

# Subject: Statutory Officers' Protocol

**Report to: London Assembly**

**Report of: Head of Paid Service**

**Date: 28 January 2015**

**This report will be considered in public**

## 1. Summary

- 1.1 This report consults the Assembly on the proposal for the pay award for 2014-2016 for the GLA's Statutory Officers only and rectifies an anomaly in the pay for one Statutory Officer.
- 1.2 The report also seeks the approval of the Assembly for some minor revisions to the Statutory Officers' Protocol

## 2. Recommendations

- 2.1 **That the Assembly confirms (noting that it is a joint decision with Mayor) that the pay award made to GLA staff should also be made to the Statutory Officers and agree that the pay of one of the Statutory Officers should be corrected, as set out in paragraph 4.7 of the report.**
- 2.2 **That the Assembly notes that, in accordance with the Senior Salaries Review Body recommendation (agreed in 2009) to apply future local government awards to the pay of the Mayor and Assembly, the local government pay settlement of 2.2% (from 1 January 2015) will be applied to the pay of Assembly Members and the Mayor.**
- 2.3 **That the Assembly agrees (noting it is a joint decision with the Mayor) the minor changes to the Statutory Officers' protocol.**

## 3. Background

- 3.1 Assembly Members and the Mayor must jointly determine the annual pay award for:
  - The Mayor and Assembly Members; and
  - The three Statutory Officers - the Head of Paid Service, Statutory Finance Officer and Monitoring Officer (noting that for the Monitoring Officer the Mayor and Assembly are only responsible for determining any uplift on the honorarium payment made for Monitoring Officer duties).

3.2 The Mayor has not yet determined whether his appointees should receive a pay increase and will need to determine this following any decision taken on the above.

#### 4. Issues for Consideration

4.1 The Head of Paid Service, following receipt of a pay claim from Unison and consultation with the Mayor and the Assembly at GLA Oversight Committee, has determined that staff in the GLA should receive an increase of 2.2% from 1 January 2015 until 31 March 2016. This broadly mirrors the local government settlement.

4.2 Following consideration by the Mayor and Assembly in 2009 of the last independent review by the Senior Salaries Review Body of GLA elected members' remuneration, it was confirmed that basic salaries should track the local government staff settlements nationally. Therefore 2.2% (the local government settlement) will be applied to Assembly Members and the Mayor's pay from 1 January 2015 to 31 March 2016.

4.3 The Mayor and Assembly must determine the pay award for Statutory Officers in line with section s72, s73 and s127 of the GLA Act 1999 (as amended). The Head of Paid Service has suspended a decision on other senior staff pay (Executive Directors) pending a decision on Statutory Officers' pay. It is likely that the Head of Paid Service will apply the decision taken on the pay award for Statutory Officers (which, in practice, only substantively affects the pay of 2 of the 3 officers) to the remaining Executive Directors. The Mayor will also want to consider this decision when deciding on the pay award for his own appointees.

4.4 By way of background generally, the table below sets out the pay awards to GLA staff, Assembly Members and Statutory Officers since 2008.

	<b>GLA</b>	<b>London local authorities</b>	<b>Assembly Members</b>	<b>Statutory Officers</b>
2013/14	1% for all staff	1%	1%	1%
2012/13	Nil	Nil	Nil	Nil
2011/12	4% for grade 2 0% for all other grades	Nil	Nil	Nil
2010/11	Nil	Nil	Nil	Nil
2009/10	1% (except Executive Directors and Mayoral appointees)	1% (senior officers – 0%)	1%	Nil
2008/09	2.75%	2.75%	2.75%	2.75%

4.5 Following the expansion of the GLA's responsibilities and budget from 1 April 2012, there has been no amendment to the salary of the Executive Director of Resources who is also the Statutory Finance Officer. This salary is lower than that of other Executive Directors such as the Executive Director of Housing and Land, and the Executive Director of Development, Enterprise and Environment due the

times when the Directors were appointed. This is an anomaly that should have been corrected previously for reasons of equity especially given that the GLA Statutory Finance Officer now has financial oversight of a gross GLA budget which has increased from £260m in 2011/12 to £1.1 billion in 2014/15.

- 4.6 However, officers have not just looked at internal GLA pay levels; a benchmarking exercise looking at comparable salaries across the GLA Group and local authorities has been undertaken. Although finance roles differ considerably across different organisations, depending on size and scope of the organisation, it is believed that comparable roles are paid at least the same or considerably more than the proposed spot salary here.
- 4.7 Against this background it is recommended the salary for the Executive Director of Resources (the GLA's Statutory Finance Officer) is increased to £141,400 from its current level of £135,514, which would bring it in line with the Executive Director of Development, Enterprise and Environment. The 2.2% increase for the 2014 -2016 pay claim would be applied to this spot salary as with other staff.

#### **Statutory Officers' Protocol**

- 4.8 At its meeting on 11 November 2009, the Assembly agreed to approve and adopt (noting that it was a joint decision with the Mayor) a staffing protocol in respect of the three Statutory Officers; namely, the Head of Paid Service; the Chief Finance Officer and the Monitoring Officer.
- 4.9 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.
- 4.10 On 14 December 2011 the post of Greater London Returning Officer (GLRO) was added to the Statutory Officers' Protocol. This was because the roles of GLRO and Head of Paid Service were split and the GLRO responsibilities assigned to a different officer of the authority.
- 4.11 It is proposed the reference to the GLRO is removed from the protocol as the role was reassigned to the Head of Paid Service following the Assembly's Election Review in 2014. (For clarity, this means that the Head of Paid Service now has combined responsibility for these two roles as well as a third role as Executive Director of Communities and Intelligence.) The GLRO is not one of the three named statutory officers in the GLA Act 1999 and it is proposed that the protocol reverts to the position pre-December 2011.
- 4.12 The proposed draft Statutory Officer Staffing Protocol is attached as **Appendix A**.

## **5. Legal Implications**

- 5.1 Under the GLA Act 1999 (as amended) the GLA is required to have three Statutory Officers; a Monitoring Officer, a Chief Finance Officer and the Head of Paid Service. The GLRO is not one of the Statutory Officers. In accordance with section 67(2) of the GLA Act 1999 (as amended) the Head of Paid Service has the power, after consulting the Mayor and the Assembly, to appoint such staff as he considers necessary for the proper discharge of the functions of the Authority, having regard to the resources available and the priorities of the Authority.

- 5.2 The Mayor and the Assembly acting jointly may attribute the role of one of the Statutory Officers to staff appointed under section 67(2).
- 5.3 The Mayor and the Assembly acting jointly have the power to determine the terms and conditions (including as to remuneration) of the Authority's statutory officers in accordance with the GLA Act 1999 (as amended).
- 5.4 The Statutory Officer Protocol sets out the process for appointing Statutory Officers and determining their terms and conditions of employment.
- 5.5 By way of this paper, the Head of Paid Service seeks the agreement of the London Assembly to amend the Statutory Officer Protocol.

## **6. Financial Implications**

- 6.1 There is sufficient provision within the Corporate Contingency budget to fund the proposed pay award for the three GLA Statutory Officers, the Mayor and the Assembly, along with the increase in the salary of the Executive Director of Resources.

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### **List of appendices to this report:**

Appendix A – Statutory Officers' Protocol

<b>Local Government (Access to Information) Act 1985</b>
List of Background Papers: None.
Contact Officer: Patrick Alleyne, Human Resources Manager Telephone: 020 7983 4140 E-mail: <a href="mailto:patrick.alleyne@london.gov.uk">patrick.alleyne@london.gov.uk</a>

# Annex A Statutory Officers – Staffing Protocol

## 1. The Statutory Officers

- 1.1 Under the GLA Act 1999 (as amended)<sup>1</sup> 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 Service<sup>2</sup>;
  - Chief Finance Officer<sup>3</sup>; and
  - Monitoring Officer<sup>4</sup>.
- 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)<sup>5</sup>.
- 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:
- 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
  - 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 jointly<sup>6</sup>.

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

<sup>2</sup> Required under the GLA Act 1999 (as amended) s 72(1)

<sup>3</sup> Required under the GLA Act 1999 (as amended) s 127 and 127A

<sup>4</sup> Required under the GLA Act 1999 (as amended) s 73 (1)

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

<sup>6</sup> 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 shall<sup>7</sup>:
- 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 Mayor<sup>8</sup> 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>9</sup> 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)

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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).

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

<sup>8</sup> In respect of the matters relating to the Mayor within this protocol

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

- 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).
- 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 Service<sup>10</sup>, 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,<sup>11</sup> 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.

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

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

- 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. 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:
  - a. The functions of the Greater London Returning Officer;
  - b. 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

1. This procedure incorporates provisions of the Local Authorities (Standing Orders) (England) Regulations 2001/3384.
2. Those Regulations, and accordingly this procedure, set out the requirements that must be followed when an allegation of alleged misconduct by a statutory officer (which may be contained within a grievance) requires to be investigated, and when proposing to dismiss a statutory officer for any reason other than redundancy, ill health or the non-renewal of a fixed term contract – so, when proposing to dismiss (whether in the probationary period or otherwise) for reasons of poor performance (capability), and misconduct. When proposing to dismiss a statutory officer for some other substantial reason (as referred to in the Employment Rights Act 1996), advice should be sought as it may not be necessary to comply with the requirements of this procedure.
3. For the purposes of establishing whether or not there is case worthy of investigation under 4 below, the Mayor and the Assembly’s staffing committee may agree that a preliminary investigation be carried out or commissioned by an appropriately senior officer of the Authority.
4. Where the Mayor and the Assembly’s staffing committee:
  - (a) agree that an allegation of alleged misconduct by a statutory officer requires to be investigated;  
or
  - (b) agree to *propose* to dismiss a statutory officer (on the grounds subject to this procedure, set out in paragraph 2 above)they shall jointly appoint - with the agreement of the statutory officer concerned – a designated independent person (“DIP”) to investigate. If the statutory officer will not agree the DIP, that person will be appointed by the Secretary of State. The Mayor and the full Assembly may also jointly agree to suspend the statutory officer for a maximum of up to two months, for the purposes of a DIP conducting an investigation.
5. A DIP must produce an investigation report.
6. No action (other than a maximum of a two-month suspension for the purposes of a DIP conducting an investigation) can be taken other than in accordance with a recommendation of a DIP, contained in a DIP’s report.
7. The DIP may direct that:
  - the Authority (acting by the Mayor and the Assembly jointly) terminate any suspension of the relevant officer, OR
  - the previously determined suspension period be extended, OR
  - the terms of the previously determined suspension be varied, OR
  - no steps (by or on behalf of the Authority) in respect of an allegation of alleged misconduct by a statutory officer, or proposals to dismiss a statutory officer (on the grounds subject to this procedure, set out in paragraph 2 above) other than in the presence, or with the agreement, of the DIP be taken before a report is made to the Mayor and the Assembly by the designated, independent person.
8. For the purposes of the DIP’s investigation, the DIP:

- may inspect any documents relevant to the alleged misconduct, or proposals to dismiss, which are in the possession of the Authority, or which the Authority has the power to authorise the DIP to inspect;
- may require any member of staff of the Authority to answer questions concerning the matters to be investigated by the DIP.

9. In the DIP's investigation report the DIP must:

- state an opinion as to whether (and, if so, the extent to which) the evidence he or she has obtained supports:
  - (a) any allegation of misconduct by the relevant statutory officer, or
  - (b) any proposals to dismiss the relevant statutory officer (on the grounds subject to this procedure, set out in paragraph 2 above)
- recommend any action which appears to the DIP to be appropriate for the Authority (acting by the Mayor and the full Assembly jointly – where the recommended action is dismissal, or where the recommended action is short of dismissal) to take against the relevant statutory officer; and
- provide a copy of the report to the relevant statutory officer no later than the time that the DIP provides it to the Mayor and the full Assembly.

10. The Mayor and the full Assembly (acting jointly) can only take action against a statutory officer in accordance with a recommendation of the DIP, as contained in the DIP's report.

11. The joint decision of the Mayor and the Assembly, made in accordance with paragraph 10 above shall be final, and the statutory officer will have no right of appeal.

### 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.