

# Statutory Officer Protocol

---

Issue date	November 2018
Amendments made from previous version (November 2015)	Appendix 2 of the Protocol (performance, disciplinary and dismissal procedure) establishes Assessment Panel to sift complaints about a statutory officer. Minor drafting changes.
Approved by	Mayor via MD 2395- 27 November 2018 Assembly at Plenary meeting- 6 December 2018
Review date	November 2020
Senior owner	Chief Officer
Document owner	Assistant Director, Finance and Governance

# 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>; and
  - Monitoring Officer<sup>3</sup>.
- 1.2 The statutory functions exercisable by these officers are listed in Appendix 1 to this document.

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

- 2.1 The Mayor and the Assembly acting jointly may allocate 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)<sup>4</sup>.
- 2.2 In these circumstances the Assistant Director of Human Resources & Organisational Development (HR & OD) should, where appropriate, establish an internal competition involving appropriately senior and experienced officers / postholders as to their posts being attributed with the function of a statutory officer. In the event that there is:
- Only one candidate, 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
  - More than one suitable expression of interest, an appropriate selection and appointment process shall be determined by the Mayor and by the Assembly's staffing committee with both parties acting jointly<sup>5</sup>.

## 3. External recruitment and shortlisting

- 3.1 Where it is not proposed or possible to designate a statutory officer in accordance with paragraph 2.1 above, a recruitment and selection process must be followed. The Assistant Director of HR & OD will<sup>6</sup>:
- Draw up a job description and person specification which sets out:
    - the duties and accountabilities of the officer concerned; and
    - any qualifications, skills and experience required;
  - Make arrangements for a copy of the documents mentioned at (a) above to be sent to any person on request; and

---

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

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

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

<sup>4</sup> This is provided for in the Local Authorities (Standing Orders) Regulations 1993/202

<sup>5</sup> Noting that, whilst the Assembly's staffing committee can determine this, the full Assembly must take any decision to appoint and also any decision relating to the terms and conditions of the appointment

<sup>6</sup> The following provisions incorporate the requirements of the Local Authorities (Standing Orders) Regulations 1993/202

- 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 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 HR & OD shall make further arrangements for advertisement in accordance with paragraph 3.1 above.

#### **4. Appointment**

- 4.1 The Mayor and Assembly are required to make appointments to the three statutory officer posts with both parties acting jointly.
- 4.2 Unless there is an express decision of the Mayor 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 Mayor<sup>7</sup> and Assembly as necessary):
- A. The Mayor, and also a member of staff appointed under s 67(1) of the GLA Act acting as an adviser to the Mayor if the Mayor so chooses, and a sub-committee of the Assembly's staffing committee with such membership being politically proportional as per the usual rules on 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 option A. above)
- 4.3 Formal decisions after the conclusion of the interview process on the appointment and the terms and conditions of that appointment will be taken by the Mayor via a Mayoral Decision form (following a recommendation from one of the Mayor's appointees if under option B.) and by the Assembly via the Assembly's staffing sub-committee making a recommendation to the full Assembly. Any offer of employment will need to be made conditional on, and subject to, the formal approval of the Mayor 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.
- 4.5 The Mayor, or the Mayor's representative, and the 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.
- 4.6 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.

---

<sup>7</sup> With a formal written delegation being made to one of the Mayor's appointees where this is required

## **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 Mayor's approval must be given via a Mayoral Decision form. 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, the GLA standard terms and conditions that apply to all staff appointed by the HoPS<sup>8</sup> should normally also apply to the statutory officers.
- 5.4 To this end, when the HoPS consults with the Mayor and the Assembly's staffing committee on proposed changes to terms and conditions of employment that apply to staff appointed by the HoPS<sup>9</sup>, the Mayor should be asked, and the Assembly's staffing committee should be asked to recommend to the full Assembly, whether or not (on the HoPS agreeing to the proposed changes) to apply the proposed change to the GLA standard terms and conditions in respect of the statutory officers.
- 5.5 In some circumstances, and due to the nature of their roles, 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. They are attached at Appendices 2 and 3 to this Protocol and have been so approved.
- 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. Their views will be taken into account but will not be determinative.

## **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.
- 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.

---

<sup>8</sup> "Terms and conditions" here includes any employment protocols or policies that confer contractual rights upon all staff appointed by the HoPS

<sup>9</sup> Or proposed changes to employment protocols or policies that confer contractual rights upon all staff appointed by the HoPS

### 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:
  - i. The functions of the Greater London Returning Officer (GLRO); and
  - 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).
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 s 67(2) of the GLA Act and determining such staff members' terms and conditions of employment under s 70(2) of the GLA Act.
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 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 its 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 authorise action being taken against a statutory officer on grounds of capability or misconduct.*

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

1. Action may only be taken in respect of:
  - a) Misconduct, after the GLA's Disciplinary Procedure has been complied with; and / or
  - b) Capability, after the GLA's Capability Procedure has been complied with.
2. In applying the above procedures, the HoPS will usually exercise management responsibilities in respect of the Chief Finance Officer and the Monitoring Officer. At any time the Mayor and Assembly, acting jointly, and in such manner as they agree, may undertake these responsibilities.
3. The Mayor and Assembly acting jointly, and in such manner as they agree, shall exercise management responsibilities under the above procedures in respect of the HoPS.
4. A decision to take disciplinary action 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 and is subject to the GLA's Standing Orders.

#### **B. Dismissal**

5. This procedure applies where a GLA employee who has been designated as a statutory officer may potentially be dismissed for reasons of poor performance (capability) or misconduct<sup>10</sup>, whether in their probationary period or otherwise.

#### **C. Procedure**

6. Where there is an allegation or complaint of poor performance or misconduct ("the allegation"), then the procedures set out in paragraphs 6.1 to 13 below shall apply.

---

<sup>10</sup> 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."

### Assessment Panel hearing

- 6.1 The allegation must be referred to a panel (“the Assessment Panel”) comprising the following members:
  - a) Two Assembly Members to be nominated by the Assembly; and
  - b) The Mayor’s Chief of Staff or a member of staff appointed by the Mayor under s 67(1) of the GLA Act.
- 6.2 The members of the Assessment Panel will decide amongst themselves who will chair its meetings. In the absence of such an agreement, the Chair of the Assembly determines who will act as chair.
- 6.3 The purpose of the Assessment Panel is 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) to refer the allegation to the Review Panel (see below). It is not to determine whether or not the allegation is proved. If the Assessment Panel determines that there are no such reasonable grounds, then the allegation shall be dismissed and no further action taken in respect of it.
- 6.4 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, which 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

- 6.5 If the Assessment Panel makes a finding that there are reasonable grounds for the matter to be considered by a “Review Panel” (unless there is an express decision of the Mayor and / or the Assembly to the contrary), then the allegation should be referred to the Review Panel. The Panel should consider the allegation within 20 working days of the written confirmation being provided as at paragraph 6.4 above. The Review Panel members will comprise the following:
  - a) The Mayor and / or, if the Mayor so chooses, up to two of the Mayor’s staff appointed under section 67(1) of the GLA Act;
  - b) An advisory sub-committee of the Assembly which is politically proportionate as per the usual rules as to proportionality; and
  - c) An Independent Person<sup>11</sup>, who will not have voting rights.
- 6.6 The HoPS should attend and participate (in an advisory non-voting capacity) in any meeting of the Review Panel considering allegations concerning the Chief Finance Officer or the Monitoring Officer.
7. Meetings of the Assessment and Review Panels 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. The Panels may resolve to conduct their meeting in private if they consider confidential or exempt information (as falling within the same categories so defined in Part 5A of the Local Government Act 1972) is likely to be disclosed.
8. The Review Panel must decide who to appoint to investigate the allegation and must permit the statutory officer to attend a meeting of the Review Panel to make representations.

---

<sup>11</sup> An Independent Person appointed under section 28(7) of the Localism Act (see the Local Authorities (Standing Orders) (England) Regulations 2001 Schedule 3 paragraph 1). 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

9. The Review Panel must produce a report (“the Report”) containing the Panel’s advice, views and recommendations to the “whole Authority” (both the Mayor and the Assembly) on the allegations, their conclusions into the proposed dismissal (including whether or not the statutory officer should be dismissed) and any representations from the statutory officer concerned.

Whole Authority meeting

10. At the next appropriate time, providing that it is at least 20 working days after the Review Panel’s final meeting, the whole Authority must consider the Report, the conclusions of any investigation and any representations from the statutory officer concerned. It must then decide whether or not the statutory officer should be dismissed.
11. The Authority must do what is set out in paragraph 10 above by means of convening a concurrent meeting of the Mayor and the Assembly, to be convened and conducted in accordance with legal advice. The meeting is not one to which Part 5A of the Local Government Act 1972 applies. The Mayor and the Assembly may resolve to conduct this meeting in private if they consider confidential or exempt information (falling within the categories so defined in Part 5A of the Local Government Act 1972) is likely to be disclosed.
12. The Authority may decide to dismiss a statutory officer if the Mayor and a majority of the Assembly both agree to do 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.

### 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);
- The Mayor and the Assembly acting jointly, and in such a manner as they agree, shall exercise management responsibilities under the procedure in respect of the HoPS; and
- 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 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.