

Consultation Response Form - Consultation on the review of the arrangements for dealing with alleged misconduct of senior officers in local authorities (Oldham Review)

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Question 1: It is clear that “disciplinary action” should be used for issues of misconduct only. The regulations should only be concerned with the conduct of senior officers. Performance issues should be dealt with locally as agreed by performance related policies. Do you agree or disagree?

UNISON agrees that “disciplinary action” should be used for issues of misconduct only and regulations should only be concerned with the conduct of senior officers.

Performance and minor issues can be dealt with locally, although we would welcome further clarity and examples of what constitutes performance and misconduct, as there can be overlap between the two, and the difference between what constitutes a minor issue compared to one which is referred for disciplinary action.

All processes must ensure all appropriate referral to disciplinary action is made – guarding against both malicious accusations and ensuring those needing serious consideration are properly handled.

Question 2: Welsh Government believes local government should develop good practise guidance on performance management for senior officers. This would help reduce the confusion about what disciplinary action, using these regulations, can be used for.

Welsh Ministers would welcome your views on whether further clarity would be helpful in the regulations and their supporting documentation as to the circumstances in which they apply and if so, any suggested wording that could be considered.

UNISON agrees that supporting documentation would be helpful to clarify the distinction between performance and misconduct.

UNISON is of the view that good practice should be consistent across local authorities in Wales.

Question 3: The DIP recommended sanction should be followed – Do you agree or disagree?. If you disagreed it would be helpful for you to provide supporting information to your response.

UNISON believes the DIP recommended sanction should be followed. It would not be reasonable for an independent person to be appointed and to perform an independent investigation for the outcome to be ignored. There must be confidence in the process and in the outcomes of the process – adhering to the recommended sanction is a part of this and to do otherwise would undermine the procedure.

However, use of a DIP does raise the question over the purpose of Councillors in the process as there is no alternative other than to accept the recommendation, and so this element of the procedure needs further consideration.

Question 4: Should a non-legally qualified person be appointed in some cases – yes/no. If ‘yes’ should they have access to independent legal advice?

Appointing a non-legally qualified DIP who then requires access to independent legal advices raises a question over whether the DIP should in fact be legally qualified. The main driver behind appointing a non-legally qualified DIP appears to be the cost of a legally qualified DIP. UNISON believes cost should not be the determining factor behind this decision. Access to a fair and timely process which delivers a clear and decisive outcome must be the priority.

UNISON therefore believes that a DIP should be legally qualified.

Question 5: Should the regulations be amended to enable the Investigating Committee to decide whether a legally qualified or non-legally qualified DIP be appointed in their preliminary stage of investigation. Do you agree or disagree? Please explain your response.

UNISON does not agree that it should be up to the investigating committee to determine which type of DIP to appoint. As previously stated, UNISON believes the DIP should be legally qualified.

Question 6: Should the regulations be amended so that the DIP appointment, regardless of being legally qualified or not, be appointed on a “taxi rank basis” to ensure fairness and openness in the process. Do you agree or disagree? Please explain your response.

UNISON agrees a ‘taxi rank basis’ of selection would help to maintain a level of independence that a ‘committee selection’ process may not.

Question 7: The role of the Investigating Committee (IC) is to establish whether there is a case to answer and, if there is a case does it warrant further investigation. The role of the IC is not to investigate the case in more depth. Do you agree or disagree? Please explain your response.

UNISON agrees with the role of the IC in theory – in practice, however, it is not as simple. It is often likely that IC will need to go into further detail to enable them to determine whether the case needs to be referred. It is often a complex decision to make and leads to a high level of duplication and the IC undertaking a large proportion of the process. In UNISON’s experience, the investigation by the IC is akin to a full disciplinary investigation.

This is time consuming and leaves the senior layers of the organisation in a state of flux, which can be disruptive.

Further clarification on this aspect of the procedure is required for Investigating Committees so that they are clear on the boundaries for determining what needs to be referred.

Question 8: Do you agree or disagree that work undertaken by the investigation committee should be shared with the DIP to avoid duplication of effort? Please explain your response.

It is important for the DIP to understand why an Investigation Committee has concluded that they believe there is a case to answer but the work undertaken by the Investigation Committee to substantiate their decision should not be readily available as a matter of standard practice.

The DIP should have access to the work of the Investigation Committee only if there is a genuine belief or evidence to support that there would be a possibility of duplication of effort.

UNISON believes a tightening of the process over what does or does not require referral to an independent disciplinary process would be more beneficial.

Question 9: Should the regulations and/or supporting documentation ensure the DIP has specific powers to take such steps as they think appropriate to keep the investigation progressing efficiently in the event of failure to comply with a timetable? Please explain your response.

UNISON cannot agree to allowing decisions to be made in the absence of the individual under investigation. There may be numerous legitimate reasons as to why an individual may not be available and stipulations around a time limit may be discriminatory in action when, for example, an individual's mental health is taken into consideration.

Every effort should be made to ensure participation at all stages.

Question 10: The investigation should not be delayed indefinitely. There is a suggestion that if the process has been delayed for a length of time because the person being investigated has not replied or appears to be stalling the process the DIP should be able to continue with the hearing in the absence of the person being investigated. Do you agree or disagree?

Full consideration would need to be made to establish why a process is being stalled.

However, UNISON is clear that all members of a local authority workforce should be treated fairly irrespective of their position within the structures of the council and so we would expect the rules to be applied consistently both for internal and external investigations.

Question 11: If representation is made by external investigations to halt the DIP process then this should be considered. Representations from the individual being investigated should also be considered. However, the DIP should have an opportunity to ask for the decision on deferring the process to be reviewed on a timescale which

should be considered for each individual case. The rationale for not continuing should be documented whatever decision is reached. Do you agree or disagree?

UNISON agrees with this position.

Question 12 – In terms of the interaction between standing orders and contractual terms and conditions do you support a review of the model constitution?

UNISON supports a review of the model constitution.

Question 13: We would like to know your views on the effects that consulting on the review of the arrangements for dealing with alleged misconduct of senior officers in local authorities (Oldham Review) would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? Could positive effects be increased, or negative effects be mitigated?

Question 14: Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 15: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space below to report them:

UNISON is of the view that all members of the local authority workforce, irrespective of their position within the structures, is treated fairly.

In UNISON's experience, matters that have been referred for independent consideration to a DIP can be time consuming and, throughout the period of the investigation, the individual/s in question remain on full pay – which in the case of senior officers, can be a significant sum. When we compare this to the rest of the workforce, it is clear there is an inequity in the treatment of staff dependent on status.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: