

**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	Deputy Catherine McGuinness
Graeme Doshi-Smith	Wendy Mead
Helen Fentimen	Deputy Brian Mooney
John Fletcher	Susan Pearson
Marianne Fredericks	Jeremy Simons
Michael Hudson	James Tumbridge
Ann Holmes	Alderman Sir David Wootton
Alderman Alison Gowman	Alderman Sir Alan Yarrow

**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.