

Report – The Standards Regime Review Working Party

Independent Review of the City of London's Standards Regime

To be presented on Thursday 11th January 2018

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

SUMMARY

This report provides findings of the review undertaken by your Standards Regime Working Party in respect to the Corporation's current Standards Framework, especially the Complaints Procedure (alleged breaches of the Members' Code of Conduct). Specifically, this report outlines the consideration given to a review undertaken by Mr Charles Bourne QC and his report ("the Report"), who was appointed by the Town Clerk to examine the Standards Framework and provides both findings and recommendations on how to improve the current arrangements.

RECOMMENDATION

We recommend that the Court of Common Council approves the responses we have proposed in respect to the recommendations as set out in the Report, and the revised Code of Conduct, Complaints Procedure and Guidance to Members on the Code of Conduct as appended.

MAIN REPORT

Background

1. At the meeting of the Court of Common Council on 23rd June 2016, concerns were expressed by a number of Members about the content of the Standards Committee's annual report, principally around the identification of a Member involved in a particular complaint and that Committee's handling of the complaint. This led to a decision by the Court to refer the report back to the Standards Committee for further consideration.
2. In light of the concerns raised, the Standards Committee re-submitted its annual report to the Court at its meeting on 21st July 2016, without naming the individual Member concerned with the complaint.
3. To ensure that Members would have full confidence in the arrangements in place, the Standards Committee also reported to the Court of Common Council its intention to commission an independent review of the current arrangements for addressing matters connected to the conduct of Members under the Localism Act 2011.

4. The Standards Committee proposed that the review should be independent and broad in its remit so that City Corporation's responsibilities under the Act, fulfilled by the Standards Committee in accordance with the Terms of Reference set by the Court, could be further considered. The review would examine the arrangements the City Corporation currently has in place for addressing matters connected to the conduct of Members (including co-opted Members) under the Localism Act 2011 with a particular focus on the Complaints Procedure (alleged breaches of the Members' Code of Conduct).
5. The Town Clerk appointed Mr Charles Bourne QC of 11 King's Bench Walk to carry out the task. As part of the review process, written submissions were sought from all directly elected and co-opted Members from the outset. Mr Bourne subsequently met with Members of the Standards Committee and then, on a one-to-one basis, with a number of other Members.
6. A meeting with Mr Bourne, which all Members were invited to, also took place on 7th November 2016 to enable further consultation and input into the process.
7. The final report detailing Mr Bourne's findings, together with his recommendations, was presented to the Court of Common Council, for information, at your meeting on 12th January 2017.
8. The Court decided that *'a Panel be established by resolution of this Court today comprising the Chairman of the Standards Committee, the Chairman of Policy & Resources, the Chairman of the General Purposes Committee of Aldermen and the Chief Commoner with power to act to appoint a Working Party to report to this Court as soon as is practicable during this year on how the various recommendations in Mr Bourne's Report might be progressed and implemented as appropriate'*.
9. After careful consideration, the Panel reached a consensus on the final ten Members who should be approached to serve.
10. At the Working Party's initial meeting in February 2017, Emma Edhem was elected as our Chairman. We initially sought to decide upon a method of working for considering the various recommendations contained in Mr Bourne's review. After working through each of the recommendations presented within the report, we concluded that there were primarily six clear, separate, areas of work that required investigation. These were agreed to be:
 - Assessment of Complaints
 - Investigation of Complaints
 - Complaints Hearings
 - Sanctions
 - Appeals
 - the Role of the Independent Person
11. On 6th November 2017 and twice on 9th November 2017, a total of three sessions were held by the Chairman of your Working Party for all Members of the Court of Common Council in order to informally brief Members on our

findings and to invite further input into the process. The Chairman of your Working Party also held a briefing session for the Standards Committee, again inviting input into the process. Additionally, and prior to holding the four meetings with the Standards Committee and Members as described above, all Members, including Members of the Standards Committee, were invited to email comments on the draft findings of your Working Party for consideration by the same. Following comments received from Members at those briefings and also by email, the Working Party met further to consider the comprehensive representations made by the Members and to amend the draft report and guidance accordingly.

12. For the purpose of this report, each recommendation and our responses are provided in the following section, grouped in the areas of work (as stated at paragraph 11).

Review of recommendations

13. At our first meeting, 27th February 2017, we agreed that some recommendations were straight forward, made good sense and could be dealt with quickly, without the need for detailed consideration. These recommendations – and our response to each one – were as follows:

- 13.1 ***Recommendation 1: Members should be required to attend such training on conduct and standards matters as the City may provide from time to time***

Working Party response: We support this recommendation.

- 13.2 ***Recommendation 2: The Code of Conduct should adopt the CSPL's [Committee on Standards in Public Life] revised descriptions of the Nolan Principles***

Working Party response: We support this recommendation.

- 13.3 ***Recommendation 3: The Code of Conduct should contain more express requirements in respect of equality and diversity***

Working Party response: We support this recommendation, and were also of the view that the Code of Conduct should make explicit reference to Members' obligation to comply with the Equality Act 2010.

- 13.4 ***Recommendation 4: The Code should prohibit Members from bringing their office into disrepute, engaging in any bullying and intimidation or breaching obligations of confidentiality to the City***

Working Party response: We supported the recommendation but with the proviso that behavioural issues should be contained in an additional separate and distinct clause in the Code. We were also of the view that the reference to Members bringing their office into disrepute, engaging in any bullying and intimidation, and breaching obligations of confidentiality to the City be three, clearly separate bullet points in the Code of Conduct.

- 13.5 **Recommendation 5:** *The Guidance to Members on the Code should be updated to reflect changes to the Code and also to deal with conduct matters generally, rather than only with the declaration of interests*

Working Party response: We support this recommendation.

- 13.6 **Recommendation 6:** *The City should retain a Standards Committee which will keep abreast of all of the City's activities relating to conduct and standards, including training*

Working Party response: We support this recommendation and considered that the Standards Committee should not only be retained but should also continue to operate as a Grand Committee with the ability to report directly to the Court of Common Council. We agreed that it is important to retain the independent dynamics of a Standards Committee with continued involvement of both Co-opted Members and Independent Persons in their separate and distinct roles respectively.

- 13.7 **Recommendation 7:** *The Chief Commoner and Privileges Chairman should have a discretion to share with the Standards Committee information which may be useful to it. Whilst the Standards Committee may ask them, from time to time, whether there is any such information to be shared, the Standards Committee should not have a formal role of monitoring the pastoral activities of the Chief Commoner and Privileges Chairman*

Working Party response: We support this recommendation. It is our opinion that there is no formal role for the Standards Committee in monitoring the pastoral responsibilities of the Chief Commoner or the Aldermanic Chairmen (the Chairman of the General Purposes Committee of Aldermen and the Chairman of the Privileges Committee of Aldermen).

The Chief Commoner and the Aldermanic Chairmen should continue to have a discretion to report matters which are not serious in nature but may nevertheless be deemed of sufficient breach to report to the Standards Committee. Accordingly, on matters of a serious nature, an obligation should be imposed upon the same to report matters to the Standards Committee. It is borne in mind that the role of the Standards Committee is in promoting and maintaining high standards of conduct by Members. In the circumstances, the Standards Committee should be put in a position whereby they are capable of enquiring whether there is any such information to be shared. In matters of criminality, racial abuse or sexual harassment, such matters should be immediately referred to the Standards Committee.

It was felt by your Working Party that the Standards Committee should have the discretion to refer minor issues to the Chief Commoner for resolution (this could apply in circumstances where an issue could be resolved informally).

It should be emphasised that the Chief Commoner and the Aldermanic Chairmen have the ability to refer a dispute for formal resolution under the Complaints Procedure, where it relates to a potential breach of the Code of Conduct.

We agreed that the Chief Commoner and the Aldermanic Chairmen should receive guidance from the appropriate officer on how to most appropriately handle such instances. We were also of the view that all Members should be offered training and guidance on when to make a formal complaint or when to flag issues with the Chief Commoner and the Aldermanic Chairmen.

- 13.8 **Recommendation 8:** *There should be more detailed published guidance on the procedure for dealing with complaints, especially at the hearing stage*

Working Party response: We support this recommendation.

- 13.9 **Recommendation 9:** *The City should provide training for all Members and Officers who deal with complaints (and appeals) to ensure that they are dealt with expertly and consistently*

Working Party response: We support this recommendation.

- 13.10 **Recommendation 36:** *After a finding of breach, publication of the finding should be an available sanction and the usual course, subject to recommendation 35. Otherwise the Standards Committee should have a discretion as to publication, to be exercised having regard to legal advice where appropriate, the views of the Independent Person and all the circumstances as set out at paragraph 199 [of the report]*

Working Party response: We support this recommendation.

Recommendations relating to the Assessment of Complaints

14. Recommendations 10-14 of the Report were considered within the Assessment of Complaints area of work.

- 14.1 **Recommendation 10:** *Initial assessment of a complaint should be by the Monitoring Officer, with a limited discretion to assign the function to another officer (or an officer of another authority) where necessary e.g. in a case of conflict of interest*

Working Party response: We support this recommendation, with the Monitoring Officer providing the initial assessment of a complaint in consultation with the Chairman of the Standards Committee, the Chief Commoner, one of the Aldermanic Chairmen and one Independent Person, provided the person or persons in consultation was not involved in the complaint and or was not the one referring the complaint. We also agreed that it should be left to the Monitoring Officer to determine if he or she might have a conflict of interest in any case and if so to delegate the assessment of the complaint accordingly. In addition, we were of the view that the complainant should be informed in the event where the Chief Commoner refers a complaint to the Monitoring Officer or the Standards Committee.

- 14.2 **Recommendation 11:** *A rule should require that an Independent Person's views be sought at the assessment stage unless this is considered unnecessary*

Working Party response: We support the recommendation that an Independent Person's views be sought at the assessment stage, but deem it necessary that the same always be consulted at this stage.

- 14.3 ***Recommendation 12:*** *The published arrangements should refer to the possibility of the Independent Person's views being sought at the assessment stage by the respondent to an allegation*

Working Party response: We support this recommendation and add that the draft reflect 14.2 above.

- 14.4 ***Recommendation 13:*** *Decisions on initial assessment should be accompanied by concise written reasons which enable the complainant and the respondent to understand (1) whether any of the grounds for not proceeding are present and if so (2) the reasons for the decision on whether and how to proceed*

Working Party response: We support this recommendation as a statutory requirement.

- 14.5 ***Recommendation 14:*** *If assessment is carried out by the Monitoring Officer and if the complaint is not dismissed or resolved informally, it should be referred for investigation by an Investigating Officer who may be another officer of the Corporation or an officer from another local authority, with provision for the Investigating Officer to be assisted by an external investigator where appropriate*

Working Party response: It is our opinion that it would be both just and cost effective for another officer from the Comptroller & City Solicitor's Department, or another Chief Officer of this authority, to undertake the investigation of a complaint if the Monitoring Officer had carried out the assessment and not dismissed or informally resolved it. We supported the notion that the Monitoring Officer (in consultation with Chairman of the Standards Committee, the Chief Commoner, one of the Aldermanic Chairmen and one Independent Person) should decide the most appropriate investigating officer (including external support where appropriate) on a case by case basis.

We are also of the view that the criteria currently contained within the document entitled '*How complaints to the City of London Corporation's Standards Committee will be dealt with*' should be tightened to stipulate that all complaints should be submitted for consideration within three months in order to satisfy initial assessment criteria, except in exceptional circumstances. Further to this, it should also be amended to state that an initial assessment will normally be completed within 30 working days (removing the words 'an average of' in the document) and that Investigations must be completed and a report provided within three (as opposed to six) months of assessment. Deviation from the time limits can be only be in exceptional circumstances backed with cogent reasons.

Recommendations relating to the Investigation of Complaints

15. Recommendations 15-17 of the Report were considered within the Investigation of Complaints area of work.

- 15.1 **Recommendation 15:** *Investigation should be the subject of a concise but sufficiently detailed protocol covering the matters set out at paragraph 110 of the Report*

Working Party response: We support this recommendation, but with the proviso that the Member who was the subject of a complaint would have the same right as the complainant to identify supporting evidence and/or witnesses at the interview stage.

- 15.2 **Recommendation 16:** *When interviewed by the Investigating Officer, the Member should have the right to be accompanied by a person of their choice. This could be a lawyer although the process should be an interview with the Member rather than a hearing involving advocacy*

Working Party response: We support this recommendation.

- 15.3 **Recommendation 17:** *The Investigating Officer should report on whether there is or is not evidence of a breach, or whether the allegation of breach of the Code of Conduct raises a case to answer*

Working Party response: We support this recommendation, and were of the view that there needs to be a reasoned explanation offered to substantiate the findings of the Investigating Officer

Recommendations relating to Complaints Hearings

16. Recommendations 18-25 and 34 of the Report were considered within the Complaints Hearings area of work.

- 16.1 **Recommendation 18:** *Hearings should be conducted by a committee or sub-committee including at least one (non-voting) co-opted member*

Working Party response: We are of the view that hearings should continue to be conducted by a Sub-Committee of the Standards Committee, to comprise of three elected Members, one (non-voting) Co-opted Member and the mandatory role of the Independent Person. It was, however, unanimously and strongly felt that the Standards Committee (or any sub-committee thereof) should not then be involved in any subsequent appeal.

- 16.2 **Recommendation 19:** *A pre-hearing process should be used to identify the issues and decide what (if any) witnesses need to attend the final hearing unless all parties consider it unnecessary*

Working Party response: We are of the view that a pre-hearing process should be used and that this should be formalised. We are also of the opinion that both the respondent and the complainant should be included in the pre-hearing process. We considered that Recommendation 19 should be amended thus - *"A pre-hearing process should be used to identify the issues and decide what witnesses are required to attend the final hearing and address issues of disputed fact unless all parties consider it unnecessary."*

- 16.3 **Recommendation 20:** *The committee should continue to conduct hearings in public session, subject to its statutory powers to move into confidential session under Part VA of and schedule 12A to the Local Government Act 1972*

Working Party response: We support this recommendation, and were of the view that there cannot be a “blanket rule” as to whether or not hearings should be conducted in public session. We considered that, this must be for the Hearing Sub-Committee to determine on a case-by-case basis.

- 16.4 **Recommendation 21:** *The procedure should state that the respondent may be legally represented. Respondents or their representative should be allowed to question witnesses, subject to the Chairman's discretion to set a timetable which may limit the time for questioning*

Working Party response: We are of the view that both the respondent and the complainant should be entitled to be legally represented. We felt that recommendation 21 should be amended to “The procedure should state that either party may be legally represented. Respondents/Complainants or their representatives should be allowed to question witnesses, subject to the Chairman’s discretion to manage the Hearing in a fair and expeditious manner”. During the course of discussing this recommendation, it was further our opinion that there was clearly a need for a more robust Hearing Procedure to be developed.

- 16.5 **Recommendation 22:** *The role of the Independent Person at a hearing (and generally) should be set out in writing, emphasizing its importance. The Independent Person should answer questions and express views in the presence of all those attending the hearing. Where a panel finds a breach of the Code of Conduct, the views of the Independent Person should be sought on sanction*

Working Party response: We support this recommendation.

- 16.6 **Recommendation 23:** *The arrangements should reiterate that an Independent Person's views may also be sought by the respondent at the hearing stage*

Working Party response: We support this recommendation.

- 16.7 **Recommendation 24:** *The written procedure should also make separate provision for the committee to take legal advice where necessary*

Working Party response: We support this recommendation.

- 16.8 **Recommendation 25:** *The arrangements should clarify that the question whether there has been a breach of the Code must be answered on the balance of probabilities. The panel should give concise but clear reasons for its decisions in relation to breach and sanction*

Working Party response: We support this recommendation and are of the view that the arrangements should also explicitly clarify that the burden of proof

is on the complainant to prove an allegation and not for the respondent to disprove it.

- 16.9 **Recommendation 34:** *Before any finding of breach there should be a presumption against publication of details of a case*

Working Party response: We support this recommendation.

- 16.10 **Recommendation 35:** *The announcement of any findings and/or sanction at the hearing stage should be delayed until either (1) the appeal time limit passes and no appeal is received or (2) an appeal is dismissed or (3) a new finding is made and/or a sanction is imposed at a re-hearing*

Working Party response: We support this recommendation, with the deletion of the words 'at a re-hearing.'

Recommendations relating to Sanctions

17. Recommendation 26 was considered within the Sanctions area of work. We endorsed the following in respect to the recommendation:

- 17.1 **Recommendation 26:** *The list of available sanctions should draw a distinction between a finding of breach and the sanction of censure*

Working Party response: We first gave consideration to the general comments about available sanctions in paragraphs 145-152 of the Report. It was acknowledged that an elected Member cannot be disqualified or suspended under the Corporation's arrangements. However, we noted that the Court of Common Council reserves the power to appoint Members to Committee, and similarly has the power to revoke such appointments. We noted that that any such sanction must be necessary and proportionate to the nature of the breach.

We support the recommendation that the list of available sanctions should draw a distinction between a finding of breach and the sanction of censure.

Recommendations relating to appeals against complaints

18. Recommendations 27-31 of the Report were considered within the appeals area of work.

- 18.1 **Recommendation 27:** *A respondent Member should continue to have a right of appeal against finding of breach and/or sanction, subject to a written appeal being delivered within a reasonable time limit such as 14 days*

Working Party response: It is our opinion that a Member should continue to have a right of appeal against a finding of breach and/or sanction, but we considered that the right to appeal should also be extended to the complainant, notwithstanding the view expressed by Mr Bourne at paragraph 158 of his report. This should be subject to written notice of intention to appeal being given within 14 calendar days from the date that the appellant was notified of the decision of the Standards Committee (with reasons). The right of appeal would also be subject to the appellant providing a full written appeal, including all

reasons for that appeal, within 28 calendar days from the date that he/she was notified of the decision of the Standards Committee.

18.2 Recommendation 28: *Those deciding an appeal should not be part of the body (e.g. the Standards Committee) from which the hearing panel is constituted; and*

Recommendation 29: *It may be better for a separate individual or panel to receive a written appeal, review the decision and decide whether to remit it to a differently constituted hearing panel (16i). If this course is taken there should be no right of appeal against the outcome of the re-hearing*

Working Party response: Having considered these recommendations, it is our opinion that a separate Standards Appeal Committee, made up of Members who are not on the Standards Committee, should be constituted. However, we considered it preferable that this Committee should be able to substitute a new decision on appeal, but may remit the decision(s) back to the Standards Committee to be re-decided if deemed appropriate to do so, as per Mr Bourne's suggestion. It should therefore have the authority to either uphold, change, reverse or remit back a decision made by the Standards Committee. It is our opinion that there should be no further appeal from a decision of the Standards Appeal Committee. It was further our opinion that this Committee would normally determine any appeal on the papers but should have the discretion to receive oral representations if necessary on a case by case basis.

We recommend that a Standards Appeal Committee should be made up of the following ex-officio Members (or his/her representative):

- Chairman of Policy and Resources Committee
- One of the Aldermanic Chairmen
- Chairman of Finance Committee
- Chairman of Audit and Risk Management Committee
- A former Chief Commoner

Those sitting on the Standards Appeal Committee must consult with an Independent Person, preferably one not involved in the original hearing. The Independent Person would not be entitled to a vote as part of the Standards Appeal Committee's deliberation.

It was further agreed that the quorum for this Committee, should it be established, should be any three of the listed Members, or their representatives (being, as the case may be, the Deputy Chairman, an Alderman passed the Chair and a former Chief Commoner).

18.3 Recommendation 30: *The Court should decide how to design its appeal arrangements by considering the questions set out at paragraph 165 of the report*

Working Party response: In respect to one question posed, it is our opinion that there should be a training and guidance requirement for the Members of the new Standards Appeal Committee. In relation to those other questions, it is

our opinion that we had already answered them by our consideration of recommendations 27-29.

- 18.4 **Recommendation 31:** *Any appeal panel should receive the views of an Independent Person before making its decision, preferably one who was not involved at or before the hearing stage*

Working Party response: We support this recommendation.

Recommendations relating to the role of the Independent Person

19. Recommendations 32-33 of the Report were considered within the Role of the Independent Person area of work.

- 19.1 **Recommendation 32:** *The City's Independent Persons should not routinely attend meetings of the Standards Committee other than (1) hearings where they have a statutory role and (2) meetings at which their role is under discussion and they may contribute useful information. They should however be supplied with all such agendas, minutes and other documents as will enable them to remain abreast of the Standards Committee's discussions and decisions about the Code [of Conduct] and conduct matters generally*

Working Party response: We noted that, contrary to Mr Bourne's suggestion, the Independent Persons themselves felt that they should routinely attend meetings of the Standards Committee. The majority of Members of the Working Party, however, are in support of Mr Bourne's suggestion that Independent Persons should no longer continue to routinely attend Standards Committee meetings particularly so as to reinforce their independence from that Committee. Whilst the Independent Persons' input is important and valued, it is our opinion that in the interest of independence they should instead be invited to attend a separate briefing session with the Chairman, Deputy Chairman and relevant Officers of the Standards Committee every six months in order to be updated on their activities instead of regularly attending Committee meetings. It is also our opinion that, under this new approach, they should also continue to receive all Standards Committee agendas and minutes. It should be noted that Independent Persons are at liberty to attend open Standards Committee meetings as members of the public should they so wish.

- 19.2 **Recommendation 33:** *A respondent Member exercising the right to seek the views of an Independent Person should be given a choice between a non-confidential consultation with the Independent Person who will advise the hearing panel and a confidential consultation with an Independent Person who will not. Arrangements should state that the purpose of either type of consultation is for the respondent to seek the Independent Person's views, not to influence them, and a note should be kept of what is said*

Working Party response: We noted that it is mandatory for an Independent Person to be consulted on the determination of any allegation. It was recognised that respondent Members also had a statutory right to consult an Independent Person about their case. We are in favour of insisting on the separation of the two roles so that respondent Members could only consult an Independent Person not advising the hearing panel.

Conclusion

20. Having given thorough consideration to each recommendation, we submit this report to the Court for consideration. Should the Court approve the responses to the recommendations, it is recommended that the Court should consequently approve the revised Code of Conduct, Complaints Procedure and Guidance to Members on the Code of Conduct as appended. The suggested amendments to these documents are detailed throughout our responses to the report's recommendations.

Background Papers

- Item 17, Standards Committee: Annual Report, Meeting of the Common Council, 23rd June 2016
- Item 8, Referral Back – Standards Committee, 8th July 2016
- Item 16a, Independent Review of Standards Framework, Meeting of the Common Council, 21st July 2016

Appendices

- Appendix 1 – Revised Code of Conduct
- Appendix 2 – Revised Complaints Procedure and form
- Appendix 3 – Revised Guidance to Members on the Code of Conduct
- Appendix 4 – Report of Mr Bourne QC: 'An independent review by leading counsel of the arrangements made under the Localism Act 2011 by the City of London Corporation for addressing matters connected with the conduct of Members and Co-opted Members'

DATED this 27th day of November 2017.

SIGNED on behalf of your Committee.

Emma Edhem
Chairman, Standards Regime Review Working Party