the issue.

The Council will accept the issue as a dispute once the Director of Corporate Services receives a letter from the Branch Secretary or full time officer of the relevant trade union(s) or the trade union side secretary of the Corporate Joint Committee if the dispute is a collective issue and involves all the recognised trade unions on the CJC explaining the trade union objections.

4. **EXCLUSIONS**

The Dispute Resolution Sub Committee will not consider issues that can be dealt with through other procedures for which an appeal mechanism exists.

For example:

- discipline
- grievance
- employee performance
- ill health procedure
- complaints of discrimination or harassment made under the Council's formal Complaints Procedure
- regrading appeals.

The Dispute Resolution Sub Committee will not consider issues raised by or on behalf of, teachers and non-teaching staff in schools with delegated budgets.

Any concerns about which procedure is appropriate should be referred to the Chief Personnel Officer.

5. OPERATION OF THE PROCEDURE

5.1 STAGE 1 – INFORMAL

The Chief Personnel Officer will, at the request of a Chief Officer, trade union or elected members provide a conciliation service to resolve an issue without it having to go to the Dispute Resolution Sub Committee.

A meeting between everyone involved will be arranged within five working days of the request.

5.2 STAGE 2 – REFERRAL TO THE DISPUTE RESOLUTION SUB COMMITTEE

If it can't be resolved at Stage 1, or if Stage 1 is not appropriate, it will be referred to the Dispute Resolution Sub Committee.

A meeting of the Panel will be arranged within 20 working days of receiving a written request from either side to convene a Panel at Stage 2. The request must be made in writing to the Director of Corporate Services.

The Chief Personnel Officer will draw up the terms of reference for the Dispute Resolution Sub Committee in consultation with both sides. The terms of reference will set out clearly what is in dispute and will be agreed by both sides. This will help the Sub Committee focus on the issue(s) that needs to be resolved.

Both sides to the dispute will provide a written statement of case. This, together with the terms of reference, will be submitted to the panel members, and to the other side, five working days before the hearing.

In urgent cases involving industrial relations issues, it may not be practical to submit a Statement of Case because of time constraints.

The hearing may be run under the procedure in Appendix 1. However, an alternative format may be used in any case when the Chair agrees with both sides that this would help.

5.3 STAGE 3 – REFERRAL TO REGIONAL JOINT COUNCIL

If the issue cannot be resolved at Stage 2, it can be referred to the East Midlands Regional Joint Council Disputes process.

If the trade unions wish to move to Stage 3, they must declare their intention in writing to the Director of Corporate Services within 20 working days or less, if both sides agree, of receiving the Stage 2 decision in writing.

6. MEMBERSHIP OF THE SUB COMMITTEE

- 6.1 The Sub Committee will consist of three non-executive members of the Council selected from the Licensing and Appeals Committee. One of these must be from one of the minority parties.
- 6.2 The Council will appoint the three members at its Annual Meeting, or at the most convenient Council meeting.
- 6.3 All three members must be available for each meeting before it can proceed.

DISPUTE PROCEDURE

STAGE 2 DISPUTE HEARING

1. The trade union will put their case in the presence of the Council's representative, and may call witnesses.
2. The Council's representative may question the trade union and their witnesses.
3. Elected members may question the trade union and their witnesses.
4. The Council's representative will put the case in the presence of the trade union, and may call witnesses.
5. The trade union may question the Council's representative and any witnesses.
6. Elected members may question the Council's representative and witnesses on the Council's case.
7. Each witness should withdraw after they have given their evidence and been questioned by both sides and the members. Either side may recall them.
8. The trade union will then sum up their case.
9. The Council's representative will then sum up the Council's case.
10. Both sides will retire and wait for the Sub Committee's decision.
11. The Sub Committee will deliberate in private, only recalling the Council's representative and the trade union to clarify evidence already given. If recall is necessary, both sides must return even though only one is concerned with the point in doubt.
12. The Director of Corporate Services, or nominated representative, will attend the hearing and will advise the Sub Committee in private.
13. All the information to be considered by the Sub Committee is to be submitted in the presence of both sides.
14. At the end of the proceedings, the Chair of the Sub Committee will inform both sides of the recommendation, and confirm it in writing within five working days.

**EAST MIDLANDS PROVINCIAL COUNCIL
FOR LOCAL AUTHORITIES' APT&C SERVICES**

DISPUTES MACHINERY

PREAMBLE

From time to time disputes arise between an Authority and its APT&C employees which do not fall within the strictly defined categories under paragraph 80 of the National Scheme of Conditions of Service or paragraph 11 of the Provincial Council's Constitution relating to differences.

Such disputes may arise from communication or consultation breakdowns, from unilateral action on the part of employer or employed, or from disciplinary procedures.

It is not intended that this machinery would become operative until the full local machinery has been exhausted.

DISPUTES

Where in any locality within the area of the Provincial Council a dispute arises between the local authority and a constituent trade union, which cannot be or shows no prospect of being settled, and which could lead to industrial action, the status quo shall prevail and the Joint Secretaries shall be empowered to consult with both parties and to investigate the circumstances leading to the dispute with a view to settling the matter to the satisfaction of both parties.

In the event of the Joint Secretaries being unable to resolve the matter, the Provincial Council shall:

- a) Act as a Conciliation Board at the request of either party to the dispute;
- b) Investigate the full facts relating to the dispute, consider the matter and communicate to the parties concerned the decision of the Provincial Council thereon;
- c) Use all available means for settling the dispute and for preventing a cessation of work in such locality;

- d) Trade Unions which are constituent members of the Provincial Council shall not call or take part in any direct or indirect strike or other industrial action, eg work to rule or overtime ban, and the Local Authorities shall not take part in any direct or indirect lock out; which strike or lock out involves all or any of the employees within the purview of this Provincial Council, until such time as the Provincial Council has had an opportunity of investigating the circumstances incident thereto. In the event of the Provincial Council being called upon to investigate the circumstances referred to, the Disputes Committee shall be called together for this purpose within seven days, and their decision given forthwith;
- e) In the event of the Provincial Council being unable to settle the dispute, either party may request a reference to the National Council and the Provincial Council shall make every endeavour to ensure that no cessation of work shall take place in the locality concerned until the matter has been inquired into and considered by the National Council.

DISPUTES COMMITTEE

The Council shall appoint a Disputes Committee consisting of not more than seven representatives of each side of the Council to consider and determine all disputes between an authority and a constituent trade union, other than those covered by the provisions of paragraph 80 of the National Scheme of Conditions of Service for APT&C Services or by paragraph 11 of this Constitution, and as referred to the Committee by the Joint Secretaries of the Council.

Representatives of both parties shall be required to attend before the Disputes Committee.

The findings of the Committee shall not require the confirmation of the Council but shall be reported to them for information only.

Three members and the secretary on either side shall form a quorum.

Review of the Councils "Settling Disputes Procedure"

At this meeting on 1 August reconvened on 5 August 2008 the Disputes Resolution Sub Committee recommended that a review should take place of the Councils "Settling Disputes Procedure."

In particular the Sub Committee identified four areas of concern which should be addressed by the review:

- the provision of regular briefings to members of the Personnel Committee so that they are kept aware of any negotiations being undertaken with Trade Unions
- ensuring adequate consultation is undertaken as part of any negotiations, taking into account the sensitivity of negotiations in relation to S.188 notices
- clarifying the triggers for each stage of the process so that it is clear to all parties
- the stage at which any "status quo" arrangements would apply when a dispute arises.

The outcome of the review and recommendations arising from it are outlined below.

1. The two key issues likely to provoke dispute over the coming months are Pay Review and Travel Plan. These are already standing items on the agenda for Personnel Committee although it is recognised that developments may take place between meetings of the Committee which would need to be the subject of a written briefing to members.

Disputes can arise from negotiations taking place at both a departmental and a corporate level. In order to make sure that members of the Personnel Committee are aware of discussions which are taking place across the Council it is proposed that members be included on mailing lists of for agendas and minutes of all meetings in which conditions of service issues are raised. These would include Corporate Joint Committee, Departmental Joint Consultative Committees and Conditions of Service Working Party.

2. The Council is rightly proud of its record of close partnership with the trade unions and every effort is made to gain agreement with them on all issues. This is not always possible and there is an extent to which a claim of lack of adequate consultation is a mask for the fact that the trade unions do not like the outcome of negotiations. However the concern of the Sub Committee is noted and we recognise the importance of going the "extra mile" in an effort to avoid any breakdown where possible.

3. The triggers for each stage of the procedure are set out in the “Settling Disputes Procedure.”

For Stage One these are when:

- following consultation and/or negotiations, the Council states its intention to proceed with a particular proposal
- the relevant trade union(s) do not accept the decision and wish to make further representations
- both sides agree that further discussions at officer level will not resolve the issue.

For Stage Two this is:

- if the dispute cannot be resolved at Stage One or if Stage One is not appropriate.

Situations can arise when it is not always clear to both sides that the triggers have been reached and a course of action may be followed by one party that the other was not expecting. It is therefore proposed that, at the point where a breakdown in negotiations is reached, a formal minute be made at the relevant meeting that both sides agree that further discussion or consultation will not resolve the dispute. The minute will be sent to the Assistant Director – Human Resources who will initiate action at the relevant stage of the procedure. Copies of this minute will be sent to the Chair of the Personnel Committee and the Cabinet Member for Direct and Internal Services. Paragraph 3 of the Settling Disputes Procedure will require a minor amendment to reflect this proposal.

- 4 The “Settling Disputes Procedure” quite deliberately makes no commitment to maintaining the status quo when a dispute arises. This is to ensure that essential changes which the Council feels it has to make cannot be unnecessarily delayed by the declaration of a dispute by a trade union. The involvement of the East Midlands Regional Joint Council, formerly the East Midlands Provincial Council, introduces further delay and uncertainty which may be harmful to the Council. Indeed the involvement of the Regional Joint Council takes away any Council control or influence over the eventual outcome of the dispute and places it in the hands representatives some of whom can be from small district councils with no feel for or understanding of issues facing a large, urban council with a diverse population.
- 5 There are a number of difficult and potentially very contentious issues facing the Council over the coming months. These include the implementation of the HR review, the implementation of a new pay structure and changes to travel allowances and employee car parking. Failure or delay to implement a new pay structure could expose the Council to legal action over equal pay. Changes to travel allowances and car parking are required to deliver savings which have been included in budget plans. In the event of a failure to negotiate an agreement on these issues, the declaration of a dispute is a tactic which will be employed to delay implementation.

- 6 It is therefore proposed that the procedure does not include a commitment to maintain the status quo when a dispute arises.
- 7 It is also proposed that the procedure should be amended to remove Stage Three the referral to the East Midlands Regional Joint Council. This proposal will need to be discussed with the trade unions.