

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.