

## Report – Policy and Resources Committee

### The City Franchise

*To be presented on Thursday, 8<sup>th</sup> December 2016*

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

#### SUMMARY

At the Court Common Council meeting on 12 May 2016 the issue of whether the current electoral registration process included those businesses in the City which operated on the basis of using shared office space. Whilst Members were advised that under the terms of the City of London (Various Powers) Act 1957, qualifying bodies including sole traders and partnerships must occupy premises as owner or tenant to be eligible to register, it was nevertheless acknowledged that the way in which businesses operated was evolving. As a consequence, the Chairman of the Policy and Resources Committee gave an undertaking that the issue would be explored further and that a report on the findings, including possible changes to primary legislation, would be presented to the Court by the end of the year.

A report on whether people or businesses who occupied serviced and shared office space were eligible to register and vote in City-wide elections has since been considered by your Policy and Resources Committee. The report noted that a specimen agreement to occupy space in WeWork premises (a shared office space provider) was examined and it concluded that occupying premises in this way represented a license rather than a tenancy and, as such, under the current franchise arrangements, clients would not be eligible to register.

To change the current franchise arrangements would require primary legislation. However, in light of the timescale and risks associated with that route at the present time, your Committee did not support this course of action. Nevertheless it did acknowledge that it was important to recognise a new and increasing category of constituent who, whilst not eligible to register and vote, should be engaged with.

#### RECOMMENDATION

We **recommend** that the decision not to take action to seek primary legislation to amend the City's franchise be endorsed and this category of constituent, who whilst not eligible to register and vote, should be engaged with.

#### MAIN REPORT

##### Background

1. Earlier this year, the issue of voter registration was raised 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.

### **Serviced Offices in the City**

2. Research carried out by the Economic Development Office 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.
3. 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 (e.g. accounting, legal, consulting, real estate and recruitment), 20% in finance and insurance and the remainder split across other sectors.
4. 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**

5. 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**

6. The Comptroller & City Solicitor considered the legal aspects and in doing so, he had the benefit of seeing an agreement issued to occupiers of WeWork premises. His advice is as follows.
7. 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.
8. In contrast a license 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.

9. 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.
10. 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.
11. 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.

12. 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".*

13. 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**

14. 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.
15. 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.
16. 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 (i.e. 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?
17. 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**

18. Members of the Resource Allocation Sub-Committee considered this matter on an informal basis at their annual Away Day 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 and your Policy and Resources Committee supported this. 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%.
19. 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.

20. 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**

21. 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 was not recommended. This view is supported. However, was acknowledged that it is 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.***

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

DATED this 6<sup>th</sup> day of October 2016.

SIGNED on behalf of the Committee.

**Mark Boleat**  
Chairman, Policy and Resources Committee