

## **Guidance Note for the Police and Crime Committee Confirmation Hearing in respect of the appointment of the Deputy Mayor for Policing and Crime**

### **1. Introduction**

- 1.1 Section 32(1) of the Police Reform and Social Responsibility Act 2011 requires the Assembly to arrange for the special scrutiny functions specified in the Act to be discharged by a Police and Crime Panel (which the Assembly has chosen to call the Police and Crime Committee). These special scrutiny functions include the holding of a Confirmation Hearing in respect of the appointment of the Deputy Mayor for Policing and Crime by the Mayor's Office for Policing and Crime.
- 1.2 Section 60A and Schedule 4A to the GLA Act 1999 (as amended) set out the processes relating to Confirmation Hearings for specified Mayoral appointments, including in relation to a proposed appointment to the office of Deputy Mayor for Policing and Crime.

### **2. Before the Confirmation Hearing**

#### ***Decision to hold a Confirmation Hearing***

- 2.1 The Police and Crime Committee has three weeks from receipt of formal notice of the appointment of Deputy Mayor for Policing and Crime within which to:
- decide whether to hold a Confirmation Hearing and whether to request that the candidate produce any documents in relation to the proposed appointment;
  - hold the Hearing itself; and
  - make a written recommendation to the Mayor as to whether the candidate should be appointed/advise the Mayor that it has exercised its veto of the appointment (further information regarding the use of veto is set out below).
- 2.2 Section 32(5) of the Police Reform and Social Responsibility Act 2011 provides that the special scrutiny functions as defined in the Act - which include deciding whether to hold a confirmation hearing for the proposed candidate for the Deputy Mayor for Policing and Crime and whether or not to request the candidate to provide, in advance of the meeting, any relevant documentation - may only be exercised by a meeting of the whole Police and Crime Committee and may not be delegated to a single Assembly Member.

#### ***Provision of Notice of the Hearing to the Candidate***

- 2.3 If it is decided to hold a Hearing, a formal notice issued by the Head of Paid Service must be given to the candidate at least one week before the day on which the Hearing is to take place, unless the candidate waives this right. It must be sent by registered post or a recorded delivery service.

### **3. At the Confirmation Hearing**

#### ***Questions to the Candidate***

- 3.1 The purpose of the Confirmation Hearing is to establish whether the candidate has the ability to do the job and is fit for office. Questions may therefore cover:
- whether the candidate is qualified for the position;
  - whether the candidate has the time and capacity for the position;
  - whether the candidate is fit (independent & impartial) for the position; and

- Key responsibilities and issues for the organisation to which the Mayor is proposing to appoint the candidate.

- 3.2 Advice from Counsel is that the scope of questions can include anything reasonable and relevant to the candidate's fitness for office and ability to do the job. The Chair should intervene if questions are irrelevant, unduly personal, or discriminatory.
- 3.3 Legal advice regarding standards of evidence and hearsay is set out at the end of this note.
- 3.4 The Committee does not have the power to compel a candidate to answer a question, but may take their answer or failure to answer into account in making a recommendation. Counsel has advised that it is unlikely that there would be potential grounds for defamation action resulting from Assembly Members drawing inferences from a failure to provide information, because the proceedings would be covered by qualified privilege.
- 3.5 Candidates are not obliged to answer any question or produce any document which they would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England or Wales.

***Presumption that Confirmation Hearings will be held in public***

- 3.6 The presumption is that Hearings are held in public. The Committee does, however, have discretion to exclude the press and the public from the meeting and move into private session if it is to consider exempt information, as defined under Schedule 12A of the Local Government Act 1972.
- 3.7 Under Schedule 12A, categories of potentially exempt information include:
- Information relating to any individual;
  - Information which is likely to reveal the identity of an individual; and
  - Information relating to the financial or business affairs of any particular person (including the authority holding that information)
- 3.8 IMPORTANTLY, information that falls within the categories of potentially exempt information (above) should only be considered in private session if and so long as in all the circumstances of the case, the public interest in considering that information in private outweighs the public interest in considering it in public. Information is not exempt (and cannot therefore be considered in private session) if it is required to be registered under the Companies Act 1985; Friendly Societies Acts 1974 and 1992; Industrial and Provident Societies Acts 1965 to 1978; the Building Societies Act 1986; or the Charities Act 1993.
- 3.9 Counsel's advice is that the Assembly should consider any reasonable request from a candidate to hold a hearing in private.

***Police and Crime Committee's Decision/Recommendation to the Mayor***

- 3.10 At the end of the question and answer session, once the candidate has left the meeting, the Committee will discuss their decision/recommendation.
- 3.11 Options for the Committee are:
- 1) To agree to recommend the candidate's appointment to the Mayor: or
  - 2) To agree not to object to the candidate's appointment, but to write to the Mayor to provide comments regarding the proposed appointment; or

3) To agree to exercise the veto against the candidate's appointment (noting that at least two-thirds of the Members present and voting must vote in favour of the veto and it may only be exercised where the candidate is not a Member of the London Assembly).

### ***Use of the Police and Crime Committee's veto***

3.12 Under paragraph 10 of Schedule 4A of the GLA Act 1999 (as amended) and Standing Order 9.2.H, the Police and Crime Committee may veto the appointment of the candidate as Deputy Mayor for Policing and Crime where the candidate is not a member of the London Assembly if the Committee votes by at least two-thirds of the members present and voting, for the following motion:

"The Police and Crime Committee hereby resolves to veto the proposed appointment of ..... as Deputy Mayor for Policing and Crime".

3.13 The motion may be moved at the meeting without notice.

3.14 If the Chair of the Police and Crime Committee notifies the Mayor's Office for Policing and Crime of the motion to veto within the three weeks of the notification and proposed appointment by the Mayor's Office for Policing and Crime the Mayor's Office for Policing and Crime must not appoint the candidate as Deputy Mayor for Policing and Crime.

3.15 Legal advice is that, in order for any use of veto to be lawful:

- The Committee must follow the procedure set out at paragraphs 3.12 to 3.14 above;
- The Committee must take into account any relevant matters and, conversely, must not take into account any matters which are irrelevant;
- The decision must not offend the Wednesbury reasonableness test.

3.16 The Wednesbury reasonableness test is that the decision must not be so unreasonable that it defies logic or accepted moral standards, so that no sensible person who had applied their mind to the question to be decided could have arrived at it.

3.17 If the Police and Crime Committee did veto a proposed appointment, its decision could potentially be challenged by way of judicial review. Any such challenge is only likely to be able to succeed if the Court was satisfied that:

- There had been a serious procedural error in the conduct of the Hearing (for example, less than two-thirds of the Committee voting in favour of the veto); or
- The Committee had based its decision to veto on irrelevant considerations, or decided to veto on spurious grounds unsupported by the facts or evidence.

3.18 Only a person or legal body with a "sufficient interest" in the decision to veto could bring a claim for judicial review – which would certainly include the MOPC, and could potentially include others. The most likely outcome of any successful judicial review claim would be that the Police and Crime Committee would be ordered to re-conduct the Hearing.

### ***Issues to be taken into consideration when exercising the power of veto***

3.19 As the introduction of the power of veto in relation to the appointment of the Deputy Mayor for Policing and Crime is relatively new there is no case law relating specifically to when it would be reasonable to exercise the veto and what factors might be deemed by a court to be irrelevant.

3.20 However, relevant matters for the Police and Crime Committee's Confirmation Hearing would include questions about:

- Whether the candidate is suitably qualified and experienced for the position;
- Whether the candidate has the time and capacity for the position;

- Whether the candidate is fit (independent and impartial) for the position; and
- Key responsibilities and issues for the organisation to which the Mayor is proposing to appoint the candidate.

- 3.21 Irrelevant considerations would include party political perceptions of the candidate, and any decision to reject a candidate on the basis of party politics (as opposed to the relevant considerations listed above) is highly likely to be unlawful.
- 3.22 Members should be objective and impartial when making decisions. Members must observe the distinction between having a closed mind to arguments that may be contrary to the rules of natural justice and therefore unlawful and simply having a predisposition to a certain view.
- 3.23 The Committee may make a decision only in respect of those things for which it is empowered. It could not, for example, decide to veto the appointment of a candidate who is an Assembly Member, as that is not permitted in law.
- 3.24 The Members of the Police and Crime Committee (as when they are members of any other Assembly Committee) must also comply with the GLA's Code of Conduct when they are acting in their capacity as a member of the Authority and they should observe the principles of public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

## **4. After the Confirmation Hearing**

### ***Letter to the Mayor***

- 4.1 Following any Confirmation Hearing, the Chair of the Police and Crime Committee will write to the Mayor within three weeks of the date of the Mayor's notification of the proposed appointment, to communicate the Committee's recommendation as to whether or not the candidate should be appointed to office, and to advise of any motion passed to veto the appointment.
- 4.2 The Chair of the Police and Crime Committee must also ensure that the Assembly is notified of every such decision (Standing Order 9.2.G)

### ***End of the Confirmation Hearings Process***

- 4.3 The end of the confirmation process is reached when:

The Mayor has given the Chair of the Police and Crime Committee the notification required by paragraph 5(2) of Schedule 4A in respect of acceptance or rejection of the Assembly's recommendation (if the candidate is an Assembly Member);

OR

The period of 3 weeks (from the day on which the Assembly received notification from the Mayor of the candidate(s) whom he intends to appoint) has expired without any recommendation being given to the Mayor by the Assembly.

## **Annex 1**

### **Standards of Evidence**

In relation to standards of evidence, legal advice is that similar rules should apply as to quasi-judicial types of Committees. Hearsay evidence is admissible in quasi-judicial proceedings, provided consideration is given to the source, nature and credibility of the evidence. In considering hearsay evidence, it should only be admitted where it can fairly be regarded as reliable and Members must allow an objecting party a fair opportunity of commenting on it and contradicting it.

Hearsay means a statement made, otherwise than by a person while giving oral evidence in the proceedings, which is tendered as evidence of the matters stated and references to hearsay include hearsay of whatever degree.

What must be discounted as evidence are gossip, speculation and unsubstantiated innuendo. In considering hearsay evidence, it should only be admitted where it can fairly be regarded as reliable and Members must allow an objecting party a fair opportunity of commenting on it and contradicting it.

The following points can be borne in mind by Members when considering the weight of hearsay evidence:

the reasonableness of the party calling the evidence rather than producing the original maker;

whether the original statement was made at or near the same time as the evidence it mentions;

whether the evidence involves multiple hearsay;

whether any person involved had any motive to conceal or misrepresent matters;

whether the original statement was an edited account, or was made in collaboration with another, or for a particular purpose;

whether the circumstances of the hearsay evidence suggest an attempt to prevent proper evaluation of its weight.