

DISCIPLINARY PROCEDURE – ENGLAND

Position as at 1 April 2016

New rules relating to disciplinary action against Chief Executives, s151 Officers and Monitoring Officers (statutory officers) came into force in May 2015. They removed the requirement for disciplinary action against statutory officers to be undertaken with the involvement of a Designated Independent Person (DIP), and introduced a new requirement, where dismissal of a statutory officer is recommended, for an Independent Panel to report to the relevant council meeting on such recommendation. Councils are required to adopt standing orders setting out the role and process of the Independent Panel.

Over the past year, discussions have taken place with the Employers with a view to producing a new disciplinary process for statutory officers which incorporates the 2015 regulations. Agreement has been reached on most points, and it is hoped that a revised process will be finalised in the next few weeks.

Councils will shortly be preparing papers for their annual meetings, which may include arrangements for the appointment of an Independent Panel for the next municipal year.

The purpose of this note is to alert members to the current state of play in relation to the discussions with the Employers about the Independent Panel.

One major point about the new Panel that has been under discussion is its constitution. The wording of the mandatory standing order is ambiguous, defining the Panel as 'a committee appointed ...under section 102(4) of the Local Government Act 1972'.

While this section permits advisory committees to be made up of persons who are not councillors, the Local government and Housing Act 1989, schedule 1 paragraph 1(b) indicates that the political balance rules apply to advisory committees – which would mean that the independent members could always be outvoted by councillors!

DCLG has stated (with the usual caveats) that their 'informal view is that a council may appoint non-members to an advisory committee and that such advisory committees may consist wholly of persons who are not members of the authority'.

We are hoping to reach agreement with the Employers that, to give effect to the obvious intention of the regulations, the conditions of service will specify that the Panel should comprise only independent persons.

Members of ALACE will wish to be aware of this issue in the run-up to their annual meetings, and if you have any query on the situation in your authority before the new Conditions of Service Handbook is available (or, indeed, afterwards) do please contact ALACE for assistance.