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 interests[87]). 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.

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[91] Section 28(7).

[92] *An Independent Review by Leading Counsel of the Arrangements made under the Localism Act 2011by 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 2012[94]. 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]

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[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 out[98], 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 Members[102] 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 1985[105] 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 required[108] 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.