

Constitution Committee 13.2.16

Council 23.2.16

New JNC Handbook for Chief Executives and Consequential Amendments to the Constitution

Points of Clarification

1. This clarification note is offered in respect of matters contained in the above-mentioned report and its 6 Appendices. It is offered following helpful discussions with the Chair of Staffing Committee, who brings experience and perspective as Chair of Staffing Committee, as a former Cabinet Member and with the benefit of experience of the operation of the former Designates Independent Persons processes which these new processes replace.

Context

2. By way of context, Members should be aware that the first draft of the report (and its appendices) was provided by external solicitors (as referenced in paragraph 8.1 of the report). External input was sought primarily because there has been uncertainty as to how the new processes should be applied in practice. This is referenced in the report (paragraphs 10.5 to 10.7). External support was sought so that this council could benefit from the experience of a firm that has advised a number of councils on how best to align their constitutions and processes with the new regulations and JNC Chief Executive's Handbook Model Disciplinary Procedures.

Number of Committee Members

3. The first point of clarification relates to the suggested number of members of the proposed new Investigation and Disciplinary Committee ("IDC") and Disciplinary Appeals Committee ("DAC") (paragraphs 10.19 and 10.20 of the report respectively). There is a need to achieve the right balance between having a committee that is large enough to provide a rounded and balanced view on matters that will come before it, and a committee that is not so big that its ability to be convened on a quorate and rapid basis, and to then deal with sensitive matters rapidly and confidentially, is impeded.
4. External advice and best practice suggested a Membership of 5 properly achieved this balance. Membership of 7 was proposed in the report as that assisted the council in terms of complying with the political proportionality requirements upon it across all of its committees in the round. Ultimately, the number of Members is a matter for Council to decide.

Appointing Members

5. Clarification has been sought as to how Members are to be appointed to the IDC and DAC. Again, there are a number of options and this is ultimately a matter for Members.
6. The overriding consideration here is to ensure that the council is able to convene quorate IDC and DAC meetings, perhaps at short notice, comprised of Members who will be clear of any conflict of interests in the matters to be considered. In that regard, flexibility in the appointments process and appointable Members is considered to be the key. That needs to be balanced with the need to ensure that Members of either committee can be appropriately briefed/trained.
7. One option is to provide that IDC and/or DAC members are to be drawn from some identified wider pool of members. The benefit to that approach is there is a more closely identified group of members to whom training could be delivered. The difficulty with that approach however is that the more constrained the group of Members available for appointment, the more difficulties there may be in convening a quorate unconflicted committee at short notice.
8. Hence the approach taken in the report (albeit not clearly articulated) is to simply rely upon the appointments process that now applies to all committees as agreed by Council at its meeting on 15 December 2016. That is that Council establishes committees by determining how many members a committee shall have and setting its terms of reference, but that appointments (and changes) of Members to serve on a committee (once established by Council) shall be done, when required, by way of notification to the Head of Governance and Democratic Services by the leader or whip of the political group in question.
9. To clarify then, the approach proposed through the report is that in the event an IDC or DAC committee meeting is required, the leaders/whips of the political groups who have places to fill on those committees will be asked to nominate the required number of Members from their group through notification to the Head of Governance and Democratic Services. The duly nominated Members would then comprise the committee for the purposes of transacting the business that is required to be put to the IDC/DAC process. For consistency in the handling of a matter, it is expected that the membership of the IDC/DAC considering a discreet matter would remain the same at each stage that either IDC or DAC input is required into that matter.

10. It is considered that this approach would enable the flexibility required by not constraining appointments from a narrower pool, enabling instead appointments to be made from the full membership of the council.
11. In terms of training, it is considered that the infrequency with which such committees are expected to meet, coupled with narrow nature of the issues it is likely to need to address and the fact that specialist external legal advice is most likely to be available to the committees when they do meet, means that adequate training and briefing can be provided to members as follows:-
 - a) e-learning materials made available to all members on the IDC/DAC/IPP committee purpose, processes and terms of reference.
 - b) Bespoke briefing/training on a case by case basis for the members nominated in the event that an IDC/DAC is convened.

Members will be required to have completed this training before sitting on the IDC or DAC.

Drafting Changes to the Appendices

12. The following matters of clarification are proposed to be addressed through drafting alterations to the appendices to the report.
13. Appendix 4 – Proposed Terms of Reference for the Investigation and Disciplinary Committee (“IDC”).
 - a) To align with the format of the Terms of Reference of other committees in the constitution, and to more clearly explain what the IDC does and how it interacts with the DAC and IPP, it is suggested that:-
 - i) The agreed number of committee members be inserted immediately before the first sub-heading in the terms of reference.
 - ii) the section headed “scope” is changed to “Statement of Purpose”
 - iii) There is then inserted into the “Statement of Purpose” section three new paragraphs (and numbering adjusted accordingly) as follows. It is suggested that the first paragraph is inserted at the beginning of the “Statement of Purpose” section of the Terms of Reference, and the last two paragraphs be inserted at the end of that section.

1.1 Members shall be appointed to the committee, as and when a

committee is required to be convened, under the normal processes for making appointments to committees (via group leader/whip notification to the Head of Governance and Democratic Services). For consistency, unless unavoidably indisposed or conflicted, once appointed, the same Members shall comprise the committee (and any adjournment of it) over the course of the full consideration of the matter (and any related matter) that it has been convened to consider, until such time as the matter is disposed of.

1.7 In the event that the Committee recommends dismissal then that recommendation shall be referred to the Independent Persons Panel prior to being referred to Council for a determination in accordance with the Staff Employment Procedure Rules

1.8 With the exception of a decision to recommend to Council that a DSO be dismissed, there shall be a right of appeal to the Disciplinary Appeals Committee against any decisions made by the Committee to take disciplinary action against a DSO.

14. Appendix 5 – Proposed Terms of Reference for the Disciplinary Appeals Committee (“DAC”)

a) The same suggestion at 13 a) above to change “Scope” to “Statement of Purpose” is made in respect of the terms of reference for the DAC.

b) In section 2.0 (Membership of the DAC), it is suggested that the content of paragraph 13 a) iii) is repeated in respect of the DAC.

15. Appendix 6 – Proposed Terms of Reference for the Independent Persons Panel (“IPP”)

a) The same suggestion at 13 a) above to change “Scope” to “Statement of Purpose” is made in respect of the terms of reference for the IPP.

b) In section 2.0 (Terms of Reference) two further paragraphs be added:-

2.2 The advice of the Independent Persons Panel must be sought in accordance with the Staff Employment Procedure Rules where the Investigation and Disciplinary Committee propose to recommend the dismissal of a DSO (Note: DSO definition to be inserted into para 1.1)

2.3 The advice of the Independent Persons Panel may (but need not be) sought by the Investigation and Disciplinary Committee at any other point in

an investigation or disciplinary process or (if not conflicted) by the Disciplinary Appeals Committee.