

LGRJF

facilitating local government reorganisation

CIRCULAR LGRJF/10 – FEBRUARY 2015
Internal One Step Grievance Procedure to link with
RPA Independent Third Party Dispute Resolution Procedure

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COVER LETTER TO: CIRCULAR LGRJF/10 – FEBRUARY 2015

To: Chief Executives of District Councils and arc21

Cc: DoE Local Government Division, Public Service Commission

Dear Colleague

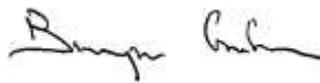
1. The attached circular detailing the Internal One Step Grievance Procedure to Link with the RPA Third Party Disputes Resolution Procedure has been agreed by the Local Government Reform Joint Forum (LGRJF) and is promulgated under the authority of the Local Government Staff Commission under Section 40(4) (f) of the Local Government Act (NI) 1972.
2. It is therefore issued by the Local Government Staff Commission as a statutory recommendation for adoption by councils with immediate effect.
3. In accordance with the Northern Ireland Executive's Guiding Principles all employing authorities should immediately engage with their local NIJC recognised Trade Unions to consider application and implementation arrangements.
4. This Procedure applies to all employees who will move to a new organisation or to a new employer as a result of decisions of the Review of Public Administration and the reform of local government.

5. This Procedure applies in place of and not in addition to the Council's grievance procedure in cases where there is either a claim of non-adherence to the transfer scheme associated with the transfer of functions, a dispute against the designated employer or in the case of a dispute in relation to a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions.

6. In the event that interpretation matters arise or clarification is necessary contact should in the first instance be made with the Staff Commission, or the Joint Forum Side Leads.



A KERR
LGSC



B GRAHAM
LGRJF TUS Lead



R WILSON
LGRJF Employers' Lead

04 February 2015

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CIRCULAR LGRJF/10 – FEBRUARY 2015

**(NAME) COUNCIL
INTERNAL ONE STEP GRIEVANCE PROCEDURE
TO LINK WITH RPA INDEPENDENT THIRD PARTY
DISPUTE RESOLUTION PROCEDURE**

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1.0 INTRODUCTION

- 1.1 This procedure applies to all employees who will move to a new organisation or to a new employer as a result of decisions of the Review of Public Administration and the reform of local government.
- 1.2 This procedure applies in place of and not in addition to the Council's grievance procedure in cases where there is either a claim of non-adherence to the transfer scheme associated with the transfer of functions, a dispute against the designated employer or in the case of a dispute in relation to a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions.
- 1.3 This procedure details the steps to be followed by an employee who raises a grievance and how the Council will take effective action to resolve the claim without unreasonable delay.
- 1.4 There are separate arrangements for the handling of RPA disputes in respect of pension provision.

2.0 CONTEXT

- 2.1 The procedure is based on the provisions of the Code of Practice on Disciplinary and Grievance Procedures issued by the Labour Relations Agency in April 2011.
- 2.2 Cognisance has also been taken of the RPA Code of Practice on Staff Transfers, specifically the RPA Independent Third Party Dispute Resolution Procedure: non-pension matters and RPA Independent Third Party Dispute Resolution Procedure: pensions . An extract is attached as Appendix 1. The full document can be accessed at http://www.pscni.gov.uk/compendium_of_guiding_principles.pdf

3.0 GENERAL PRINCIPLES

- 3.1 Any steps under this procedure shall be taken promptly unless there is good reason for delay. Any time limits in this procedure may be extended by the Council if it is reasonable to do so.
- 3.2 It is the aim of this procedure to resolve matters at the earliest practicable date and at the earliest stage possible, it is not anticipated that all grievances will go through all procedural steps.
- 3.3 Employees are entitled to be accompanied to a hearing by a Trade Union representative or work colleague. The Council will be sensitive to the needs of employees and in certain circumstances a request to be accompanied by a companion from a support organisation which has a special interest in assisting and supporting employees may be considered. Employees do not have the right to be accompanied by a legal representative.
- 3.4 Mediation may be available, subject to agreement of all parties involved in the grievance, including agreement on the choice of mediator.
- 3.5 Records must be kept of all stages of the grievance process.

- 3.6 All matters relating to a grievance will be treated as far as possible in strictest confidence between all parties involved. Any breach of this confidence without good reason may be subject to disciplinary action.
- 3.7 This procedure will be subject to the provisions of Data Protection and Freedom of Information legislation and disclosure for Industrial and Fair Employment Tribunals or other legal proceedings.
- 3.8 This procedure does not preclude an employee from pursuing their statutory rights under current legislation.
- 3.9 Employees will have the right of appeal to the RPA Independent Third Party Procedure as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third party procedure.

4.0 DETAILED GRIEVANCE PROCEDURE

- 4.1 If an employee wishes to raise a RPA related grievance they should put the grievance in writing making it clear that the grievance has arisen as a result of the implementation of the reform of local government and submit it to their Line Manager, who will inform the Council's Human Resource Department.
- 4.2 The employee will be invited to attend a grievance meeting as soon as reasonably practical and will be notified of this in writing, normally at least 10 working days in advance of the meeting. They will also be advised of their right to be accompanied by a trade union representative or work colleague.
- 4.3 In some situations it may be necessary to clarify the subject matter of the grievance in advance of conducting the grievance meeting. It may be appropriate to conduct some form of full and impartial investigation prior to the grievance meeting which may be completed by an independent person with technical expertise. The grievance investigation should be dealt with within 20 working days unless the parties agree otherwise.
- 4.4 Following the grievance meeting (or final grievance meeting if more than one is held) a summary record will be prepared and forwarded to the employee within 5 working days of the meeting. The employee will also be informed of their right of appeal to the RPA Independent Third Party Dispute Resolution Procedure.
- 4.5 Employees who appeal to the RPA Independent Third Party Dispute Resolution Procedure must lodge their appeal with the Labour Relations Agency within 6 weeks from the date of the conclusion of the internal grievance procedure

**EXTRACT FROM RPA CODE OF PRACTICE –
RPA INDEPENDENT THIRD PARTY DISPUTE RESOLUTION PROCEDURE**

5. RPA Independent Third Party Dispute Resolution: Non-Pension Matters

Interpretation

- 5.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration.
- 5.2 This guidance applies in cases where there is either a claim of non adherence to the transfer scheme associated with the transfer of functions, a dispute against the designated employer or in the case of a dispute in relation to a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions.
- 5.3 This guidance does not apply to the handling of RPA disputes in respect of pension provision. The handling of such disputes is outlined separately at paragraph 6.
- 5.4 Individual employers are reminded that they are required to operate an internal dispute resolution procedure which complies with statutory obligations including the statutory right of accompaniment. To facilitate a speedy resolution, employers are asked to ensure that RPA disputes relating to non-adherence to the transfer scheme associated with the transfer of functions, disputes against designated employer or disputes in relation to a change in workplace location which has been made as a result of the implementation of RPA decisions are dealt with by a decision making authority.
- 5.5 Employers are required to inform employees of their additional right of appeal to the RPA Independent Third Party Procedure as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third party procedure. Employers are reminded that the RPA Independent Third Party Procedure does not replace internal dispute resolution and all of the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA independent procedure. In organisations where grievance/dispute resolution procedures include a final stage which is independent/external, this final stage would be replaced by the RPA Independent Third Party Dispute Resolution Procedure.
- 5.6 Employees must be advised that the implementation of these procedures does not affect their right to lodge a claim with the Industrial Tribunal or Fair Employment Tribunal.

5.7 At the first stage of the internal dispute resolution procedure employees are required to indicate either:

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- i) if and why they believe that their dispute relates to:
 - a) non-adherence to the transfer scheme associated with the transfer of functions; or
 - b) a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions;
- ii) what they consider would resolve the dispute; and
- iii) what they consider their material detriment to their existing terms and conditions to be; and, give an indication of their actual loss.

or:

B

- i) if and why they believe their dispute relates to designated employer;
- ii) what they consider would resolve the dispute; and
- iii) whether they consider that there is material detriment to their existing terms and conditions, and if so, give an indication of their actual loss. Employers must indicate to employees whether they consider a dispute fulfils the above criteria and thus can be taken to the RPA Independent Third Party Dispute Resolution. The employee may appeal an employer's decision, including appealing ultimately to the RPA Independent Third Party Dispute Resolution Procedure, in this regard. This could be either an individual or panel within the organisation.

5.8 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the Labour Relations Agency (LRA) for a range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public service employers and trade unions who will be trained through the LRA. For further information please refer to Annex 1.

5.9 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.

5.10 Employers must make employees aware that the LRA must receive their appeal within six weeks from the date of conclusion of internal dispute resolution. If an appeal is received by the LRA which is outside this time limit, the matter will be referred to an arbitrator who may extend the time limit if it is concluded, in all the circumstances of the case, that it was not reasonably practicable to lodge the appeal in time. The appeal will follow the process set out at paragraph 5.11 below.

- 5.11 The key features of the RPA Independent Third Party Dispute Resolution Procedure for non-pension matters are outlined below:
- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 5.10;
 - ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
 - iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures have been exhausted;
 - iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within six weeks from the date of conclusion of the internal dispute resolution;
 - v) if the appeal does not meet the criteria as set out in iii) above the LRA will notify both parties;
 - vi) written statements from both the employer and the employee must be submitted to the LRA Arbitration Secretary at least 2 weeks before the date of the hearing; and
 - vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing. This constitutes the end of the process and there is no further appeal through this mechanism.

6. RPA Independent Third Party Dispute Resolution: Pensions

Interpretation

- 6.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration and whose pension provision is transferred to another pension scheme as a result of that move.
- 6.2 This guidance applies in the handling of RPA appeals in respect of pension provision.
- 6.3 Individual employers are reminded that, by virtue of the Pensions (Northern Ireland) Order 1995, their pension schemes are required to operate an internal dispute resolution procedure for pensions – this is normally a two stage process. They should ask pension scheme trustees or managers to ensure that arrangements in place are capable of dealing with RPA related appeals and that scheme members have access to information on these arrangements.
- 6.4 Individual employers should ensure that arrangements are in place to provide for individual pension schemes to inform scheme members of their right of appeal to the RPA Independent Third Party Dispute Resolution Procedure for pension-related disputes as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third-party procedure by a work colleague or trade union representative. The RPA Independent Third-Party Dispute Resolution Procedure is in addition to internal dispute resolution for pensions (see 6.3) and all the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA Independent Third Party Dispute Resolution Procedure.

- 6.5 In line with current statutory provisions, claims of maladministration, if unresolved during internal dispute resolution, may be referred to third-party dispute resolution in the form of the Pensions Advisory Service. If it still remains unresolved the dispute can be further referred to the Pensions Ombudsman. This will therefore include claims in respect of maladministration where the claim has arisen as a result of RPA. The procedure detailed at paragraph 6.11, therefore, provides for RPA Independent Third Party Dispute Resolution Procedure where claims do not meet the criteria as laid down by the Pensions Ombudsman.
- 6.6 Scheme members should be made aware that the Pensions Ombudsman will normally only investigate a complaint within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of the act or omission happening.
- 6.7 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the LRA for range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public service employers and trade unions who will be trained through the LRA. For further information please refer to Annex 2.
- 6.8 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.
- 6.9 Employers must make employees aware that to bring forward an appeal they must do so within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of the act or omission happening. Employers must also make employees aware that the LRA must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution. The parties will do all things necessary for the proper conduct of the appeal hearing. This includes complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.
- 6.10 The RPA Independent Third Party Process outlined at 6.11 does not cover disputes in respect of maladministration which are within the remit of the Pensions Advisory Service and the Pensions Ombudsman. For further information in relation to third party dispute resolution in this regard please see paragraphs 6.5 and 6.6 above.

- 6.11 The key features of the RPA Independent Third Party Procedure for pensions are outlined below:
- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 6.9;
 - ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
 - iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures for pensions have been exhausted;
 - iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within 6-8 weeks. Where necessary, the panel will appoint an actuary to independently assess the case and to provide them with a report and, where necessary, an assessment of the actions required. The cost of the actuary will be met by the respondent employer;
 - v) if the appeal does not meet the criteria as set out in iii) above, the LRA will notify both parties;
 - vi) written statements from both the employer and the employee must be submitted at least 2 weeks before the date of the hearing; and
 - vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing.

This constitutes the end of the process and there is no further appeal through this mechanism.