

STANDARDS COMMITTEE
Thursday, 15 November 2018

Minutes of the meeting of the Standards Committee held at Livery Hall - Guildhall on
Thursday, 15 November 2018 at 11.00 am

Present

Members:

Oliver Lodge (Chairman)
Ann Holmes (Deputy Chairman)
Caroline Addy
Judith Barnes
Chris Boden
Alderman David Graves
Mark Greenburgh (Co-opted)
Michael Hudson
Deputy Jamie Ingham Clark
Deputy Edward Lord
Alderman Professor Michael Mainelli
Jeremy Simons

Officers:

John Barradell	- Town Clerk and Chief Executive
Angela Roach	- Assistant Town Clerk
Gemma Stokley	- Town Clerk's Department
Lorraine Brook	- Committee and Member Services Manager
Martin Newton	- Town Clerk's Department
Chloe Rew	- Town Clerk's Department
Rebecca Muscat	- Town Clerk's Department
Michael Cogher	- Comptroller and City Solicitor
Edward Wood	- Comptroller and City Solicitor's Department

In Attendance:

John Scott (Chief Commoner)
Randall Anderson
Alderman Nicholas Anstee
Alexander Barr
Peter Bennett
Nicholas Bensted-Smith
Mark Bostock
Deputy David Bradshaw
Tijs Broeke
Simon Duckworth
Mary Durcan
John Fletcher

Marianne Fredericks
Alderman Prem Goyal OBE
Graeme Harrower
Christopher Hayward
Christopher Hill
Deputy Tom Hoffman, MBE
Shravan Joshi
Gregory Lawrence
Vivienne Littlechild , MBE
Alderman Ian Luder
Deputy Catherine McGuinness
Wendy Mead, OBE
Deputy Brian Mooney
Sylvia Moys, MBE
Barbara Newman, CBE
Graham Packham
Susan Pearson
Jason Pritchard
Ruby Sayed
Ian Seaton
Steve Stevenson (Co-opted)
Deputy John Tomlinson,
Deputy Philip Woodhouse
Alderman Sir David Wootton

1. **APOLOGIES**

Apologies for absence were received from Deputy Kevin Everett and Dan Large (Co-opted Member).

2. **MEMBERS' DECLARATIONS UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA**

There were no declarations.

3. **POLICY AND GUIDANCE ON DISPENSATIONS UNDER THE LOCALISM ACT 2011**

The Committee received a joint report of the Town Clerk and the Comptroller and City Solicitor setting out the details of the Standards Committee Working Party's draft future policy and guidance on dispensations, revisions to the dispensation request application form and proposed decision notices.

The Chairman gave a presentation on the background to the Working Party and highlighted some key areas to help focus discussion as follows:

Consistency

The Chairman highlighted that this was a theme throughout and that the Working Party itself had been formed after the Standards Committee had been

made aware of concerns amongst Members regarding consistency in the granting of dispensations.

He stated that the production of a policy around dispensations was, in itself, a consistency measure which it was hoped would give a clear structure to what would hopefully be a clear and detailed process.

The Chairman reported that, whilst the Dispensations Sub Committee had always been in existence, in the past, some applications for dispensation had been considered under urgency procedures and some by the Standards Committee as a whole. It was intended that, going forward, this would be revised with the role of the Dispensations Sub Committee maximised. He added, however, that the timeliness of applications would be key to achieving this.

Another consistency measure proposed was the election of three members of the Standards Committee, one or another of whom would always chair the Dispensations Sub-Committee.

Application Form

The Chairman continued by stating that the application form was also designed with consistency in mind. Relevant prior decisions could be cited and considered in the new form and Officers would also seek to identify and cite these in their covering reports to the Dispensations Sub Committee.

The new form was designed to directly correspond with the new Guidance and Policy. The Chairman explained that the design of the existing application form often led to inadequate information being provided by applicants. It was hoped that a form calling for a more detailed application would help reduce the number of applications rejected due to inadequate or incomplete information being provided.

The Chairman stated that it was hoped that a clearer understanding of what was needed to secure a dispensation could be achieved and that the redesigned application form could go some way to assisting with this.

The form was also intended to be more user friendly. Whilst electronic and hard copies of the form would be acceptable going forward, there was a preference for electronic applications as these tended to be easier to process.

Submission of Applications

Members were informed that forms should be submitted as soon as the need for dispensation could be foreseen.

The Chairman went on to highlight the fact that there would be scope, under the new arrangements, as there currently was, to enhance and resubmit a request for dispensation.

Policy Measures

The Chairman highlighted that the draft policy reflected legal framework and set out 12 factors that the Committee will take in to account. He added that there were two areas where the ability to grant dispensations was delegated to the Town Clerk.

Members were informed that the new policy also encouraged Ward level coordination.

Consideration Factors

The Chairman presented each of the 12 consideration factors for the future granting of dispensations as follows:

- Maintaining public confidence;
- Application to vote – there would be a higher ‘hurdle’ to clear for applications to vote as opposed to applications to speak given that voting would usually have more of an impact on outcomes;
- Equivalent public rights – it was recognised that an elected Member with a disclosable pecuniary interest (DPI) was sometimes, under the Localism Act, in a less advantageous position than a member of the public wishing to speak on a matter;
- Expectation of ward representation – particularly for Ward Committees;
- Alternative means of ward representation – the policy provided some further guidance around this;
- Widely held interests – issues that were universally experienced such as Council Tax;
- Directly engaged interests – if something will make a substantial difference to the Member in question;
- Personal knowledge – how critical a factor is this?;
- Diversity and Inclusion;
- Manifesto promises;
- Scope and duration – this point was about precision. It was highlighted that broad request were less likely to be granted as they were often too vague or ‘wide open’;
- Previous dispensation decisions.

Delegated Decisions

The Chairman highlighted that the granting of dispensations around Council Tax and Planning and Licensing would be delegated to the Town Clerk given that they were considered to be non-contentious.

- Council Tax – The Chairman highlighted that governmental guidance indicated that there was no need for a dispensation in this area. However, the legislation did not clarify this point. Members were therefore able to apply to the Town Clerk for a dispensation in this area if they were keen to take a ‘belt and braces’ approach;
- Planning & Licensing – The Chairman noted that Members frequently wished to speak as members of the public on these matters. He clarified that such delegated decision applications were not open to Members of the Planning and Transportation or the Licensing Committee; members of those committees could apply for dispensations through the normal route.

It was highlighted that Members seeking dispensations in these areas under the Delegated Decision process were only required to complete a shortened version of the application form. Dispensations in these areas could also be granted until the next round of elections.

Additional Measures

The Chairman announced that, going forward, it was proposed that the Town Clerk would announce the use of any dispensation at relevant meetings. Members should also then allude to any dispensation they had been granted when speaking by dispensation.

Another area for consideration that had been highlighted by the Working Party was Ward substitution whereby consideration could be given to another Ward member standing in for a Member with a DPI on a certain issue. It was recognised that this matter could not be determined by the Standards Committee and would probably require a policy decision at the Court of Common Council.

The Chairman concluded by reporting that future training would include dispensations, particularly for any newly elected Members.

The Comptroller and City Solicitor added that he hoped that the Guidance and Policy presented to Members assisted with what had become a vexed issue of late. He reminded Members present that, as a Member led authority, this was ultimately a political issue to be determined by members within the legal framework. He added that it would be important to strike an appropriate balance between effective democratic representation and public perception.

The Comptroller and City Solicitor went on to cover:

Public Law Duties

The Comptroller reported that a Member's first duty was to understand the law and give effect to it. Members must also exercise their powers for a proper purpose – taking into account all relevant matters, ignoring irrelevant matters and ensuring their decisions were reasonable and rational. Finally, Members were also to ensure that discretion was properly exercised.

The Statutory Scheme

The Comptroller highlighted that the statutory scheme was set out within the draft policy. He reported that Parliament had decided that a person with a DPI in a matter shall not speak or vote except where a dispensation has been granted. A local authority MAY grant a dispensation in certain circumstances if it considers that, without a dispensation, the business of the relevant body will be impeded, or it is in the interest of residents/the public or is otherwise appropriate. The Comptroller underlined that it was therefore a broad discretion but not an unlimited one.

Members were reminded that this was not a new position and that Members with pecuniary interests have been prevented from speaking and voting where

their interests are engaged since at least 1972 although the rules on exemptions and dispensations have varied.

The Comptroller underlined that the granting of dispensations was discretionary. There was no right to a dispensation nor any statutory presumption in favour of a dispensation.

Finally, the Comptroller highlighted that the old Code of Conduct contained some exemptions to allow speaking on allowances, council tax, honours and housing provided the matter did not relate to the Member's particular tenancy or lease. These exemptions were not carried forward in the Localism Act Regime but can be dealt with, where deemed appropriate, by a dispensation.

Discretion

The Comptroller stressed that this point was key, and that discretion must be properly exercised in each case. He highlighted that it was legitimate to have a policy in place to ensure consistency, but that it must not be so rigid so as to prevent discretion from being applied in any given case.

The Comptroller reported that, in this context, the draft policy put to Members was a lawful one. That was not to say, however, that it was the only one open to Members. Having taken into account all relevant matters, Members could choose to adopt something either more or less restrictive. He added that it was also legitimate for other local authorities to take a different but equally valid approach.

The Approach of Other Local Authorities

The Comptroller highlighted that the City of London Corporation were not a typical local authority. The City operated a Committee structure versus the Executive model employed elsewhere. He added that there was no obligation for principal authorities in England to publish a Dispensations Policy.

That having been said, some Members had expressed interest in what approach other authorities took. The Comptroller reported that he had contacted 15 authorities that the City of London Corporation were in partnership with on this matter and had received responses from 9. He went on to summarise these. The responses demonstrated that there was no single approach to dispensations and that it was more of an issue for this authority because of its nature.

Having listened to the Comptroller and City Solicitor's presentation of the legal position around dispensations, the Chairman invited questions and comments from those elected Members and Co-opted Members in attendance who were not members of the Standards Committee.

A Member commented that he felt that the starting premise here was fundamentally wrong. He added that the documentation seemed to be as limited as possible despite advice from the Comptroller and City Solicitor emphasising the fact that Members had discretion here. This was also apparent from ground (e) around granting a dispensation (the authority considers it

'otherwise appropriate to grant a dispensation'). He therefore argued strongly in favour of a broader scheme.

The same Member went on to talk about the fact that the City's residential population was primarily across 4 Wards. Unsurprisingly, the residents here tended to elect those who lived within their Ward as their Common Councilmen. To then prevent these Common Councilmen from speaking or voting on certain matters would be perceived as suppressing the residential voice. Substitution in these cases would not be practical given that all resident Members would be faced with the same issues. He added that this also fed the narrative of those keen to abolish the City of London Corporation, that the organisation was undemocratic.

Another Member agreed with the point that the draft policy presented seemed overzealous. He added that a common-sense approach had clearly been applied since 1972 and therefore questioned why this should not continue. He reiterated the point that this new policy would disenfranchise any resident Members or Members of residential Wards.

A Co-opted Member of the Standards Committee questioned what Members wanted to do/achieve that was not permissible under the draft policy. He agreed that the document was prescriptive. He stated that, prior to the 2011 Act, when requests for dispensation had to be submitted to the Secretary of State, no applications had been made.

A Member questioned what had caused this narrowing of interpretation 7 years after the introduction of the 2011 Act. He also questioned whether there was any distinction in the Act between housing estates developed using housing revenue and those not.

The Chairman reiterated that the Policy had been created following Members concerns over consistency around the granting of dispensations. He added that it did not pre-determine anything and had been produced for reasons of transparency and consistency in terms of decision making and to assist in maintaining public confidence.

The Comptroller and City Solicitor reported that the wording around land and licences within the act did not address the nature of a housing development.

A Member commented that residents were important stakeholders in the City and that their voice was equally as important as business voice. He went on to state that resident Members were also often more knowledgeable on certain local issues than non-resident Members and therefore better placed to speak to these issues. He stated that he felt that the draft policy read well but would require sensible interpretation on all fronts.

The Member went on to question whether there would be any feedback provided to Members who submitted a request for dispensation as to how/why a decision was reached on their case. He also questioned the scope of a DPI and whether, for example, a planning application to enhance streetscape

around a Member's property could be considered in this category given that it could, arguably, enhance the value of this.

The Chairman clarified that it was the intention to provide feedback directly to applicants going forward. He added that applicants were also permitted to attend the Dispensations Sub Committee meeting at which their application was considered. Decisions on each application would also be clearly recorded within the Committee minutes and a rationale for each decision would also be provided.

A Member suggested that, if Members were permitted to attend the Dispensations Sub Committee at which their application was considered, it would make sense for that Member to also be able to respond to any questions or points of clarification that the Dispensations Sub Committee may have on the application as opposed to a resubmission being necessary and creating any unnecessary delay.

The Chairman stated that he felt that this could be accommodated at the discretion of whomever was chairing the relevant Dispensations Sub Committee meeting.

A Member commented that she felt it was possible to reach a compromise on this matter whereby it was generally accepted that Members could speak but not vote on certain matters where a DPI was engaged, as was the case in many other local authorities. The limited number of applications for dispensation received elsewhere was perhaps indicative, she suggested, of a more relaxed approach.

A Member of the Standards Committee highlighted that housing matters at other authorities, to give one example, were generally decided by a single executive Member and that decision was then scrutinised by Members as opposed to key decisions being taken by Members on Committees as was the case here.

A Member challenged the statement made by a Co-opted Member of the Standards Committee that there had been no applications for dispensation from Common Councilmen prior to 2011. He stated that he had first been elected in 2004 and had always applied for a broad dispensation on Barbican Residential Committee matters to speak and not vote as a residential Member. He added that this had never been problematic to date and that the dispensation had generally been granted until the next election.

The Chairman of the Standards Committee noted this point but also took the opportunity to refer to alternative mechanisms for representation that should be considered by effected Members.

A Member highlighted that 20% of the 100 elected Common Councilmen were resident Members. She added that non-resident Members were often unaware of the history behind certain issues and lacked the necessary information yet were able to speak and vote on these matters. She stated that she had been

encouraged by other residents to stand for Common Council and was now frustrated to find that she was unable to adequately represent the views of those who had encouraged her to take office.

The Chairman responded by stating that some of the issues referred to by the Member related to primary legislation and that she should therefore seek to contact her local MP.

A Co-opted Member of the Health and Social Care Scrutiny Committee stated that he had been co-opted on to this body as a local user of the service and as a local resident who was leaseholder in the City. He added that, under these proposed rules, he would seemingly have to seek a dispensation every time he wished to speak.

A Member underlined the burden being placed on Members under the proposed regime. He reminded those present that Common Councilmen served as volunteers and that the requirement to complete a ten-page form was tantamount to throttling democracy.

A Member thanked the Town Clerk for circulating additional documentation on the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. She added that she was surprised to see that this did not appear in the report.

The Member went on to report that it was for the City Corporation to comply with the Act as a Local Authority or Police Authority. Section 33 of the Act underlined the statutory right to ask for dispensations to speak and vote on matters where a DPI was engaged. The guidance on this was simple and easy to understand with the grounds for the granting of dispensations also clearly listed. She stated that ground (e) was a clear 'get out clause' and leaned in favour of anything too prescriptive. The Policy now proposed by the Standards Committee was, however, unnecessarily confusing matters and blurring boundaries. A ten-page form was not, for example, necessary when a request for dispensation could simply be put in writing to the relevant Officer.

The Member suggested that there were many mistakes in the draft Policy and that she could not comprehend why the Standards Committee appeared to be trying to confuse this matter. Her concern was that a move like this could be seen to be giving those who wished to abolish the City of London Corporation a 'loaded gun'. She concluded by suggesting that the Policy should be considered externally to seek honest and open legal advice on the proposed way forward.

The Chairman clarified that the document had already been seen by Counsel. The Chairman reiterated that, whilst dispensations were not necessarily required for issues such as Council Tax, they were available to those Members who wished to err on the side of caution and take a 'belt and braces approach'. With reference to the proposed application form, the Chairman clarified that this was an attempt to reduce the risk of the Dispensations Sub Committee rejecting an application due to inadequate information being provided.

A Member of the Standards Committee commented that the widely held perception that this was an attempt at trying to restrict democratic representation was simply untrue. The guidance and policy provided Members with helpful pointers and made it clear that only relevant elements of the form need be completed for each application. She concluded by stating that it was not possible to relax the law on this matter to suit certain Committees.

A Member thanked the Committee for all of its work in trying to clarify and simplify the dispensations process. She did, however, share concerns around this being too restrictive despite the fact that Members clearly had a choice around what measures to apply within the legal framework. There was a clear need to strike a more adequate balance between 'representing persons living in the authority's area' and maintaining public confidence. The current, proposed, response was such that it risked residents and resident Members feeling 'gagged' and unnecessarily restricted in speaking on certain items.

A Co-opted Member of the Standards Committee stated that he understood that many of the issues raised today and previously were particular to the Barbican Residential Committee and therefore suggested that it may be appropriate for the organisation to reconsider the scope/remit of this body going forward. He went on to state that resident Members needed to apply the DPI test as to whether or not they had an engaged DPI relating to a certain matter before a Committee and what it was they wanted to do that engaged this Policy. He stated that he struggled to foresee any issues around this and that it was simply part of a democratic and transparent process.

The Deputy Chairman of the Standards Committee added it was the law that members with an engaged DPI could not speak or vote, without a dispensation to do so. Whether a DPI was engaged was a matter of interpretation, however, and there was discretion as to whether a dispensation be granted. The fact that City Wards are small, and most Members stand as Independents meant, in order to represent their electors, members here would be likely to have a greater need for dispensations, than in most authorities.

A Member questioned how these rules might be applied to Court of Common Council and spontaneous debate where any issues might not be easily foreseen. The Comptroller and City Solicitor stated that, in theory, this should not occur as a question in this forum was not normally a matter for determination.

A Member of the Standards Committee stated that he was very familiar with how the dispensations policy operated elsewhere and that Members elsewhere were generally clear on when they should not speak or vote on a matter with dispensations decisions generally taken by Officers. He added that pecuniary interests were not purely about monetary gain which was frequently misunderstood and that a DPI existed in isolation whether or not a matter that engaged it arose. These matters should be declared and publicly registered by Members within 28 days of their election.

A Member stated that this had created a nervousness for her around her ability to judge whether or not she had a DPI in relation to certain matters. The Chairman clarified that advice could be sought from the Comptroller and City Solicitor at any point on this.

A Member referred to the fact that he had previously been refused a dispensation to speak on a fire safety matter as Chairman of his own Committee (Audit and Risk Management Committee) which had no decision-making powers despite being advised by the Comptroller and City Solicitor that he had no DPI. The Member went on to suggest that a shortened form of 2-3 pages would be adequate with additional information requested only where necessary.

A Member commented that the rules around dispensations were clear as was the need for timely applications, He questioned, however, how this would work in relation to late items put before a Committee. In terms of application forms, he questioned whether a more general form of dispensation might be applied for and granted to resident Members – until the next election perhaps as appeared to have been the case to date.

A Member commented that the law underpinning the Policy was an anti-corruption measure which, it seemed, had been corrupted by the Standards Committee, to become an anti-democratic measure. He agreed that there was a duty to maintain public confidence but also urged the Committee to err on the side of caution and democracy in its consideration of the Policy. He went on to state that it was his intention to put a motion to the Court of Common Council meeting on 6 December calling for an Independent Review of this matter.

The Chairman made it clear that there was no pre-determination or exclusion of anything within the consideration of dispensations.

A Member commented that he had confidence in the Standards Committee's ability to tackle what was, by no means, an easy task. He added that he welcomed the changes in terms of transparency, integrity and openness. He informed those present that he had sat on other local authorities where elected representatives were well aware of any DPI's they may have. If there was any ambiguity the approach had always been to seek guidance from the relevant legal officer – in this case, the Comptroller and City Solicitor. He added that it was entirely reasonable that resident Members would be expected to be able to speak on certain Ward issues where they would undoubtedly have more knowledge than non-resident Members. He stated that, voting, however, was entirely different and a more difficult justification to make. The Member concluded by stating that he felt that the revised form gave Members ample opportunity to express any need they had to speak and/or vote on a matter. He did, however, urge a light touch approach from the Standards Committee as to how the new Policy would be applied and suggested that this was something that could be monitored and judged in time by fellow Members.

A Member stated that his manifesto had been built around his ability and desire to represent his Ward. He therefore now felt very disenfranchised. He

continued to refer to correspondence between the Chairman of the Barbican Association and members of the Standards Committee which had expressed some strong opinions on this matter. He was therefore disappointed to not see these points reflected anywhere.

The Member went on to state that he felt that serious consideration should be given to providing resident Members with a blanket approach on certain Committees subject to there being no direct conflict with any DPs. The Chairman agreed with this point and highlighted that much of this was addressed within paragraphs 20 (b) and 21 (j) of the draft Policy.

With regard to correspondence with the Chairman of the Barbican Association, a Co-opted Member of the Standards Committee reported that the correspondence had related specifically to the Barbican Residential Committee's consideration of the Housing Governance Review and that they had disagreed on a matter of policy around this. There had therefore been no merit in continuing the correspondence.

A Member of the Standards Committee suggested that the policy guidance might be updated to reflect when a dispensation was required and the fact that any matter before a Committee for information would not necessarily require a dispensation for example.

The Chairman thanked all of those present for their attendance and contribution to the consultation around the draft policy, guidance and application form.

4. QUESTIONS ON MATTERS RELATING TO THE WORK OF THE COMMITTEE

There were no additional questions.

5. ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT

There were no additional, urgent items of business for consideration.

The meeting ended at 1.00 pm

Chairman

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