

Legislative background

SI 2015 No 881 involved both the repeal of earlier Regulations which determined disciplinary procedures in respect of statutory officers of the Council and the adoption of new procedures. These Regulations amended the Local Authorities (Standing Orders) (England) Regulations 2001 and make provision about the standing orders of local authorities in England in relation to staff and disciplinary procedures.

Legislative background

The new Regulations simplify, as well as localise, the disciplinary process in English local authorities for the most senior officers by removing the mandatory requirement that a DIP should be appointed. In place of the DIP process, a decision to dismiss will be taken by full council, which must consider any advice, views or recommendations from an Independent Panel along with the outcome of any investigation leading to a recommendation to dismiss, and any representations from the officer concerned.

Complaint received

***Investigating and disciplinary
committee convened (IDC)***

This should be a standing committee of the
Council

The IDC considers the allegation/s-

The chief executive should be asked for comments-
in the light of the chief executive's comments and
having carefully considered the complaint/allegation
the IDC may decide on any of the following actions

Option 1

No further action,
this should be immediately
communicated to the chief
executive and the complainant
notified if necessary.

Option 2

Informal un-recorded oral warning

If the matter is not serious but there is some minor fault or error on the part of the chief executive then the IDC can issue an informal un-recorded oral warning.

Option 3

Case to answer/further investigation required

If following consideration of the chief executive's response the IDC believe that the case cannot be dismissed and requires further investigation and, that if the allegations were to be upheld they would result in a sanction greater than an informal warning. The IDC should appoint an Independent Investigator, II, and consider suspension.

Suspension

The chair of the IDC should have delegated authority to suspend.

Suspension should be reviewed after a period of two months and only extended following consultation
With the II and consideration of any objections
/representations from the CE

Appointment of the Independent investigator (II)

An Independent Investigator is appointed-

A list of suitably qualified individuals should be maintained by the LGA. This could operate as a taxi rank system or the authority could be given three names from which the CE could pick. Only genuine conflicts of interest etc. should be acceptable reasons for rejection by the CE. If the CE will not agree within 14 days the Council should be free to appoint their choice from the approved list.

Role of the II

In practice it should be for the II to determine their role . It may be a process of evidence gathering , hearing submissions etc leading to the formulation of a recommendation for consideration by the IDC. Alternatively the II may hear the case and direct the parties regarding procedure, timetable for exchanging documents etc. If the II hears the case both parties will have the usual opportunities to present evidence and cross examine witnesses etc. At the hearing both parties are afforded the opportunity to be represented by an individual of their choice, although personal legal representation should be obtained at the expense of the CE.

The report of the II

Irrespective of the manner in which the II investigates the case on completion of their investigation the II must prepare a report with recommendations and rationale for submission to the IDC.

Hearing by the IDC

- If the II has held a full hearing the IDC will limit their hearing to a consideration of the II's report. They may decide to call witnesses for clarification. The CE and II should attend this meeting.
- If the II did not hear the case then the IDC should now afford the CE the opportunity for a hearing to allow the postholder to challenge the recommendations of the II, call witnesses etc. The same rule regarding representation would apply in this context

Recommendations of the IDC

Following either consideration of the report of the II or a full hearing of the case the IDC will essentially have three options

1. No case to answer
2. Disciplinary action short of dismissal
3. Dismissal

No case to answer

Appropriate communication should be prepared in agreement with the CE to ensure that as far as possible there is no damage to the postholder's reputation.

Action short of dismissal

A recommendation of action short of dismissal should be communicated in writing to the CE with rationale for the decision. The CE should be afforded the right of appeal in accordance with the Council's usual procedures,

Recommendation to dismiss

If there is a recommendation to dismiss the report of the IDC and the II should then be sent to Independent Panel (IP) for their consideration. The Chief executive may make written representations to the IP

Composition and role of the IP

The IP should be a committee of the Council, appointed under section 102(4) of the Local Government Act 1972, and should comprise only independent persons (at least two) appointed under S28(7) of the Localism Act 2011. Appropriate training should be provided to these Independent members. Both parties should be present or represented* at the meeting. The IP should receive any oral representations from the Chief Executive, in which case it should invite any response on behalf of the IDC to the points made, and may ask questions of either party. The IP should review the decision and prepare a report for Council. This report should contain clear rationale if they disagree with the recommendation to dismiss.

* the IDC should nominate a person to attend on its behalf

Report to full Council

Following consideration by the IP a report should be presented to Council. This report should comprise the recommendation of the IDC, the II's report and any comments on the dismissal from the IP.

In the light of this information Council should consider the recommendation to dismiss. The Chief executive should be allowed to attend this meeting and address Council. The II may also be invited to attend to provide clarification if required. Following this consideration Council should either confirm or reject the recommendation to dismiss. They may at this stage impose a lesser sanction

Appeal ?
