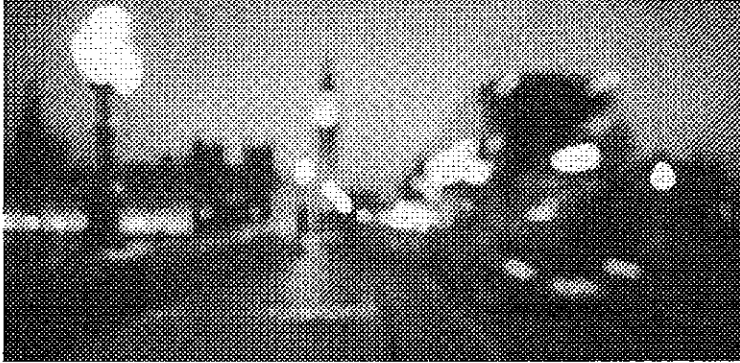


Wither the statutory protection for Chief Officers - Pickles' parting shot?

With Parliament prorogued next week, many might have thought that the long talked about revocation of the Designated Independent Person Regime for statutory chief officers had escaped this Parliament. But apparently not!



The eagle-eyed watchers of Her Majesty's Stationery Office (HMSO) will have seen laid before the House of Commons on Wednesday, the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015. The rules require all English local authorities to pass new constitutional arrangements for the appointment and dismissal of the Head of Paid Service (HoPS), Monitoring Officer (MO) and Chief Financial Officer (CFO), from 11 May 2015.

The new regulations are not a masterpiece of drafting; but seem to have the following effects.

- Gone is the requirement to appoint a designated independent person (DIP) before taking any disciplinary action or dismissing a chief officer for any reason other than ill health or redundancy. Instead the authority is to use a new breed of Independent Persons appointed to the authority's Standards Committee (or another authority's standards committee).
- The new Independent Persons should be local electors for the area of the authority, but may be other Independent Person appointed by the authority or another authority.
- The two or more Independent Persons are to be appointed to a Panel (being a Committee of the Authority) who are to offer any advice, views or recommendations to a meeting of the full council in relation to any proposal to dismiss the HoPS, MO or CFO [gone is any protection in relation to disciplinary action short of dismissal].
- The Independent Persons do not get to vote on the Panel; nor is there any mention of proportionality in terms of the number of Independent Persons on the Panel as opposed to voting members of the authority.
- The Panel must be appointed (but there is no requirement for it to meet) at least 20 working days before the meeting of the authority which is to consider any proposal to dismiss the officer.

So where does this leave chief officers?

On the positive side, the protection of it being a meeting of the full council that must approve the appointment or dismissal of a statutory chief officer is probably a good thing.

On the negative side:

- Gone is the appointment of a suitable Designated Independent Person, the identity of whom must have been agreed by the officer under investigation - so where will the Panel take advice from?
- Gone is the requirement for a report from the DIP setting out the evidence that supports the allegations.
- Gone is the recommendation from the DIP on the scale of disciplinary action, if any, that the authority is permitted to take.
- Gone is the protection against action short of dismissal.

The new regulations have been rushed in without consultation and, frankly, are full of holes.

The regulations do not prescribe:

- The numbers or voting membership of the Panel - it could be flooded with members of the Executive or majority party, and the view of the Independent members need not be represented in its report.
- There is no requirement for it to be a standing committee, nor for its members to receive any training
- There is no requirement to provide independent legal advice or support to the panel, even if requested
- There is no requirement for the panel to meet any particular period before the meeting of the authority
- There is no right for the officer subject to the process to attend or make representations to the Panel.

Finally, while the regulations rescind the previous protections and provisions in the statutory regime, they will do nothing to alter the contractual arrangements on foot. So those officers (Heads of Paid Service) who are employed on the JNC Conditions for Chief Executives, will still continue to enjoy the protections of a DIP being required as a matter of contract; whereas Monitoring Officers and Chief Financial Officers employed on JNC Chief Officer Conditions of Service will not!

Altogether a bit of a botched job; and importantly a significant watering down of the protections to officers who are expected to stand as a bulwark against errant members at the very time when the functions of the external auditor and the standards regime for members have also been diluted. Worrying times ahead!

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This analysis may contain information of general interest about current legal issues, but does not give legal advice.