

Committee:	Date:
Establishment Committee – for information Finance Committee – for decision Policy and Resources Committee – for decision	4 February 2016 16 February 2016 18 February 2016
Subject: Statutory Dismissal Procedures for the Head of Paid Service (Town Clerk and Chief Executive), Monitoring Officer (Comptroller and City Solicitor) and Chief Financial Officer (Chamberlain)	Public
Report of: Joint Report of the Town Clerk and the Director of Human Resources	For Information
Authors: Chris Braithwaite and Tracey Jansen	

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 agreed that any complaints regarding the Statutory Officers should be considered by the Chairman of the Appointing Committee (Policy and Resources Committee for the Town Clerk and Chief Executive or Comptroller and City Solicitor; Finance Committee for the Chamberlain) and the Chairman of the Establishment Committee.

These Chairmen would 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. 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.

In the event of dismissal being an action which is considered, the Regulations require that Court of Common Council takes the final decision in the matter. The Court of Common Council is required to consider the findings of any investigation, representations from the Statutory Officer involved and, crucially, the findings of a Panel. Therefore, to comply with the Regulations, a Statutory Officer Review Panel (the Panel) must be created in accordance with requirements set out in the Regulations..

To ensure that the Panel maintains independence from any single Committee, it is proposed that the Panel 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 (Chief Commoner and certain Committee Chairmanships). Proposed Terms of Reference and composition for the Panel are set out at Appendix 1.

The relevant Standing Order (set out at Appendix 2) was 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 an addition be made to the Standing Order to spell out that the procedure to be followed is that which is set out within the Statutory Officer Disciplinary Procedure.

Recommendations

The **Policy and Resources Committee** is asked to:

- a) Agree that the Chairman of the Policy and Resources Committee, in conjunction with the Chairman of the Establishment Committee, will be responsible for the management of the investigation of complaints or concerns regarding the Head of Paid Service (Town Clerk and Chief Executive) or the Monitoring Officer (Comptroller and City Solicitor).
- b) Recommend to the Court the creation of a Statutory Officer Review Panel, with Terms of Reference as set out at Appendix 1.
- c) Recommend to the Court amendment of Standing Order 63 in line with the terms set out in Appendix 2.

The **Finance Committee** is asked to agree that the Chairman of the Finance Committee, in conjunction with the Chairman of the Establishment Committee, will be responsible for the management of the investigation of complaints or concerns regarding the Section 151 Officer (Chamberlain).

The **Establishment Committee** is asked note the report.

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. The Director of Human Resources has worked with the Town Clerk's Department and Comptroller and City Solicitor's Department to undertake further work into the disciplinary procedure which would be followed in the event of the potential dismissal of these relevant officers and the governance arrangements to facilitate this.
4. 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

5. 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.
6. The Establishment Committee agreed to specific proposals to comply with the requirements of the 2015 Regulations.

Responsibility for investigation of complaints

7. The Establishment Committee agreed that responsibility for considering the action to be taken in relation to complaints received about these three Officers should be as follows:

"The Chairman of the appointing Committee for the relevant officers (Policy and Resources Committee for the Head of Paid Service and Monitoring Officer; Finance Committee for the Section 151 Officer) and the Chairman of Establishment Committee will take an initial view of any complaints or concerns raised regarding the relevant officer and determine the appropriate course of action, reporting to the Court of Common Council as appropriate where dismissal of the relevant officer is recommended. In the event that there is a conflict of interest for the Chairmen, then an alternative Committee Chairman and/or Deputy Chairman will take on this role."

8. In the event that a formal investigation is required, it is anticipated that the relevant 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.
9. In the event of any disagreement between the two Chairmen as to how to proceed, the decision of the Appointing Committee Chairman will be final.

10. 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 relevant Committee Chairman is responsible for the management and oversight of the investigation of all complaints against the Statutory Officers.

Creation of a Statutory Officer Review Panel

11. 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.

12. Accordingly, the Establishment Committee agreed to propose that:

- a) For the purposes of considering dismissal of a Statutory Officer, that the composition of the Panel comprises three current Chairmen and at least two of the three Independent Persons appointed to the Standards Committee.
- b) The Panel composition, once agreed, is set up as a Standing Committee and reporting directly to the Court of Common Council.

13. 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 on an ex-officio basis.

14. Upon reflection, Officers believe that it would be more appropriate to appoint the Chief Commoner and four Committee Chairmen to the Panel. This would ensure that, if the investigation of the incident involves the interviewing of any Committee Chairmen, they would be able to be excused from attending the meeting of the Panel without the Panel becoming too small to reasonably consider the issue. Any extension beyond five elected Members (a total panel size of seven) would seem to create too large a panel.

15. It is further recommended that Chairmen of specific Committees are appointed to the Panel. This would ensure that there is no delay in convening the Panel due to the Court first needing to appoint Members to it. The Panel must not include those Chairmen responsible for the management of the investigation of the complaint (Chairmen of Policy and Resources Committee and of Finance Committee) to ensure clarity, transparency and an independent view of the matter.

16. The simplest way to determine the appropriate Chairman is to follow the order of primacy given to Committees in the Members' Pocket Book. It is therefore proposed that the Statutory Officer Review Panel comprises:
- The Chief Commoner;
 - Chairman of Planning and Transportation Committee;
 - Chairman of Port Health and Environmental Services Committee;
 - Chairman of the Markets Committee;
 - Chairman of the Police Committee;
 - two of the three Independent Persons appointed to the Standards Committee.
17. Proposed Terms of Reference for the Panel are set out at Appendix 1.
18. The Director of Human Resources will be responsible for providing advice on the administration, application and overview in relation to the disciplinary procedures for the three Statutory Officers. Where it is considered that there is a conflict of interest, an external senior human resources and/or legal adviser will be sourced to support the process as appropriate.
19. There is no requirement for the Panel to undertake in person any investigation into the matter of concern. It is recommended that it reviews the findings of the investigator and any representations made by the Statutory Officer before forming a view on the matter.

Statutory Officer Disciplinary Procedure

20. Based on the proposals agreed by the Establishment Committee, and subject to approval of recommendations set out in this report Officers will update the Disciplinary Procedure for the Statutory Officers. The Statutory Officers will be consulted on the revised Procedure before it is referred to the Establishment Committee for approval.

Amendment to Standing Orders

21. The 2015 Regulations required that specific text be included with Standing Orders. The Standing Order does not provide information regarding the process to be followed in the event of disciplinary action being considered against one of the Statutory Officers. Therefore, it is proposed that the following is added to Standing Orders:

“Officers shall ensure that any action to consider the dismissal of a Statutory Officer shall comply with the provisions contained within the City of London Corporation’s Statutory Officer Disciplinary Procedure”

22. This change has been incorporated into the proposed updated Standing Order extract at Appendix 2, and is intended to mirror the process which is applied to Project Management (Standing Order 50(2)).

Representations by Statutory Officer

23. 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 to allegations made against them when dismissal is being considered. Officers are not usually permitted to address the Court. However, an exception would clearly be made in this instance.

Proposals

24. 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

25. 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 give us the opportunity to review the current procedures that apply to the Statutory Officers and to bring these in line with our Managing People standards and principles whilst at the same time ensuring compliance with the new statutory requirements.

Implications

26. These are included in the body of the report.

Conclusion

27. There is 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. The report sets out the proposed decision making structures and roles that need to be put in place to comply with the Regulations.

Appendices

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

Chris Braithwaite

Senior Committee and Member Services Officer

T: 020 7332 1427

E: christopher.braithwaite@cityoflondon.gov.uk

Tracey Jansen

Head of Corporate Human Resources and Business Services

T: 020 7332 3289

E: tracey.jansen@cityoflondon.gov.uk