

Committee(s)	Dated:
Policy & Resources – For Information	6 October 2016
Subject: The City's Franchise	Public
Report of: Town Clerk, Remembrancer and Comptroller & City Solicitor	For Decision
Report author: Simon Murrells – Town Clerk's Department	

Summary

The purpose of this report is to consider whether people or businesses who occupy serviced and shared office space are eligible to register and vote in City-wide elections.

Based on a specimen agreement to occupy space in WeWork premises (a shared office space provider), it is apparent that such occupation represents a licence rather than a tenancy and, as such, under the current franchise arrangements, their clients are currently ineligible to register.

To change the current franchise arrangements would require primary legislation but in light of the timescale and risks associated with that route at the present time, it is not recommended.

This view is supported by Members of the Resource Allocation Sub-Committee. However, the Members believe it important for consideration to be given to recognising a new and increasing category of constituent who, whilst not eligible to register and vote, should nevertheless be engaged with.

The report also highlights that a greater impact on voter registration could be achieved if registrations in a particular already eligible category of business were increased.

Recommendation(s)

- a) Members are asked to note the report and endorse the view expressed informally by the Resource Allocation Sub-Committee that no action should be taken to seek primary legislation to amend the City's franchise;
- b) consideration be given to recognising a new category of constituent who, whilst not eligible to register and vote, should nevertheless be engaged with; and

c) subject to agreement to a) and b) above, submit a report on your conclusions to the Court of Common Council, for information.

Main Report

Background

1. The issue of voter registration has been raised recently by Members in the Court of Common Council and, in particular, whether people who occupy serviced and shared office space are eligible. The Chairman agreed to the position being examined and for a report to be presented to the Court before the end of 2016.
2. When the matter was raised subsequently at the Policy & Resources Committee it was suggested that it might be advantageous for a small number of Members to look at the issue informally. Whilst no action has been taken to establish a separate working party, Members of the Resource Allocation Sub-Committee have considered the matter informally and their views are set out in this report.

Serviced Offices in the City

3. Research carried out by the Economic Development Offices shows that there are no official sources of data on serviced offices and occupiers. Bespoke research was commissioned in 2014 to look at serviced office space in the City and since that time, a number of new serviced offices have opened most notably the new WeWork building in Moorgate, which at full capacity can accommodate 3000 people. Serviced office space in the City is growing quickly with capacity quadrupling in size since 1995, with 60% of the 85 centres having opened since 2008. They account for 3% of the City's total office stock.
4. The research showed that there were an estimated 2,250 businesses based in serviced offices in the City, employing around 18,000 people. An estimated 40% of occupiers were in professional services (eg accounting, legal, consulting, real estate and recruitment), 20% in finance and insurance and the remainder split across other sectors.
5. Most businesses in serviced offices were SMEs (employing fewer than 250 people) accounting for 70% of serviced office space. The average length of stay was between 18 and 24 months with longer periods of 3 to 5 years not uncommon. The remaining 30% of space was split between representative offices of larger companies (10%) and flexible space (20%).

The City's Franchise

6. For registration purposes, under the City's franchise, Qualifying Bodies, sole traders and partnerships are required to occupy premises as owner or tenant. A tenant of such premises may, subject to the other requirements, be registered whereas a licensee may not. The issue is, therefore, the basis on which businesses occupy shared office space e.g. whether they occupy the space as tenants or licensees.

The Legal Position

7. The Comptroller & City Solicitor has considered the legal aspects and in doing so, has had the benefit of seeing an agreement issued to occupiers of WeWork premises. His advice is as follows.
8. A tenant has the grant of a right of exclusive possession of land for a determinable period of time. A tenant has both a contractual relationship with the landlord and an interest in land. The key element of a tenancy is exclusive possession. A tenant can exclude the whole world from the land including the landlord, although in practice the landlord will reserve rights to enter the land to inspect and repair it.
9. In contrast a licence is simply permission for a licensee to do something on a licensor's property which prevents the activity from being trespass. A licence is by definition not a lease, it is a personal right or permission and does not confer exclusive possession. Indeed by its nature occupation will be shared with others. A licence can vary in duration and formality. For example a customer has an implied licence to enter a coffee shop to purchase and consume coffee along with other customers. An employee has a licence to attend their employer's place of work for the purposes of their employment and a customer has a licence to occupy a hotel room for the duration of their stay. These examples will be created with no or limited formality. On the other hand, licences can be for longer duration and have a more formal structure, for example in the case of serviced offices or concessions in a department store.
10. The fact that an agreement purports to be a licence does not mean that it will be construed as one. A Court will look at all the circumstances of the arrangement and a purported licence conferring exclusive possession for payment is likely to be construed as a tenancy. In other words the Courts will not permit sham licences where the real arrangement is a tenancy. This is important because of the rights, particularly security of tenure, which can attach to tenancies in various circumstances. A tenancy-at-will is the lowest form and most insecure type of tenancy but it nonetheless confers exclusive possession on the tenant during its life.
11. Thus an arrangement where an occupier has exclusive possession of part of a property for rent will generally be a tenancy and an arrangement where the occupier has personal permission to occupy part of a property in common with others will generally be a licensee. Landlords will generally be at pains to ensure that the nature of the occupation will be clear to the parties.
12. Turning to the WeWork agreement it is very clear that the arrangement is intended to be a licence and not a tenancy and its nature is clear from the agreement. In paragraph 2 the agreement confers "non-exclusive access to the Office Space" and, at paragraph 2(c), WeWork reserve the right to access the Office Space without notice for any purpose, and to alter the Office Space.
13. Most tellingly, paragraph 9(a) provides:-

“Nature of the Agreement; Relationship of Parties. Your agreement with us is the commercial equivalent of an agreement for accommodation in an hotel. The whole of the Office Space remains our property and in our possession and control. We are giving you the right to share with us the use of the Office Space so that we can provide the Services to you. Notwithstanding anything in this agreement to the contrary, you and we agree that our relationship is not that of landlord and tenant or lessor-lessee and this Agreement in no way shall be construed as to grant you or any Member any title, easement, lien, possession or related rights in our business, the Premises, the Office Space or anything contained in or on the Premises or Office Space. This Agreement creates no security of tenure, tenancy interest, leasehold estate or other real property interest”.

14. Thus on the face of it there is a clear intention to create a licence which could only be overridden if it could be shown that it were in fact a sham. This would only be likely if the individual was, say, the only occupier and it was not in fact being run as shared office facilities.

Amending the Franchise

15. Whilst individual applications to register will always be considered on a case by case basis, in light of the legal position set out above, enabling occupiers of shared office space such as that provided by WeWork to register would require the City’s franchise to be amended. The Remembrancer has confirmed that to change the franchise would require primary legislation which is likely to be a lengthy and detailed process.
16. The reforms to the current franchise, enacted in 2002, took over three years to progress through Parliament, through a combination of the vagaries of the legislative timetable and delays caused by Members of the Commons (some still sitting in the House and now in prominent positions) who were hostile to the concept of a business vote.
17. The qualifying period for registration for the City-wide March 2017 elections commenced on 1 September 2016 and there is, therefore, no prospect of any amendments being introduced in time for the 2017 elections. There is also the issue, should primary legislation be pursued, of identifying who should be eligible to vote. For example, should eligibility require a minimum licence period, should part-time licences count (ie: on, say, 2 days each week), should it include people who regularly sit in a coffee shop using a laptop or businesses who jointly hire a meeting room for regular use?
18. Quite apart from these features, even in the form of a simple amendment, seeking to base registration on a licence is fraught with difficulty because the range of licences would effectively amount to a worker vote, given that so many people have licences to occupy their employer's premises.

The Informal Views of Members of the Resource Allocation Sub-Committee

19. Members of the Resource Allocation Sub-Committee considered this matter on an informal basis at their annual Awayday held in July. The Members were unanimous in agreeing that no action should be taken to seek primary legislation to amend the City's franchise. The fact that serviced offices represented only 3% of the City's total office stock was taken into account (although that figure is increasing) and it was noted that a greater impact on voter registration could be achieved if registrations in a particular already eligible category of business were increased. For example, if the 90 plus unregistered large firms registered all of their voters it would uplift the current voter registrations by 15% and if the 2,500 or so unregistered small firms did likewise, it would uplift current voter registration levels by 22%.
20. It could, therefore, be argued that a focus on increasing registration levels within the current system is more advantageous and action is being taken to highlight voter registration generally through increased awareness such as the City's Roadshows which have been visiting larger businesses over the summer months together with other initiatives.
21. It was, however, fully acknowledged that the nature of employment in the City was changing and that consideration should be given to recognising a new category of constituent who, whilst not eligible to register and vote, should be engaged with. A simple first step would be to include occupiers of shared office space in the circulation of Ward Newsletters and other publications such as CityView and further thought should be given on how to communicate with them in different ways.

Conclusion

22. This report addresses the question of whether occupiers of shared office space are eligible to register and vote in City-wide elections. Based on a specimen agreement to occupy space in WeWork premises, it is apparent that such occupation represents a licence rather than a tenancy and, as such, under the current franchise arrangements, they are currently ineligible to register. To change the current arrangements would require primary legislation but in light of the timescale and risks associated with that route at the present time, it is not recommended. This view is supported by Members of the Resource Allocation Sub-Committee. However, the Members believe it important for consideration to be given to recognising a new and increasing category of constituent who, whilst not eligible to register and vote, should nevertheless be engaged with.

Background Papers - Serviced Office Review Research by the Instant Group – 2015.

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