

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD1577

Title: Statutory Officers' Protocol

Executive Summary:

This report seeks the Mayor's approval to revisions to the Statutory Officers' Protocol.

Decision:

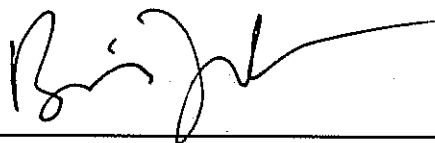
That the Mayor agrees changes to the Statutory Officers' protocol as set out in the appendix to this decision (noting it is a joint decision with the Assembly and that the Assembly approved the changes at the Assembly Plenary meeting on 4th November 2015).

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

18.11.15

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 The Authority is required to have three Statutory Officers: a Head of Paid Service; a Chief Finance Officer; and a Monitoring Officer. These three posts have unique employment status within the Authority. They are the only three posts to which appointments must be made, and terms and conditions determined, by the Mayor and the Assembly acting jointly. The Mayor and the Assembly acting jointly are required to approve any changes to the Statutory Officers' Protocol
- 1.2 In November 2009 the Mayor and Assembly agreed to approve and adopt (noting that it was a joint decision with the Assembly) a staffing protocol in respect of the three Statutory Officers.

- 1.3 On 28 January 2015 the Assembly and the Mayor agreed some minor revisions to the protocol.

2. Issues for Consideration

- 2.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amended the Local Authorities (Standing Orders) (England) Regulations 2001 and created a new procedure for dismissing statutory officers. This requires a change to the Statutory Officer's Protocol.
- 2.2 The draft Statutory Officer's Protocol is in Appendix 1.
- 2.3 The amendments to the protocol are contained within Appendix 2 of the protocol; the main changes are as follows:
- The designated independent person (DIP) is no longer responsible for conducting an independent investigation. Instead a panel appointed by the Authority, consisting of the Mayor, Assembly Members and at least two Independent Persons must meet for the purposes of advising the Authority on matters relating to the dismissal of the statutory officers of the authority;
 - The Panel must be appointed at least 20 working days before there is a meeting of the authority to consider, and decide by voting, whether or not to approve a proposal to dismiss;
 - That meeting must, before voting on the proposals for dismissal, take into account (i) any advice, views or recommendations of the Panel; (ii) the conclusions of any investigation into the proposed dismissal; and (iii) any representations from the relevant statutory officer.

3. Equality comments

- 3.1 The Statutory Officers – Staffing Protocol complies with legal provisions that apply to the statutory officers, and has been drafted to ensure that it complies with equalities principles. The GLA's statutory officers have been consulted on the protocol.

4. Financial comments

- 4.1 There are no financial implications associated with this.

5. Legal comments

- 5.1 The Mayor has the power to do what is set out in this report.

- 5.2 The relevant law relating to this matter is referred to above, and is referred to and properly reflected in the amended protocol.

6. Investment & Performance Board

- 6.1 This decision is not project related and therefore has not been submitted to the Investment and Performance Board.

Appendices and supporting papers:

Statutory Officers' Protocol

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

If YES, for what reason:

Until what date: (a date is required if deferring)

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form –NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the
following (✓)

Drafting officer:

Juliette Carter has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

Assistant Director/Head of Service:

Juliette Carter has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Sponsoring Director:

Martin Clarke has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Head of Paid Service:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature



Date 13.11.15

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature



Date 16:11:2015

Statutory Officers – Staffing Protocol

1. The Statutory Officers

- 1.1 Under the GLA Act 1999 (as amended)¹ the Authority is required to have “statutory officers” mentioned in paragraph 1.2 below. References in this document to the “staffing committee” are to the Assembly’s Oversight Committee unless the Assembly authorises another committee to exercise those functions.
- 1.2 These are the:
- Head of Paid Service²;
 - Chief Finance Officer³; and
 - Monitoring Officer⁴.
- 1.3 The statutory functions exercisable by these officers are listed in Part I of Appendix 1 to this document. Statutory functions exercisable by officers other than the statutory officers are listed in Part II of Appendix 1.

2. Appointment (Designation) without an external recruitment and selection process

- 2.1 The Mayor and the Assembly acting jointly may attribute the function/role of a statutory officer to an existing post occupied by an existing member of staff (and therefore designate that postholder as a statutory officer), without following an external recruitment and selection process (in which case sections 3 and 4 of this protocol do not need to be followed)⁵.
- 2.2 However, in these circumstances, the Assistant Director of Human Resources and Organisational Development should, where appropriate, seek expressions of interest from appropriately senior and experienced officers/postholders as to their posts being attributed with the function of statutory officer, and in the event that there is:
- (i) Only one suitable expression of interest, the that postholder may be permanently designated as a statutory officer if the Mayor and the Assembly agree to the designation and its terms and conditions; or
 - (ii) 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 acting jointly⁶.

¹ All references to the GLA Act 1999 (as amended) are references to the 1999 Act as amended by the GLA Act 2007.

² Required under the GLA Act 1999 (as amended) s 72(1)

³ Required under the GLA Act 1999 (as amended) s 127 and 127A

⁴ Required under the GLA Act 1999 (as amended) s 73 (1)

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

⁶ Note that, 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.

3. External Recruitment and Shortlisting of the Statutory Officers

- 3.1 Where it is not proposed or possible to designate a statutory officer in accordance with 2.1 above, a recruitment and selection process must be followed and the Assistant Director of Human Resources and Organisational Development shall⁷:
- a. Draw up a job description and person specification which sets out:
 - (i) The duties and accountabilities of the officer concerned; and
 - (ii) 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 an advertising and/ or search process).
- 3.2 Where a post has been advertised as set out in 3.1 above, the Mayor and the Assembly (through its staffing committee) shall approve the arrangements for the selection of a shortlist of such qualified applicants to be interviewed in accordance with section 4 of this protocol below.
- 3.3 Where no qualified person has applied, the Assistant Director of Human Resources and Organisational Development shall make further arrangements for advertisement in accordance with paragraph 3.1 above.

4. Appointment of the Statutory Officers

- 4.1 The Mayor and Assembly are required to make appointments to these statutory officer posts acting jointly.
- 4.2 Subject to any express decision of the Mayor⁸ and/or the Assembly to the contrary, the interviews for a vacant statutory officer post should be conducted by the Mayor and Assembly acting together as one panel and taking a joint decision through the use of one of the following options (to be determined by the Mayor⁹ and Assembly as necessary):
- A. the Mayor, and a representative of his staff appointed under s 67(1) of the GLA Act acting as an adviser to the Mayor, and a sub-committee of the Assembly's staffing committee, with such membership being politically proportional as per the usual rules as to proportionality; or
 - B. up to two representatives of the Mayor, who must be staff appointed under s 67(1) of the GLA Act, and a sub-committee of the Assembly's staffing committee (with membership as set out in A. above)

WITH

formal decisions being taken subsequent to the conclusion of the interview process by the Mayor taking his decision on appointment and terms and conditions via a Mayoral Decision form (following a recommendation from one of his appointees if under option b), and the Assembly's staffing sub-committee making a recommendation to the full Assembly to appoint a candidate upon recommended terms and conditions. (In these circumstances, any offer of employment will need to be made conditional upon and subject to the formal approval of the Mayor and the Assembly).

- 4.3 The Head of Paid Service will participate in the interviews of candidates for the posts of Monitoring Officer and Chief Finance Officer (in an advisory capacity).

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

⁸ In respect of the matters relating to the Mayor within this protocol

⁹ With a formal written delegation being made to one of his appointees where this is required by any of the options below

- 4.4 The Mayor and Assembly (through its staffing committee) 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.
- 4.5 Other than in exceptional circumstances, the composition of those conducting the interviews should remain the same for all candidates in all rounds of interviews for a statutory officer vacancy.
- 4.6 Any proposed appointment will be subject to references and the Authority's usual pre-employment checks.

5. Terms and Conditions

- 5.1 The Mayor and Assembly are required, acting jointly, to determine the terms and conditions of the statutory officers.
- 5.2 The full Assembly must decide any changes to the statutory officers' terms and conditions.
- 5.3 By adopting this document the Mayor and Assembly jointly agree that, as a matter of principle, terms and conditions that apply to all staff appointed by the Head of Paid Service¹⁰, should normally also apply to the statutory officers.
- 5.4 To this end, when the Head of Paid Service (HOPS) consults with Mayor and the Assembly's staffing committee upon proposed changes to terms and conditions of employment that apply to staff appointed by the HOPS,¹¹ the Mayor should be asked, and the Assembly's staffing committee should also be asked to recommend to the full Assembly, whether or not (upon the HOPS agreeing to the proposed changes) to apply the proposed change to terms and conditions in respect of the statutory officers.
- 5.5 In some circumstances, however, and due to the nature of their offices, the statutory officers do need to have terms and conditions of employment that are different to those that apply to all staff appointed by the HOPS.
- 5.6 Such terms and conditions must be approved by the Mayor and the Assembly acting jointly, and have been so approved as attached at Appendices 2-3 to this document.
- 5.7 Before any proposals to change the terms and conditions of the statutory officers are submitted to the Mayor and the Assembly, the statutory officers themselves must be consulted on the proposals.

6. Disciplinary action and investigations

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

7. Dismissal

- 7.1 The statutory officers may only be dismissed by the Mayor and the Assembly acting jointly.
- 7.2 Detailed procedures in respect of how the statutory officers may be dismissed as a result of probationary, disciplinary or capability (excluding ill health) action are contained in Appendix 2.

¹⁰ "Terms and conditions" here includes any employment protocols or policies that confer contractual rights upon all staff appointed by the HOPS.

¹¹ Or proposed changes to employment protocols or policies that confer contractual rights upon all staff appointed by the HOPS.

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.

PART I**STATUTORY OFFICERS – STATUTORY FUNCTIONS****A. The Head of Paid Service**

1. Functions of the proper officer of the Authority for the purposes of Parts I and II of the Greater London Authority Act 1999 (as amended), other than those relating to:
 - i. The functions of the Greater London Returning Officer;
 - ii. 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) (see below)
2. Functions of the Authority's head of paid service under the Greater London Authority Act 1999.
3. Functions of 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 head of paid service under Part I of the Local Government and Housing Act 1989 generally, including under Section 4 (designation and reports of head of paid service) 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 generally.
7. The functions under any other enactment (whenever passed) of a proper officer or responsible officer (or other designation used in the enactment) as regards areas not falling within paragraphs 2(d) and 3(d) below.
8. The functions of consulting with the Mayor and the Assembly and appointing staff under s 67(2) of the GLA Act, and determining such staffs' terms and conditions of employment under s 70(2) of the GLA Act.

B. The Chief Finance Officer

9. Functions of the chief finance officer responsible for the proper administration of the financial affairs of the authority under Section 127(1) of the Greater London Authority Act 1999.
10. Functions of the responsible officer under Local Government Finance Act 1988.
11. Functions of the proper officer under the Local Government Finance Act 1988.
12. 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 its financial affairs and arrangements.

C. The Monitoring Officer

13. Functions of the monitoring officer for the Authority under Section 5 of the Local Government and Housing Act 1989.
14. Functions of the monitoring officer under Part III of the Local Government Act 2000 (as amended) including the GLA Code of Conduct, and the Standards Committee (England) Regulations 2008/1085, and any rules as to the investigation and determination of alleged breaches of that Code.
15. 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.
16. 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.

PART II

OTHER OFFICERS – STATUTORY FUNCTIONS

D. The Executive Director of Secretariat

22. Functions of proper officer of the authority for the purposes of Part VA (Access to Meetings and Documents of Certain Authorities, Committees and Sub-Committees) of the Local Government Act 1972 as applied to the Assembly by Section 58 (openness) of the GLA Act 1999.
23. Functions of the proper officer under Sections 15 to 17 (political balance on committees etc.) of the Local Government and Housing Act 1989 including under the Local Government (Committees and Political Groups) Regulations 1990.

Statutory Officers – Performance, Disciplinary and Dismissal Procedure

Only the Mayor and the Assembly acting jointly can authorise action being taken against a statutory officer on grounds of capability or misconduct.

A. Action short of dismissal

1. Action short of dismissal may only be taken in respect of:
 - a) misconduct, after the GLA's Disciplinary Procedure has been complied with;
 - b) capability, after the GLA's Capability Procedure has been complied with.
2. In applying the above procedures, the Head of Paid Service shall usually exercise management responsibilities in respect of the Monitoring Officer and the Chief Finance Officer (although, at any time, the Mayor and Assembly acting jointly, in such manner as they agree, may undertake these responsibilities).
3. The Mayor and Assembly acting jointly (in such manner as they agree) shall exercise management responsibilities under the above procedures in respect of the Head of Paid Service.
4. A decision to take disciplinary action, short of dismissal, against any of the statutory officers in connection with their role as a statutory officer must be taken by the Mayor and Assembly acting jointly.

B. Statutory Officers' Dismissal Procedure

5. This procedure applies where a GLA employee who has been designated as a statutory officer may be dismissed for reasons of poor performance (capability) or misconduct¹², whether in probationary period or otherwise.

C. Procedure

6. Where there is an allegation of poor performance or misconduct which, if proven, could result in the dismissal of a statutory officer, the matter must be referred to and considered by a concurrent meeting of the following (subject to any express decision of the Mayor and/or the Assembly to the contrary) ("The Panel"):
 - a) the Mayor and, if the Mayor so chooses, one of his/her staff appointed under section 67(1) of the GLA Act, and
 - b) an advisory sub-committee of the Assembly which is politically proportionate as per the usual rules as to proportionality.
 - c) two Independent Persons¹³, who will not have voting rights.

¹² The Regulations apply to disciplinary action, which is defined as including "any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of body or mind, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract."

¹³ An Independent Person appointed under section 28(7) of the Localism Act (see: the Local Authorities (Standing Orders) (England) Regulations 2015/881 Schedule 3 paragraph 1). Independent Persons must be appointed to the sub-committee in the following priority order: an independent person who has been appointed by the GLA and who is an elector within Greater London; any other independent person appointed by the GLA; or an Independent Person who has been appointed by another authority. Any remuneration, allowances or fees paid by the Authority to an Independent Person appointed to the Panel must not exceed the level of remuneration, allowances or fees paid to that person in respect of that person's role as an independent person in relation to the standards regime under Part 1 Chapter 7 of the Localism Act 2011.

The Head of Paid Service should attend and participate (in an advisory non-voting capacity) in any meeting of the Panel considering allegations concerning the Chief Finance Officer or the Monitoring Officer.

7. Meetings of the Panel must be convened and conducted in accordance with legal advice. The Panel may resolve to conduct its meeting in private if it considers confidential or exempt information (as defined in Part 5A of the Local Government Act 1972) is likely to be disclosed.
8. The Panel must decide whether or not to appoint someone to investigate the allegation(s) and, if so, whom; and whether or not to permit the statutory officer to attend a meeting of the Panel and make representations.
9. The Panel must produce a report ("the Report") containing the Panel's advice, views and recommendations to the Authority on the allegations, and whether or not the statutory officer should be dismissed.
10. At the next appropriate time, providing it is least twenty working days after the Panel's last meeting, the Authority must consider the Report; the conclusions of any investigation into the proposed dismissal; any representations from the relevant officer, and decide whether or not the statutory officer should be dismissed.
11. The Authority must do what is set out in paragraph 10 above by a concurrent meeting of the Mayor and the Assembly, to be convened and conducted in accordance with legal advice. The Mayor and the Assembly may resolve to conduct this meeting in private if they consider confidential or exempt information (as defined in Part 5A of the Local Government Act 1972) is likely to be disclosed.
12. The Authority may only decide to dismiss a statutory officer if the Mayor and a majority of the Assembly both agree to this.
13. If the Authority decides to dismiss a statutory officer, notice of dismissal must be given in accordance with their terms and conditions of employment.

Statutory Officers – 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.
- Usually, the Head of Paid Service shall exercise management responsibilities under the procedure in respect of the Monitoring Officer, the Chief Finance Officer (unless the Mayor and the Assembly acting jointly decide to exercise their powers in this regard).
- The Mayor and the Assembly acting jointly (in such a manner as they agree) shall exercise management responsibilities under the procedure in respect of the Head of Paid Service.
- 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 medical adviser are not in agreement. The Mayor and Assembly acting jointly (in such a manner as they agree) will conduct and determine all final formal interviews, and appeals against dismissal, under the sickness policy in respect of all the statutory officers.