

Committee:	Date:
Resource Allocation Sub-Committee	20 November 2020
Subject: Governance Review: Standards Regime	Public
Report of: Town Clerk	For Decision

Summary

In September 2019, the Policy and Resources Committee, proposed the undertaking of a comprehensive Governance Review of the City Corporation. The Committee was conscious that some potentially contentious issues needed to be addressed and that some radical changes may need to be considered. It was, therefore, agreed that the review should be undertaken independently and Robert Rodgers, The Lord Lisvane, was appointed to conduct the Review.

Following the Review's submission, it was determined that the many proposals therein should be considered in a structured and methodical way in the coming period, with Members afforded sufficient time to read and consider the content and implications. It was noted that the recommendations were extensive and it would be for Members to consider how far they were appropriate and which should be taken forward. It was also agreed that it would be of the utmost importance to ensure that the process provided for all Members of the Court to continue to have the opportunity to input and comment on the Review.

To that end, a series of informal Member engagement sessions were arranged to afford all Members opportunities to express their views on the various aspects of the Review as they are considered. These would then be fed back to the Resource Allocation Sub-Committee to help inform its initial consideration of specific items.

A resolution of the Court of Common Council (8 October 2020, see appendix 2) had the effect that consideration of aspects of the Review relating to the Standards Regime would need to be taken first. Accordingly, three engagement sessions were held and the outcomes of those sessions are set out in the appendices to this report.

Members are now asked to consider the various proposals relating to Section 8 of the Lisvane Review, in the context of Members' observations and reflections at the various informal sessions. The proposals relate to the establishment of a new Standards regime and associated implications in respect of other existing arrangements.

Recommendations

That Members:-

- Consider the proposals in relation to Standards made by Lord Lisvane in Section 8 of his Review (Appendix 1).
- Note the feedback provided by Members through the informal engagement process (Appendix 4).
- Consider the items in respect of the various proposals, as set out in this report and Lord Lisvane's Review, and make recommendations as to a way forward.

Main Report

Background

1. In September 2019, the Policy and Resources Committee, proposed the undertaking of a comprehensive Governance Review of the City Corporation. The Committee was conscious that some potentially contentious issues needed to be addressed and that some radical changes may need to be considered. It was, therefore, agreed that the review should be undertaken independently and Robert Rodgers, The Lord Lisvane, was appointed to conduct the Review.
2. The Committee received Lord Lisvane's Review in September 2020 and determined that the many proposals therein should be considered in a structured and methodical way in the coming period, with Members afforded sufficient time to read and consider the content and implications. It was noted that the recommendations were far-reaching and wide-ranging and it would be for Members to consider how far they were appropriate and which should be taken forward. It was also agreed that it would be of the utmost importance to ensure that the process provided for all Members of the Court to continue to have the opportunity to input and comment on the Review.
3. The Governance Review will affect all aspects of the City Corporation's governance and all Members as a consequence. It is, therefore, imperative that any implementation reflects the view of the Court, and it is likely that all Members will have views on particular elements. Their continued input remains integral and incorporating all Members' views within the next steps of the process will be vital in ensuring that the recommendations which are ultimately put to the Court are viable.
4. To that end, a series of informal Member engagement sessions were arranged to afford all Members opportunities to express their views on the various aspects of the Review as they are considered. These would then be fed back to the Resource Allocation Sub-Committee to help inform its initial consideration of specific items.
5. A resolution of the Court of Common Council (8 October 2020) had the effect that consideration of aspects of the Review relating to the Standards Regime would need to be taken first. Accordingly, three engagement sessions were held and the outcomes of those sessions are set out in the appendices to this report.
6. The relevant part of the Lisvane Review is Section 8, paragraphs 386 – 450, which covers proposals and reflections in relation to the Standards Regime.
7. The section provides a reflection on recent experiences in relation to the regime by way of context, together with accompanying recommendations for a proposed route forward and new system.
8. As well as the complaints and appeal procedure, the section also touches on related issues including Dispensations, Training, and Member / Officer relations.

9. Paragraphs 386 - 394 set out reflections on the statutory position and requirements in relation to Standards. Paragraphs 395 – 403 reference the recent experiences, including the Bourne Review. Both of these sub-sections are contextual and contain no specific recommendations.
10. Paragraphs 404 – 415 concern the Dispensations regime. Again, the sub-section primarily reflects on the position to date and some relevant history, with Lord Lisvane expressing his concurrence with the findings of Philip Kolvin QC.

Lisvane's recommendations

11. The next paragraphs, 416 – 437, then set out the proposed way forward, for consideration.
12. Paragraphs 416 – 420 make clear Lord Lisvane's view that Members should not sit in judgement on each other.
13. Paragraph 421 sets out a role in relation to conciliation, utilising informal mechanisms such as mediation via the Comptroller or Chief Commoner, whilst noting there is a balance to be struck reputationally in relying too far on informal processes.
14. The recommendations in relation to formal process are summarised as follows:
 - The establishment of Independent Panel composed only of independent persons, to receive allegations of misconduct, determine whether to investigate, present findings to the Court, and hear any appeal. (*Paragraph 425*).
 - The creation of a Standing Order provision to facilitate the above in such a way that the various items presented to the Court by the Panel are accepted without debate. (*Paragraph 428*).
 - The subsequent abolition of the Standards Committee and Standards Appeal Committee. (*Paragraph 435*).
15. Depending on what is ultimately decided in respect of the above, there are consequential considerations that need to be borne in mind. These include:
 - The formation / recruitment process of the new Independent Panel (*paragraphs 429 – 435 address*).
 - What should happen to those areas of responsibility under the purview of Standards Committee which do not relate to complaints and so would not necessarily go to the new Panel (*appendix 2 sets out the current Standard Committee Terms of Reference with links and commentary for ease of reference*).
16. The section also makes recommendation or commentary on a number of related areas:-
 - **Register of Interests** (*paragraphs 438-439*): this relates to the way in which Members' interests are displayed on the website, which Lord Lisvane views

as unhelpful / not sufficiently transparent, with a suggested change to address concerns.

- **Training** (paragraphs 440-442): Lord Lisvane echoes the recommendation of Charles Bourne QC that training on standards and conduct matters should be made mandatory, and without which no Member should be eligible to be appointed to a Committee.
- **Member / Officer Relations** (paragraphs 443-446): there is no specific recommendation but it is worth noting the implication that participation in the Statutory Officer Review Panel (under Standing Order 64) would fall to Independent Members of the new Panel, should such be established.
- **Freemasonry** (paragraphs 447-450): whilst there is some commentary, no particular recommendation is made.

Consideration

17. Three Member engagement sessions have been held in respect of this section of the report, the summary notes of which are appended to this report. Also included are comments sent by email following the meetings.
18. Members are now asked to give consideration to the various recommendations in the context of those discussions and the views expressed by Members of the Court. Pertinent considerations to work through include:

Independent Panel

- (i) ***Do Members agree with the recommendation to establish an Independent Panel, composed only of independent persons?***
- (ii) ***Should such a Panel receive allegations of misconduct, determine whether to investigate, present findings to the Court, and hear any appeal?***
- (iii) ***What should its composition be?***
- (iv) ***How should it be appointed to?***
- (v) ***Should the positions on the Panel be remunerated?***
- (vi) ***Who should be responsible for supporting the Panel, or for producing the Panel's rules and procedures (including possible sanctions)?***
- (vii) ***How should the Court consider its recommendations (i.e. should a Standing Order, preventing debate on any of the Panel's recommendations, be progressed?)***

Abolition of Standards / Standards Appeals Committee

- (viii) ***Do Members agree with the proposal to abolish the Standards Committee and Standards Appeal Committee?***
- (ix) ***If yes, what is the preferred timescale for abolition?***

- (x) ***If abolition is prior to the establishment of a new overall committee framework, what should happen in the interim to those areas of responsibility under the purview of Standards Committee which do not relate to complaints and so would not necessarily go to the new Panel (appendix 2 sets out the current Standard Committee Terms of Reference with links and commentary for ease of reference).***
- (xi) ***In particular, where should responsibility for Dispensations and the Code of Conduct sit, and do any changes need to be sought to either procedure at this point in time?***

Register of Interests

- (xii) ***Are Members happy to support a change to the way in which the Register of Interests is set out?***

Training

- (xiii) ***Should training on standards and conduct matters be made mandatory?***
- (xiv) ***If so, what sanction should be applied in the event of non-compliance?***

Conclusion

19. Various proposals have been made by Lord Lisvane in relation to Standards, in Section 8 of his Review. Members are now required to consider his proposals and the attendant implications of any decisions, summarised above and set out in the Review. Particular mind should be paid to the views of all Members, made through the informal engagement process and set out in the appendices to this report, when coming to a view.
20. It is intended that any recommendations, subject to points of qualification or clarification, are put to the December meeting of the Policy & Resources Committee for further consideration. Thereafter, proposals are to be submitted to the Court of Common Council at its January 2021 meeting, to facilitate the finalisation and implementation of any new arrangements.

Appendices:

- **Appendix 1:** Extract - Governance Review Section 8, Standards
- **Appendix 2:** Standards Committee ToRs (with comments on responsibilities)
- **Appendix 3:** Resolution from CoCo, 8 October 2020
- **Appendix 4:** Notes from Member Engagement Sessions

8

Standards and Conduct

The statutory requirement

386. The Localism Act 2011 replaced the conduct regime of the Local Government Act 2000 with rather less prescriptive requirements, and no effective sanctions (except in the case of non-registration of interests⁸⁷). The Corporation is subject to the 2011 Act's requirements in respect of standards and conduct, in its capacity as a local authority and also as a police authority. It has chosen to apply its standards and conduct arrangements to all its functions, even if these are not of a local authority type.

387. The 2011 Act provides that “a relevant authority [which the Corporation is] must promote and maintain high standards of conduct by members and co-opted members of the authority”.⁸⁸

388. The Act requires the adoption of “a code dealing with the conduct that is expected of members and co-opted members of the authority when they are operating in that capacity”.⁸⁹ Such a code must be consistent with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

389. Under the 2000 Act, authorities had to have standards committees chaired by an independent person. Under the 2011, all that is necessary is that there should be “arrangements”:

“arrangements under which allegations can be investigated; and

“arrangements under which decisions on allegations can be made.”⁹⁰

390. The arrangements must also include the appointment of “at least one independent person

⁸⁷ Section 34 introduced a new criminal offence of failing to declare or register a pecuniary interest.

⁸⁸ Section 27(1).

⁸⁹ Section 27(2).

⁹⁰ Section 28(6).

“whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.”⁹¹

391. The Corporation decided to discharge the duty to have “arrangements” by setting up a Standards Committee. This consists of two Aldermen, ten Common Councillors and five (previously four) co-opted (external and independent) members.
392. The Committee has the task of promoting and maintaining high standards of conduct; maintaining the Code of Conduct and the Protocol on Member/Officer Relations, and associated guidance; advising and training Members and co-opted Members on conduct matters; monitoring allegations referred to it, and assessing and hearing such allegations; deciding on whether allegations should be investigated; deciding on whether a breach has occurred; and determining an appropriate sanction.
393. There is nothing out of the way about these functions; they are similar to those in the arrangements made by many authorities, and they are broadly similar to those under the previous statutory regime.
394. I will not rehearse the detailed provisions and processes; they are dealt with thoroughly and very well in the Independent Review by Charles Bourne QC,⁹² who also makes observations on how they might be improved, and I return to some of these below.

The experience of the Standards Committee and the conduct regime

395. I must first acknowledge the efforts made by all those who have tried to make the standards regime work as intended. They have done so in good faith, and are not to be blamed for the present situation.
396. However, the Corporation has now got to the point where I do not think that it is sensible or practical to try to repair the current arrangements, nor to try and reconstitute the Standards Committee along new lines.

⁹¹ Section 28(7).

⁹² *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*, December 2016.

397. The problems appear to have started in 2015 with the first complaint against a Member to reach the investigation stage. The Member was found, both at the initial hearing and on appeal, to have breached the Code of Conduct. Information about this complaint in the Standards Committee's Annual Report of 23 June 2016 included the name of the Member concerned, and on that account provoked widespread criticism of the process.
398. From there things seem to have gone downhill, with the Standards Committee and its members being subjected to frequent criticism, sometimes expressed in unacceptably discourteous terms. The Standards Committee commissioned the independent review from Charles Bourne QC to which I have referred. Following that review, the Court established a Standards Regime Review Working Party, separately from the Standards Committee.
399. That Working Party, and subsequent consideration by the Court, rejected the Bourne Report's recommendation that undertaking training in standards and conduct matters should be a prerequisite for being appointed to any Corporation Committee. It also ignored Mr Bourne's warning about splitting decision-making on appeals, providing that the new Appeal Panel, independent of the Standards Committee, should be able to substitute a new decision on appeal (on the papers only) rather than refer the case back to the Standards Committee for reconsideration.
400. However, the Bourne Report led to the establishment of new complaints procedures, and a revised Code of Conduct and guidance from March 2018. A Standards Appeals Committee was also established.
401. Unfortunately the new procedures did not receive practical backing from the Court. A complaint was made against a Member; after hearing and appeal he was found to have breached the Code of Conduct, and the Standards Committee recommended that he be suspended for twelve months from the Standards Appeals Committee, of which he was a member.
402. However, when in March 2020 the matter was reported to the Court of Common Council for endorsement, the Court declined to do so. The debate illustrated the weakness of the Corporation's approach to matters of Member conduct. In the debate the appropriateness – or otherwise – of the whole process was revisited; arrangements

previously approved by the Court were criticised; and the case was rehearsed without adequate evidence.⁹³

403. The handling of Standards matters has involved significant cost. At one time or another, four Silks have been involved, together with external investigators. To date the total cost, including the internal costs of running the Ethical Framework, is more than £500,000, which is wholly disproportionate.

Dispensations

404. The standards mix has been made more toxic by a long-running dispute over the granting of dispensations.
405. The Localism Act 2011 replaced the 2000 Act's provisions relating to personal and prejudicial interests with a scheme for "disclosable pecuniary interests" (DPIs).
406. Interests which may give rise to a DPI are listed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012⁹⁴. They fall into the following categories: employment, office, trade or profession; sponsorship (of the Member concerned by a third party) a current contract for goods or services; beneficial interest in land in the authority's area; licence to occupy land in the authority's area; tenancy with beneficial interest; and beneficial interest in securities of a body based in the authority's area. A Member's spouse, civil partner or co-habitor with such an interest is within the registration and declaration requirements.
407. The default setting, under section 31(4) of the Localism Act 2011, is that a Member with a DPI which is engaged (in other words, upon the precise item of business before the Court or a Committee) should neither speak nor vote.
408. However, it is possible for the authority concerned, on written application, to grant a "dispensation", on the terms specified in section 33 of the 2011 Act, but subject to conditions which are explicit in that section, and which amount to the following (two conditions, relating to political groups and executive arrangements, do not apply to the Corporation's circumstances):

⁹³ Minutes of the Court of Common Council, 5th March 2020, Minute 24.

⁹⁴ S.I., 2012. No. 1464.

- without the dispensation the number of Members affected would make up so great a proportion of the whole that the transaction of business would be impeded;
- that the dispensation would be in the interests of persons living in the authority's area; and
- (a catch-all) "that it is otherwise appropriate to grant a dispensation".

Section 33 says that a dispensation may not be given for a period longer than four years. A dispensation may be in respect of speaking or voting, or both.

409. The issue at the centre of contention was whether the Corporation could give "blanket" or "open-ended" dispensations up to, or preferably for the whole of, the maximum of four years allowed by the Act. In December 2019 the City Solicitor took advice from Leading Counsel (Philip Kolvin QC) as to the lawfulness of open-ended dispensations.

410. In his Opinion Mr Kolvin advised that such dispensations would be unlawful. The two principal grounds of his advice were, first, that they would be too wide, taking in everything relevant to a DPI except (in the terms of the applications at issue) something which affected the Member concerned in a unique way; and second, that the authority could grant a dispensation only "having had regard to all relevant circumstances". It would not be possible to grant a blanket dispensation of up to four years because there was no way of predicting those circumstances.

411. Mr Kolvin identified five other difficulties with the open-ended approach, but also offered a possible compromise policy. I respectfully agree with Mr Kolvin. I do not believe that by any stretch of statutory construction he could have come to any other conclusion.

412. The events which followed were no more edifying than those which preceded Mr Kolvin's advice. It was alleged that the City Solicitor had given partial Instructions to Counsel, and that this had resulted in partial and incorrect advice. This resulted in a tart rejoinder from Mr Kolvin in his Supplementary Advice. On 24th

January 2020, after a somewhat confused debate, the Standards Committee voted to accept Mr Kolvin's substantive Opinion.

413. On 18th June 2020 the Court of Common Council considered the standards regime on the basis of a Motion moved by Marianne Fredericks "to address the longstanding concerns of Members in relation to the current Standards Regime". Following the approval of an amendment to the Motion, the Court resolved: "That this Honourable Court resolves that the Motion to convene a Working Party chaired by the Chief Commoner to report to the Court as soon as practicable on how proceedings for breaches of the Code of Conduct may be conducted be referred to Lord Lisvane for full and comprehensive incorporation into the Governance Review."⁹⁵

414. I trust that this Part of my Report demonstrates that I have taken the view of the Court expressed through this Resolution fully into account.

Where does the Corporation stand now?

415. I think that there would be widespread agreement that on conduct matters the events of the last five years have been regrettable. They have also been potentially damaging to the Corporation's reputation. An authority of the stature of the City of London Corporation, seeking to present itself as a champion of the highest standards, simply cannot afford to continue in this way.

The way forward: principles

416. Above all, the Corporation must set itself to maintain and support the promotion of those highest standards, and its Members need to be fully engaged in this endeavour.

417. Experience so far shows that Members cannot (and, in my view, should not) pass judgement upon their colleagues.⁹⁶ I note that, in the consideration of the Motion on 18th June, the words "without Members sitting in judgement on each other" were removed, on the basis that "a jury of peers could well offer the best protection to Member complaints being dealt with fairly, notwithstanding the challenges for Members involved".⁹⁷

⁹⁵ Minutes of the Court of Common Council, 18th June 2020, Minute 11.

⁹⁶ I cannot resist a quotation from Sellers and Yeatman, *1066 And All That*, speaking of the provisions of *Magna Carta* (no doubt Clause 21): "No baron should be tried, except by a special jury of other barons who would understand". For the avoidance of doubt, I think that it was intended to be satirical.

⁹⁷ Minutes of the Court of Common Council, 18th June 2020, Minute 11.

418. It will be clear from this Report that I strongly disagree with that view; and I judge that, increasingly, it does not have public credibility.
419. A fair but exacting process must be available to deal with complaints against Members, whether those come from other Members, Officers, or members of the public.
420. Consistent with the principles of natural justice, decision-making processes should be as open and transparent as possible, not least so that constituents can be properly informed when holding Members to account.
421. As the Bourne Report pointed out⁹⁸, there is a role for conciliation, drawing upon the skills both of the Monitoring Officer and the Chief Commoner, and no doubt others. But I echo Charles Bourne's caution against relying too much upon informal resolution. If a complaint is *prima facie* sufficiently serious, then informal resolution may not be appropriate and indeed may be reputationally hazardous.

The way forward: practicalities

422. It is clear that the Standards Committee approach has failed and that it cannot realistically be revived.
423. Although I have been told that the "outsourcing" of the Standards process is not possible, I disagree. The 2011 Act no longer requires that a relevant authority should have a Standards Committee, merely that "arrangements" should be in place. Those arrangements must include the appointment of *at least* [my italics] one independent person.⁹⁹
424. It is therefore the case that an authority may decide to have arrangements which are almost entirely in the hands of independent persons.
425. **I therefore recommend that the Corporation should set up an Independent Panel composed only of independent persons, and charge that Panel with:**

⁹⁸ Paragraph 98.

⁹⁹ Section 28(7).

- receiving allegations of misconduct referred to it by the Monitoring Officer;
- deciding whether any allegation should be investigated;
- on the basis of the allegation, determining whether there has been a breach of the code of Conduct;
- reporting that determination, together with a full report of the facts, to the Court for endorsement;¹⁰⁰
- hearing any appeal (the appeal function will of course need to be separated rigorously from the assessment and determination function)
- after determination, and appeal if necessary, recommending an appropriate sanction, giving reasons as necessary.

426. The Localism Act 2011 places on the authority the responsibility deciding whether there has been a breach of the Code of Conduct, and of taking action following a finding of a breach.¹⁰¹ These are therefore not functions which may be delegated to a Panel of the sort that I have recommended.

427. But it will be essential to avoid the replaying of a case in the way that occurred in March 2020. This would be especially so if the upheld complaint were to be from an Officer (who would not have the opportunity of defence in a debate) against a Member (who would).

428. **I therefore recommend a Standing Order provision which would require the Panel's**

- **determination that a breach had occurred; and**
- **recommended sanction**

¹⁰⁰ Under Section 28(11) of the Localism Act 2011.

¹⁰¹ Section 28(11).

to be decided without debate (and a further provision which would make it difficult or impossible for such a Standing Order to be dispensed with).

429. The Panel should review the current Codes of Conduct and guidance, in consultation with the Governance and Nominations Committee, and develop its own Rules of Procedure, for communication to (but not for approval by) the Court of Common Council.
430. The Independent Members¹⁰² of the Panel should be recruited in the same way as the co-opted members of the Standards Committee have been. Judicial or other legal experience should not be a necessary qualification, but independence, authority, judgement, skill in analysing and assessing evidence, and experience at a fairly high level in the public or private sectors, will be required.
431. I think that it may be necessary to have about eight Members of the Panel, to provide Members to constitute Hearing Panels and Appeal Panels, and to provide a degree of collegiate approach and mutual support. Members of the Panel should be paid an appropriate daily rate. It will be for the Corporation to decide whether the present co-opted members of the Standards Committee should, if they are willing, become Independent Members of the Panel, or whether there should be a clean break and a new recruitment from scratch.
432. The terms of appointment will need to be staggered to avoid the need for substantial replacement of the Panel, and loss of embodied experience, at any one time. A base term of appointment might be four years, with reappointment for one further term.
433. I do not offer a draft Standing Order at this stage, but will provide one if the Corporation wishes it.
434. Indemnity and insurance will be required, as agreed by the Court for the current co-opted Members.¹⁰³
435. Until the Independent Panel has been recruited and is ready to begin its work, the present arrangements should remain in place.

¹⁰² The Localism Act uses the term “independent person”. In the context of the Panel I have used the term “Independent Member”. Section 28(8)(c) of the Localism Act makes provision for the method of appointment.

¹⁰³ See Minutes of the Court of Common Council, 5th December 2019.

Thereafter, the Standards Committee should be abolished, and with it the Standards Appeals Committee.

436. **I realise that these new arrangements may be unwelcome or uncomfortable for some, but I would observe that the Corporation had the opportunity to get this right, and failed to do so.**

437. If my recommendation for the abolition of the Barbican Residential Committee is accepted, I suspect that the cause of at least some of the difficulties experienced over the last few years will be removed.¹⁰⁴ It may also be that the restrictions imposed by section 618 of the Housing Act 1985¹⁰⁵ will for the same reason become less irksome.

Other issues

The Register of Interests

438. At the moment, the registrable interests of an individual Member may be seen by going to that Member's page on the website. So far as the Corporation as a whole is concerned, I do not think that provides adequate transparency. **The whole of the Register of Interests should be available on dedicated pages on the website.** This will, for example, allow easy visibility of whether an interest relevant to a particular function of the Corporation is shared by a number of Members.

439. The current practice also appears to be in contravention of section 29 of the Localism Act 2011, which requires that the authority's register "is published on the authority's website". I take this to mean that the register is accessible in its entirety, not that excerpts from it are attached to individual pages.

Training on standards and conduct matters

440. The Bourne Report said that "In my view the City's Code, or its arrangements in general, would be materially improved by requiring Members to attend such training on conduct and standards matters as the City may provide from time to time...It would be

¹⁰⁴ See also SO 44.

¹⁰⁵ "...no person shall vote as a member of that [Common] Council, or any such committee [charged with any purpose of the 1985 Act or the Housing Associations Act 1985] on a resolution or question which is proposed or arises in pursuance of this Act or the Housing Associations Act 1985 and relates to land in which he is beneficially interested" (s618(3)).

appropriate to require attendance as a condition for serving on committees”.¹⁰⁶

441. This recommendation was unfortunately not accepted, and I repeat it now. **Training on standards and conduct matters should be mandatory, and without which no Member should be appointed to a Committee.** Charles Bourne QC observed “standards in public office and attitudes to equality and diversity do not stand still but instead continuously evolve, and those elected to public office should be leaders rather than followers in this process”.¹⁰⁷ **I agree.**

442. Apart from being a sensible precaution to protect the Corporation from criticism, I doubt whether in the absence of such a requirement the Corporation could meet – certainly the spirit, but possibly also in full the formal provision – of section 27(1) of the Localism Act 2011, which requires a relevant authority to promote and maintain high standards of conduct. To reject mandatory training would seem to fall short of the requirement to promote high standards of conduct.

Member/Officer relations

443. The Corporation has a Protocol on Member/Officer Relations, which forms part of the Code of Corporate Governance. This needs to be read in parallel with the Code of Conduct applying to Members.

444. It is essential that Officers at any level are able to raise matters relating to the conduct of other Officers (for which there are separate provisions) or to the conduct of Members towards them. And it should be borne in mind that this is a relationship which is not under the sole control of the Corporation. A serious case may end up in an Employment Tribunal, with all the reputational risks involved.

445. It should not need saying that a mutually respectful relationship between Members and Officers is essential to the Corporation’s success and reputation, and to the retention of the staff who are an asset to the institution.

446. I note that SO 64 (6) (Disciplinary Action) envisages the involvement of Independent Members of the Standards Committee

¹⁰⁶ Bourne Report, paragraph 52.

¹⁰⁷ *ibid.*

on a Statutory Officer Review Panel. This is a statutorily required¹⁰⁸ role which will fall to Independent Members of the Panel recommended above.

Freemasonry

447. I mention this issue because it has been raised with me a number of times during my Review, both in the context of diversity “there are more Freemasons on the Court than there are women” and in respect of what individuals have seen as “below the radar” collective influences upon Committee appointments, the allocation of Chairs, and other decisions.
448. Freemasonry is a society which has more than 300,000 members, all men, in England and Wales, including some 40,000 in London. Its three key principles are Neighbourly Concern, Charity and Moral Standards (referred to by Masons as Brotherly Love, Relief and Truth). It is a charitable donor on a very large scale all over the country, including support of projects within the Square Mile.
449. I should put beyond any doubt that I make no comment on Freemasonry or its role but, given the views put to me, I think it helpful to comment upon issues of transparency. The recommendations that I make on recorded votes, and on the availability of a full Register of Interests as a single document on the website, will contribute to that transparency.
450. So far as the use of Guildhall facilities (also raised with me) is concerned, I take it that Masonic gatherings are on the same basis, and charged on the same basis, as any other gathering of Members for a purpose not directly connected with Corporation business.

¹⁰⁸ See The Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 (S.I., 2015, No. 881), Schedule, paragraph 4.

STANDARDS COMMITTEE

Below, against the Standards Committee's **Terms of Reference**, is some commentary to highlight its various roles and responsibilities, where necessary, so it is clear where thought as to the reallocation of responsibilities may be required:

To be responsible for:-

- (a) promoting and maintaining high standards of conduct by Members and Co-opted Members of the City of London Corporation and to assist Members and Co-opted Members to observe the City of London Corporation's Code of Conduct;
- (b) preparing, keeping under review and monitoring the City of London Corporation's Member Code of Conduct and making recommendations to the Court of Common Council in respect of the adoption or revision, as appropriate, of such Code of Conduct – **the current Code was last approved by the Court on 16 July 2020. That version can be found [HERE](#). There is no cross-reference within the Code itself to the Complaints procedure. Lisvane recommends a role for the Governance & Nominations Committee.**
- (c) keeping under review, monitoring and revising as appropriate the City of London Corporation's Guidance to Members on the Code of Conduct and the complaints procedure and relevant paperwork, reporting any changes on these documents to the Court of Common Council in the Committee's annual report. – **last approved by the Court on 8 March 2018. The document can be found [HERE](#). Again, no explicit reference to the Complaints Procedure here, although it does reference the Officer/Member Protocol – para 37 onwards.**
- (d) keeping under review by way of an annual update by the Director of HR, the City of London Corporation's Employee Code of Conduct and, in relation to any revisions, making recommendations to the Establishment Committee – **essentially this is an annual report from HR to the Standards Committee and any issues they have are ultimately passed to Establishment for consideration and approval if they see fit.**
- (e) keeping under review and monitoring the Protocol on Member/Officer Relations and, in relation to any revisions, making recommendations to the Establishment Committee- **again, this is an annual report from HR to the Standards Committee and any issues they have are ultimately passed to Establishment for consideration and approval if they see fit.**
- (f) advising and training Members and Co-opted Members on matters relating to the City of London Corporation's Code of Conduct – **this is provided by the Comptroller & City Solicitor as Monitoring Officer. He undertakes training open to all Members periodically and training is also offered to all as part of the induction programmes we run after all out elections. Members of the**

Standards Committee receive more in-depth training around the handling of Complaints, etc.

- (g) monitoring all allegations referred to it and dealing with assessment of and any hearing into any allegations of breach of the City of London Corporation's Code of Conduct in respect of Members and Co-opted Members, and in particular – **this is governed by the Complaints Procedure which has been in force since 19 July 2018 and can be found [HERE](#) .**
- (i) to determine whether any allegation should be investigated by or on behalf of the Town Clerk or the Monitoring Officer and their findings reported to the Committee – **this is currently done via an Assessment Sub-Committee which is drawn from the membership of the Standards Committee as and when required.**
 - (ii) in relation to any allegation that it has decided to investigate, to determine whether there has been a breach of the Code of Conduct, taking into account the views of an Independent Person appointed under the Localism Act 2011 – **this is currently done via a Hearing Sub-Committee which is also drawn from the membership of the Standards Committee.**
 - (iii) where there has been a breach of the Code of Conduct, to determine the appropriate sanction, and where this involves removal of a Member or Co-opted Member from any committee or sub-committee, to make an appropriate recommendation to the relevant appointing body – **this is also the job of the Hearing Sub-Committee at present.**
- (h) dealing with/determining applications for Dispensation – **this process is currently managed via a Dispensations Sub-Committee; however, the authority to decide applications for certain types of straightforward dispensations has been delegated to the Town Clerk – the Dispensations Policy/Guidance can be found [HERE](#) and has been in operation since January 2020. Mention of Section 618 and the limitations this poses can be found at paras 20 and 21.**
- (i) To prepare an annual report on its activity for submission to the Court of Common Council.

**Resolution of the Court of Common Council relating to Standards /
Governance Review
8 October 2020**

Resolved – That this Honourable Court resolves that the Resource Allocation Sub-Committee begins the consideration of the recommendations made in Part 8 of Lord Lisvane's Report by presenting a detailed report on a new standards regime to the Policy and Resources Committee which then presents a detailed report on that regime to the Court at its meeting in January 2021, with a view to the regime's system for handling complaints being implemented by the end of March 2021 at the latest.

Governance Review: Member Engagement Sessions

Standards: Session 1

28 October 2020

Notes of Discussion

Present

Sheriff Christopher Hayward (in the Chair)	Deputy Jamie Ingham Clark
Caroline Addy	Vivienne Littlechild
Randall Anderson	Oliver Lodge
Doug Barrow	Deputy Edward Lord
Deputy Roger Chadwick	Andy Mayer
Henry Colthurst	Wendy Mead
Graeme Doshi-Smith	Deputy Brian Mooney
Helen Fentimen	Susan Pearson
John Fletcher	Jeremy Simons
Marianne Fredericks	James Tumbridge
Michael Hudson	Alderman Sir David Wootton
Ann Holmes	Alderman Sir Alan Yarrow
Alderman Alison Gowman	

Introduction

Sheriff Hayward, in the Chair, thanked Members for joining today's session. He noted that the Governance Review would affect all aspects of the City Corporation's governance and all Members as a consequence; it was, therefore, imperative that any implementation reflected the view of the Court, and that all Members had the opportunity to feed in their views on particular elements. These informal engagement sessions were the first part of that process.

He emphasised that the purpose of today's session was not to make decisions and that there were no preconceptions heading into these sessions, which were all about listening and ensuring that the views of Members on particular issues were known before any formal stage of considerations.

To that end, a short factual summary paper had been circulated, together with the relevant extract of the Review itself, to try and help focus discussion.

Prior to debating the recommendations set out by Lord Lisvane, two Members spoke to raise general observations on the background details referred to in the Review:

- In respect of paragraph 402, a Member challenged Lisvane's assessment of the Court coming to a differing conclusion as a weakness, arguing that the stages of deliberation through the committee system strengthened the level of scrutiny and meant that it was perfectly proper for different conclusions to be reached. In that vein, it was suggested that it should be seen as a strength that the Court reached its own views, as it demonstrated it was not simply a "rubber stamp".

- Another Member took the opportunity to clarify that a jury of peers did not necessarily mean other Members but, rather, a collection of normal people. Consequently, independent persons should be considered to be peers and they suggested that, in considering potential proposals, Members should not fixate on the misassumption that only Members were able to perform that function.

Recommendations: Members' Comments and Observations

Members then proceeded to debate the various recommendations.

Paragraphs 416-437: Creation of an Independent Panel to consider Complaints and the Abolition of the Standards and Standards Appeals Committee

- Several Members spoke in support of Lisvane's recommendations as they stood, suggesting that almost wholesale adoption of the proposals in this area would be wise. However, a number took issue with particular elements or proposals therein.

Panel Composition

- A Member suggested the Panel should be comprised of 9 independents with staggered 3-year terms, to allow for different panels to be drawn and a balance between continuity and change. Other Members spoke in support of such a Panel size and utilising staggered terms.
- It was, however, observed that the Lisvane proposal would mean the same group of individuals dealt with both hearings and appeals, with it noted that full consideration as to the size of the Panel was, therefore, important to avoid logistical issues and potential conflicts.
- One particular point of consideration, which Lisvane did not offer a conclusion on, was whether those current independent or co-opted members of the Standards Committee should serve on any new Panel (ref: paragraph 431).
- A Member suggested that no precipitate decisions should be taken in respect of the replacement of incumbent independent Members, with it observed that some were very recent appointments of a high calibre, and that there might be difficulty in finding new candidates of the same quality. It was suggested that keeping them on the basis of an interim arrangement might be prudent, as beginning quickly with a complete *tabula rasa* might have the unintended effect of undermining any new process before it began.
- Several Members disagreed with this position noting that, notwithstanding the calibre or history of specific individuals, there was a clear issue with credibility and confidence in the current regime. As a result, they felt it was vital to begin with an entirely fresh start, with new individuals as well as a new process, in order to repair Members' confidence in the processes as well as the City Corporation's reputation in this area.

- Reservations were expressed about the relationship of the independent Panel to the proposed Governance & Nominations Committee, with it suggested that the dynamic between the two bodies would need to be explored and assurances provided. Should it not be used, then thought would need to be given to an alternative appointment / recruitment mechanism for independent Members.

Support for Members and the relative merits of an external Panel

- A Member expressed significant concern that, should one have the misfortune of being falsely accused of something, the current system was inequitable towards the Member defending themselves. Lord Lisvane's proposals did not resolve these issues. It was observed that, whilst officers might have access to internal legal support, it was incumbent upon the Member to manage their own defence with no such assistance. Consequently, the value of a jury of peers formed of other Members, who had context and greater familiarity with matters, allowed for the final judgment to be made more in the round and by those who could appreciate the wider perspective. Accordingly, they felt that the proposals at paragraph 425 were insufficient, as they did not take this into account and meant that a Member without the legal background or support to articulate their defence adequately was at a significant disadvantage.
- Several Members echoed the importance of providing some sort of assistance or legal support to Members if needed, stressing the importance of equality of representation for both sides in any hearing. A Member added that there should be no misassumption that "equality of arms" could be achieved simply through Member representation on any Panel and, accordingly, legal support would be vital.
- Reflecting on the use of a fully external Independent Panel to hear complaints cases, a Member expressed the view that this effectively constituted a form of outsourcing, cautioning that whilst one might be able to outsource the work one could never outsource responsibility. Reference was made to other areas of outsourcing within the City Corporation where problems had arisen due to a failure to manage contracts or relationships properly, with it feared that a similar situation could arise here.
- It was also suggested that a fully independent Panel would not recognise the unique nature and context of the City Corporation, nor the different and collaborative way in which it operated, and so come to flawed conclusions. However, another Member suggested that seeking an independent and objective view from outside the Corporation "bubble" was even more important in this context, as Members were untrained and too close to each other to take decisions comfortably or entirely impartially.
- A Member also commented that fairness and justice was not achieved by hiving off responsibility.

- Other Members articulated their firm belief that the fundamental premise of Members not judging Members should be held paramount, reflecting on the issues that had occurred in recent times.
- Particular reference was made to individual Members' experiences and the extremely distressing circumstances that the current processes, where fellow Members sat in judgment on others, had caused. It was observed that continued working relationships with fellow Members were inevitably strained after this process which was not conducive to collegiate working, quite aside from the emotional and mental trauma caused by the process, which a Member referred to as one of the most unpleasant experiences of their life.
- Clarity was sought as to how Member acceptance of decisions made by any Panel would be managed, particularly where Members felt that the outcome reached had been decidedly unfair or lacking context.
- A suggestion was made that having an independent Panel to deal with the middle stage of investigation (i.e. the hearing stage), whilst reserving the appeal stage for a Member body, could provide a way to remove the difficulties associated with the process at that point, whilst also addressing concerns around ensuring that questionable outcomes could be revisited with the benefit of context. Several Members expressed support for this as part of a three-stage process (beginning with informal resolution).

Informal Resolution Processes

- With reference to the potential for informal resolution of issues, a Member highlighted the importance of providing appropriate training for the Chief Commoner in managing such items, and also for the introduction of a protocol to inform any hearing panel that informal discussions had taken place.
- The suggestion of a protocol for the Chief Commoner to operate under when dealing with misconduct matters through the informal resolution process, to provide them with guidance, was also made.
- Supporting these points, a Member added that the Panel should also have ability to refer complaints back to the Chief Commoner for informal resolution, noting previous examples of relatively trivial matters that had been before the Standards Committee which would have been dealt with more appropriately on an informal basis.
- The value and importance of an apology in some instances should not be underplayed, as there were occasions when a marker indicating and accepting fault in a direct fashion would be beneficial in achieving a satisfactory resolution.
- Commenting on the wider issues with the Standards regime, a Member observed that the large number of formal processes, procedures and protocols could be a factor in causing confusion. Including an option for informal

resolution before engaging these would be beneficial and consistent with some of the comments made by Charles Bourne QC during his previous review.

- A Member cautioned that a “one size fits all” approach would not work, as it would not be appropriate to require all matters to go for informal resolution as a starting point, observing that there would inevitably be some issues so serious as to make this wholly inappropriate. Therefore, they did not support the suggestion that all complaints be required to go to informal resolution first. It was suggested that some sort of threshold could be established in respect of this.
- The view was expressed that part of the problem to-date was the type of cases being referred to Standards, with it argued that the quasi-legal procedure felt heavy-handed in cases of a more minor nature which could have been resolved through informal measures. Setting out criteria for escalation to the Panel or resolution through informal measures would be helpful in avoiding this.
- Other Members also spoke in support of strengthening the informal aspect of the process, with it observed that it was almost always readily apparent when items should go directly to a Panel and, equally, where there were items that should never proceed to that level. It was noted that the current arrangements did not allow for a complaint to be rejected or sent for informal resolution first, and it was argued that there should be some ability whereby the Panel could insist upon an informal resolution being sought, or to decline to consider trivial matters.
- Whilst noting that whether to have an informal process and what form it should take was up to the Court, a Member commented that the right to make a formal complaint was a legal right and that any future system would need to be mindful of legal constraints.

Sanctions and Panel Outcomes

- It was suggested that a mechanism should be introduced to allow for the independent panel to remove a person from committee directly, rather than relying on the Court for the imposition of sanction without debate, with the prospect of requiring the Court to act as a rubber-stamp felt by several Members to be both unpalatable and unrealistic.
- Should it be the case that the Court must make the final decision and there was no legally valid alternative, then some Members agreed with the recommendation that any Panel recommendations should be unamendable. Others maintained that this was neither appropriate, with view to the Court’s sovereignty and the valuable role of additional scrutiny, nor enforceable, given the practical inability to prevent debate.

- Referencing paragraph 426, a Member queried the assertion that certain items could not be delegated to a Panel and so had to come to Court. Absolute clarity would be helpful in this regard.
- A Member suggested that asking the Court to ratify or approve sanctions would negate the notion of the Panel's independence.
- It was commented that the Court's responsibility was to ensure a robust and effective process, not necessarily to directly make the decisions made within the framework set out.
- A Member expressed significant concern as to the potential for any sanction that might remove a Member from a committee unless their transgression directly affected the work or responsibilities of that committee; to do otherwise interfered with Members' ability to represent those who had voted for them.

Abolition of the Standards Committee

- There was a broad consensus that the Standards and Standards Appeals Committees should be abolished.
- However, a Member expressed concern around timing and any proposal to abolish the Standards Committee at this particular point in time, ahead of wider consideration around committee structures, in view of the many other areas of activity beyond complaints which it was responsible for. Until the balance of recommendations relating to the wider committee structure were considered, it was suggested it would be prudent to leave it in place to continue oversight of those other items in the interim.
- Other Members also stressed the importance of thinking carefully about where those other areas of responsibility sat and that they should not be forgotten. The importance of the link between the complaints process and the Members' Code of Conduct was highlighted as a particularly crucial matter, with it argued that this must remain in the hands of elected Members and not outsourced, with it observed that the values and codes to which Members signed up should be for them to decide. If these were not determined by Members, then it would risk losing buy-in in respect of the standards set out in any Code to which those Members should conform. This had implications for when and how the Standards Committee was abolished.
- A Member argued that the Standards Committee no longer retained any credibility and that the changes proposed in the Review provided an opportunity to repair some of the reputational damage to the Corporation. Consequently, the best approach might be to abolish the Committee and make a clean break with entirely new individuals on a new Panel.
- A suggestion was made that, prior to its abolition, the last act of the Standards Committee should be to revise the Code of Conduct. This would be with a view to addressing issues where there was broad agreement, such as putting

teeth around the prospect of referral of complaints to an informal process first, with a mechanism utilising the reasonable judgement of the Chief Commoner to allow for serious items (clearly beyond the remit of an informal resolution) to be referred to the formal process.

- A Member urged pace in implementing change, arguing that there was no need to wait for a decision in respect of any prospective Governance & Nominations Committee as any relevant decisions could be incorporated later in the process.

Paragraphs 404-414: Dispensations

- A Member expressed concern that the current system did not include an opportunity to review dispensations during their period of application, so as to ensure that they remained relevant and appropriate. It was suggested that dispensation should be made for a shorter period, say one year, and / or with a designated review period, to ensure appropriate scrutiny.

Paragraphs 440-442: Training

- A Member expressed concern at the proposition that training should be made mandatory in order to serve on any committee, other than where required by statute, with it argued that barring any fairly-elected Member from service to committees was undemocratic. Therefore, whilst training was important and should be made freely available, it should not be obligatory. Any decision by individual Members not to undertake training would doubtless prove a factor in assessing cases should any issues arise, in any case.
- Another Member spoke to support this view strongly, observing that the electorate returned Members to represent them, not to undertake training, and barring Members from undertaking their representational role effectively was inappropriate.

Close

Sheriff Hayward thanked Members for their many contributions, adding that any additional points Members wished to make by email following the meeting would be welcomed.

Additional Comments received after the meeting

Following the meeting, the following additional comments / points of clarification were submitted by Members who had been in attendance:

- One Member expressed their support for all the recommendations put forward by Lord Lisvane as they stood.
- Another Member, noting the proposed role of a possible Governance & Nominations Committee in the new Standards process, highlighted that

thought would need to be given to alternatives should the creation of such a committee not be approved. Their inclination was to favour the Establishment Committee in such a circumstance, for reasons of HR expertise and so on.

- It was felt that it would be inappropriate and impractical for dispensations to be handled by an external panel. Unlike complaints, these applications often needed to be handled at short notice, and it would be a significant logistical challenge to get a panel together in a timely manner.
- Regardless of which committee took on responsibility for dispensations, it was ventured that it would be wise to have a Dispensations Sub-Committee to look after that area. In order to ensure likely availability of Members, a minimum of nine members was suggested, to enable meetings of three. In addition, it was suggested the membership be drawn equally from Planning & Transportation, Licensing, and Community & Children's Services, as these were the bodies from which the majority of applications arose.
- The question of who would select the members of any Independent Panel and on what criteria merited serious attention.
- A Member expressed their support of calls for simplified procedures for less serious matters of complaint but added that the detail needed careful thought.
- In response to a specific query as to the responsibility for determining complaints, the Comptroller had advised that this was a local authority function and could only be dealt with by the Court, or an appropriately authorised committee/sub-committee, officer, or another local authority. Thus, whilst any final decision could not be left to the Panel to take, it did not necessarily have to be taken by the Court.
- In response to a further specific query as to informal resolutions, it was noted that steps could be taken at the beginning of the process to empower the Assessment Committee to encourage/require informal resolution.

Governance Review: Member Engagement Sessions

Standards: Session 2

12 November 2020

Notes of Discussion

Present

Sheriff Christopher Hayward (in the Chair)	Shravan Joshi
Caroline Addy	Alderswoman Susan Langley
Peter Bennett	Deputy Edward Lord
Mark Bostock	Alderman Ian Luder
Deputy Keith Bottomley	Alderman & Sheriff Prof. Michael Mainelli
Deputy David Bradshaw	Paul Martinelli
Deputy Michael Cassidy	Jeremy Mayhew
John Chapman	Deputy Catherine McGuinness
Dominic Christian	Deputy Brian Mooney
Mary Durcan	Ben Murphy
Sophie Fernandes	Graham Packham
Marianne Fredericks	Alderman Sir Andrew Parmley
Tracey Graham	James de Sausmarez
Alderman David Graves	John Scott
Alderman Tim Hailes	Alderman Sir David Wootton
Graeme Harrower	Dawn Wright
Deputy Jamie Ingham Clark	

Introduction

Sheriff Hayward, in the Chair, thanked Members for joining today's session. He noted that the Governance Review would affect all aspects of the City Corporation's governance and all Members as a consequence; it was, therefore, imperative that any implementation reflected the view of the Court, and that all Members had the opportunity to feed in their views on particular elements. These informal engagement sessions were the first part of that process.

He emphasised that the purpose of today's session was not to make decisions and that there were no preconceptions heading into these sessions, which were all about listening and ensuring that the views of Members on particular issues were known before any formal stage of considerations.

To that end, a short factual summary paper had been circulated, together with the relevant extract of the Review itself, to try and help focus discussion.

Recommendations: Members' Comments and Observations

Members then proceeded to debate the various recommendations.

Paragraphs 416-437: Creation of an Independent Panel to consider Complaints and the Abolition of the Standards and Standards Appeals Committee

Panel Composition

- Noting that the Code of Conduct was currently enforced through a system requiring Members sitting in judgment on each other, it was observed that such an arrangement would not comply with accepted principles around trial by jury in legal proceedings, whereby a person was not eligible to sit on a jury if they knew the defendant. Consequently, it was unable to satisfy accepted requirements for a fair hearing and thus Lisvane's recommendations for an independent panel should be adopted to remove the unfairness inherent in the current system.
- There was a broad consensus that a new Panel, with an entirely new and independent membership, would be preferable in order to give confidence in a new system, given the involvement of existing co-optees and independent persons in the current regime.
- An argument was advanced that all new panellists should be entirely independent of the City and that, further, they should ideally be retired judges. Appointing individuals of such calibre and repute, with a long-established history of acting impartially, would have the effect of giving great confidence in the system. It would also offset any Member temptation to overturn the Panel's recommendations when put to the Court for ratification, preventing the reintroduction of Member on Member judgement at the latter stage. The payment of a fixed retainer fee was proposed, to ensure a high calibre of panellist.
- Other Members suggested that limiting the Panel to judges would not be prudent, suggesting that a full Panel of judges with no connection to the City would be difficult to recruit to and that sufficient numbers were necessary to ensure a panel could always be formed. The importance of a diverse Panel representative of the City was also noted and that there should be sufficient flexibility to ensure this. In addition, it was also argued that other candidates with appropriate background, such as magistrates or those with experience of other tribunal or arbitration processes, should also be considered.
- The recruitment process for a new Panel was queried, particularly given uncertainty around any future Governance & Nominations Committee and the timescales in which it was hoped a new Standards regime could be swiftly established. It was suggested that the recruitment could be conducted via open advert, with an interview panel representative of the Court (for instance, 1 senior and 1 junior Alderman, 1 Commoner with under 5 years' service, 1 with under 10 years' service, 1 with over 10 years' service and 1 other commoner, with a contingent of the membership being either residents or members for residential wards).
- Whilst supportive of the general direction of travel, a Member cautioned that there was still lots of detail to be worked through and that care should be taken in doing so. Clarification was also sought as to whether the Monitoring Officer would be responsible for producing reports to the Independent Panel in the first instance.

Informal Resolution Processes

- The importance of an initial “lighter-touch” informal conversation in the first instance was advocated, where transgressions were of a less serious nature. Given the nature of the Court as a small collegiate body, such discussions could be very productive in eliminating misbehaviour early on and achieving swift resolutions.
- A Member observed that this sort of light-tough regulation was out of step with the national position and accepted best practice, adding that new legislation in relation to this matter may also close off this avenue somewhat in the coming period. The inconsistencies around avoiding “Member on Member judgment” whilst also empowering the Chief Commoner to adjudicate in an informal process was also highlighted, although another Member disputed this assessment, arguing that the Chief Commoner was not making judgment in the informal instance as there was no power of sanction.
- It was commented that a one-size fits all approach would not be appropriate, particularly where there were complaints from non-Members where it would be important to ensure they had confidence in relation to the route of resolution for their complaint. Flexibility would be important as a result, although seeking to deal with many matters via an informal route first and where appropriate would be optimal.

Sanctions and Panel Outcomes

- Following a point of clarification at the previous engagement session, it was advised that the responsibility for determining complaints was a local authority function and could only be dealt with by the Court, or an appropriately authorised committee/sub-committee, officer, or another local authority. Thus, whilst any final decision could not be left to the Panel to take, it did not necessarily have to be taken by the Court.
- It was cautioned that Members must recognise the parameters and statutory constraints that would apply to any Standards regime the Court decided to put in place, with it noted that there had previously been situations where Members were disputing matters that it was simply not open to the Corporation to change.
- Several Members expressed the firm view that a repeat of previous Court debates on any recommendations would be highly undesirable and should be avoided, either through approval without debate or some other appropriate mechanism. It was also argued that not overturning any recommended sanctions was vital to protecting the integrity of any independent regime.
- A Member expressed the view that “outsourcing” sanction decisions around democratically appointed representatives to non-elected individuals felt wrong on principle, contending that the final decision must surely remain with elected Members.

- In relation to the possibility of asking another local authority to take on a role in the process, a Member observed that any authority would be unlikely to agree to be the decision-maker, suggesting instead that an agreement on a pan-London basis, to create a joint committee across the 33 authorities to determine standards and ethics complaints, might be worth pursuing.
- It was asked whether thought should be given to a sanction of recall, noting that Members were ultimately responsible to their electorate and so it could be put to the voters to determine. A Member argued strongly against such a proposal, suggesting it was draconian and that any matter of sufficiently serious a nature to warrant this would likely be a matter for police investigation and judicial consideration in any event, although it was added that perhaps this could be appropriate if any suspended sentence was passed down.

Abolition of the Standards Committee

- There was a consensus that the Standards Committee should be abolished; however, it was observed that there were many other areas of activity beyond complaints which Standards was responsible for, and which consideration would need to be given in respect of future ownership arrangements.
- A Member argued that these residual functions could be quickly and easily transferred to another committee, which could in turn either retain them or transfer them to another committee under any new structure.
- Several Members spoke to urge the abolition of the Standards Committee by the end of March 2021, suggesting it would be an important symbolic act and help restore faith in the process, particularly amongst residents.
- The efforts of those serving on the Standards Committee now and previously were noted, with Members expressing gratitude for their attempts to make the system work and reflecting on the unfortunate tone and personalised criticism which had arisen in the past. It would be important to avoid such an occurrence in future and for all Members to treat the new process and participants with respect.

Paragraphs 404-414: Dispensations

- A Member observed that the issue of dispensations was not typically a problematic one for other local authorities, arguing that the excessively rigid approach taken in previous years had been the source of much issue. As much of that previous policy had now been unravelled, they suggested that it be replaced with a new system of granting dispensations as broadly as possible, with applications for dispensations which are still needed to be considered by one of the Independent Panellists (ideally a retired judge).
- The ongoing uncertainties relating to s618 of the Housing Act 1985 were referenced, with it noted that progress had been limited in seeking the repeal of this section due to COVID-19 and Brexit.

Paragraph 438: Register of Interests

- Several Members spoke to support the recommendations in paragraph 438, advocating the importance of transparency.

Paragraphs 440-442: Training

- A Member expressed the strong view that the lack of mandatory training was both unusual and potentially embarrassing for the City Corporation, suggesting that modules on unconscious bias, standards and conduct, should be in place by April 2021 and without undertaking which a Member should be ineligible from service on Committees.
- A recent issue concerning failures to correctly record Related Party Transactions was highlighted as an example of where insufficient understanding of issues by some could lead to significant reputational difficulties for the City Corporation, with it argued that appropriate mandatory training must be put in place for such items to prevent a repeat of similar instances.
- It was also argued that the diversity of Members' professional and personal backgrounds meant that training on the Nolan Principles and standards of behaviour was an essential piece in ensuring that all Members began their tenure on the Court with the same understanding of expectations around behaviour and conduct.
- A Member echoed these comments, noting there were occasions where some may have fallen foul of the rules simply through a lack of awareness. Adequate training was, therefore, vital to mitigate against this possibility and this would, in turn, give greater confidence in the outcomes of any independent judgment process.
- The importance of sanctions for non-compliance was highlighted, with it suggested this needed careful consideration. An automatic sanction, perhaps scalable depending on the level of non-compliance, was mooted. The importance of Members discharging their duties as elected Members properly and understanding their role and responsibilities was stressed.

Close

Sheriff Hayward thanked Members for their many contributions, adding that any additional points Members wished to make by email following the meeting would be welcomed.

Additional Comments received after the meeting

Following the meeting, the following additional comments / points of clarification were submitted by Members who had been in attendance:

- A Member supported the creation of a wholly independent panel, formed of as wide a range of people as possible and ideally including JPs and tribunal members, as well as judges and others.

- Support for an entirely new membership for the Panel was expressed.
- Support was also expressed for an enhanced informal complaints route, with it suggested that had been situations where the heavy hand of the committee seemed to be inappropriate, when a more restrained and sensible discussion would be more appropriate and productive.
- It was emphasised that any formal process must be speedy, with it unfair for matters to be drawn out for months or years which could cause significant stress to the Member complained about.
- There was support for the abolition of the Standards Committee as soon as was practicable, alongside an expression of gratitude to those Members of the Standards Committee who had tried to do their best in a difficult situation.
- It was noted that the issue of sanctions was a very difficult one which would almost inevitably lead to controversy at some stage. Avoiding public debate at Court was desirable, with an openness and transparency to the procedure as the public had a right to know about transgressions.
- In respect of the potential for a sanction of recall for the most serious offences there were mixed views, with a suggestion that this should be limited to where a criminal offence was committed.

Governance Review: Member Engagement Sessions

Standards: Session 3

12 November 2020

Notes of Discussion

Present

Sheriff Christopher Hayward (in the Chair)	Deputy Catherine McGuinness
Randall Anderson	Barbara Newman
Deputy Michael Cassidy	William Pimlott
Marianne Fredericks	Mark Wheatley
Natasha Lloyd-Owen	

Introduction

Sheriff Hayward, in the Chair, thanked Members for joining this evening's session. He noted that the Governance Review would affect all aspects of the City Corporation's governance and all Members as a consequence; it was, therefore, imperative that any implementation reflected the view of the Court, and that all Members had the opportunity to feed in their views on particular elements. These informal engagement sessions were the first part of that process.

He emphasised that the purpose of today's session was not to make decisions and that there were no preconceptions heading into these sessions, which were all about listening and ensuring that the views of Members on particular issues were known before any formal stage of considerations.

To that end, a short factual summary paper had been circulated, together with the relevant extract of the Review itself, to try and help focus discussion.

Recommendations: Members' Comments and Observations

Members then proceeded to debate the various recommendations.

Paragraphs 416-437: Creation of an Independent Panel to consider Complaints and the Abolition of the Standards and Standards Appeals Committee

- Several Members spoke to commend the Lisvane recommendations, suggesting that Members should not spend significant time agonising over or debating the proposals and should simply seek to adopt and implement them as quickly as possible.
- A Member commented that residents would be pleased to note the pace and seriousness with which a new regime was being implemented and urged that this be taken forward as a matter of priority.
- The potential to move those matters outside of complaints which were currently within the Standards Committee's remit to other committees as an interim measure, alongside setting up an Independent Panel to hear complaints, was posited. It was, therefore, unnecessary to delay the abolition

of the Standards Committee until any new committee structure had been worked through.

- It was suggested that it would be helpful to ensure Members were fully informed as to the detail of the Localism Act, with a Member commenting that it was clear many people did not understand fully what the regulations said and the sanctions that could or could not be applied.
- In relation to an enhanced informal aspect of the complaint process, using the Chief Commoner, a Member noted that complainants were sometimes simply hoping for an apology and recognition of a transgression and, consequently, factoring a lower-level resolution process into the formal procedure could be beneficial.
- It was also commented that it would be important to not confuse the Chief Commoner's internal informal role for Members with the separate legally required Standards procedure (in which a new lighter-touch "informal resolution" tier could be incorporated).
- With reference to potentially conflicting concerns around Members not judging each other but also not entirely outsourcing the complaints process, a Member suggested that an Independent Panel could consider the substantive complaint but that the Appeals process be reserved for a panel of Members.
- With reference to the Panel's composition, a Member noted that there were two new and highly qualified independent Members who had not been involved in the historic issues around the Committee who it might be prudent to retain.
- It was clarified that these two independent Members had been appointed by a panel comprising Chair of Policy & Resources (or their representative), the Chair of the General Purposes Committee of Aldermen, and the Chief Commoner. Such a Panel could be used to recruit an additional cohort of independent Members for a new Panel.
- A Member stressed the importance of putting relevant documents, such as the Code of Conduct and Hearing Procedure, into a more user-friendly, plain-English format.

Paragraph 438: Register of Interests

- There was strong support for the recommendation to improve the format and visibility of Members' interests, with it emphasised that an approach of maximum transparency should be pursued and that making this item easily accessible was, therefore, of the utmost importance.

Paragraphs 440-442: Training

- A number of Members supported calls for training to be made mandatory, arguing that different methods (e.g. online or recorded sessions) could be utilised to make things to accommodate differing needs. However, there was

a range of views as to whether this should be across all areas or limited to service on specific bodies with quasi-judicial or similar functions.

- It was observed that training was often mandatory at local authorities, and that it was already mandatory to serve on licensing panels. The suggestion was made that it was in Members' own interests to ensure they were suitably trained and prepared for undertaking their responsibilities, as training offered protection in many circumstances.
- A Member expressed some reservations with regard to enforcement or sanction, noting that in the case of some ward committees in particular it might be difficult to identify candidates willing and able to serve and undertake training (where the ward had only a small number of Members). Other Members countered that this was a matter for the ward and that they might need to explore pairing arrangements in such a circumstance.
- The possibility of linking training or sanction to hospitality or the withholding of certain privileges for Members was also mooted.
- The point was also made that, should Members be remunerated in due course, it would be unsustainable to refuse mandatory training.
- One potential option, for those Members with significant experience on any existing committee, could be to allow them to complete a form expressing their confidence in their existing abilities and make a declaration that training is not required.

Members took the opportunity to raise a number of additional issues relating to the wider Lisvane Review, including the likelihood of various proposals being implemented without amendment, the timing of meetings, and the remuneration of Members. It was noted that these items would be considered at later stages in the process or, in the case of remuneration, through the forthcoming recommendations from the Members' Financial Assistance Working Party.

Close

Sheriff Hayward thanked Members for their participation in the evening's session and their various contributions.