

# Statutory Officer Protocol

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Approved by	Mayor via MD xxxx- yyyy Assembly at Plenary meeting- zzzzzzz
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Senior owner	Chief Officer
Document owner	Assistant Director, People

# Statutory Officer Protocol

## 1. The statutory officers

1.1. Under the Greater London Authority (GLA) Act 1999 (as amended), the Authority is required to have the following statutory officers:

- Head of Paid Service<sup>1</sup> (HoPS)
- Chief Finance Officer<sup>2</sup>
- Monitoring Officer.<sup>3</sup>

1.2. The statutory functions exercisable by these officers are listed in Appendix 1 to this document.

### Line management responsibilities for statutory officers

1.3. General day-to-day management responsibilities shall be exercised for:

- Chief Finance Officer and Monitoring Officer: by the HoPS
- HoPS: jointly by the Mayor's Chief of Staff on behalf of the Mayor and the Chair of the staffing committee on behalf of the Assembly

subject always to:

- anything to the contrary provided for in this Protocol itself (including in Appendix 2, and section B of that Appendix in particular)
- the general power of the Mayor and the Assembly (acting jointly, and in such manner as they agree)<sup>4</sup> to decide to jointly exercise those general management responsibilities themselves – in which case (unless they jointly agree otherwise) such responsibilities are delegated to, and exercised on a standing basis by:
  - the Mayor's Chief of Staff on behalf of the Mayor and
  - the Chair of the staffing committee on behalf of the Assembly.

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<sup>1</sup> Required under the GLA Act 1999 (as amended) section 72(1).

<sup>2</sup> Required under the GLA Act 1999 (as amended) section 127 and 127A.

<sup>3</sup> Required under the GLA Act 1999 (as amended) section 73 (1).

<sup>4</sup> Such a decision must be a joint decision; and shall be confirmed in writing to the Assistant Director, People, by the Mayor (without a Mayoral Decision (MD)) and by the Chair of the Assembly, following consultation with political group leaders.

## **2. Appointment or designation without an external recruitment and selection process**

- 2.1. The Mayor and the Assembly, acting jointly, may appoint an existing member of staff as a statutory officer without following an external recruitment and selection process, but in accordance with paragraph 2.2 (in which case sections 3 and 4 of this Protocol do not need to be followed).<sup>5</sup>
- 2.2. In these circumstances the Assistant Director, People, should (where appropriate) establish an internal competition inviting expressions of interest from appropriately senior and experienced officers/postholders. In the event that there is:
- only one suitable expression of interest: that postholder may be permanently appointed as a statutory officer, if the Mayor and the Assembly agree to the appointment and its terms and conditions; or
  - more than one suitable expression of interest: an appropriate selection and appointment process shall be determined by the Mayor and the Assembly's staffing committee, with both parties acting jointly.<sup>6</sup>

## **3. External recruitment and shortlisting**

- 3.1. Where it is not proposed or possible to appoint a statutory officer in accordance with paragraph 2.1, above, a recruitment and selection process must be followed. The Assistant Director, People, will:<sup>7</sup>
- a) draw up a job description and person specification that sets out:
    - the duties and accountabilities of the officer concerned
    - any qualifications, skills and experience required
  - b) make arrangements for a copy of the documents mentioned at (a) above, to be sent to any person on request and
  - c) make arrangements for the post to be brought to the attention of persons who are qualified to apply for it (i.e. through advertising and/or executive search).
- 3.2. Where a post has been advertised as set out in paragraph 3.1, above, the Mayor (through the Chief of Staff) and the Assembly (through the Chair of the latter's staffing committee, in consultation with committee group leads) shall approve the arrangements for selecting a shortlist of qualified applicants to be interviewed, in accordance with section 4, below.
- 3.3. Where no qualified person has applied, the Assistant Director, People, shall make further arrangements for advertisement in accordance with paragraph 3.1, above.

## **4. Appointment**

- 4.1. The Mayor and the Assembly are required to make appointments to the three statutory officer posts, with both parties agreeing.

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<sup>5</sup> This is provided for in the Local Authorities (Standing Orders) Regulations 1993/202.

<sup>6</sup> Whilst the Assembly's staffing committee can determine this, the full Assembly must take any decision to appoint; and any decision relating to the terms and conditions of the appointment.

<sup>7</sup> The following provisions incorporate the requirements of the Local Authorities (Standing Orders) Regulations 1993/202.

- 4.2. Unless there is a decision of the Mayor and the Assembly to the contrary, the interviews for a vacant statutory officer post should be conducted by the Mayor and the Assembly acting together as one advisory Interview Panel, via one of the following options (to be determined by the Mayor and the Assembly as necessary):
- Option A, comprising both of the following:
    - the Mayor (in person), and a member of staff appointed by the Mayor under section 67(1) of the GLA Act 1999, acting as an adviser to the Mayor if the Mayor so chooses<sup>8</sup>
    - between three and five Assembly Members as the Chair of the Assembly determines,<sup>9</sup> with those members appointed on a basis that takes into account the principle of proportionality between the political groups on the whole Assembly being represented (so far as practical, and subject always to any particular group being able to decline involvement on the Panel), among whichever number of Assembly Members the Chair decides to appoint to the Panel.
  - Option B, comprising both of the following:
    - up to two representatives of the Mayor, as the Mayor determines,<sup>10</sup> who must be staff appointed by the Mayor under section 67(1) of the GLA Act 1999
    - between three and five Assembly Members determined by the Chair of the Assembly on the same basis as set out in Option A, above.

The Interview Panel will record its recommendation(s).

- 4.3. Following conclusion of the Interview Panel process, the decision on the proposed appointment, and the terms and conditions of that appointment, will be taken jointly by: the Mayor (following a recommendation from one of the Mayor's appointees, if under option B); and the Assembly, via the Assembly's representatives on the Panel making a recommendation to the full Assembly. Any offer of employment will be made conditional on, and subject to, the approval of the Mayor (by an MD) and the Assembly.
- 4.4. The HoPS will participate, in an advisory capacity, in the interviews of candidates for the roles of Chief Finance Officer and Monitoring Officer; but will take no part in the decision-making process.
- 4.5. The Mayor or the Mayor's representative(s), and the Assembly's representatives on the Interview Panel, may jointly agree to invite any external persons to provide expert, independent advice to them (concurrently) during the recruitment process and/or at the interviews. Any external persons engaged to provide such advice will take no part in the decision-making process.
- 4.6. Other than in exceptional circumstances, the composition of the Interview Panel should remain the same for all candidates in all rounds of interviews.
- 4.7. Any proposed appointment will be subject to references and the Authority's usual pre-employment checks.

## 5. Terms and conditions

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<sup>8</sup> The Mayor will confirm in writing to the Assistant Director, People, the number and identity/ies of the section 67(1) staff appointed by the Mayor under Option A; and that the Mayor has delegated to the appointee(s) authority to exercise the Mayor's functions under the Statutory Officer Protocol appointment process.

<sup>9</sup> Following consultation with the leaders of the political groups, the Chair of the Assembly will confirm in writing to the Assistant Director, People, their determination as to the number and identities of the appointed members.

<sup>10</sup> The Mayor will confirm to the Assistant Director, People, the number and identity/ies of the section 67(1) staff appointed by the Mayor under Option B; and that the Mayor has delegated to the appointee(s) authority to exercise the Mayor's functions under the Statutory Officer Protocol appointment process.

- 5.1. The Mayor and the Assembly are required, acting jointly, to determine the terms and conditions of the statutory officers (including any changes to those terms and conditions).
- 5.2. By adopting this document, the Mayor and the Assembly jointly agree that the GLA standard terms and conditions that apply to all staff appointed by the HoPS<sup>11</sup> should generally also apply to the statutory officers.
- 5.3. In some respects, and due to the nature of their roles, the statutory officers need to have terms and conditions of employment that are different to those that apply to all staff appointed by the HoPS. Such terms and conditions must be approved by the Mayor and the Assembly acting jointly. They are attached at Appendices 2 and 3 to this Protocol, and have been so approved.
- 5.4. When the HoPS consults with the Mayor and the Assembly's staffing committee on proposed changes to standard GLA terms and conditions of employment, applicable to staff appointed by the HoPS,<sup>12</sup> then any such changes (if approved by the HoPS) shall also apply to the statutory officers' standard terms and conditions. The exception to this is where the Mayor or the Assembly, in their consultation responses, indicate that approval of the proposed change(s) should be referred to them for *their* consideration and (if applicable) joint approval.
- 5.5. Any other proposals to change the terms and conditions of the statutory officers must be submitted to the Mayor and the Assembly for approval. The affected statutory officers themselves must be consulted on the proposals. Their views will be taken into account, but will not determine whether the proposal is approved.

## **6. Disciplinary action and investigations**

- 6.1. This is dealt with at Appendix 2 to this document.

## **7. Dismissal or imposition of lesser sanctions**

- 7.1. The statutory officers may only be dismissed by the Mayor (or, if the Mayor so chooses, one the Mayor's staff appointed under section 67(1) of the GLA Act 1999) and the full Assembly, acting jointly.
- 7.2. Detailed procedures in respect of how the statutory officers may be dismissed, or have lesser sanctions imposed as a result of probationary, disciplinary or capability (excluding ill health) action, are contained in Appendix 2.
- 7.3. Appendix 3 modifies the GLA's sickness policy, and sets out a procedure in respect of how the statutory officers may be dismissed as a result of ill health.

### Approval of settlement agreement with statutory officer

- 7.4. The HoPS or (if appropriate) the Assistant Director, People, may negotiate, agree the terms (including the amount of any financial compensation, and other appropriate payments or costs) and execute a settlement agreement with a statutory officer who has been subject to the above process, after consultation with the Mayor and the Chair of the Assembly; and subject to the requirements of financial regulations, and the approval requirements set out in section 7.5, below.

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<sup>11</sup> "Terms and conditions" here includes any employment protocols or policies that confer contractual rights upon all staff appointed by the HoPS.

<sup>12</sup> Or proposed changes to employment protocols or policies that confer contractual rights upon all staff appointed by the HoPS.

- 7.5. Statutory guidance applies to the making and approving of special severance payments on leaving service.<sup>13</sup> Any special severance payment to be made to a statutory officer must be approved jointly by: the Mayor or, if the Mayor so chooses, one of the Mayor's staff appointed under section 67(1) of the GLA Act 1999; and the staffing committee on behalf of the Assembly.<sup>14</sup>

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<sup>13</sup> Department for Levelling Up, Housing and Communities, [Statutory guidance on the making and disclosure of special severance payments by local authorities in England](#), 12 May 2022

<sup>14</sup> The requirement for approval from both the Mayoral and Assembly sides is a matter of policy, rather than a legal requirement; thus, this is not formally a 'joint decision', and as such it can be delegated.

### Statutory functions

#### A. The Head of Paid Service (HoPS)

1. Functions of the proper officer of the Authority for the purposes of Parts I and II of the GLA Act 1999 (as amended), other than those relating to:
  - the functions of the Greater London Returning Officer
  - part VA of the Local Government Act 1972 (access to information) as applied to the Assembly by section 58 of the GLA Act 1999 (Openness).
2. Functions of the HoPS under the GLA Act 1999, including the functions of consulting with the Mayor and the Assembly and appointing staff under section 67(2) of the GLA Act 1999; and determining such staff members' terms and conditions of employment under section 70(2) of the GLA Act 1999.
3. Functions of the proper officer of the Authority for the purposes of Part III of the Local Government Act 1974 (local government administration), as applied to the Authority by section 74 of the GLA Act 1999.
4. Functions of the proper officer of the Authority for the purposes of sections 225 (deposit of documents) and 228 (inspection of documents) of the Local Government Act 1972, as applied to the Authority by section 75 of the GLA Act 1999.
5. Functions of the HoPS under Part I of the Local Government and Housing Act 1989 generally, including under section 4 (designation and reports of the HoPS) as applied to the Authority by section 72 of the GLA Act 1999.
6. Functions of the proper officer under the Local Government and Housing Act 1989.
7. The functions under any other enactment (whenever passed) of a proper officer or responsible officer (or other similar designation used in the enactment), as regards areas not falling within the above paragraphs.

#### B. The Chief Finance Officer

8. Functions of the Chief Finance Officer responsible for the proper administration of the financial affairs of the authority, under section 127(1) of the GLA Act 1999.
9. Functions of the responsible officer under Local Government Finance Act 1988.
10. Functions of the proper officer under the Local Government Finance Act 1988.
11. The functions under any other enactment (whenever passed) of a chief finance officer, proper officer or responsible officer (or other designation used in the enactment) concerning the Authority's accounting practices, audit arrangements, or financial affairs and arrangements.

#### C. The Monitoring Officer

12. Functions of the Monitoring Officer for the Authority, under section 5 of the Local Government and Housing Act 1989; and section 73 of the GLA Act 1999.

13. Functions of the Monitoring Officer under Part I of the Localism Act 2011.
14. Functions of the proper officer of the Authority under sections 229 (photographic copies of documents) and 234 (authentication of documents) of the Local Government Act 1972, as applied to the Authority by section 75 of the GLA Act 1999.
15. The functions under any other enactment (whenever passed) of a monitoring officer, proper officer or responsible officer (or other designation used in the enactment) concerning the Authority's legal affairs and arrangements, including compliance with the law.



### Performance, disciplinary and dismissal procedure

Only the Mayor and the Assembly, acting jointly, can decide to take action against a statutory officer on grounds of capability or misconduct, as provided for below.

#### A. Action regarding allegations of misconduct and/or capability failings

1. In following the procedure set out in section B, below, the GLA will have regard to the following policies, and comply with their terms, insofar as they are applicable and appropriate to the procedure in section B:
  - in relation to misconduct: the GLA's Disciplinary Procedure
  - in relation to capability: the GLA's Capability Procedure.
2. A decision to take action on grounds of capability or misconduct (disciplinary action) against any of the statutory officers, in connection with their role as a statutory officer, must be taken by the Mayor and the Assembly acting jointly, in accordance with the procedure in section B.
3. The GLA's external auditor will be notified of any referral under paragraph 7 below. In terms of what can be disclosed to the external auditor, this will need to take into account the need for compliance with data protection and other confidentiality obligations. However, information required for the external auditor to assess the risk to the integrity of the GLA's internal control environment, arising from any allegation, will need to be shared in confidence.

#### B. Procedure

4. Where there is an allegation or complaint of poor performance or misconduct (the allegation), then the procedures set out in paragraphs 7 to 22 below shall apply. Support will be provided by the Assistant Director, People, as appropriate. Where the allegation is made in the context of another formal procedure (e.g. a grievance), or would properly be dealt with under such a procedure, that procedure will normally be concluded first, before the procedures below apply, subject to any alternative decision by the person exercising line management responsibilities.
5. Meetings of the Assessment, Review and Appeal Panels (referred to below) must be convened and conducted in accordance with legal advice. They are not meetings to which Part 5A of the Local Government Act 1972 applies; and neither the press nor the public have any rights to attend.
6. The statutory officer may be accompanied at each stage of the procedure, as set out in the GLA's Disciplinary or Capability Procedure (as applicable).

##### Assessment Panel hearing

7. The allegation must be referred<sup>15</sup> to a panel (the Assessment Panel) comprising the following members:
  - two Assembly Members appointed by the Chair of the Assembly following consultation with the leaders of the political groups, usually being one from each of the two largest political groups represented on the Assembly<sup>16</sup>; and

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<sup>15</sup> The referral will be by the HoPS where the allegation is against the Chief Finance Officer and the Monitoring Officer; and by the Monitoring Officer where the allegation is against the HoPS.

<sup>16</sup> The Chair of the Assembly will confirm to the Assistant Director, People, the identities of the Assembly members appointed to the Assessment Panel.

- the Mayor’s Chief of Staff or a member of staff appointed by the Mayor under section 67(1) of the GLA Act 1999.<sup>17</sup>
8. The members of the Assessment Panel will decide who will chair its meetings. In the absence of such an agreement, the Chair of the Assembly determines who will act as Chair. The Assessment Panel must: invite the statutory officer to attend a meeting of the Assessment Panel to make representations; and permit the statutory officer to submit documentary evidence to that meeting.
  9. The purposes of the Assessment Panel are: to review the allegation on the basis of the evidence submitted to the Panel; and to determine whether there are reasonable grounds (a prima facie case)<sup>18</sup> to refer the allegation to the Review Panel (see below). Its purpose is not to determine whether the allegation is proved. If the Assessment Panel determines that there are no such reasonable grounds, the allegation shall be dismissed and no further action taken in respect of it. The Assessment Panel shall also determine whether the statutory officer should be suspended; and, if so, on what terms (including as to review). In urgent cases the person(s) exercising line management responsibilities may determine this with the position to be reviewed by the Assessment Panel when it meets.
  10. The Chair of the Assessment Panel shall confirm the Assessment Panel’s findings, and the reasons for those findings, in respect of the allegation in writing. These shall be sent to: the Review Panel (if applicable – see below); the person making the allegation; and the statutory officer who is the subject of it.

#### Review Panel hearing

11. If the Assessment Panel makes a finding that there are reasonable grounds for the matter to be considered by a Review Panel, then (unless there is an express decision of the Mayor and the Assembly to the contrary)<sup>19</sup> the allegation should be referred to the Review Panel. The Panel should consider the allegation – normally within 20 working days of the written confirmation being provided, as at paragraph 10 above. The Review Panel members will comprise the following:
  - up to two of the Mayor’s staff appointed under section 67(1) of the GLA Act 1999, as chosen by the Mayor<sup>20</sup>
  - between three and five members of the Assembly, as the Chair of the Assembly determines,<sup>21</sup> with those members being appointed on a politically proportionate basis that takes into account the principle of proportionality between political groups on the whole Assembly being represented (so far as practical, and subject always to any particular group being able to decline involvement on the Panel), among whichever number of Assembly Members the Chair decides to appoint to the Panel; and
  - two advisory non-voting “independent persons”, selected from the list of such persons maintained by the Authority under section 28(7) of the Localism Act 2011, to provide impartial advice and challenge to other members of the Panel – provided that the following is observed:
    - If, at the time of the hearing, there are fewer than two independent persons available to sit on the Panel, then the Assistant Director, People, shall seek (so far as reasonably

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<sup>17</sup> The Mayor will confirm to the Assistant Director, People, the number and identity/ies of the section 67(1) staff appointed; and that the Mayor has delegated to the appointee(s) authority to exercise the Mayor’s functions under this process.

<sup>18</sup> If it were to be proved through an independent investigation, there would be sufficient grounds to lead to dismissal or other sanction that would be recorded on the statutory officer’s personal file; and there is evidence in support of the allegation sufficient to require further investigation.

<sup>19</sup> A decision by the Mayor and the Assembly not to invoke the Review Panel procedure must be a joint decision; and shall be confirmed in writing to the Assistant Director, People, by the Mayor (without an MD) and by the Chair of the Assembly following consultation with political group leaders.

<sup>20</sup> The Mayor will confirm to the Assistant Director, People, the number and identity/ies of the section 67(1) staff appointed; and that the Mayor has delegated to the appointee(s) authority to exercise the Mayor’s functions under this process.

<sup>21</sup> The Chair of the staffing committee will confirm in writing to the Assistant Director, People, following consultation with the leaders of the political groups their determination as to the number and identities of the Assembly members to be appointed.

practicable) to appoint to the Review Panel up to two persons who are independent persons appointed by a London borough council(s) and/or the City of London Corporation, under section 28 (7) of the Localism Act 2011. (The Assistant Director, People, may agree to pay such a person for their time and expenses for participating on the Panel.)

- If it has not been reasonably practicable to appoint an independent member, in such circumstances, from a London borough council(s) and/or the City of London Corporation, then the Review Panel may proceed with only one independent person, or without any.
12. The members of the Review Panel will decide who will chair its meetings. In the absence of such an agreement, the Chair of the Assembly determines who will act as Chair.
  13. The HoPS or (where the HoPS is the complainant or the subject of the allegation) the Assistant Director, People, will attend and participate (in an advisory non-decision-making capacity) in any meeting of the Review Panel considering allegations concerning the Chief Finance Officer or the Monitoring Officer.
  14. The Review Panel must decide who to appoint to investigate the allegation, and set the terms of reference. The investigation report must be provided to the Review Panel and the relevant statutory officer. The Review Panel will notify the statutory officer of the range or types of disciplinary action that may be considered as potential outcomes based upon the findings of the investigation (if any). Unless the Review Panel considers, at a preliminary meeting, that, based on the investigation report and without the need for any further investigation, there are no grounds to uphold the complaint, the Review Panel must hold a meeting at which the investigator will present his/her report; and invite the statutory officer to attend that meeting to make representations. The Review Panel and the statutory officer will have the right to question the investigator; and to call and question any witnesses.
  15. The Review Panel must produce a report recording the representations from the statutory officer concerned; the Panel's findings on the allegations; their conclusions into any proposed disciplinary action – including whether or not the complaint against the statutory officer was upheld, and whether dismissal or a sanction short of dismissal is appropriate. The Panel will also review whether the statutory officer should be (or continue to be) suspended; and, if so, on what terms. A copy of the report must be given to the statutory officer.
  16. The Review Panel may itself decide to apply a sanction short of dismissal. Within 10 working days of receiving the Report, the statutory officer may appeal in writing against the Review Panel's decision. The appeal will be determined by an Appeal Panel, comprising the following:
    - two Assembly Members appointed by the Chair of the Assembly, following consultation with the leaders of the political groups – usually one from each of the two largest political groups represented in the Assembly,<sup>22</sup> who have not been involved in the earlier stages of the procedure; and
    - the Mayor or the Mayor's Chief of Staff, or a member of staff appointed by the Mayor under section 67(1) of the GLA Act 1999,<sup>23</sup> who has not been involved in the earlier stages of the procedure.The Appeal Panel must hold a meeting, and invite the statutory officer to attend that meeting to make representations prior to determining the appeal.
  17. Where the Review Panel recommends that dismissal is appropriate their Report shall be submitted to and determined by a Whole Authority meeting convened as soon as practicable in accordance with paragraphs 18 to 22 below and conducted in accordance with legal advice.

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<sup>22</sup> The Chair of the Assembly will confirm to the Assistant Director, People, the identities of the Assembly members appointed to the Assessment Panel.

<sup>23</sup> The Mayor will confirm to the Assistant Director, People, the number and identity/ies of the section 67(1) staff appointed; and that the Mayor has delegated to the appointee(s) authority to exercise the Mayor's functions under this process.

## Whole Authority Meeting

18. A Whole Authority Meeting is a duly convened meeting at which the following are physically present, acting jointly to determine the matter in question:
  - the Mayor, in person; or, if it is not practical for the Mayor to attend, for any reason, a member of the Mayor's staff appointed under section 67(1) of the GLA Act 1999 (Mayor's Representative) who has not previously been involved at the Assessment Panel or Review Panel stages; and
  - a duly convened plenary meeting of the Assembly, to which the requirements of Part 5A of the Local Government Act 1972 shall apply.
19. All questions and other matters coming before the Whole Authority Meeting are to be taken by the joint agreement of:
  - the Mayor or the Mayor's Representative; and
  - a simple majority of Assembly members present and voting (if there is an equality of votes, then the Chair of the Assembly shall have a second or casting vote to determine the Assembly's decision).
20. The Assistant Director, People, will provide attendees at the meeting with a note setting out the procedure to be followed at the Whole Authority Meeting. The Mayor or the Mayor's Representative, and the Assembly, may jointly resolve to conduct the meeting in a private and confidential session. The press and public are excluded from this session, if it is considered that confidential or exempt information (falling within the categories so defined in Part 5A of the Local Government Act 1972) is likely to be disclosed.
21. The Whole Authority Meeting must consider the report; the conclusions of any investigation; and any representations from the statutory officer concerned (who must be invited to attend). It must then decide whether the statutory officer should be dismissed. Alternatively, the Whole Authority Meeting may decide to impose a sanction short of dismissal, or no sanction.
22. If the Authority decides to dismiss a statutory officer, notice of dismissal must be given in accordance with the terms and conditions of their employment.

### Sickness policy

The GLA's sickness policy applies to the statutory officers, but with the following modifications:

- All the statutory officers shall report their sickness absence to their line manager.
- The HoPS shall exercise management responsibilities under the procedure in respect of the Chief Finance Officer and the Monitoring Officer (unless the Mayor and the Assembly, acting jointly, decide to exercise their powers in this regard).
- Final formal interviews under the sickness policy should only be conducted, in respect of the statutory officers, strictly in relation to their ill health (otherwise, for matters of capability and conduct, Appendix 2, above, applies). Prior to any final formal interviews, the Authority should consider appointing an independent medical adviser (at its own cost), where the medical opinion of the statutory officer's medical adviser and the Authority's own medical adviser are not in agreement. The Mayor and the Assembly, acting jointly, and in such a manner as they agree, will conduct and determine all final formal interviews, and appeals against dismissal, under the sickness policy and in respect of all of the statutory officers.