

Committee: Policy & Resources Committee – for decision Civic Affairs Sub-Committee Court of Common Council – for decision	Dated: 05/05/2022 17/05/2022 16/06/2022
Subject: Members’ Code of Conduct – Complaints Procedure and ancillary matters from the Panel of Independent Persons.	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	1, 5, 8, 10
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain’s Department?	N/A
Report of: The Town Clerk & Chief Executive and the Comptroller & City Solicitor	For Decision
Report author: Gemma Stokley, Principal Governance and Member Services Officer	

Summary

Following the submission of Lord Lisvane’s Review of the City Corporation’s Governance in September 2020, 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 and, as such, following extensive engagement with Members, the Court were able to consider and approve a number of proposals in relation to Standards made by Lord Lisvane at its 14 January 2021 meeting and authorised the Town Clerk to take such actions as were required to give effect to the decisions taken and facilitate their implementation.

Members will recall that nine Members of a new Independent Panel were appointed by the Court in Summer 2021 on the recommendation of the Independent Persons Appointment Panel (consisting of the Chair of Policy & Resources, the Chief Commoner, and the Chair of the General Purposes Committee of Aldermen). Since that time, the Panel have met on several occasions, focusing primarily on the production of a revised Complaints Procedure which has been in force since the beginning of February and is formally presented today. Alongside this, the Panel have submitted a letter to the City Corporation asking that consideration now also be given to a number of ancillary matters that have emerged as they have worked through the process. These include matters such as Panel size and terms of office for Panel Members

Recommendations

Members are asked to:

1. Note the new Complaints Procedure as set out in Appendix One.
2. Note the proposed Terms of Reference for the Panel as set out in Appendix Two.
3. Give consideration to the ancillary matters raised by the Panel in their letter to the City Corporation at Appendix Three and decide how best to proceed on these ahead of making recommendations thereon to the Court of Common Council.
4. Consider how best Common Councillors might be appointed to assist the Panel at the Appeal stage of any complaints by advising on contextual matters and make recommendations thereon to the Court of Common Council.

Main Report

Background

Creation of an Independent Panel

1. Lord Lisvane's recommendations pertaining to Standards included a recommendation "*that the Corporation should set up an Independent Panel composed only of independent persons, and charge that Panel with:*
 - *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;*
 - *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."*

Process

2. The Court of Common Council, at its 14 January 2021 meeting, endorsed this proposal as well as the adoption of Lisvane's recommendations in the form of a three-stage process, to be operated by the Independent Panel:
 - The first stage to be a more informal / conciliatory nature, seeking to resolve swiftly those issues which might be addressed through dispute resolution or a conversation and apology (with external dispute resolution advice to be made available to the Panel as it deems appropriate and a suitable protocol produced for such stage to be produced).
 - The second stage to then be the formal Hearing process, utilising the Independent Panel, as outlined by Lisvane (i.e. determination of investigation and breach and reporting to the Court of Common Council for endorsement).

- The third stage to be the Appeal stage, the Panel for which should also include a minority of Members of the Court of Common Council, to help provide any relevant internal context.

It was decided that the Panel should be supported by the Comptroller & City Solicitor, as the Monitoring Officer, including in respect of the production of rules and procedures as time progresses, with clerking or administrative support also provided by the Town Clerk's department in the usual way.

Composition

3. The Court also agreed with Lisvane's comments in relation to the need for a membership of sufficient size, to ensure that the sub-panels at the hearing and appeal stages could be comprised of entirely different Panel Members, although drawn from the same overall pool and directed that a panel of nine individuals, ought to be secured, utilising staggered terms to provide for both continuity and turnover.

Progress

4. Nine Independent Persons were appointed by the Court of Common Council in Summer 2021. Since this time, the Panel have met on several occasions, supported by the Town Clerk and the Comptroller and City Solicitor as Monitoring Officer, to work up a new, fit for purpose, Complaints Procedure that is presented today ahead of its formal submission to the Court of Common Council. Alongside this process, several matters such as the size of the Panel and Terms of Office for Panel Members have arisen. These are set out within a letter to the Assistant Town Clerk (see Appendix Two) and your views on these matters are now therefore also sought.

Complaints Procedure and Independent Panel Terms of Reference

The Members' Code of Conduct Complaints Procedure now in operation is presented attached at Appendix One, alongside the proposed Terms of Reference for the Panel of Independent Persons (Appendix Two). The Terms of Reference stipulate that the Panel will commit to the publication of an Annual Report – it is proposed that this be produced at the end of each municipal year beginning in 2023 and its purpose will be to summarise the number and type of complaints heard in that period. We can report that, to date, the Panel have held two Assessment Sub-Panel meetings, each of these considering two separate complaints (so four complaints in total) and that the first Hearing Sub-Panel meeting is scheduled for mid-May.

The Panel have already elected their Chair for the ensuing year – Amanda Orchard, and their Deputy Chair Gary Rogers.

Ancillary Matters

As the Panel have worked through the process of producing a new Complaints Procedure, a number of issues have arisen, it was therefore considered opportune to ask Members to now consider these alongside the new Procedure which helps to contextualise these. These matters are detailed in a letter from

the Panel to the City Corporation (attached at Appendix Three) and your views on each of these are now sought.

Panel Size

Given that the Panel are proposing a three-tier process for dealing with complaints, as advised by Lord Lisvane and supported by the Court of Common Council, they are of the view that the size of the Panel should be increased from nine to twelve in total. The reasoning behind this is explained in more detail within their letter to the Town Clerk at Appendix Three. However, to summarise, the Complaints Procedure stipulates that no Independent Person may sit on more than one sub-panel in relation to the same complaint and, essentially, a larger Panel is therefore felt necessary in order to allow for illness or other non-availability of a panel member or for instances where a panel member may need to recuse themselves for any other reason. A Subject Member is also entitled to consult with one of the Independent Persons, taking the total required on the Panel to at least ten. ***Should Members be supportive of this proposal, a recommendation thereon would need to be put to the Court of Common Council with the Town Clerk instructed to re-constitute the Independent Persons Appointment Panel (consisting of the Chair of Policy & Resources, the Chief Commoner, and the Chair of the General Purposes Committee of Aldermen) to progress a further round of recruitment to appoint additional Panel Members. The Panel ask that consideration also be given to one of their number joining the Appointment Panel on this occasion so that they might feed into the advertisement and recruitment process, helping to identify any current gaps in terms of skills sets.***

Panel Terms of Office

Given that a large part of their first year in office has been dedicated to working up a new Complaints Procedure and that their first experience of considering complaints under this new procedure only came in February 2022, the Panel are requesting that terms of Office for the nine Independent Persons already in post be extended by one year to allow them to begin to oversee the operation of this and have adequate time to reflect upon and share any lessons learned. Thereafter, it is recognised that Panel members will be appointed on staggered terms and with a fixed term of office of two years, renewable twice, as approved by the Court and in order to ensure a regular turnover of Panel membership. ***Members views are now also sought on this proposal so that a recommendation thereon may be presented to the Court of Common Council.***

Panel Member Training

The Panel noted that the Lisvane Report recommended that Members appointed to a Committee should, as a matter of best practice, undertake certain professional training in diversity. The recommendation was essentially for Members to undertake the same mandatory learning as Officers.

The Panel have indicated that they would also welcome the opportunity to support the Corporation in role modelling best practice in respect of undertaking professional training in matters such as diversity. In keeping with the spirit of the Lisvane Report, the Panel consider it would therefore be appropriate for all Independent Persons to at least have the opportunity to undertake such training and for this to be periodically refreshed.

It is hoped that Members will be supportive of this request and that the necessary arrangements for such training can be actioned by the Town Clerk in consultation with Corporate HR thereafter.

Former Panel Members as Consultees

Whilst not an immediate priority, the Panel are of the view that it may, in due course, be advisable to have a secondary “panel” of former Independent Persons who would be available for consultation by the subject Member of any complaint as to the working, procedures and processes of the panel. ***We are hopeful that Members will be supportive of the introduction of this process and agree that this would be valuable so that a system whereby those standing down from the Panel may still be called upon for this purpose.***

Appeal Procedure

When initially considering the Lord Lisvane recommendations pertaining to Standards, the Court directed that the Panel for Appeal should also include ‘a minority of Members of the Court of Common Council, to help provide any relevant internal context’. However, no further direction was provided as to how many elected Members should be called upon and how they were to be selected for this purpose.

You will note that paragraph 6 of the new Complaints Procedure recognises the need for the Appeal Panel to be assisted by an elected member, appointed by the Town Clerk, to advise on contextual matters. ***However, further consideration should now be given by Members as to how they wish to operate a process for the appointment of Members to the Appeal stage of any complaint.*** One option would be to delegate the appointment of Members to the Town Clerk, in consultation with the Chair of the Independent Panel, another would be for the Court to elect a body of Members for this purpose annually and for a number of these to be selected by rota whenever an Appeal arises.

Again, any recommendation on this matter will need to be put to the Court of Common Council for formal adoption.

Conclusion

Members are asked to note the new Members’ Code of Conduct Complaints Procedure now in operation as set out in Appendix One and the Panel’s Terms of Reference. They are also requested to now provide some direction as to the

appointment of Common Councillors to the Appeals Procedure as well as a number of other ancillary matters raised by the Panel as set out in Appendix Three and discussed further within this report. The Policy and Resources Committee is asked to make any recommendations thereon to the Court of Common Council.

Appendices

- Appendix 1: Members' Code of Conduct – Complaints Procedure
- Appendix 2: Panel of Independent Persons – Terms of Reference
- Appendix 3: Letter from Panel of Independent Persons

Contact

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