

From the Chief Executive  
Carolyn Downs

Paul Rowsell  
Deputy Director –Democracy  
Department for Communities and Local Government  
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13 March 2013

Dear Paul

**Re: Draft Amendment Regulations removing the Requirement for a Designated Independent person to Investigate allegations of misconduct against Senior Officers**

1. I refer to your letter dated 14 February 2013 and enclosure, inviting our comments on the draft amendment to the Local Authorities (Standing Orders) (England) Regulations 2001, which will remove the requirement on local authorities to appoint a Designated Independent Person (DIP), to carry out an investigation of alleged misconduct prior to taking any disciplinary action against the Head of Paid Service (HoPS), Monitoring Officer (MO) and S151 Chief Finance Officer (CFO).
2. The Standing Order Regulations in their current form provides protection for the local authority against legal challenge as much as they provide a fair process for officers against arbitrary disciplinary action or dismissal. It is however accepted that the Regulations has undoubtedly created a process that is overly bureaucratic and time consuming. The majority of cases relate to poor performance and in this context the most appropriate means of resolving these issues is the council's performance management procedure adapted as necessary for a senior officer. Where a leader has lost confidence in their Chief Executive or there is a clash of personalities this may best be handled through a negotiated compromise agreement, which the LGA would support as a matter of course.
3. However, in instances of bullying, harassment, inappropriate behaviour, gross misconduct, financial irregularity we believe that there is value in a process that requires an independent third party to assist local authorities for the following reasons;
  - elected members may not have the technical expertise to handle these complex cases and will require high quality advice throughout the process –if the case is against the chief executive there may not be officers within the Council with the experience to manage an investigation of this nature. Also all other officers would be

subordinate to the chief executive making the task of conducting and presenting a case difficult if not impossible in most circumstances;

- in the case of the Monitoring Officer or S151 Finance Officer the Chief Executive is able to support and advise members but could not also investigate and present the case for the authority; so an independent third party would be required to either investigate and present the case or advise members, as the CE could not perform both roles;
- these cases by their nature will be high profile and complex, with the potential to impact significantly on the reputation of the Council. An independent third party, with appropriate expertise and experience, will ensure the Council manages the process correctly and minimises the risk of subsequent action.
- in the context of a local authority, elected members will always be vulnerable to allegations of political bias when managing a process of this nature. The involvement of an independent third party will minimise this risk and significantly reduce the likelihood of on-going legal action.
- there is also the risk that the cost of legal action will be significantly higher than any settlement that may be made, following consideration of the outcome of an investigation which has been carried out by an independent third party.

4. Also, the removal of this requirement as a statutory obligation will not automatically change the contractual entitlement of these officers or remove the need to comply with relevant employment law and best practice requirements. The majority of existing contracts of employment for these staff will refer to the JNC conditions of service, which contain a model process to be applied in all circumstances unless variations have been agreed locally. Therefore removal of this contractual entitlement will need to be by national negotiation, within the Joint Negotiating Committees, and the Officers' side will not wish to give this up unless an alternative mechanism, which incorporates an element of independence, is agreed to replace it.
5. While we welcome the removal of the requirement to follow the rather bureaucratic statutory process we believe that a streamlined alternative that still incorporates a role for an independent third party is necessary to ensure the process is legally robust, fair and protect the interests of both sides. To ensure the quality of this independent advice we believe that the LGA should maintain a list of suitably qualified and experienced individuals, agreed by both sides of the respective JNC's. Local authorities wishing to instigate proceedings against their chief executive, monitoring officer or S151 officer would then be able to ask the LGA to nominate an independent person from this list. The list would operate as a 'taxi rank' system, e.g. individuals would move up the list until they were nominated returning to the bottom of the list on completion of the case. The parties could only object to the individual nominated if there was a clear conflict of interest, in this event the next person on the list would be presented. This would remove the lengthy delays created by the current statutory process where both parties must agree on the identity of the Designated Independent Person.

There should be fixed rate payments, having regard to complexity, for the independent person to avoid some of the excessive fees currently charged for this work and to enable the local authority to budget precisely for the costs of an investigation.

6. Finally, it is in the interest of both parties that these matters are concluded without any unnecessary delay; therefore, we recommend that the jointly agreed process should contain clear timescales to be adhered to by both parties.

In conclusion, we would ask that the draft amending regulations is amended to incorporate our proposal set out paragraph 5 above.

We would welcome a discussion on how our proposal could be implemented.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Carolyn Downs', written in a cursive style.

Carolyn Downs  
Chief Executive