

Report – Policy and Resources Committee

Statutory Dismissal Procedures for the Head of Paid Service, Monitoring Officer and Chief Financial Officer

To be presented on Thursday, 23rd June 2016

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

SUMMARY

The Local Authorities (Standing Orders) (England) (Amendments) Regulations 2015 (“the 2015 Regulations”) amended the process by which disciplinary action can be taken in respect of the Head of Paid Service (Town Clerk), Section 151 Officer (Chamberlain) and Monitoring Officer (Comptroller and City Solicitor) (hereafter referred to as “Statutory Officers”). The Regulations now only cover dismissal of these officers, rather than all formal disciplinary or capability matters.

The Establishment Committee has agreed that any complaints regarding the Statutory Officers should be considered by the Chairmen of the Policy and Resources, Finance and Establishment Committees. These Chairmen will have responsibility for managing and overseeing the investigation of complaints (but no direct role in the investigation itself) and would consider the appropriate action to be taken.

Their options are: to determine that no action is necessary; to determine that some disciplinary action short of dismissal may be necessary; or to determine that dismissal of the Statutory Officer is a possibility.

In the event of dismissal being an action which is considered, the Regulations require that the Court of Common Council takes the final decision in the matter. This would include considering the findings of any investigation, any representations from the Statutory Officer involved and, crucially, the findings of a Panel (which must include Independent Persons). Therefore, to comply with the Regulations, a Statutory Officer Review Panel (the Panel) must be created.

To ensure that the Panel maintains independence from any single Committee, it is proposed that it be created as a Grand Committee of the Court. To ensure that there is no unnecessary delay in convening a meeting of the Panel, it is recommended that appointment to the Panel be by virtue of holding certain offices (the Chief Commoner and the Chairmen of the Planning and Transportation, Port Health and Environmental Services, Markets and Police Committees), along with any two of three Independent Persons appointed to advise the Standards Committee. The proposed Terms of Reference and composition of the Panel are set out at Appendix 1.

The current drafting of the relevant Standing Order (Standing Order 63) is as set out by legislation and is silent as to the investigative procedure to follow in the event of

such disciplinary action being required. Therefore, it is proposed that this Standing Order be deleted in entirety and replaced with a new Standing Order (set out at Appendix 2) which sets out the full process to be followed in such matters. As the Committee comprises solely of Committee Chairmen and the Chief Commoner, an amendment is also required to Standing Order 29(3) to add this Panel to the list of those Committees of which a Member can hold Chairmanship while being Chairman of another Committee.

To avoid contradiction, it is also recommended to add this Committee as an exception to the rule within Standing Order 29(3) which states that no ex-officio Member can Chair a Committee. Finally, to avoid contradiction it is recommended to amend Standing Order 29(7) to state that ex-officio Members can vote in the election of Chairman for the Statutory Officer Review Panel.

RECOMMENDATION

It is **recommended** that the Court:

- a) Agrees to the creation of a Statutory Officer Review Panel, with Terms of Reference as set out at Appendix 1.
- b) Agrees to the amendment of Standing Order 63 in line with the terms set out in Appendix 2.
- c) Agrees to the addition of the Statutory Officer Review Panel to the list of those Committees in Standing Order 29(3) of which a Member can hold Chairmanship while being Chairman of another Committee, and to amend Standing Order 29(3) to state that “no ex-officio Member of a Committee is eligible to be Chairman of the Committee, except for the Statutory Officer Review Panel.”
- d) Agrees to amend Standing Order 29(7) to add the Statutory Officer Review Panel to the list of those Committees in which ex-officio Members are eligible to vote in the election of Chairman.

MAIN REPORT

Background

1. The Local Authorities (Standing Orders) (England) (Amendments) Regulations 2015 require that all Local Authorities (which the City of London Corporation is considered to be by the legislation) amend Standing Orders to ensure that they state that the ‘relevant body’ (the Court of Common Council for the Corporation) is responsible for approving dismissal of the Head of Paid Service, Section 151 Officer and the Monitoring Officer. Dismissal of any of these Statutory Officers must be approved by way of a vote at a meeting of the Authority provided it takes into account:
 - any advice, views or recommendations of a Panel
 - the conclusions of any investigation
 - any representations from the relevant officer concerned
2. The Court of Common Council agreed the amendment to Standing Orders in line with the 2015 Regulations in June 2015.

3. Dismissal for the purposes of the 2015 Regulations does not include redundancy, permanent ill health or infirmity of mind or body and does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract. It does include conduct and capability dismissals.

Current Position

4. A report was submitted to the Establishment Committee for consideration in December 2015, as the Committee responsible for all matters relating to the employment of City of London Corporation employees (where such matters are not specifically delegated to another Committee). This includes responsibility for disciplinary matters until delegated otherwise. The Establishment Committee agreed to specific proposals to comply with the requirements of the 2015 Regulations.
5. The Establishment Committee has agreed that responsibility for considering the action to be taken in relation to complaints received about these three Officers should be the responsibility of the Chairmen of the Policy and Resources Committee, the Finance Committee and the Establishment Committee.
6. In the event that a formal investigation is required, it is anticipated that these three aforementioned Chairmen would have responsibility for commissioning the investigation (but have no direct role in the investigation itself), and for considering any appropriate action as a result of the investigation's findings. The options are: to determine that no action is necessary; to determine that some disciplinary action short of dismissal may be necessary; or to determine that dismissal of the Statutory Officer is a possibility.
7. The 2015 Regulations require these arrangements to be followed in relation to complaints which may result in dismissal. However, in most situations, preliminary work will need to be undertaken to determine whether a complaint could lead to potential dismissal. Therefore, it is proposed that the three aforementioned Chairmen are responsible for the management and oversight of the investigation of all complaints against the Statutory Officers.

Creation of a Statutory Officer Review Panel

8. The 2015 Regulations require that, in considering the dismissal of a Statutory Officer, the Court of Common Council must consider the views or recommendations of a Panel (including Independent Persons), along with the conclusions of any investigations into the proposed dismissal and any representations from the Statutory Officer.
9. In the event of such disciplinary action being required, it would be wise to ensure that the process is not unnecessarily delayed by needing to wait until the next meeting of the Court to formally appoint Members to the Panel (or requiring the Town Clerk, who may be the Officer who is subject of the investigation, to take a decision on the Membership of the Panel under urgency). Therefore, it is recommended that appointment to the Panel be based on holding certain Chairmanships.

10. It is possible that the investigation of the complaint may involve the interviewing of the Chairman of a Committee. In this instance, it would be expected that the Chairman would stand down from involvement in the Panel. To ensure that this can happen without the Panel becoming too small to reasonably consider the issue, it is proposed that the Panel consist of the Chief Commoner and four Committee Chairmen. In addition, regulations require that the Panel includes at least two Independent Persons. It is suggested it be open for any two of the three serve as availability allows, to ensure that a reasonable quorum can be set and achieved. Therefore, it is proposed that the Panel comprises:
 - the Chief Commoner for the time being;
 - Chairman of Planning and Transportation Committee for the time being;
 - Chairman of Port Health and Environmental Services Committee for the time being;
 - Chairman of Markets Committee for the time being;
 - Chairman of Police Committee for the time being;
 - Any two of the three Independent Persons appointed to advise the Standards Committee.
11. These are the senior Chairmen by the order listed in the Members' Pocketbook, excluding the Chairmen of Policy and Resources and Finance Committees, who would be involved in the investigation. This arrangement ensures that there is no delay in convening the Panel due to the Court first needing to appoint Members to it.
12. Proposed Terms of Reference for the Panel are set out at Appendix 1.

Statutory Officer Disciplinary Procedure

13. In light of the amendments to the disciplinary procedure, the Statutory Officer Disciplinary Procedure was amended. The Officers concerned were consulted and this was considered and approved by the Establishment Committee on 9 June 2016.

Amendment to Standing Orders

14. The 2015 Regulations set out specific text which should be included within Standing Orders. Policy and Resources Committee delegated authority to the Town Clerk, in consultation with the Chairman and Deputy Chairman, to review the Standing Order to reflect the procedures that would be put in place. Exercise of this delegated authority was delayed until the Disciplinary Procedure referred to above had been developed.
15. The current drafting of the relevant Standing Order (Standing Order 63) is as set out by legislation and is silent as to the investigative procedure to follow in the event of such disciplinary action being required. Therefore, it is proposed that this Standing Order be deleted in entirety and replaced with a new Standing Order which sets out the full process to be followed in such matters.
16. This proposed new version of Standing Order 63 is set out at Appendix 2. This amended version of the Standing Order was agreed under delegated by the

Town Clerk, in consultation with the Chairman and Deputy Chairman of the Policy and Resources Committee.

17. As currently drafted, all Members of the Panel are either Grand Committee Chairmen or the Chief Commoner and are thus ineligible to be Chairman of another Grand Committee. Therefore, it is necessary to add the Statutory Officer Review Panel to the list of Committees of which a Member can hold the Chairmanship while also holding Chairmanship of another Grand Committee, set out at Standing Order 29(3).
18. To avoid contradiction, it is also necessary to add a caveat to the third bullet point of Standing Order 29(3), so that this states that “no ex-officio Member of a Committee is eligible to be Chairman of the Committee, with the exception of the Statutory Officer Review Panel.”
19. Finally, to avoid contradiction it is also necessary to amend Standing Order 29(7) to add the Statutory Officer Review Panel to the list of Committees in which ex-officio Members are allowed to vote in the election of Chairman.

Representations by Statutory Officer

20. The regulations are clear that the Court of Common Council, in considering the potential dismissal of one of the Statutory Officers, must take into account any representations made by the officer. While it is anticipated that the officer would make written representations to the Court of Common Council, it would not be reasonable to prevent an officer from responding orally to allegations made against them when dismissal is being considered. Officers are not usually permitted to address the Court. However, an exception would clearly need to be made in this instance.

Proposals

21. There is a need to finalise the arrangements for taking disciplinary action against the three Statutory Officers in light of the 2015 Regulations. Members are asked to consider and agree the recommendations in order that the revised arrangements can be put in place.

Corporate & Strategic Implications

22. The 2015 Regulations have reduced the statutory requirements in relation to disciplinary matters. This is in line with the City Corporation’s HR Strategy to simplify and standardise HR policies and procedures. The 2015 Regulations provide the opportunity to review the current procedures that apply to the Statutory Officers and to bring these in line with the City Corporation’s Managing People standards and principles whilst at the same time ensuring compliance with the new statutory requirements.

Conclusion

23. There is a requirement to comply with the new 2015 Regulations in relation to the statutory dismissal procedures for the Head of Paid Service, Monitoring Officer and Section 151 Officer. It is therefore recommended that the Court agrees to the creation of a Statutory Officer Review Panel and necessary

consequent changes to Standing Orders to allow the necessary arrangements to be put into place.

All of which we submit to the judgement of this Honourable Court.

DATED this 13th day of June 2016.

SIGNED on behalf of the Committee.

Mark Boleat
Chairman, Policy and Resources Committee

Appendices

- Appendix 1 – Statutory Officer Dismissal Panel Terms of Reference
- Appendix 2 – Standing Order 63 (amended)