



Courts Sub (Policy and Resources) Committee

Date: FRIDAY, 2 DECEMBER 2016
Time: 1.45 pm
Venue: COMMITTEE ROOM - 2ND FLOOR WEST WING, GUILDHALL

Members: Deputy Catherine McGuinness (Chairman)
Alderman Sir David Wootton (Deputy Chairman)
Alderman Sir Michael Bear
Nicholas Bensted-Smith
Mark Boleat
Deputy Alex Deane
Sheriff & Alderman Peter Estlin
Nicholas Hilliard
Michael Hudson
Adam Richardson
Sheriff & Alderman William Russell
James de Sausmarez
John Scott

Enquiries: Gemma Stokley
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Lunch will be served in the Guildhall Club at 1pm
NB: Part of this meeting could be the subject of audio or video recording

John Barradell
Town Clerk and Chief Executive

AGENDA

1. **APOLOGIES**
2. **MEMBERS' DECLARATIONS UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA**
3. **PUBLIC MINUTES**
To agree the public minutes of the meeting held on 26 October 2016.

For Decision
(Pages 1 - 4)
4. **TERMS OF REFERENCE AND FREQUENCY OF MEETINGS**
Report of the Town Clerk.

For Decision
(Pages 5 - 8)
5. **THE CITY OF LONDON AND THE MAGISTRACY**
Report of the Remembrancer.

For Information
(Pages 9 - 20)
6. **QUESTIONS ON MATTERS RELATING TO THE WORK OF THE SUB COMMITTEE**
7. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**
8. **EXCLUSION OF THE PUBLIC**
MOTION - That under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A of the Local Government Act.

For Decision
9. **NON-PUBLIC MINUTES**
To agree the non-public minutes of the meeting held on 26 October 2016.

For Decision
(Pages 21 - 24)
10. **MODERNISATION OF THE CITY'S COURTS**
Report of the Town Clerk **(TO FOLLOW)**.

For Decision

11. **QUESTIONS ON MATTERS RELATING TO THE WORK OF THE SUB COMMITTEE AND WHICH THE SUB COMMITTEE AGREE SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**
12. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT AND WHICH THE SIB COMMITTEE AGREE SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**

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COURTS SUB (POLICY AND RESOURCES) COMMITTEE

Wednesday, 26 October 2016

Minutes of the meeting of the Courts Sub (Policy and Resources) Committee held at the Guildhall EC2 at 10.00 am

Present

Members:

Deputy Catherine McGuinness (Chairman)	Michael Hudson
Alderman Sir Michael Bear	Sheriff & Alderman William Russell
Deputy Alex Deane	James de Sausmarez
Sheriff & Alderman Peter Estlin	Alderman Sir David Wootton
Nicholas Hilliard	

Officers:

Charles Henty	-	Secondary and Under Sheriff of London and High Bailiff of Southwalk
Michael Cogher	-	Comptroller and City Solicitor
Peter Lisle	-	Assistant Town Clerk
Peter Collinson	-	City Surveyor's Department
Natasha Dogra	-	Town Clerk's Department
Steven Humpleby	-	Central Criminal Court
Alison Hurley	-	Assistant Director Corporate Property Facilities Management
Paul Wilkinson	-	City Surveyor

1. APOLOGIES

Apologies for absence were received from Mark Boleat, John Scott and Nicholas Bensted-Smith.

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

There were no declarations of interest.

3. ELECTION OF DEPUTY CHAIRMAN

The Sub-Committee was invited to elect a Deputy Chairman in accordance with Standing Order 30.

Resolved – Alderman Sir David Wootton was elected to serve as Deputy Chairman of the subcommittee.

4. TERMS OF REFERENCE AND FREQUENCY OF MEETINGS

Members of the Sub-Committee was invited to consider the terms of reference and frequency of meetings. It was noted that the current terms of reference did not correctly reflect the purpose and priorities for the subcommittee as set out

in the report proposing its establishment, nor did they set out the constitution or quorum for the group. Members agreed that the terms of reference should also include that for a period of five years, from June 2016 to April 2021, the Sub-Committee would be responsible for oversight of the management of all matters relating to the Central Criminal Court, the City of London Magistrates' Court and the Mayor's and City of London Court.

The Deputy Chairman said that the Sub-Committee was being provided with an opportunity to promote and manage the work undertaken by the three City of London courts.

The Deputy Chairman also highlighted that the future of another Court in London was currently under consultation; if this resulted in the closure of the Court it was possible that more cases would need to be considered at the City of London Magistrates' Court or the Old Bailey. This would have implications on whether certain maintenance and upgrade works would need to be undertaken at these Courts. Members agreed that the strategy regarding the contribution of the courts would help to identify which works needed to be prioritised.

It was agreed that the remit of the subcommittee should take a holistic approach regarding all three City of London Courts and that a strategy should be drawn up covering all three rather than approaching items of work individually. The Town Clerk was tasked with revising the terms of reference and setting up a special meeting of the subcommittee in the beginning of December where the terms of reference and strategy would be considered, after which the reports would be submitted to the Policy and Resources Committee for their consideration at the meeting on 15th December 2016.

The Chairman asked Members to consider inviting Alderman Alison Gowman to serve as an observer on the Sub-Committee in her capacity as Chairman of the Aldermen and Magistracy Sub-Committee. Members agreed that this would be beneficial to the work of the Sub-Committee.

Resolved – That, Alderman Gowman be invited to serve as an observer on the Courts Sub-Committee and that the Town Clerk revise the terms of reference and arrange a special meeting of the subcommittee in December 2016.

5. CENTRAL CRIMINAL COURT BUSINESS PLAN 2016-19

The Sub-Committee considered the Business Plan which related to the Central Criminal Court. Members noted that the plan was due to be refreshed and in future the plan would combine the business plans of all three City Courts. Members noted that the department had continued to expand its wider educational and outreach roles with some 71 visits having taken place in the past year. There had been a significant increase in daytime visits from schools, universities and judicial related initiatives with a particular emphasis on diversity and inclusion.

The Sheriffs had also expanded the target audience for lunches and a number of "themed" lunches had taken place specifically focusing on certain target audiences, promoting the rule and significance of law in successful commerce

and to promote the close relationship with the Judiciary and the Corporation of London's responsibility for the Central Criminal Court.

A Member queried whether an event could be hosted to thank the Treasury Counsel for their work. The Chairman agreed to investigate this matter outside of the meeting.

In response to a query regarding the financial aspects of the business plan, the Secondary and Under Sheriff agreed to circulate a paper relating to these matters to Members of the Sub-Committee.

Resolved – that the report be received.

6. FUTURE WORK PROGRAMME - CENTRAL CRIMINAL COURT

The Sub-Committee considered a report of the Secondary and Under Sheriff of London detailing the future works to be undertaken at the Central Criminal Court.

Members noted that in future the report would refer to all three City Courts. The Sub Committee agreed that it would be beneficial to visit all three courts before the Sub Committee met in the new year.

Resolved – that the report be received and that the Town Clerk be requested to arrange for the Sub Committee to visit the three City of London Courts.

7. QUESTIONS ON MATTERS RELATING TO THE WORK OF THE SUB COMMITTEE

There were no questions.

8. ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT

There was no urgent business.

9. EXCLUSION OF THE PUBLIC

Resolved - that under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A of the Local Government Act.

Item No.	Paragraph No(s).
10-13	3

10. MOBILE TELEPHONES & MEMBERS OF THE PUBLIC (CENTRAL CRIMINAL COURT)

The Sub-Committee considered a report of the Secondary and Under Sheriff of London.

11. CENTRAL CRIMINAL COURT SECURITY ENHANCEMENTS: ANTI-SHATTER FILM AND BOMB BLAST CURTAIN RENEWAL

The Sub-Committee considered a report of the Secondary and Under Sheriff of London.

12. **CENTRAL CRIMINAL COURT SECURITY ENHANCEMENTS: CCTV**
The Sub-Committee considered a report of the Secondary and Under Sheriff of London.
13. **CITY OF LONDON MAGISTRATES COURT: MINOR AND MAJOR WORKS**
The Committee received a presentation from the City Surveyor.
14. **QUESTIONS ON MATTERS RELATING TO THE WORK OF THE SUB COMMITTEE WHICH THE SUB COMMITTEE AGREE SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**
There were two non-public questions.
15. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT AND WHICH THE SUB COMMITTEE AGREE SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**
There was one item of private urgent business.

The meeting closed at 11.25 am

Chairman

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Committee: Courts Sub (Policy and Resources) Committee	Date: 2 December 2016
Subject: Terms of Reference and Frequency of Meetings of the Courts Sub (Policy and Resources) Committee	Public
Report of: Town Clerk	For Decision
Report Author: Gemma Stokley	

Summary

1. The terms of reference of the Courts Sub Committee were originally submitted to the 26 October 2016 meeting for consideration. At this meeting the Sub Committee requested that some amendments be made to these and that the report be re-submitted for consideration at their next meeting.
2. The revised terms of reference are now attached as an appendix to this report for your consideration. The appendix also sets out both the constitution and quorum for the Courts Sub Committee.
3. At their meeting on 26 October 2016, the Sub Committee also highlighted that they would like to meet on a quarterly basis in 2017. Accordingly, the following meeting dates were approved by the Chairman and Deputy Chairman:
 - 9 February 2017;
 - 12 June 2017;
 - 25 September 2017; and
 - 8 December 2017

Recommendations

The Sub Committee is recommended to:

- a) approve the revised Terms of Reference of the Sub Committee; and
- b) note the 2017 dates for Sub Committee meetings.

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COURTS SUB (POLICY AND RESOURCES) COMMITTEE

1. **Constitution**

A Non-Ward Committee consisting of,

- Two Aldermen nominated by the Court of Aldermen;
- Four Members appointed by the Court of Common Council;
- The Chairman of the Policy and Resources Committee – the Chairman or one of his Deputy Chairmen to Chair the Sub Committee;
- A Deputy Chairman of the Policy and Resources Committee;
- One Member appointed by the Policy and Resources Committee;
- One Member appointed by the Finance Committee;
- Ex-officio the Recorder and the serving Sheriffs at the Central Criminal Court;

2. **Quorum**

The quorum consists of **any three** Members.

3. **Terms of Reference**

For a period of five years, from June 2016 to April 2021, to be responsible for oversight of the management of all matters relating to the Central Criminal Court, the City of London Magistrates' Court and the Mayor's and City of London Court so far as they concern the City of London Corporation.

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Committee: Courts Sub (Policy and Resources) Committee	Date: 2 December 2016
Subject: The City of London and the Magistracy	Public
Report of: Remembrancer	For Information
Report Author: Paul Double	

Introductory Note

1. The paper annexed responds to a request that a report on the constitutional background to the City's relationship with the Magistracy be submitted to this subcommittee. This background is primarily referable to the Aldermen although non Aldermanic magistrates are now in the main responsible for summary justice in the City's Magistrates' Courts. Experience with the botched exercise of reforming the office of Lord Chancellor demonstrated (if demonstration were needed) that making changes to a constitutional settlement of centuries standing without a detailed analysis of the landscape is likely to be a cause of difficulty. That is not to say, of course, that change should not be entertained; as is well known, the City has only survived by a process of canny evolution and its evolving relationship with the administration of justice is a good example of this process at work.
2. For completeness the paper includes reference to the significant change to the position of Aldermen as magistrates introduced by the Access to Justice Act 1999, and the subsequent Act of Common Council by which the mandatory linkage to the magistracy was ended. It does not, however, deal with the aspect of that Act which related to the position of Lord Mayor as Chief Magistrate. The 1999 Act broke the link between the office of Chief Magistrate and Bench Chairman in the City, a link which had been mistakenly introduced by the Justices of the Peace Act 1968. That break enabled the Lord Mayor's position as Chief Magistrate—or chief civil officer of the City—to stand alone, as it had before the development of the present-day magistracy. Reference is also made to the ownership of the City's Courthouse at 1 Queen Victoria Street and its relationship with the work of the City of London Police.

Recommendation

3. Members are invited to note the attached paper.

Background

1. The Aldermen exercised the power to preserve the peace within the City since time immemorial.¹ Their governance over their wards once amounted to a form of proprietary right,² and they exercised a very wide range of powers, including the command of the watch, the regulation of public houses, the cleaning of highways, the enforcement of weights and measures, and the documentation of those who lived there.³ They were thus akin to the ancient and primarily 'executive' position, which prevailed throughout the country, of 'conservator of the peace'.⁴
2. In the 14th century the role of conservator of the peace began to be transformed into the judicial position of 'justice of the peace'.⁵ The transformation was statutory, the first justices being created in 1361 pursuant to the statute of 34 Ed. III, c. 1.
3. The status of the Aldermen as *ex officio* justices of the peace was established in a series of Royal Charters. By the Charter of 2 Ed. IV (9th November, 1462), the status was granted to the Lord Mayor, the Recorder and those Aldermen who had passed the chair. By the Charter of 14 Cas. I (18th October, 1638), this was extended to the three senior Aldermen below the chair. The Charter of 4 Will. & Ma. (28th July, 1692) further extended the status to the six senior Aldermen not to have passed the chair, provided that they had served as Sheriff. The series of Charters culminated in that of 15 Geo. II (25th August, 1741), by which the Lord Mayor, Recorder and all the Aldermen were made justices of the peace.
4. The automatic assumption by the Aldermen of the role of justice of the peace was abrogated by the Access to Justice Act 1999, section 76(1) of which provided that the Lord Mayor and Aldermen should in future be justices of the peace appointed under commission by the Lord Chancellor in accordance with the Justices of the Peace Act 1997 (now the Courts Act 2003). It was anticipated at the time of the passage of the Bill for the 1999 Act that Aldermen would continue to serve as justices of the peace, provided that they satisfied the general requirements of suitability for that office.⁶ Indeed the ultimate form of the 1999 Act was an accommodation with the then Lord Chancellor, Lord Irvine of Lairg, to preserve the link between the Aldermen and the magistracy. Accordingly, the Common Council provided by an Act of 10th September 1998, later substituted by an Act of 4th June 2001, that candidates for the office of Alderman must be considered suitable by the Lord Chancellor's Advisory Committee for justices of peace in the City of London for appointment as justices of the peace on the City bench.

¹ Pulling, *The Laws, Customs, Usages and Regulations of the City and Port of London*, 2nd Ed. (Bond and Wildy & Sons, 1854), pp. 28-9

² *The Corporation of London: Its Origin, Constitution, Powers and Duties* (OUP, 1950), pp. 36-7, Pulling, *op. cit.*, p. 26

³ Pulling, *loc. cit.* (n. 1)

⁴ *Ibid.*, and see *Halsbury's*, vol. 29(2), 4th Ed. (Reissue), para. 502

⁵ *Halsbury's, ibid.*, para. 503

⁶ See House of Lords Hansard, 28th January 1999, cc. 1251-4

5. As a result of certain difficulties over the suitability test applied by the Lord Chancellor's Advisory Committee and changes to the organisation of the magistrates' courts, a further Act of Common Council of 16th May 2013 provided an alternative qualification based on that for the office of Police and Crime Commissioner to run alongside the suitability test for the magistracy.
6. The Court of Aldermen is a court of record.⁷ The 1837 Report of the Royal Commission on Municipal Corporations classed the functions of the Court under two heads, one 'judicial' and the other 'executive'.⁸ According to the Report, "in its judicial capacity [the Court] is the Bench of Magistrates for London." Functions classed as 'judicial' included the trying of the validity of elections, the granting of freedoms and the examination of claims thereto, the admission and swearing-in of certain officers, and the exercise of jurisdiction over the livery companies.⁹ These and other individual functions are examined below, following a general overview of the relationship between the Aldermen and the magistracy.

General Overview

7. The sole explicitly prescribed link between the office of Alderman and that of justice of the peace is now that laid down in the Act of Common Council of 2013 referred to at paragraph 5. The Common Council having the jurisdiction to amend the customs of the Corporation,¹⁰ it is competent to abolish this link through a further Act of Common Council, should it so desire. In these circumstances, the Court of Aldermen could eventually comprise individuals wholly unconnected with the magistracy.
8. As noted above, an absolute connection between the role of Alderman and that of justice of the peace was abrogated by the Act of Common Council of 1998 and the Access to Justice Act 1999. Although all Aldermen under this regime had to be found suitable for appointment as a justice of the peace, this did not guarantee that they would in fact have been appointed as such, and the Act of Common Council did not require appointment. The practice whereby Aldermen have been appointed justices of the peace is governed by the Lord Chancellor, and remains subject to his discretion. In one sense, therefore, the assumption that all Aldermen would be magistrates has not been on wholly firm ground since 1999.
9. It is nevertheless prudent to consider carefully the constitutional consequences if a situation were to arise where the magistracy ceased to be represented on the Court of Aldermen. The historical development of the office of Alderman occurred against a seemingly settled and permanent background whereby the Aldermen served as the City's justices of the peace. Little distinction between the two positions having been required for many purposes for such a lengthy period of time, it may well be inevitable

⁷ *Halsbury's, op. cit.* (n. 4), para. 47

⁸ *Second Report of the Commissioners appointed to inquire into the Municipal Corporations in England and Wales: London and Southwark; London Companies*, 25th April 1837, p. 67

⁹ *Ibid.*

¹⁰ Charter of 15 Edw. III (1341), 3rd June

that some degree of intertwining or overlapping of functions has occurred. It is very difficult to rule out, in such a situation, the possibility of some unforeseen consequence arising from any attempt entirely to disentangle the two offices, whether in the form of some legal technicality or a more oblique impact on the constitutional position and balance of the City.

10. That said, it is possible to argue that the absence of justices of the peace would not result in any explicit impediment to the exercise of the current functions of the Court of Aldermen. The general powers of the Court, including the 'judicial' powers outlined at paragraph 8 above, derive from the customary law of the City, repeatedly confirmed by Charters and by statute.¹¹ These customary powers may be said to reside in the hands of the Aldermen *qua* Aldermen, and not *qua* justices of the peace, and, if so, would survive the uncoupling of the two offices. "No usage can be part of the law, or have the force of a custom, that is not immemorial"¹² – so every custom, including the powers of the Aldermen, is taken to have existed since 1189, this being the beginning of legal memory. The customary powers of the Court of Aldermen therefore significantly predate the creation of the office of justice of the peace in the fourteenth century, let alone the time when all of the Court's members were first granted that office, in 1741. The statutory jurisdiction¹³ of the justices of the peace may, therefore, be viewed as a subsequent appendage to the customary role of the Aldermen as keepers of the peace within their wards. As a matter of logic, the removal of the latter statutory powers would not, therefore, impinge upon the validity of the prior customary ones.
11. If, however, logic does not supply the conclusive answer, the only potential legal challenge to the customary powers of the Aldermen would appear to be to the effect that a given power (in all likelihood a judicial one) is no longer reasonable if the Aldermen are no longer justices of the peace. Reasonableness is one of the requirements for a valid custom.¹⁴ Three counter arguments may, however, be advanced. First, the reasonableness of a custom is to be ascertained at the time of its inception, and is unaffected by subsequent changes in circumstances: "a custome once reasonable and tolerable, if after it becomes grievous, and not answerable to the reason whereupon it was grounded, yet it is to be... taken away by act of parliament."¹⁵ Second, the effect of the many confirmations of the City's customs by Charter and by statute is that no challenge to the legality (as opposed to the existence) of the City's customs can be entertained: they must be taken to be good *qua* customs.¹⁶ Third, the very nature of the magistracy is that of a lay body. No legal qualification or experience is required to serve as a justice of the peace. Therefore, it does not seem that

¹¹ See Bohun, *The Rights, Liberties, Privileges, Laws and Customs, of the City of London*, 3rd Ed. (Browne et. al., 1723), pp. 473-6

¹² *Millar v. Taylor* (1769) 4 Burr 2303, *per* Yates J at 2368. See also *Wolstanton Ltd. and A-G of Duchy of Lancaster v. Newcastle-under-Lyme Corpn* [1940] AC 860, HL, *per* Viscount Maugham at 876.

¹³ The judicial powers of the justices of the peace are entirely or largely statutory: see *White v. Feast* (1872) LR 7 QB 353, *per* Blackburne J at 358. The sole qualification might be the power of a justice of the peace to bind over a person to keep the peace, the origin of which is unclear, but possibly derives from the common law powers of the conservators of the peace: see *Lansbury v. Riley* [1914] 3 KB 229.

¹⁴ See *Wolstanton Ltd. and A-G of Duchy of Lancaster v. Newcastle-under-Lyme Corpn*, n. 12 above.

¹⁵ 2 Co Inst 664. See also *Mercer v. Denne* [1904] 2 Ch 534, *per* Farwell J at 557 (affd. [1905] 2 Ch 538, CA)

¹⁶ See *Truscott v. Merchant Tailors' Company* (1856) 11 Exch 855, *per* Cresswell J at 865, *per* Crompton J at 866

the exercise by an Alderman even of a function characterised as ‘judicial’ would become any less reasonable, in legal terms, if that Alderman were not a justice of the peace.

12. For completeness, it is worth recording that there is nothing in the role of justice of the peace for the City which requires such a justice to be an Alderman. The statutory jurisdiction of the justices of the peace in the City has, since the passage of the Justices of the Peace Act 1968, been exercised through the City Bench and not through the Court of Aldermen. There has been no legal impediment to prevent the Lord Chancellor appointing justices of the peace who are not Aldermen to serve in the City of London Magistrates’ Court since that time. Indeed, the vast majority of the justices who sit in the City are now non-Aldermanic.
13. As indicated in paragraph 9 above, the purely technical approach of determining whether functions carried out by the Aldermen could legally survive if justices of the peace were not represented in the Court’s membership does not, however, provide the full answer to the question of whether it is safe to sever the link.

Specific ‘Judicial’ Functions

14. The following paragraphs consider specific functions, including those identified in the 1837 Royal Commission Report as judicial in nature. The technical constitutional question is whether any such power is expressly or impliedly limited to the continuing role of the Aldermen as justices of the peace.

Livery Companies

15. The Aldermen possess exclusive jurisdiction to approve and adjudicate on the ordinances of the livery companies. This jurisdiction is of ancient origin, and was confirmed by a Charter of 20 Hen. VII (1505), 23rd July.
16. The historical connection between the Aldermen and the livery companies is deep, and in many respects obscure. The original, Saxon-era guilds of London were territorial and social, rather than commercial, associations, and it is suggested that these guilds initially created the office of Alderman in the City.¹⁷ The development of civic government in the City is closely linked with the development of the commercial or mercantile guilds – thus there is early mention of Aldermen as heading the mercantile as well as territorial guilds,¹⁸ the freedom of the City could for a considerable period only be achieved through freedom of a livery company,¹⁹ and, indeed, the mercantile guilds enjoyed a brief period in the reign of Edward II when they, and not the territorial districts, formed the constituent parts of the municipality.²⁰ Conversely, mercantile guilds not just in the City but across

¹⁷ Arundell, *Historical Reminiscences of the City of London and its Livery Companies* (Bentley 1869), pp. 31-2

¹⁸ Norton, *Commentaries on the History, Constitution & Chartered Franchises of the City of London* (3rd Ed., rvd.) (Longmans, Green & Co., 1869), p. 340

¹⁹ Pulling, *op. cit.* (n. 1), pp. 71, 62

²⁰ *Report of the Commissioners on the Livery Companies of the City of London, 1884*, Part I

the country came under the jurisdiction of the municipal authorities.²¹ As stated in the *Constitution* book: “The control exercised by the Court of Aldermen over the livery companies arose partly as a result of the recognition in the fourteenth century of the right of the companies to a share in the government of the City and partly by reason of the civic regulation of the freedom, regulation and trade.”²² The current jurisdiction of the Court over the companies can be seen to be the modern expression of this intimate historical connection between the companies and the civic authorities, and not in any way dependent upon or derivative from the position of the Aldermen as justices of the peace.

17. The connection between trade guilds and the office of justice of the peace would appear to be a statute of 15 Hen. VI, c. 6, which provided that any such guild had to have its ordinances approved by justices of the peace “in the counties.” The City has been accorded the status of a County in a number of contexts, both ancient and modern. These include the administration of justice.²³ In cities and towns, however, the approval role was afforded to “chief governors”. If the City were not treated as a County, the Aldermen would presumably be regarded as equivalent to “chief governors”. It is unclear, however, whether such individuals would have been magistrates as well, though given the argument for the counties it seems reasonable to assume that they exercised judicial functions.
18. The superintendence of the Court of Aldermen over the Livery conferred by the Charter of 1505 (referred to at paragraph 15 above) does not, on its face, link that role to the position of members of the Court as justices of the peace. It was however granted at a time when the Lord Mayor, Recorder and Aldermen above the chair had already been made justices of the peace (by the Charter of 1462 referred to at paragraph 3 above). It might accordingly be propositioned that the grant of the Charter presupposed that a proportion of the Court were justices.

Freedom of the City

19. The freedom is a corporate privilege, and its conferral is a matter for the customary law or the terms of the Charter of the relevant area.²⁴ The functions of the Aldermen in respect of freedoms of the City are twofold. First, they try claims to freedom as of right, for example by patrimony or servitude (although this is now more theoretical than practical). Second, they exercise the discretion to confer the freedom upon those presented to them by a livery company for that purpose. This latter function can properly be described only loosely as ‘judicial’. The former would seem broadly judicial in nature, as it is concerned with ascertaining the rights of a person under the customary law of the City. Nonetheless, there would appear to be no connection with the office of justice of the peace *per se*. The freedom being in essence a question of the membership of the Corporation, it would seem sensible as a matter of principle that a governing body of the

²¹ *Ibid.*

²² *Op. cit.* (n. 2), p. 46

²³ See, for example, *History of the London County Council* (Gibbon & Bell, 1939), p. 596, *Constitution* book, *op. cit.*, n. 2, p. 169

²⁴ *Halsbury's*, vol. 29(1), 4th Ed. (Reissue), para. 97

Corporation should take initial cognisance of the matter, in their capacity as governing body, and not (in the case of the Aldermen) in their capacity as justices. If they fail to act in accordance with the customary law of the City, then a prerogative writ will issue from the Queen's Bench Division in order to correct the error.²⁵ The 'judicial' character in a technical legal sense is questionable: the Aldermen may be said simply to be deciding on behalf of the Corporation whether the Corporation is bound to a certain measure, rather than making any externally binding independent adjudication between rival cases. This view accords with the position elsewhere in the country, where the decision as to entitlement to the freedom would be taken by a municipal officer, subject to the supervisory jurisdiction of the Queen's Bench: see, e.g., *R v. Marshal* (1787) 2 Term Rep. 2. Moreover, the arguments in paragraph 10 above are applicable, both the significance of the freedom and the Aldermen's jurisdiction over it significantly predating the creation of the office of justice of the peace. The fact that adjudication over freedom issues is undertaken by a body comprised of people who are experienced in the process of adjudication might, therefore, be argued to be more of a comfort factor than a constitutional or legal necessity.

Wardmote elections

20. By custom the Court of Aldermen has the exclusive jurisdiction to regulate, examine and determine procedural issues arising from elections to the Common Council.²⁶ While the extension of the jurisdiction of the election court to municipal elections in the City (as effected originally by section 167 of the Representation of the People Act 1949 and now section 191 of the Representation of the People Act 1983) has removed the practical significance of that custom, it is still possible in theory to envisage some residual jurisdiction in the Court of Aldermen (which has never been expressly removed).
21. Arguments can be advanced to support the view that the power of the Court of Aldermen to regulate elections did not derive from their functions as justices of the peace. The beginnings of the modern, elective Common Council came early in the reign of Richard II, when a committee of the Court of Common Council charged the Aldermen to assemble their wards every year "to choose four of the most efficient persons that were in their ward, to be of the common council for the following year."²⁷ Thus it can be seen that the Aldermen exercised superintendence over the Common Councilmen from a very early point in the development of that body. This power may or may not have originated from the (then still developing) judicial functions of the Aldermen as justices of the peace;²⁸ but another argument is that both developed as natural incidents of the general power of governance at that time exercised by the Aldermen within their wards.²⁹
22. Support for the contention that the origin of the superintendence was administrative rather than judicial arises from the fact that Richard II died by

²⁵ *Townsend's case* 1 Lev 91

²⁶ *Bolton & anr. v. Jeffes & anr.* (1718) 2 Bro Parl Cas 463

²⁷ Pulling, *op. cit.*, pp. 38-9

²⁸ See paragraph 5 above.

²⁹ See paragraph 3 above.

assassination in 1400 (he had been deposed the previous year). This was some 60 years before the status of justice of the peace was conferred on any member of the Court of Aldermen (see paragraph 3 above).

23. Looking at the contemporary context, the regulation of elections does not form any part of the normal role of a justice of the peace. Most elections in England are supervised by a returning officer, usually a high sheriff or the chairman of a local authority.³⁰ The position of local authority chairmen as *ex officio* justices of the peace was abrogated by the Justices of the Peace Act 1968,³¹ whereas sheriffs are actually barred from serving as justices of the peace for the duration of their tenure.³² This is sufficient to demonstrate that there is no general principle of law connecting the superintendence of local elections and the office of justice of the peace. The Court of Aldermen in its role of adjudicating on Common Council elections is subject to the jurisdiction of the electoral court in the same manner as are returning officers for local government elections,³³ and therefore there is no apparent need for the Aldermen to possess any greater a judicial role than a returning officer.

The City of London Police Act 1839

24. Section 2 of the City of London Police Act 1839, as enacted, read:

... where the Word “Justice” shall be used the same shall be understood to mean the Lord Mayor or any Alderman or the Recorder of the [City of London]; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the Subject or Context repugnant to such Construction.

25. The Act has been much amended over the years and many operational provisions repealed. The Act is, however, the foundation for the City Corporation’s current status as a police authority and so deserves consideration. The powers granted to ‘Justices’ under the Act as passed, such as those of summary conviction and the issue of warrants, are of the sort typically associated with the role of justice of the peace. In addition, section 53 of the Act expressly presumes that a justice will hold “sittings” at which a person pressing charges could be bound to appear – a provision which would appear inapposite in respect of a sitting of the full Court of Aldermen. These factors, in addition to the very use of the word ‘Justice’, provide a clear indication that the section is premised on the Lord Mayor, Recorder and Aldermen being justices of the peace for the City.
26. As a consequence of the changes made by the Justices of the Peace Act 1968 (by which the Aldermen ceased to be the sole justices for the City) the words “justice of the peace for the City of London” were substituted for the reference to the Lord Mayor, Aldermen and Recorder.³⁴ That term is of course redundant following the demise of the City of London Magistrates

³⁰ *Halsbury’s*, vol. 15(4), 4th Ed., para. 355

³¹ Schedule 1 (now repealed)

³² Sheriffs Act 1887, s. 17

³³ Representation of the People Act 1983, ss. 130(1), 191

³⁴ Paragraph 5 of Schedule 3 to the 1968 Act.

Court Committee, but at the time of its substitution, included the Lord Mayor and Aldermen as justices. On one view a statute is to be construed in accordance with the circumstances existing at the time of its passing, and on this basis the substituted words include reference to the Lord Mayor and Aldermen. An alternative approach is to treat the terminology in a dynamic way as referring to “any justice of the peace sitting in the City of London” (thus dealing with the fact that not all Aldermen are justices and that there is now no separate City of London bench). The assumed elasticity would however be very fully stretched if a situation were reached where no Aldermen were justices.

Administration of the judicial oath

27. By custom, the judicial oath and oath of allegiance of a new justice of the peace or Recorder of London is taken before the Court of Aldermen.³⁵
28. By section 6 of the Promissory Oaths Act 1868, and the Second Part of the Schedule to that Act, justices of the peace and the Recorder of London are among those required to take the judicial oath and the oath of allegiance upon assuming office. By section 2 of the Promissory Oaths Act 1871, as amended by the Courts Act 2003,³⁶ those required under the 1868 Act to take the judicial oath and the oath of allegiance may do so before such persons as Her Majesty may appoint, or before the Lord Chancellor, or in open court before one or more judges of the High Court, or before one or more Circuit judges.
29. Home Office Circular 142 of 1974 evidences that Her Majesty has declared that a new justice of the peace may take the oaths before any two justices of the peace for the same commission area.³⁷ Accordingly, it appears that the jurisdiction of the Court of Aldermen to receive the oaths must derive from the position of the Aldermen as justices of the peace.³⁸ This jurisdiction could not survive the abrogation of the Aldermen’s position as justices of the peace, but may survive for as long as at least two Aldermen remain magistrates by virtue of section 7 of the Courts Act 2003.
30. In respect of the Recorder of London, a letter from the then Lord Chancellor’s Department to the Town Clerk of the City, dated 6th May 1998, records that Her Majesty has appointed the Court of Aldermen to receive the oaths of the Recorder pursuant to section 2 of the 1871 Act. On the assumption that the information in the letter is correct, and the authority to receive the oaths is vested in the Court *per se*, then this would remain unaffected if Aldermen ceased to be justices of the peace. Were the appointment of the Court of Aldermen to be premised on their being a body of magistrates, the appointment would cease to be effective and the

³⁵ See, in respect of the latter, Bohun, *op. cit.*, p. 64

³⁶ Section 109(1), Schedule 8, para. 51

³⁷ The concept of the ‘commission area’ was effectively abolished by the Courts Act 2003, which by section 7 creates a commission of the peace for the whole of England and Wales. It is therefore arguable that the oath can now be received by two justices of the peace anywhere within the jurisdiction, although the ‘local justice areas’ created by section 8 of the 2003 Act would seem a natural replacement in terms of geographical limitation.

³⁸ It follows that the Court of Aldermen would for statutory purposes constitute a Magistrates’ Court when receiving the oaths, being justices of the peace acting under an enactment: see Schedule 1 of the Interpretation Act 1978, section 148(1) of the Magistrates’ Courts Act 1980

Aldermen's ability to swear the Recorder would end. This has not been raised by the Ministry of Justice, which remains content as to current arrangements.

Sittings at the Central Criminal Court

31. By section 8(3) of the Senior Courts Act 1981 (as amended), "the Lord Mayor of the City and any Alderman of the City shall be entitled to sit as judges of the Central Criminal Court with any judge of the High Court, Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts)." This reflects the historic involvement of the Recorder and Aldermen in the criminal justice system within the City,³⁹ and it would seem reasonable to view this involvement as linked to or predicated upon the role of the Aldermen and Recorder as justices of the peace. The language of the statute is, however, in plain terms, and its effect would not be undermined by any change in the position of the Aldermen as justices of the peace. It is of course possible that the abrogation could provoke the repeal of this provision, if it were considered no longer appropriate to allow the Aldermen to sit in the Court. Notwithstanding the wording of section 8(3), the role of the Aldermen in the Central Criminal Court is nowadays purely "honorary and ceremonial," and is not interpreted to enable the Aldermen to exercise the jurisdiction of the Court,⁴⁰ so such a move would be prompted more by policy considerations than by legal need.

Meetings of the Court of Common Council

32. There are some elements of the City's constitution which do not explicitly require the Court of Aldermen, or some members of it, to be Justices, but where an inference of such a requirement may be drawn from the context. Perhaps the most pronounced of these is the requirement that an executive act of the Common Council of a legislative character must be executed in the presence of at least two Aldermen and with the Lord Mayor (or a *locum tenens*) presiding.⁴¹ It may be propositioned from the requirements that the Civic constitution proceeds on a basis that executive acts of a legislative nature assume a proportion of the Aldermen in Common Council to be Justices. If the number of Aldermen present to constitute a valid Court of Common Council (in addition to the Lord Mayor) is two, and given that from 1741 all Aldermen were justices, a safe assumption is a requirement that at least two Aldermen (three including the Lord Mayor) should be Justices.

33. It must be conceded that this proposition is not beyond argument. The involvement of Aldermen in preserving the peace has existed since time immemorial.⁴² While the role of Aldermen in the early period of the Common Council's existence could be said to be equivalent to conservators of the peace, the formalisation of Aldermen as Justices did not occur until 1462,

³⁹ *Constitution book, op. cit.*, n. 2, p. 71

⁴⁰ See the statement of the Attorney-General at the Report Stage of the Courts Bill, Official Report (Commons), 7th April 1971, col. 533

⁴¹ There is old authority to support the view that a majority of the Court of Aldermen should be present. See for example *R v. Bellringer* 4 T.K. 823; *R v. Morris* 4 East 26. The proposition cited in this paper favours *AG v. Parker*, 3 Ath R 576 (usage); *R v. Buller* 8 East 388.

⁴² Paragraph 1 of this paper.

101 years after the statutory establishment of Justices of the Peace.⁴³ What can be said with certainty is that any of those Aldermen present at a given meeting of the Court of Common Council held after 1741 would have been Justices.

34. The need for certainty and the avoidance of any suggestion that the proceedings of the Court might not be *intra vires* provides the justification for the argument set out at paragraph 32 of this paper.

Contemporary Developments

35. The Access to Justice Act 1999 changed the City's relationship with the Magistracy fundamentally. Aldermen then in office remained as Justices, but future members of the Court were to be magistrates by commission⁴⁴ in accordance with the general rules applicable to the appointment of magistrates following a selection process undertaken by the Lord Chancellor's Advisory Committee for the City of London. Aldermen applying for the magistracy have since been considered through this route. The selection process is now undertaken by the Advisory Committee of the Central London Local Justice area.
36. The administration of the Magistrates' Courts in London was also fundamentally changed. The independent Magistrates' Courts Committees (including the City's) were abolished and replaced by a single body (the Greater London Magistrates Courts' Authority ('GLMCA')). This was not however a success and the GLMCA was abolished along with other Magistrates' Courts committees by the Courts Act 2003,⁴⁵ with Magistrates' Courts becoming part of central government as a constituent of what is now Her Majesty's Courts and Tribunals Service ('HMCTS'). Property, most notably, real property such as Courthouses formerly owned by local authorities was subject of a wide ranging power vested in the Lord Chancellor by which such property could be transferred to a Minister of the Crown (in effect by expropriation).⁴⁶ A negotiation took place during the passage of the Bill for the Act to exclude the City's Magistrates' Courts from such expropriation and the City retains the freehold of the Courthouse at 1 Queen Victoria Street.⁴⁷
37. The Magistracy is now administered by HMCTS through local justice areas. The City lies within the Central Area which also includes Westminster and Hammersmith and Fulham. A consultation on the future of the Hammersmith Courthouse is currently being undertaken by HMCTS. Although not directly relevant to the City, there could be consequences in terms of distribution and nature of the work carried out at the remaining Courts, including those in the City. Discussions on this topic are ongoing.

⁴³ Paragraph 2 and 3 of this paper.

⁴⁴ Access to Justice Act 1999 section 576(1); para 6 *supra*

⁴⁵ Section 6 of the Act

⁴⁶ Courts Act 2003, Schedule 2, Part 1

⁴⁷ SI 2005 No. 562

The Relationship with the City of London Police

38. The availability of a Court of Summary Jurisdiction is part of the expected infrastructure for any police force area. At the time of the decision by which the City Courthouse was retained in the ownership of the Corporation (2005), the Commissioner's comments included the following remarks

"The Force is fully supportive of the retention of the City of London Magistrates' Court, where there are good relationships with a variety of criminal justice groups. The court hears a wide range of criminal cases originating from the City Police, HM Customs and Excise and the Serious Fraud Office.

From an operational policing perspective the location of the court provides benefits to both the police and the court. City officers attending court to give evidence are visible on the streets of the City during their journey to the court and at the conclusion of a case, officers can quickly and easily return to normal operational duties."

P R E Double
City Remembrancer
November 2016

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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