

Joint Negotiating Committee for Chief Executives of Local Authorities

**To: Chief Executives in England (copies for the Finance Director
and HR Director) (Wales and N Ireland for information only)
Regional Directors
Members of the Joint Negotiating Committee**

13 October 2016

Dear Chief Executive,

CHIEF EXECUTIVES' HANDBOOK: UPDATED EDITION

As advised previously in JNC Circular dated 5 May 2016, the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 replaced the statutory Designated Independent Person (DIP) provisions with an Independent Panel process.

The JNC is now pleased to publish an updated edition of the Chief Executives' Handbook in which the Model Procedure for dealing with matters of discipline incorporates the new statutory process. The revised Model Procedure (for England only; the 2015 regulations do not apply in Wales) is set out at Appendix 5.

The *Model Grievance Procedure* at Appendix 8 has also been revised in order to make it more consistent with practice in authorities. The handbook has also been updated throughout to ensure that all references to external organisations, hyperlinks and emails etc are correct.

This handbook sets out what now become the conditions of service of employees engaged on terms as laid down by the Joint Negotiating Committee for Chief Executives of Local Authorities with effect from today.

With this in mind, chief executives are requested to ensure that this circular and the new handbook are drawn to the attention of the Council's Monitoring Officer and HR Director.

The Joint Secretaries of the JNC should be notified as soon as it is proposed to use the disciplinary procedure and it is recommended that both parties contact the appropriate Side secretary as soon as possible to ascertain whether more detailed assistance might be desirable.

Whilst this new procedure applies specifically to chief executives, we are aware that it could also be used as a framework for statutory chief officers.

Employers' Secretary:
Sarah Messenger
Local Government Association
Local Government House
Smith Square
London SW1P 3HZ
info@local.gov.uk

Officers' Secretary:
Ian Miller
Hon Secretary
ALACE

alacehonsec@yahoo.co.uk

The Chief Officer National Secretaries will be updating the separate chief officers' handbook in due course. In the meantime the Chief Officer National Secretaries (info@local.gov.uk and rehana.azam@gmb.org.uk) should be notified if disciplinary action against statutory officers is being considered.

The JNC has raised with the Department for Communities & Local Government (CLG) an apparent conflict between the Local Authorities (Standing Orders) (England) Regulations 2001 (as now amended by the 2015 Regulations) with the fundamental requirements of the Localism Act 2011. That apparent conflict arises in relation to the Panel that is now required under the Standing Orders Regulations 2001.

That Panel is a committee of the authority under section 102(4) of the Local Government Act 1972, and must contain at least two relevant independent persons, an independent person being a person appointed under section 28(7) of the Localism Act 2011, ie. an independent person appointed to advise the authority on elected member conduct issues. The JNC's concern is that their appointment to a Panel may debar them from being an independent person, under section 28(7).

Taking a case where a council constitutes a Panel using, say, two independent persons which it has appointed itself under section 28(7) of the Localism Act, as the Panel is a committee of the council it is our understanding that the independent persons' status is that of co-opted members of that committee, and so of the authority. It is that co-opted status that potentially then debars them from being reappointed an independent person under section 28(7) for that council.

Although the Standing Orders Regulations 2001 allow the appointment of relevant independent persons who have been appointed by another council, which would not therefore raise the issue identified above, it is clear that under the Regulations the priority is to be given to independent persons appointed by the same council as is considering the conduct of its designated officer.

In response to our raising this issue CLG informed us that it does not give legal advice, nor does it give an opinion on legislation as that is a matter for the courts. However, its informal view is that once a person is appointed as an independent person in accordance with the provisions of the 2011 Act, they may act on the Panel without ceasing to be an independent person. This is because at the time of their appointment as an independent person, they would not have been a member of a committee, including a Panel, and so not have had co-opted status in the past five years.

If though, a former independent person who had also been a member of a Panel sought re-appointment as an independent person under the provisions of the Localism Act 2011, then they would be prevented from being re-appointed until five years after the end of their tenure on the Panel since this is considered to be a committee of the local authority. While the Joint Secretaries are not entirely convinced by all the points made by CLG, we do not think that there is any value in pursuing it further. We believe that independent persons being invited to be a member of a Panel for the council of which they would thereby become subject to this possible future disqualification, should be made aware of that possibility at the time the invitation is made.

We would be interested to hear from you if this issue arises in any future application of the new procedure.

Finally, the handbook refers to a list of Independent Investigators to be maintained by the National Secretaries: the process for selecting and training these people has started and further advice will be issued in due course.

Yours faithfully,

Sarah Messenger
Ian Miller

Joint Secretaries