

Report – Civic Affairs Sub-Committee of the Policy and Resources Committee

Members' Code of Conduct – Complaints Procedure and ancillary matters from the Panel of Independent Persons

To be presented on Thursday 13th October 2022

To the Right Honourable the Lord Mayor, Aldermen and Commons of the City of London in Common Council assembled.

SUMMARY

Following the submission of Lord Lisvane's Review of the City Corporation's Governance in September 2020, a resolution of this Honorable Court (dated 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. In doing so, the Court authorised the Town Clerk to take such actions as were required to give effect to the decisions taken and facilitate their implementation.

Nine Members of a new Independent Panel were appointed by this Court in Summer 2021 on the recommendation of the Independent Persons Appointment Panel (consisting of the then Chair of Policy & Resources, the then Chief Commoner, and the then Chair of the General Purposes Committee of Aldermen). Since that time, the Panel of Independent Persons have met on numerous occasions, focusing initially on the production of a revised Complaints Procedure which has been in force since the beginning of February 2022 and with a revised version now being formally presented for your information today.

At its meeting on 5 May 2022, your Policy and Resources Committee considered a report updating Members on the implementation of the Members' Code of Conduct – Complaints Procedure and also asking them to consider a number of ancillary matters that had been raised by the Panel of Independent Persons. During consideration of the item, a number of concerns were raised by Members that there appeared to be no informal resolution aspect more explicitly set out within the Complaints Procedure which had been the express wish of this Court from the outset. Your Policy and Resources Committee resolved to refer the matter to its Civic Affairs Sub-Committee for more in-depth consideration.

The Civic Affairs Sub-Committee subsequently considered the Members' Code of Conduct – Complaints Procedure at its meetings on 5 May and 18 July 2022 respectively. On the instruction of the Sub-Committee, its Chair and the Comptroller and City Solicitor met with the Chair of the Panel of Independent Persons to bottom out an approach whereby more explicit reference to informal resolution would be included within

the Procedure. It was also agreed that the Complaints Form should be amended such that a complainant was able to indicate whether they would be willing to consider informal resolution from the outset. If complainants were open to this, the documentation would make clear that this avenue was to be exhausted before the complaint proceeded to the Assessment Panel stage.

This report now presents to the Court the updated version of the Complaints Procedure which has been in operation since August 2022. Furthermore, it asks that the Court now reflect upon the way in which it would like to see elected members appointed to advise the Panel on contextual matters at Appeal stage as well as a number of ancillary matters raised by the Panel of Independent Persons as they have created and navigated this new system.

RECOMMENDATIONS

That this Honourable Court:

- **Note** the revised Members' Code of Conduct – Complaints Procedure and Complaints Form which now includes more explicit reference to the informal resolution of complaints and is therefore more in keeping with their original instructions;
- **Note** the proposed Terms of Reference of the Panel of Independent Persons;
- Formalise and **approve** the process by which an elected Member is appointed to the Appeal Stage of any complaint to advise the Appeal Sub-Panel on any contextual matters;
- **Determine** the response to the ancillary matters raised by the Panel (as detailed in paragraphs 5-13 of this report) and pertaining to Panel size, terms of office of existing Panel members, Panel member training and former Panel members as consultees.

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. The latest version of that is presented today for your information.

Complaints Procedure and Independent Panel Terms of Reference

The latest version of the Members' Code of Conduct Complaints Procedure has been in operation since August 2022 and is presented 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 civic year beginning in 2023 and its purpose will be to summarise the number and type of complaints heard in that period.

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

Ancillary Matters

5. As the Panel have worked through the process of producing a new Complaints Procedure, a number of issues have arisen. It is therefore considered opportune to ask this Honorable Court to consider these alongside noting the new Procedure which helps to contextualise them. These matters are as follows:

Panel Size

6. Given that the Panel are operating a three-tier process for dealing with complaints, as advised by Lord Lisvane and supported by this Court, they are of the view that the size of the Panel should be increased from nine to twelve in total. The Complaints Procedure stipulates that no Independent Person may sit on more than one sub-panel in relation to the same complaint and 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. In addition to this, one Independent Person may be required to consult with the subject member of a complaint, which then takes them out of the available pool for dealing with this same complaint in any capacity.
7. ***It is therefore now proposed that the Court of Common Council instruct the Town Clerk 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 three additional Panel Members, bringing the number to twelve in total. It is also proposed that a Member of the Panel of Independent Persons join 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

8. 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 have requested 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 to allow them to 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.
9. ***It is therefore proposed that the Court of Common Council approve the terms of office for the nine Independent Person already in post be extended by one year.***

Panel Member Training

10. 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.

11. ***It is proposed that the Court of Common Council endorses the professional training detailed as best practice and requests that the necessary arrangements for such training be actioned by the Town Clerk, in consultation with Corporate HR thereafter.***

Former Panel Members as Consultees

12. The Panel were 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.
13. ***It is therefore proposed that the Court of Common Council endorse the introduction of the process of a secondary “panel” of former Independent Persons 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 – appointment of an elected Member

14. When initially considering the Lord Lisvane recommendations pertaining to Standards, the Court directed that the Independent 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. Paragraph 7 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.
15. Having recently held the first Appeal under the new procedure, there was a need to urgently clarify this arrangement and, as such, the Civic Affairs Sub-Committee considered that the appointment should be delegated to the Town Clerk in consultation with the Chair of the Panel of Independent Persons, the Chief Commoner and the Chair of the Civic Affairs Sub-Committee. The temporary solution approved by Civic Affairs has been incorporated into the new Complaints Procedure at paragraph 7. It is now, however, opportune to bring this matter back to the full Court and to ask that this arrangement is formally approved by them.
16. ***It is proposed that Common Council agrees to formalise the appointment of an elected member at Appeal stage by delegating the appointment to the Town Clerk, in consultation with the Chair of the Independent Panel, the Chief Commoner and the Chair of the Civic Affairs Sub-Committee.***

Conclusion

Members are asked to note the revised Members’ Code of Conduct Complaints Procedure that has been updated to include more explicit reference to the informal resolution of complaints and has been approved by the Panel of Independent Persons and operational since August 2022. The Terms of Reference of the Panel of Independent Persons are also presented here for information. Further to this, the

Court is now also asked to reflect upon the way in which it would like to see elected members appointed to advise the Panel on contextual matters at Appeal stage as well as a number of ancillary matters raised by the Panel of Independent Persons.

- Appendix 1: Members' Code of Conduct – Complaints Procedure and Complaint Form
- Appendix 2: Panel of Independent Persons – Terms of Reference

All of which we submit to the judgement of this Honourable Court.

DATED this 26th Day of September 2022

SIGNED on behalf of the Sub-Committee.

Deputy Edward Lord
Chair, Civic Affairs Sub-Committee