

### The Grief of the New Grievance Procedures!

**Specialising in employment law, Maxine Orr is a Partner in Worthingtons Solicitors. This month she discusses the implications of the new statutory grievance and disciplinary procedures.**

In April 2005 the Government introduced new statutory grievance and disciplinary procedures. These require employers and employees to comply with mandatory procedures in an attempt to encourage employment disputes to be resolved within the workplace and therefore reduce the amount of industrial tribunal claims. Only time will tell if this objective is successful. In the meantime, employers are grappling with the new legislation and more often than not erring on the side of caution to avoid being in breach of the law.

The Grievance procedure stipulates that an employee must follow a three step procedure or be debarred from issuing tribunal proceedings. The three steps are as follows: Inform the employer of the grievance in writing; be invited by the employer to a meeting to discuss the grievance and be notified of the decision. The employee must take all reasonable steps to attend the meeting and the employer must give the employee the right to appeal and attend an appeal meeting if he is not satisfied with the outcome of the grievance. As with many aspects of employment law, it is not as simple as it sounds. A recent decision of the Employment Appeal Tribunal in England illustrates the potential pitfalls.

Ms Shergold was employed for over 17 years by Fieldway Medical Centre - a GP surgery. She was very unhappy about the way in which the Practice Manager treated her and her fellow colleagues. She wrote a letter of resignation dated 31st October 2004 setting out her complaints about the practice manager. The employer told her that if she wished to raise a formal grievance she could do so. However, she did not ask to lodge a formal grievance nor did she claim at any time that her letter of resignation amounted to a grievance. Following a meeting with Mrs Shergold at which her complaints were discussed, the employer accepted her resignation. Mrs Shergold issued proceedings in the Employment Tribunal for constructive unfair dismissal.



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The Employment Tribunal rendered her claim inadmissible under the new rules stating that her letter of 31st October 2004 was “not an invocation of any grievance procedure”. Furthermore it noted that the letter did not raise the two allegations that Mrs Shergold had listed in her claim form with the result that the employer had not been given the opportunity to respond to the allegations. She appealed.

The Employment Appeal Tribunal overturned the decision on the grounds that “the statutory requirements are minimal in terms of what is required. It is simply that the grievance must be set out in writing”. The Chairman stated that “the purpose behind the statutory grievance procedure is... to give the parties a chance to settle disputes before litigation”. There was no requirement that an employee must comply with any company or contractual grievance procedure.

The two allegations contained in the claim form could also be relied on as part of Ms Shergold’s case. The Chairman ruled that “there is no requirement that every detail of the complaint be set out in a grievance letter. Rather it was sufficient if the employer can understand the general nature of the complaint being made”. In this case it was clear that the employer had understood the nature of the grievance and had been given the opportunity to respond.

The importance of dealing with grievances correctly is paramount as failure to follow correct procedures will result in any compensation payable being increased by up to fifty percent. It is vital that professional legal advice be taken at the time of the incident as it is often too late to rectify after the event. **mt**