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To: Personnel Committee

Date: 27 January 2010

Subject: Disciplinary and Grievance Activity

Classification: Unrestricted

SUMMARY: This report updates Personnel Committee on discipline and grievance activity for the first 6 months of 2009/10, including details of appeals.

1. Introduction

1.1 This report presents an update on a range of Employee Relations activity (excluding in schools) from April to September 2009, together with an indication of change from the previous update.

2. Activity for April to September 2009 – Additional Cases

2.1 In this period an additional 285 cases have been initiated. As previously indicated the nature and level of activity required varies considerably depending upon the circumstances of each individual case.

2.2 This represents a very small decrease of approximately 2% in overall numbers from the previous 6 month period. There have been fewer applications to Employment Tribunal, but significantly more internal dismissal appeals. This is likely to be a reflection of the robustness of managerial dismissal decisions and the effectiveness of our internal quality assurance process, the senior officer appeal. One of the primary purposes of an internal appeal is to test that robustness in advance of any external challenge and to moderate a decision if it is found to have weakness or if new information comes to light. The distribution of outcomes from recent dismissal appeals indicates this is a process that is working effectively for the Council and its staff.

2.3 The summary below (Fig 1) shows cases initiated over the 6 month period together with the preceding 6 month periods for 2008/9, 2007/08:

Fig 1

Type of Cases	2009	2008/9	2008	2007/8
Disciplinary	88	80	87	69
Capability - Poor Performance	19	25	19	22
Capability - Ill Health	110	121	164	84
Capability - Other	4	3	2	1
Grievance	41	36	37	33
Harassment	4	10	23	18
ET	4	7	10	0
Appeals	15	10	7	4
Total	285	292	349	231

- 2.4 There is a broadly comparable level of activity in areas such as discipline, capability and grievances. Capability relating to ill health remains the category with the highest level of activity in terms of volume which we would expect to be the case in the light of the continued pressure from P&D for managers to maintain good attendance in their teams. The figures show individuals who are under referral to Occupational Health or in some way being monitored by their manager with support from Personnel & Development through a formal process. The numbers of these cases being resolved (see below) indicates managers are not simply monitoring but taking positive action with respect to managing attendance. Positive action includes, maintaining employment with adjustments, redeployment to other posts, ill-health retirement where appropriate or dismissal if necessary.

3. Activity for April to September 2009 – Cases Resolved

- 3.1 The following summary (Fig 2) shows the cases that have been resolved in the last 6 months. This will not correspond to cases from the previous summary as there is a “rolling effect” for such activity and some resolved cases will have been initiated before April 2009.

Fig 2

Type of Cases	2009	2008/9	2008	2007/8
Disciplinary	78	70	74	69
Capability - Poor Performance	26	21	34	25
Capability - Ill Health	91	136	147	79
Capability - Other	7	2	3	0
Grievance	39	30	30	40
Harassment	3	14	17	18
ET	1	5	1	1
Appeals	15	7	6	5
Total	260	285	312	237

- 3.2 As with new cases, there has been a very small decrease in the number of cases concluded. However the “resolved to new cases” ratio has been maintained at virtually 1:1.

4. Disciplinary Appeals

- 4.1 Since the last report in May 2009, there have been 15 dismissal appeals resolved. The summary below (Fig 3) outlines where these cases originated, the time taken from the original hearing to the appeal and the outcome of the appeal.

Fig 3

Directorate	No of Appeals	Time from dismissal to Appeal	Outcome(s)
KASS	2	1 x 90 days 1 x 180 days	1x appeal upheld, 1x withdrawn
Chief Execs	1	1x 49days	1x Appeal not upheld
CFE	10	4x 94days, 2x 118days, 2x 119days, 2x 114days	4x Appeal not upheld 4x Appeal upheld 2x appeal withdrawn
Communities	2	1x 56days, 1x 134days (Appellant rescheduled twice)	2x Appeals not upheld
EHW	0		
Totals	15		7x Appeal Not Upheld, 5x case upheld, 3x appeal withdrawn.

Note: Dismissal appeals include those appealing against their selection for redundancy

4.2 The number of appeals against dismissal, downgrading or transfer is much higher than previously experienced. This is due to the concerted and sustained efforts by Personnel Teams to encourage and support managers to manage performance better and to resolve issues; a sustained focus on managing good attendance and the growing preparedness of individuals to challenge these decisions. Senior Officer Appeals continue to be supported by Legal Services, Corporate Employee Relations and Personnel Teams and their outcomes indicate their aim, namely to scrutinize challenged decisions, is well executed,. Where an appeal has been upheld this indicates the Appeal Panel felt that KCC was at significant risk of successful litigation by the appellant.

4.3 The time taken between dismissal and an appeal hearing varies considerably according to the circumstances. Many appeals are deferred for legitimate reasons relating to sickness, availability of witnesses or representatives and, due to the increasing complexity of cases, some take several days to resolve over a period of weeks. It is a key objective to achieve a significant reduction in the average time between dismissal and appeal over the next 6 month period and we have already taken steps that will improve our performance in this area.

5. Recommendations

5.1 That the Personnel Committee notes the annual report of employee relations activity and that of recent appeals hearings.

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