

SOLACE MANAGING IN A POLITICAL ENVIRONMENT
COMMISSION
NOTE ON LEGAL ISSUES ARISING FROM DISCIPLINE OF CHIEF
EXECUTIVES

There have been a spate of serious spats between chief executives and their local authorities many of which involve the relationships between the chief executives and the Council leader or Executive member(s). Several have also involved or derived from complaints made to the Standards Board for England by chief executives (“SBE”). These cause celebres include

1. Kingston upon Hull;
2. Lincolnshire
3. Cheltenham;
4. Worthing
5. North East Derbyshire.

One can speculate about the reason why these have occurred in a more acute form now but some explanations might be as follows

1. increasingly officers are implementing programmes at the behest of Government of which members do not approve but in which they have little say; the officer messenger is often the one shot by the politicians to whom they are conveying the message.
2. the fact that the position of chief executives is becoming ever more stressful with oversight and review by more outside bodies
3. the pressures of outside inspection such as the CPA etc. A poor report may lead to speculation and unhelpful division between members and officers as to who was responsible and who should “carry the can”.

4. the ability to complain about councillors to the SBE as an outside body coupled with a lack of understanding and clarity over the duties of monitoring officers to report member misbehaviour.
5. the lack of willingness of the political parties to manage behaviour.
6. the existence of the whistleblowing protection.
7. the changes in pensions regulations and the unwillingness of District Auditors to approve favourable settlements
8. the more active leading councillors produced by Executive or Mayor arrangements. Some argue that since the Local Government Act 2000 gave more power to councillors (a change which was intended to increase transparency and accountability), in a 'one party state' or where scrutiny is weak, it has the tendency to do the opposite. Where there is a leader or executive who prefers its own counsels to those of its officers, it entrenches their position and makes it more difficult for the chief executive and other senior officers to properly advise them. In short, where there was existing inappropriate behaviour or bullying, the position may be exacerbated by giving the members more power.

An extreme case arose in Lincolnshire CC in 2003 where David Bowles had been a successful chief executive but he fell foul of the long standing Council Leader Mr Speechley. Mr Bowles blew the whistle about Mr Speechley artificially diverting a road so that it did not cut across his land. This led to an auditor's investigation. Eventually Mr Speechley faced criminal charges and was imprisoned for nine months. Mr Bowles's position was undermined by the leading group. It is noteworthy that there was at the time a proposal for a standards committee drawn from only a single political party although that did not go ahead given the outcry it provoked.

Lincolnshire CC had indeed been the focus of standards issues for many years and many alarm bells had been rung: for example the KPMG Public Interest Report of 5.02 was critical of a climate of fear among officers alarmed by dismissals/threats of victimisation; for example it contained these remarks

a. “staff found his [Coun Speechley’s] manner intimidating” para 7.7.1

b. Coun Speechley interviewed staff down to clerical level; para 7.7.2
An Ethical Governance Audit in 2002 was also highly critical of the regime in Lincolnshire. Eventually a settlement was reached before the designated independent person (“dip”) was appointed. This was an extreme example of the failure of the Group to deal with an errant leader.

Chief executives Monitoring Officers and Chief Finance Officers properly have unique extra protection in employment law to reflect their unique status. By the Local Authority (Standing Orders) (England) Regulations 2001, a suspension can only be made for the purpose of investigating allegation of misconduct (in the wider context to include trust and confidence and capability issues), and cannot continue for longer than two calendar months without the express consent of a DIP appointed by agreement or in default by the Secretary of State. It may be asked what is the justification for this special protection (which even civil servants do not have¹) and it must be the problems of managing in a political environment and the need for Chief executives to blow the whistle and to bring into the public domain matters which are in the public interest to be known. Those who are given direct and personal responsibility to report to the

¹ They have protection after the event in an appeal to the Civil Service Appeal Board and the Civil Service Commissioners have some role in appointment and terminations.

council/public in relation to acts of the council, must have the freedom and confidence to be able to do this without fear for their jobs.

The area may become more complicated by the Model Code of Conduct for Local Government which is presently being consulted upon by the ODPM which places various obligations on council officers including Chief executives. It would be useful to codify what is acceptable 'political interference' ie in what circumstances an officer should/must take their concerns outside of the executive/council to the District Auditor, the Parties or the SBE.

There are some contentious issues surrounding the role of the DIP:

1. at present there is no formal fixed list of persons who may be appointed to the position so that DIPs are appointed on an ad hoc basis by the ODPM which may take some time to arrange². It would be more satisfactory to have a standing panel of persons (possibly to be approved by the Attorney General in the case of lawyers but those on the list should not be limited to lawyers) who are approved by the ODPM to carry out such inquiries and the parties could seek to agree on such a person within five days and then the ODPM may appoint if agreement cannot be reached;
2. there ought to be fixed procedural rules to be applied by a DIP; they must obviously be compliant with the Human Rights Act 1998 but they could have overriding objectives such as

² The parties are asked to agree on a name and in default the ODPM appoints.

concluding the reporting in the quickest time possible

consistent with fairness to both parties;

3. the regulations could be and better drafted since at present there are numerous ambiguities;
4. there are technical issues about the coverage of the jurisdiction in particular whether it applies to reliance on breach of trust and confidence as well as conduct/capability³; this should be cleared up;
5. the fit with the JNC Conditions of Service relating to Chief Executives (“The JNC Conditions”) which operate as a collective agreement and are incorporated into the individual contract of employment is not exact
6. the DIP should have wider powers to make recommendations for the disposal of a case, for example the power to recommend retirement in the interests of efficiency or ill health.
7. reports by the DIP are at present not published as a matter of course so that even though a Chief executive’s reputation might have been traduced over a long period and often in the media. Given that a DIP report is often akin to a PIR, should it not be published in the same way;
8. the process should follow as far as possible the ACAS Code of Practice on Disciplinary procedures.

³ “Disciplinary Action” is clearly defined in the LA (Standing Orders) Regulations 2001 as being “any action occasioned by alleged misconduct which if proved, would, according to the usual practice of the authority, be recorded on the member of staff’s personal file.....”. It goes in to include as “Disciplinary Action” “.....any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill health or infirmity of mind or body” in the Regulations but does not render this misconduct. ,

9. the DIP should have more procedural powers, for example to request a medical report;
10. some provision should be made for costs to be awarded in favour of an officer who is vindicated by a DIP report, whether out of the Council or ODPM funds. Very considerable levels of costs may be built up in a long drawn out process at present there is no power to make these up.

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