

An unprotected species?

Simon Goacher considers the recent legislative changes around local authority governance arrangements...

Governance is a word which can mean different things to different people. For some the very mention of the word is time to turn off and go and do something less boring.

A local authority's governance arrangements are often only scrutinised when it is under pressure. This is no different from the private sector¹; from the south sea bubble to the banking crisis, from rotten boroughs to interventions in failing authorities, there are countless examples of failures in governance leading to much wringing of hands and promises that lessons will be learned and this will never happen again; and so it is, until the next time.

A crucial factor in the success (or otherwise) of the governance arrangements of local authorities is the trinity of statutory officers: the head of paid service, the chief finance (or section 151) officer and the monitoring officer. If these work well together then things are likely to stay on track, if there is a weakness in the chain then things invariably go wrong.

These are senior officers charged with the responsibility for stepping in if things are going awry. It can often be a lonely and challenging role. The pressures faced by these officers now are greater than ever. Local authorities make difficult contentious decisions on a daily basis, balancing the need to make cuts with the high expectations of the public and politicians of what levels of service could and should be achieved with less money.

These roles were created in the 1980s when the then Conservative government recognised the need for checks and balances. The government also recognised that these roles were going to be difficult and likely to face political pressure. As a result, they were given enhanced employment rights, the main one being that no disciplinary action could be taken against them unless it was recommended by a Designated Independent Person (DIP).

The Coalition government and in particular the then secretary of state, Eric Pickles, did not like this system because he felt that it led to attempts by local authorities to remove chief executives who were not doing their jobs properly being too expensive and protracted. And so, as one of his last acts as secretary of state, Mr Pickles removed the DIP protections.

Initially the government did not want any protection at all for these officers, but there was too much objection to this. The regulations which were eventually introduced, not long before the general election in 2015, were totally different from the proposals which had been consulted upon.

Now, there is no DIP requirement but any dismissal of any of head of paid service, 151 officer or monitoring officer has to be approved by full council. Before there can be any dismissal, the proposal must be considered by a panel of independent persons.

The proposals came out of the blue and left authorities busily trying to manage elections, scratching their heads to work out how to put in place the required procedures for the first ordinary council meeting after May 2015. The independent people who now had to be consulted were particularly bemused as it was never in their job description when they applied and was nothing at all to do with the role they thought they were supposed to be carrying out.

There was also the matter of the contracts which these officers have with their councils. The JNC model disciplinary procedures for chief executives stated that a DIP process would be followed. The system has taken some time to catch up. A revised handbook was issued in October 2016 which contains a process remarkably similar to the old one. There is no DIP but there is a requirement for an independent investigator. This only contractually applies to chief executives/heads of paid service but it is likely that a similar process will be applied for the other statutory officers.

So where does all that leave us? Anecdotally, statutory officers feel less secure. They will still do the right thing. If they need to highlight governance failures or unlawful action they will, but there is less confidence that they will be supported if they do. And there is a greater fear that standing up to unwarranted and unfair political pressure is likely to lead to termination of employment. The contractual protection provided in the JNC terms goes some way to redressing the balance, but the undermining of these positions has undoubtedly weakened the fabric of governance in local authorities in England.