

STANDARDS COMMITTEE
Friday, 4 October 2019

Minutes of the meeting of the Standards Committee held at Committee Room - 2nd
Floor West Wing, Guildhall on Friday, 4 October 2019 at 11.00 am

Present

Members:

Ann Holmes (Chair)
Caroline Addy (Deputy Chairman)
Randall Anderson
Judith Barnes
Henry Colthurst
Nick Cooke
Mary Durcan
Deputy Jamie Ingham Clark
Vivienne Littlechild
Deputy Edward Lord
Alderman & Sheriff Professor Michael Mainelli
Barbara Newman
Jeremy Simons

Officers:

Gemma Stokley	- Town Clerk's Department
Lorraine Brook	- Town Clerk's Department
Antoinette Duhaney	- Town Clerk's Department
Michael Cogher	- Comptroller and City Solicitor
Edward Wood	- Comptroller and City Solicitor's Department
Kristina Drake	- Media Officer

The Chair welcomed to the meeting Members and members of the public. In view of the large number of members of the public in attendance she also asked that committee members and officers introduce themselves.

1. APOLOGIES

Apologies for absence were received from Alderwoman Susan Langley and Dan Large (Co-opted).

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

There were no declarations.

3. MINUTES OF THE PREVIOUS MEETING

The public minutes of the meeting held on 3 May 2019 were considered and approved as a correct record.

MATTERS ARISING

Review of Local Government Ethical Standards by the Committee on Standards in Public Life (page 11) – A Co-opted Member questioned when further reports relating to various recommendations could be expected by the Committee. The Chair clarified that work on these matters was already underway and that the first such report would be brought to the Committee in early 2020.

4. MINUTES OF DISPENSATIONS SUB COMMITTEES

The Committee received the minutes of the Dispensations Sub (Standards) Committee meeting held on 3 July 2019 and the draft minutes of the Dispensations Sub (Standards) Committee held on 4 September 2019.

RECEIVED.

5. REVIEW OF DISPENSATIONS POLICY

The Committee considered a report of the Comptroller and City Solicitor relative to a formal review of the Dispensations Policy.

The Chair introduced the item by stating that the Committee had looked at the experience of the first six months of the policy which was introduced in March 2019. The petition submitted in relation to this, Wardmote resolutions, comments from the Barbican and Golden Lane Residents Associations and points made at the informal meeting of this Committee last month had also been taken into account.

The Chair intimated that she intended to hold discussion today on dispensations to speak, dispensations to vote, Section 618 and procedural matters in turn, in that order. She added that, for dispensations to speak and procedural matters, her note at Item 5A. may prove useful and that for all of the issues, the basic information was contained within the Comptroller's report.

The Chair went on to highlight that the Localism Act was clear in that anyone with an engaged DPI may neither speak nor vote without a dispensation and that, to obtain a dispensation, at least one of the statutory grounds must be met.

She concluded her introduction by clarifying that the Committee's concern today was rooted in finding the best balance between representing constituents and avoiding conflicts of interest. The policy had to meet the requirements of the Law and the organisation's own Code of Conduct and protect individual Members and the Corporation from challenge.

Dispensations to speak

The Chair clarified that dispensations to speak for up to four years on council tax and general housing matters, and to speak as a member of the public on planning and licensing matters, were currently delegated to the Town Clerk. Today, she would like to seek the Committee's views on whether and, if so, how far, it wished to extend these arrangements.

At the Chair's request, the Comptroller and City Solicitor highlighted that the legal obligations were set out within the report and that the Committee had a wide but not unlimited discretion with regard to the granting of dispensations. They couldn't seek to ignore or evade the statutory scheme. They were required to exercise discretion properly, having regard to all relevant circumstances. He clarified that the Committee were not prevented from granting dispensations for Members terms of office (4 years) or from granting more general dispensations – both of which had already been done in practice. However, the Committee had a duty to inform themselves of the relevant facts in each case (the Tameside duty). The Comptroller went on to state that the granting of dispensations could be delegated to Officers or to individual Committees but not to individual Members, either expressly or by implication. Any policy that had the effect of always or never granting a dispensation would be unlawful. He echoed the Chair's earlier point that this was therefore a balancing act between democratic representation and the general (not just local) public interest. He concluded by highlighting that other legal constraints also needed to be borne in mind such as Section 618 of the Housing Act 1985 and the rule against actual or apparent bias.

The Chair highlighted that Item 5A contained a range of extensions to the current delegated dispensations to speak that Members may wish to make. She opened the matter of dispensations to speak up to debate.

A Member stated that she still found it difficult to grasp why speaking for hundreds of others as opposed to simply speaking for herself was an issue here and asked the Comptroller and City Solicitor if he could expand on this. The Comptroller explained that if a Member has an engaged DPI then there isn't a difference, in relation to the prohibition on participation in the Localism Act – that's why provision is made for dispensations. The Comptroller also referred to the R (Richardson) v North Yorkshire CC case in which it was held that a Member could not separate out their official and private capacities. He added that, if a Member were one of many affected by a proposal, this would be a relevant factor in deciding whether to grant a dispensation as had been the case with a recent dispensation granted to Deputy Joyce Nash to both speak and vote in relation to plans to extend the City of London School for Girls. A Member stated that another Councillor in the same position would also be applying for similar rights and questioned whether the same outcome was therefore likely. The Comptroller and City Solicitor declined to comment and stated that this would be a decision for the Dispensations Sub Committee in due course. A Co-opted Member added that each application was considered on its own merits but that common sense would suggest that, if all circumstances were equal, outcomes were also likely to be the same. Another Member queried whether that Councillor was in exactly the same position.

A Member stated that he felt that there was an overriding need for all elected Members to have the ability to speak on all matters and that this should therefore be the Committee's starting point. He clarified that, ideally, he would be keen to see a blanket dispensation to speak introduced for all. He went on to state that the main issues here were around Housing, Planning and Licensing matters and suggested that at the start of each Members' term of office,

specific dispensations to speak should be provided in relation to these. He agreed that the matter of voting was a thornier issue.

Another Member urged caution here, adding that every application was required to be considered on its merits. He added that granting too wide a dispensation would create a potentially invidious situation and highlighted that part of the test was whether a Member applying for a dispensation was one of many or one of few and that levels of detail were therefore important.

A Member asked the Comptroller and City Solicitor to comment on whether, in his view, the proposal put forward by a Member regarding blanket dispensations for all to speak on any matter would be legal. The Comptroller and City Solicitor responded by, once again, highlighting that dispensations to speak on general housing matters were already in existence. He questioned what it was that Members wished to see added to this. He agreed with the point made that Housing, Planning and Licensing matters tended to be the most significant here and added that policies were already in place around granting rights to speak on all of these.

A Member commented that she had left the informal meeting of this Committee last month in no doubt that the general feeling was that blanket dispensations to speak should be granted to all. She referred also to the petition received on the Dispensations Policy indicating that the public felt disenfranchised by the current scheme. She added that curtailing Members rights to speak on behalf of their electors effectively meant that standing for election was pointless.

The Deputy Chairman stated that it was very important to bear in mind all the different interests in play. She recognised the pressure to grant dispensations to speak but added that there was, nevertheless, the need to act legally.

A Member questioned whether there was any distinction made, legally, between seeking a dispensation to speak and one to vote. The Comptroller and City Solicitor explained that the statute made no distinction in terms of the test applied but did separate out applications in terms of those seeking to speak and/or vote. Conceptually, there clearly was a difference which the Committee was entitled to take into account.

A Member commented that the Policy's current definition of 'general housing matters' did not include car parking and storage and therefore that was one example of how it could be more widely drafted. He went on to state that he struggled with how this matter had been made so complex given that the Committee had broad, legal authority under the Localism Act to grant dispensations and should seek to use that authority properly, to treat elected Members as if they had common sense and to allow them to effectively represent those who had elected them. He too referred to the petition received as well as the two Wardmote resolutions put in the same terms – all indicating that residents in the City felt that the current policy prevented them from being fully represented. He agreed with the point made earlier regarding the many and the few and felt that those seeking to act on behalf of the few should not be granted a general dispensation. That aside, he stated that he was firmly of the

view that a policy that permits all to speak and vote should be in place with a 'break line' indicating that crossing this was at the personal risk of individual Members.

A Co-opted Member stated that she could see that general dispensations on some matters affecting all equally would be helpful. She argued that this, however, already existed in the form of general housing matters, and car parking and storage where this had been applied for.

The Deputy Chairman agreed that such eventualities were already covered in the existing policies. She added that applications for dispensations relating to specific topics, which were general in that they persisted in time, were easier to process and satisfy the test. Applications with no specific topic were extremely difficult to process.

A Member stated that he would be in favour of extending the dispensations delegated to the Town Clerk to include speaking on any matters affecting ward constituents.

Another Member agreed with this approach. She added that the current regime seemed to take away the ability of elected Members to demonstrate integrity and the ability to make good judgements. For this reason and, on the grounds of good governance, she would also support the introduction of blanket dispensations for resident Members to at least speak on all matters.

A Co-opted Member interjected to state that it was also important to consider the views of the wider public and third-party interests, particularly in relation to Planning and Licensing applications. He added that the granting of blanket dispensations could open the City Corporation up to litigation and questioned why Members would find the need to apply for a dispensation on a case by case basis so cumbersome. It could cause problems if there was a lack of clarity over the interests that Members had.

Two Members made the point that elected Members' publicly available registers of interests covered their pecuniary interests and also that there was an Item on every Committee agenda prompting Members to declare these in relation to items of business to be considered.

A Co-opted Member cautioned that, legally speaking, the process of granting such wide dispensations could be challenged in that it could demonstrate that relevant information was not available and that the process was therefore flawed or unfair. Areas such as Planning and Licensing could rapidly decline in credibility with third parties with such an approach. He concluded by pointing out the financial value of developments in the City which inevitably meant that the City Corporation was subject to a high degree of scrutiny.

A Member disagreed that this would be the case and suggested that this wrongly conflated a number of different issues such as personal liability and the rule against bias which in his view the dispensations regime should not properly be dealing with.

The Deputy Chairman expressed a concern that blanket dispensations could lead to Members not focussing enough on their own individual circumstances in relation to a particular item of business.

The Chair took the opportunity to summarise at this point stating that there were clearly two points of view. There were Members who were in favour of granting a blanket dispensation to speak on any matter affecting ward constituents (with whatever caveats needed attaching to it) for a four-year term of office, and other Members who had concerns about such an approach.

The Chair requested, at this stage, an indicative show of hands to determine who would be in favour of granting such blanket dispensations. Five Members indicated that they would favour this approach and seven Members (including the two Co-optees present) indicated that they would not.

A Member who had indicated his opposition to the proposal stated that the key issue here was around parameters to general dispensations. He added that he felt that there were some circumstances where such an approach would work well but that he was yet to hear these articulated or receive enough information on which to reach a firm decision.

In light of this, and the clear divergence of views amongst the Committee, it was agreed that a report should come back to this Committee seeking to simplify the process around applying for dispensations to speak and examining how the existing delegations to the Town Clerk could be applied as broadly as possible whilst avoiding the risk of a successful legal challenge against individual Members or the City Corporation.

Dispensations to Vote

The Chair underlined that dispensations to vote were currently only granted in exceptional circumstances. There was a suggestion that the wording within the current policy should be amended to state that they would only be granted in certain circumstances, with good reason. She invited the Comptroller and City Solicitor to comment on this position. The Comptroller and City Solicitor stated that voting was certainly more influential than speaking in terms of outcomes. He referred again to the caselaw around actual and apparent bias, particularly in relation to matters such as Planning and Licensing, where third party rights were engaged.

A Member stated that the issues referred to (specifically around bias and Judicial Review) could not be dispensated against. He reiterated that his concern was therefore that these were very separate issues not stemming from the Localism Act and could be dealt with at the appropriate time. The Comptroller and City Solicitor said that it was debatable whether the dispensations regime could be entirely separated out from these other related issues but in his view, it would not be wise to do so.

In response to a Member stating that some Members with engaged DPIs in development matters spoke and voted at meetings of the Planning and

Transportation Committee, the Chair advised that Members should be reporting such instances if this was the case.

The Deputy Chair highlighted that dispensations may not be granted unless certain criteria were met and that, if the dispensations regime worked properly, matters such as potential bias should be considered at that stage. She added that blanket dispensations were therefore difficult to grant and could not be entirely separated from the issue of bias.

A Co-opted Member stated that the Localism Act and dispensations regime were intended to work as 'gatekeepers' to prevent issues such as bias arising in the first place.

The Chair asked elected Members to formally vote as to whether or not they would like to see the current policy on dispensations to vote (whereby these were only granted with good reason) changed.

Votes were cast as follows:

FOR: 5 votes

AGAINST: 5 votes

The Chair exercised her casting vote on the matter and the vote was therefore lost.

Section 618 of the Housing Act 1985

The Chair clarified that the general consensus of those present at the informal meeting of this Committee last month seemed to be that Members should seek the removal of this section. She stressed that it was not within the gift of the Committee to act alone on this but asked that Members indicate their willingness to invite the Policy and Resources Committee, Community and Children's Services Committee and Barbican Residential Committee to consider, with the advice of the Remembrancer, taking steps to seek this from government.

Members were unanimously supportive of this proposal. A Member highlighted that a Housing Act was likely to be announced at the next Queen's Speech and that this would be an obvious opportunity to make the repeal.

Procedure

The Chair highlighted that there were some suggested changes detailed within her note at Item 5A for consideration. She added that this was not intended as an exhaustive list but may prove useful in terms of initiating discussion.

Firstly, Members discussed the suggestion that Members might be required to take advice as to the engagement of a disclosable pecuniary interest (DPI) from the Monitoring Officer or relevant committee lawyer, prior to applying for dispensation. Members were in favour of the principle but felt that Members should be strongly encouraged as opposed to required to adopt this approach.

A Member stressed that it was important to ensure that advice was only sought from those suitably qualified.

It was also agreed that the assessment criteria should be altered so that complaints in relation to speaking and voting will not be investigated, provided that the Member has obtained advice in good faith and with full disclosure from the Monitoring Officers or relevant committee lawyer that a DPI is not engaged. The Deputy Chair commented that this should be premised on the fact that Members had then acted in accordance with the advice received.

Members were also in favour of setting deadlines for applications for dispensations. Notwithstanding this, it was noted that the urgency procedures already in place would be retained where necessary, such as in the case of late items of business being submitted to Committees. Guidance should also be produced on what constitutes an urgent application.

The Committee were also unanimously of the view that the requirement that a member may not consider an application for dispensation for a committee on which they themselves sit should be removed.

Members were unsupportive of the suggestion that pre-meetings of individual Committees to decide applications for dispensations to vote should be pursued.

Finally, it was felt useful that meetings of the Dispensations Sub Committee should be fixed in advance at regular intervals for the following year, whilst retaining means of dealing with urgent applications.

Forms

A Member commented that the shortening and simplifying of the application form seemed to him a positive change. He added that he felt that it also served as a useful reminder to Members in terms of their obligations and that he could easily imagine a situation arising in terms of his own business interests or Livery connections for example where such focus would be helpful.

The Member went on to suggest that the Dispensations regime should be covered extensively at all future Member Induction sessions and that forms should be provided to all at election or re-election every four years or as appropriate with adequate explanation.

A Member suggested that for reasons of transparency, the revised form might also usefully refer to the need to add any interest to a Members register. Another Member added that the form should also encourage Members to apply for dispensations as early as possible.

The Chair went on to focus on the suggestion that the use of the now simplified and shortened form should be made mandatory. She suggested that this made the role of the Dispensations Sub Committee easier in terms of process and comparability. Members were supportive of this and clarified that, aside from exceptional circumstances, applications submitted not using the revised form would not be considered.

A Member suggested that hard copies of the form be made available in the Members Reading Room alongside other stationary for ease of access.

The Chair referred to the four applications for general dispensations that had previously been deferred pending discussions today and requested that the Town Clerk now contact those Members and request that their applications be resubmitted on the revised forms for consideration at a Dispensations Sub Committee to be convened as soon as possible following their receipt. In response to a question, it was clarified that those who had sat on the Dispensations Sub Committee that had originally considered these applications would not be precluded from determining them once they had been re-submitted.

Finally, the Committee discussed the possibility of introducing a minimum period between the submission of identical applications. A Member stated that he was nervous about this and felt it was setting the wrong tone in that Members should be trusted to act sensibly. The Chair clarified that this suggestion had arisen from recent monitoring of the regime but concurred with the majority view that this should not be pursued at present.

The Deputy Chair suggested that it would be useful to have a document detailing all recent decisions around dispensations made readily available to Members. The Town Clerk responded that this could be made available both online and in hard copy in the Members Reading Room going forward.

RESOLVED – That:

- (i) After considering the report, discussion paper, the previous minutes, Chairman's notes, petition and Wardmote resolutions, the Committee instruct Officers to bring back to them a report examining how the process around applying for dispensations to speak might be simplified and how the existing delegations to the Town Clerk could be applied as broadly as possible whilst avoiding the risk of a successful legal challenge against individual Members or the City Corporation.
- (ii) The Committee invite the Policy and Resources Committee, Community and Children's Services Committee and Barbican Residential Committee to consider, with the advice of the City Remembrancer, taking steps to seek the repeal of s.618 of the Housing Act 1985.

6. INSURANCE AND INDEMNITIES FOR INDEPENDENT PERSONS

The Committee considered a joint report of the Comptroller and City Solicitor and the Chamberlain setting out the position in relation to the potential personal liability of the Corporation's Independent Persons appointed under the Localism Act 2011 when carrying out their duties and the recommendations of the Committee on Standards in Public Life that local authorities provide indemnities

to their Independent Persons in relation to their comments during the discharge of their duties.

RESOLVED – That Members approve the proposal in the report for onward approval by the Court of Common Council to indemnify and/or insure Independent Persons (through the extension of the Corporation’s Defamation Cover) against awards of damages or expenses incurred arising out of the disclosure of any comments made in good faith during the exercise of their statutory functions as Independent Persons.

7. ANNUAL UPDATE TO MEMBER DECLARATIONS

The Committee considered a report of the Town Clerk providing Members with an overview of the annual update to the Members’ Declarations which commenced in July 2019.

In response to questions, the Town Clerk clarified that there was no statutory requirement for an annual update to take place. The Code of Conduct requires Members to maintain an up to date register and the guidance provides for an annual reminder to be sent for this purpose. The Town Clerk also highlighted the disappointing response rate from both elected and relevant Co-opted Members to date.

With this in mind, it was recognised that the amount of time currently dedicated by Officers to undertaking this piece of work was not sustainable given the response rates. It was therefore proposed that, whilst a completely hands-off approach would not be desirable, the Town Clerk should be instructed to simply issue an annual reminder to all Members and Co-optees to check and update forms where necessary. The onus would therefore be on individual Members/Co-optees to manage their own entries. Current arrangements around the chasing and logging of such updates would cease.

RESOLVED – That Members note the report and instruct the Town Clerk to move to a system whereby Members were simply reminded, on an annual basis, to take responsibility for checking and updating their entries.

8. THE CITY OF LONDON CORPORATION'S INDEPENDENT SCHOOLS AND PARENT GOVERNORS

The Committee received a joint report of the Town Clerk and the Comptroller and City Solicitor, alongside an excerpt from the Policy and Resources Committee meeting held on 4 July 2019, concerning the management of the City Corporation’s three independent schools and the extent to which the parents of current pupils can and should be able to serve as Governors.

RECEIVED.

9. LORD MAYOR AND SHRIEVAL GIFTS AND HOSPITALITY

The Committee considered a report of the Executive Director, Mansion House and Central Criminal Court, updating Members on the Lord Mayor and Shrieval declarations of gifts and hospitality for the year 2018/19.

Members questioned whether was necessary for the Committee to continue to receive this level of information. The Executive Director confirmed that it was a requirement under the Code of Conduct for this information to be kept and published online regardless.

The Committee thanked the Executive Director for his time but were unanimously of the view that the report needn't be submitted to this Committee in future years.

RESOLVED – That Members note the report.

10. **QUESTIONS ON MATTERS RELATING TO THE WORK OF THE COMMITTEE**

There were no questions.

11. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**

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

The Chair thanked members of the public for their attendance.

12. **EXCLUSION OF THE PUBLIC**

RESOLVED - That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following items on the grounds that they involve the likely disclosure of exempt information as defined in Part I of the Schedule 12A of the Local Government Act.

13. **NON-PUBLIC MINUTES OF THE PREVIOUS MEETING**

The Committee considered and approved the non-public minutes of the meeting held on 3 May 2019.

14. **NON-PUBLIC QUESTIONS ON MATTERS RELATING TO THE WORK OF THE COMMITTEE**

A Member questioned the outcome of the discussion around the proposal for granting blanket dispensations to speak to be given to Members for the duration of their terms of office that had taken place in public session under Item 5.

15. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT AND WHICH THE COMMITTEE AGREES SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**

The Committee considered and approved a late, separately circulated report of the Town Clerk relative to Co-opted Member Appointment(s).

The meeting ended at 1.00 pm

Chairman

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