

DERBYSHIRE COUNTY COUNCIL

CABINET MEETING

26 March 2013

**Joint Report of the Deputy Chief Executive
and the Director of HR**

**STATUTORY OFFICER DISCIPLINARY PROCEDURES
(Finance and Management)**

1. Purpose of the Report

To seek Cabinet's endorsement of a response to the Department for Communities and Local Government on its proposal to remove the "designated independent person" from the disciplinary process for the Head of Paid Service, Monitoring Officer and Chief Finance Officer.

2. Information and Analysis

The relevant local authority statutory officers affected are the Head of the Paid Service, the Monitoring Officer and the Chief Finance Officer. Their statutory responsibilities are as follows:

- Head of Paid Service - has a duty to report to Council where he/she considers it to be appropriate in respect of the co-ordination of the discharge of the various functions of the authority, or the adequacy or pay of staff, or its organisation or management.
- Monitoring Officer – has a duty to report where he/she is of the opinion that the authority has or proposes to act unlawfully.
- Chief Finance Officer – has a duty to report where there is unlawful or improper expenditure/financial dealings etc.

In exercising these important regulatory functions, the statutory officers may come into conflict with the leadership of the Authority. To protect these officers against arbitrary disciplinary proceedings potentially leading to dismissal, their disciplinary procedure incorporates the mandatory appointment of a designated independent person (DIP) to provide objectivity and impartiality to the disciplinary process.

The Department for Communities and Local Government (DCLG) has proposed that the requirement to appoint a DIP should be removed and be replaced by a requirement that a final decision to dismiss a statutory officer must be taken by Full Council. (Letter attached at Appendix 1.) The DCLG considers that the current arrangements lead to a higher prevalence and high overall cost of severance payments as part of compromise agreements, which are implemented instead of disciplinary proceedings requiring a DIP.

The DCLG has launched a consultation on the proposals for a 4 week period, ending on 14 March 2013. Following discussion with the Cabinet Member for Finance and Management, a response to the proposals has been sent to the DCLG to meet the consultation deadline. (Response attached at Appendix 2.)

It is considered that the removal of this protective measure could weaken local authorities' ability to discharge their functions effectively and lawfully in order to prevent the politicisation of the Authority's employees and to safeguard against the inappropriate or illegal use of public resources.

Whatever the outcome of the consultation, it may be appropriate for this Council to develop its own disciplinary procedures for these statutory officers. The disciplinary procedures are at present governed by model procedures in the JNC for Chief Executives and JNC for Chief Officers Conditions of Service. The model disciplinary procedure in the National Conditions for Chief Executives extends to 30 pages and is considered unnecessarily bureaucratic:

- It can give a Chief Executive and his/her representative five opportunities to put their case.
- It refers to the designated independent person conducting the disciplinary investigation and then chairing the disciplinary hearing; this is a conflict of interest which does not comply with either ACAS guidance or the Council's existing disciplinary procedures for other officers.
- In cases where dismissal is recommended, which has to be approved by Full Council, it refers to this process also constituting the individual's right of appeal which again would be contrary to ACAS guidance.

In addition, the Local Government Association has previously proposed that, to improve the process, the JNC should maintain a select list of DIPs with set fees agreed.

Taking account of all the above, it is suggested that the Council should incorporate the role of a designated independent person in its own disciplinary procedures, and reaffirm the Council's approach against 'golden handshake' pay-offs. In adopting this, it would be in keeping with DCLG advice against Councils implementing gold plated termination arrangements.

It is proposed to prepare a further report at a later date to Cabinet reviewing the current arrangements, having taken into account the outcome of the consultation and any subsequent guidance from the Local Government Employers.

4. Considerations

In preparing this report the relevance of the following factors has been considered: legal, financial, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

5. Key Decision

No

6. Call-in

Is it required that call-in be waived in respect of the decisions proposed in the report? No

Officers' Recommendations

That Cabinet:

1. Endorses the consultation response as set out in Appendix 2.
2. Agrees to incorporate the role of a designated independent person in the Council's Disciplinary Procedures for the Chief Executive, Monitoring Officer and Chief Finance Officer.
3. Receives further reports as appropriate.

DAVID LOWE
DEPUTY CHIEF EXECUTIVE

TONI COMPAI
DIRECTOR OF HR



Department for Communities and Local Government

Mary Orton
Honorary Secretary
Association of Local Authority Chief
Executives

14 February 2013

Via email

Dear Ms Orton,

DRAFT AMENDMENT REGULATIONS REMOVING THE REQUIREMENT FOR A DESIGNATED INDEPENDENT PERSON TO INVESTIGATE ALLEGATIONS OF MISCONDUCT BY SENIOR OFFICERS

The Government is committed to addressing the issue of excessive pay-offs for senior local authority staff.

The Secretary of State announced in November 2012 that he plans to remove the requirement in secondary legislation¹ that a Designated Independent Person (DIP) is appointed to review cases when a local authority wishes to pursue disciplinary action against senior officers.

That announcement indicated that there would be a short consultation of no more than four weeks before the amending regulations are laid in Parliament. I am now writing to invite your Alliance to comment on the enclosed draft amendment regulations.

The enclosed draft regulations are designed to give effect to the proposed changes to the 2001 Regulations which include:

- the removal of the requirement that a DIP should be appointed to review cases when a local authority decides to take disciplinary action against its Head of Paid Service (usually the Chief Executive Officer), monitoring officer or chief finance officer;
- a requirement for the full council to approve the dismissal of the monitoring officer or chief finance officer before notice of dismissal is given to that person – this is an addition to the existing provision that a decision to dismiss a Head of Paid Service is subject to a resolution of full council; and

¹ This requirement is currently in the Local Authorities (Standing Orders) (England) Regulations 2001.

- consequential amendments to reflect the current local authority governance arrangements as provided for principally through the Local Government and Public Involvement in Health Act 2007 and the Localism Act 2011.

The amended regulations will mean that it is for each council to consider and decide the best disciplinary process that will deliver value for money for the local taxpayer without the need for an independent investigation. It will be important that local arrangements are not gold plated, for example, by seeking to replicate the statutory arrangements the Government are abolishing.

We would welcome any comments you may have on the draft regulations. We would also be happy to talk through the draft regulations with you before the end of the consultation if that would be helpful. If you have any comments that you would like to send to us, we would be grateful to receive these by Thursday 14 March 2013.

I am writing similarly to the Tax Payers Alliance, Local Government Association, District Councils Network, the Audit Commission, Association of Council Secretaries, and Solicitors, Association of Democratic Services Officers, Chartered Institute of Public Finance and Accountancy, Centre for Public Scrutiny and Society of Local Authority Chief Executives.

Yours sincerely



Paul Rowsell

Paul Rowsell
Deputy Director – Democracy
DCLG
3/J1, Eland House
Bressenden Place
London
SW1E 5DU

Dear Mr Rowsell

Consultation Response – Removal of Designated Independent Person

Thank you for your invitation to respond to the proposal to remove the requirement for a designated independent person (DIP) to investigate allegations of misconduct by the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer and to replace it solely with a requirement that a final decision to dismiss a statutory officer must be taken by Full Council.

Derbyshire County Council's response to the proposals is as follows:

Protection of Statutory Officers

The Head of Paid Service, Monitoring Officer and Chief Finance Officer have a statutory responsibility to advise their local authority in relation to potential and actual breaches of the law.

This is an important regulatory function to protect the Authority's ability to discharge its functions effectively and lawfully, to prevent the politicisation of employees and to safeguard against the inappropriate or illegal use of public resources. Exercising this function could bring the statutory officer into conflict with the political leadership of the Authority.

If a statutory officer is to be subject to dismissal as a consequence of properly discharging these statutory duties, then such officers may be reluctant to discharge these functions properly and local democracy and probity will be threatened. The role of the designated independent person provides some protection to the above-named statutory officers.

The Council, therefore, considers that the appointment of a DIP is essential to ensure that disciplinary procedures involving statutory officers can be conducted objectively and impartially, and the scope for the above-named

statutory officers to fully discharge their responsibilities is safeguarded. The most vulnerable from inappropriate political pressure would be those under the age of pension entitlement, who would not have the opportunity to access their pension, and who may therefore prefer to retain their job rather than have their contract terminated.

It is understood that the proposed alternative of requiring a resolution of Full Council to dismiss a statutory officer, without the involvement of the DIP, will prove to be ineffective, particularly in authorities where the leadership has a majority in the Council. In those circumstances, the leadership is more likely to act in an overbearing manner and seek to dismiss officers who, for good reason, insist on exercising those statutory functions in a manner which is inconvenient for the leadership.

The Council considers it important that those who have the responsibility to serve the wider public good on a political basis cannot be unfairly jeopardised or dismissed for any narrow sectional interest. They must have the freedom 'to speak truth unto power' – without undue fear of summary removal from office for so doing. The DIP process supports the achievement of these aims.

Cost of Severance Payments

The Council considers that there is little evidence that the proposed changes will significantly reduce severance pay-offs nor that the cost of dismissing statutory officers under the DIP procedure is any higher than the cost of dismissing non-statutory officers. In this respect, it is worth mentioning that Derbyshire County Council has no track record of offering 'Golden Handshakes' which appears to be one of the Government's underlying concerns.

Moreover, use of the DIP procedures is not necessarily or invariably disproportionately expensive. In fact the Council considers that abolition of DIPs makes it more likely that costs will increase through claims for wrongful dismissal to an Employment Tribunal or in the High Court.

In addition, the requirement for the appointment of a DIP means that an authority is less likely to take arbitrary disciplinary action against a statutory officer; the DIP process actually reduces the probability of costly lengthy litigation and an excessively high severance payment.

Equally, high severance settlements do not arise when an authority seeks to dismiss a statutory officer for good cause, but are high only when it seeks to do so without a case which would stand up to scrutiny in an Employment Tribunal or Court. If the authority has a strong disciplinary case, then it should have no fear of pursuing disciplinary action.

Outside of disciplinary procedures, it is however important that there is still sufficient scope to allow lawful and defensible settlements where continuation of a statutory officer contract is untenable because there has been a fundamental breakdown in trust and confidence.

Efficiency of Existing Disciplinary Process

The Council considers that the efficiency of the existing disciplinary process is enhanced by there being a limitation on an authority's ability to suspend the Head of Paid Service for a period of not more than two months and that this can only be extended with the consent of the DIP. This restriction, therefore, encourages the Authority to conduct the investigation expeditiously and so limits the cost of paying salary during a prolonged period of suspension.

In conclusion, the Council considers the removal of the requirement for the appointment of a DIP to be a retrograde step. This would remove a powerful deterrent against improper and unfair action by an authority in dismissing a statutory officer arbitrarily or through political motivation. As such, we request the Secretary of State to reconsider and withdraw the proposal to remove DIPs.

In addition, if it is decided to retain the DIP process, this should be on the basis of the Joint National Council reviewing and improving the process by including a select list of DIPs with set fee arrangements.

Yours sincerely