APPENDIX 4

AN INDEPENDENT REVIEW BY LEADING COUNSEL OF THE ARRANGEMENTS MADE UNDER THE LOCALISM ACT 2011 BY THE CITY OF LONDON CORPORATION FOR ADDRESSING MATTERS CONNECTED WITH THE CONDUCT OF MEMBERS AND CO-OPTED MEMBERS

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1. Introduction and terms of reference

1. I have been instructed by the Comptroller and City Solicitor on behalf of the City of London Corporation ("the City") to carry out an independent broadly-based review of its current arrangements for addressing matters connected with the conduct of its members and co-opted members, with particular focus on the complaints procedure applicable to alleged breaches of the members' Code of Conduct.

2. The City is the municipal governing body of the City of London. It is divided into 25 wards and 125 members are elected to represent them. Each ward elects one Alderman, thus 25 in total who serve on the Court of Aldermen, and two or more Common Councilmen, depending on its population, there being 100 members of the Court of Common Council. The Court of Common Council ("the Court"), described as the City of London's primary decision-making body, works through committees upon which Aldermen also sit. The Court of Aldermen is chaired by the Lord Mayor of London.

3. Local government legislation often provides for the City to be treated as a London borough and for the Common Council to act as a local authority. In this way the Common Council has been made subject to the relevant sections of the Localism Act 2011 dealing with matters of standards and conduct[1].

4. In pursuance of the 2011 Act the City adopted the current version of its Code of Conduct which came into force on 1 January 2015 ("the Code").

5. In 2015 the City's Standards Committee ("the SC") received what would be the first complaint to progress beyond the initial assessment stage ("the 2015 complaint"). Findings were made at a hearing, some of which were upheld on appeal. Details of these proceedings were contained in the Standards

[1] The relevant provisions apply to the City in its capacity as a local authority and a police authority. However, for consistency, it chooses to apply its conduct and standards arrangements to Members in respect of all of its functions.

Committee's annual report to the Court on 23 June 2016. The contents of the report caused dissatisfaction among the Court, which referred the report back to the Standards Committee. Concern was also expressed about the procedures used to handle the complaint.

6. This was a trigger for the resolution to commission this independent review. Although my terms of reference do not include a review of the 2015 complaint as such, it is hoped that lessons may be learned from the handling of it.

7. My terms of reference are therefore as stated in paragraph 1 above. In particular I have considered what if any improvements might be made to (1) the Code and related documents, (2) the allocation of conduct matters to, and the constitution of, the Standards Committee and (3) the procedures for dealing with allegations of breaches of the Code.

2. Basis of the review

8. In carrying out this review I have applied the relevant law as I understand it.

9. In assessing best practice I have drawn on my experience as a Barrister and as a Judge. I was called to the Bar in 1991 and became Queen's Counsel in 2014. My practice has encompassed a number of areas, notably public law including local authority law. I have thereby had experience of advising authorities, officers and members in cases concerning local authority governance, conduct and standards. I have gained other relevant experience by practising in the fields of professional regulation and discipline and employment law. As well as specialising in the legal requirements for decision-making by bodies, committees, courts, tribunals and individuals, I have also acquired considerable experience as a user of such decision-making bodies. I have also acted as a decision maker. For some years I sat on the internal disciplinary tribunals of the Bar. Since 2009 as a Recorder I have sat as a Judge in the Crown Court. I have recently been appointed as a Deputy High Court Judge. I am also a Mediator accredited by CEDR.

10. By way of further research I have reminded myself of the conduct and standards arrangements of other local authorities and have considered two reports by the Committee on Standards in Public Life ("CSPL") namely *Standards Matter: a review of best practice in promoting good behaviour in public life* (2013, "the 2013 report") and *Striking the Balance: upholding the seven principles of public life in regulation* (2016, "the 2016 report"). I have also read a House of Commons briefing paper by Mark Sandford (a Senior Research Analyst at the House of Commons Library), *Local government standards in England* (27 June 2016).

11. In order to glean relevant factual information:

(1) I have been shown the documents listed in Appendix 1 to this report.

(2) On 5 September 2016 I had introductory meetings with the Town Clerk, and with the Comptroller and City Solicitor and other officers.

(3) I asked for all members to be told that they could share any views with me orally or in writing and a number have done so. Those representations are listed in Appendix 2 to this report. They were shared with the Standards Committee but I have not received any responses from the Standards Committee (or anyone else) to those representations.

(4) I met with the Chairman and Deputy Chairman of the Standards Committee on 15 September 2016 and attended part of a meeting of that Committee on 7 October 2016.

(5) I met with the Chief Commoner on 31 October 2016.

(6) On 7 November 2016 I attended the Court of Common Council in order to tell members about the review process, share with them any provisional views which I had formed by that time and glean from them any further information or views to which they wished me to have regard. Following that meeting I reconsidered the entire matter afresh.

12. In considering matters of fact, I have proceeded with caution. Some facts are a matter of record e.g. the procedures adopted by the hearing and appeal committees when dealing with the 2015 complaint. But where the facts are subject to opinion or are matters of individual recollection, I have kept an open mind about them. I regard it as relevant that members hold the various views which have been expressed, whether or not those views are well founded. The purpose of this report is to make recommendations for best practice going forwards, not to make findings of fact about past events.

13. The opinions expressed in this report are my own. I have not adopted the opinion of any other individual on any matter. I have therefore not found it necessary to attribute particular views to particular individuals, with the sole exception of the Chief Commoner who can be expected to have a unique insight into his own role.

3. The legislation

14. Section 27 of the Localism Act 2011 provides:

> **(1) A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority.**
>
> **(2) In discharging its duty under subsection (1), a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.**
> ...
>
> **(4) In this Chapter "co-opted member", in relation to a relevant authority, means a person who is not a member of the authority but who—**
> **(a) is a member of any committee or sub-committee of the authority, or**
> **(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,**
> **and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.**
> ...
>
> **(6) In this Chapter "relevant authority" means—**
> ...
> **(h) the Common Council of the City of London in its capacity as a local authority or police authority,**

...

15. Section 27 was part of a re-organisation of the statutory standards regime. It abolished the framework established under the Local Government Act 2000, replacing the Standards Board regime which Government described as having become:

> **" ... a system of nuisance complaints and petty, sometimes malicious, allegations of councillor misconduct that sapped public confidence in local democracy."**

16. The Act also abolished the mandatory requirement on local authorities to have standards committees, which are now optional, and the powers of the First Tier Tribunal to hear cases relating to local government standards in England. The original bill had removed entirely the requirement for councils to maintain a code of conduct but this was reinstated by amendment in the House of Lords.

17. The 2011 Act also introduced a new criminal offence of failing to declare or register a pecuniary interest (s.34) and made special provision in relation to allegations of predetermination or bias against local decision-makers (s.25).

18. Section 28 of the Localism Act requires that an authority's code of conduct, viewed as a whole, is consistent with the "Nolan" principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It must also include appropriate provision for registration and disclosure of pecuniary and non-pecuniary interests.

19. The section makes provision about how an authority must deal with written allegations of a breach of the code of conduct. Before the changes the Local Government Act 2000 required local authorities to have standards committees chaired by an independent person. Under section 28 the requirement is now for "arrangements". The definition of these is left open but they must include the appointment of at least one "independent person" ("IP"):

> **(4) A failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with arrangements made under subsection (6); in particular, a decision is not invalidated just because something**

that occurred in the process of making the decision involved a failure to comply with the code.

...

(6) A relevant authority ... must have in place—
(a) arrangements under which allegations can be investigated, and
(b) arrangements under which decisions on allegations can be made.

(7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—
(a) 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, and
(b) whose views may be sought—
(i) by the authority in relation to an allegation in circumstances not within paragraph (a), [and]
(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation ...

(8) For the purposes of subsection (7)—
(a) a person is not independent if the person is—
(i) a member, co-opted member or officer of the authority,
... or
(iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);

20. A person also may not be appointed as IP if at any time during the 5 years ending with the appointment the person was a member, co-opted member or officer of the authority. An IP must be appointed by application following a public advertisement and the appointment must be approved by a majority of members. The IP may be paid allowances or expenses.

21. Before an IP is appointed the authority must advertise the vacancy, the person must apply and the appointment must be approved by a majority of members.

22. To summarise, the views of the IP must be (1) sought and (2) taken into account before the authority makes its decision on an allegation that it has decided to investigate. The authority may also seek the IP's views in relation to an allegation in any other circumstances. That could mean when deciding whether to investigate an allegation, or in an appeal process.

23. The IP's views also may be sought by the member who is the subject of an allegation.

24. Section 28 further provides:

> **(11) If a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements put in place under subsection (6)) it may have regard to the failure in deciding—**
> **(a) whether to take action in relation to the member or co-opted member, and**
> **(b) what action to take.**

25. The Localism Act does not state what sanctions may be imposed on a member who is in breach of the code of conduct. It should be noted that there is no power to disqualify or suspend a member (though the new criminal offence of failure to disclose a pecuniary interest may lead to disqualification). In *Heesom v The Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) at [28] the High Court stated that sanctions are "limited to (for example) a formal finding of a breach, formal censure, press or other appropriate publicity and removal by the authority from executive and committee roles (and then subject to statutory and constitutional requirements)".[2]

26. The CSPL in its 2013 report noted the limited scope of possible sanctions and emphasized the importance of authorities taking steps to promote high standards before any allegations arise e.g. by way of training and induction.

4. The City's present arrangements

27. The Court has so far chosen to retain a Standards Committee ("the SC"). Its constitution, attached as appendix 3, describes it in these terms:

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[2] The 2011 Act has more teeth in relation to the registration of interests. A member or co-opted member of a relevant authority must, within 28 days of taking office, notify the authority's monitoring officer of any disclosable pecuniary interests (s.30). A member may not, in general, participate in any discussion or vote in which he has a pecuniary interest (s.31) (although dispensation to participate may be granted in certain limited circumstances (s.33)). Disclosable pecuniary interests are listed under schedule 2 of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. 19. It is a criminal offence if a member or co-opted member, without reasonable excuse, fails to comply with these requirements (s.34). The offences are punishable by a fine of up to level 5 (currently £5,000) and an order disqualifying the person from being, or becoming, a member or co-opted member of a relevant local authority for up to five years.

A Non-Ward Committee consisting of,

- One Alderman appointed by the Court of Aldermen
- Seven Commoners elected by the Court of Common Council, at least one of whom shall have fewer than five years' service on the Court at the time of their appointment
- Four representatives (with no voting rights) who must not be Members of the Court of Common Council or employees of the City of London Corporation

None of the appointed shall serve on the Committee for more than eight years.

N.B. Three independent persons are also appointed pursuant to the Localism Act 2011.

28. The SC's quorum is three members, at least one of whom must be a co-opted member.

29. The SC by its Terms of Reference is to be responsible for:

(i) Promoting and maintaining high standards of conduct by Members and Co-opted Members of the City of London Corporation and to assist Members and Co-opted Members to observe the City of London Corporation's Code of Conduct;

(ii) Preparing, keeping under review and monitoring the City of London Corporation's Member Code of Conduct and making recommendations to the Court of Common Council in respect of the adoption or revision, as appropriate, of such Code of Conduct;

(iii) Keeping under review by way of an annual update by the Director of HR, the City of London Corporation's Employee Code of Conduct;

(iv) keeping under review and monitoring the Protocol on Member/Officer Relations;

(v) advising and training Members and Co-opted Members on matters relating to the City of London Corporation's Code of Conduct;

(vi) dealing with any allegations of breach of the City of London Corporation's Code of Conduct in respect of Members and Co-opted Members, and in particular:

  (i) To determine whether any allegation should be investigated by or on behalf of the Town Clerk or the Monitoring Officer and their findings reported to the Committee;

  (ii) In relation to any allegation that it has decided to investigate, to determine whether there has been a breach of the Code of Conduct, taking into account the views of an Independent Person appointed under the Localism Act 2011;

  (iii) Where there has been a breach of the Code of Conduct, to determine the appropriate sanction, and where this involves removal of a Member or Co-opted Member from any committee or sub-committee, to make an appropriate recommendation to the relevant appointing body;

  (iv) To determine any appeal from a Member or Co-opted Member in relation to a finding that they have breached the Code of Conduct and/or in relation to the sanction imposed; and

(vii) **Monitoring all complaints referred to it and to prepare an annual report on its activity for submission to the Court of Common Council.**

30. The Code, attached as appendix 4:

(1) requires members to have regard to the Seven Principles of Public Life[3];

(2) recites these with commentary based on "illustrative text" suggested by the DCLG;

(3) lists ways (lettered from a to m) in which these are to be addressed, in terms suggested by the Local Government Association; and

(4) sets out the rules on registering and declaring pecuniary and non-pecuniary interests.

31. There is also a document entitled *Guidance to Members – Members' Code of Conduct*, attached as appendix 5. It is notable that this is concerned only with declaration of interests, gifts and hospitality.

32. A further document entitled *How complaints submitted to the City of London Corporation's Standards Committee will be dealt with* is attached as appendix 6. It includes 10 pages of guidance plus a template complaint form. The document recites the outline legal requirements for dealing with written allegations of a breach of the Code. It then states the following:

(1) When a complaint is received it will be passed to the Assessment Sub-Committee for consideration. If at any time it appears that a criminal offence may have been committed then the relevant allegation will be referred to the police.

(2) If a concern is raised orally with the Monitoring Officer, he/she should ask the complainant whether they want to put the matter formally in writing to the SC and, if the answer is no, should consider options for informal resolution such as a meeting with the Chief Commoner or

[3] Also known as the Nolan Principles, these were stated in 1995 in the first report of the CSPL. They are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

Privileges Chairman. But these informal processes should stop if at any time a matter is referred to the SC.

(3) The Monitoring Officer will normally tell the subject member about the complaint but in exceptional circumstances, after consultation with the Chairman of the SC, has a discretion to defer notification to enable investigation.

(4) The different stages of the complaints process are dealt with by three sub-committees of the SC namely the Assessment, Hearing and Appeal Sub-Committees. Membership of these is determined case by case but each will normally consist of four members of the SC including three elected City members and one co-opted member. In any one case the same members will normally sit on the Assessment and Hearing Sub-Committees but different members will sit on the Appeal Sub-Committee.

(5) The Assessment Sub-Committee may (but need not) obtain a summary or report from the Monitoring Officer or another officer. It will conduct an initial assessment and then (i) refer the complaint to the Monitoring Officer for formal investigation, (ii) direct the Monitoring Officer (having sought his/her advice) to arrange training, conciliation or other appropriate steps or (iii) decide to take no further action.

(6) The complaint must fail at this stage unless (i) it is against a named Member, (ii) the Member was in office and the Code was in force at the time of the alleged conduct and (iii) the complaint if proved would be a breach of the Code applicable at the time of the alleged conduct.

(7) The currently applicable assessment criteria (which may be changed by the SC) are:

i. Has the complainant submitted enough information to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation?

ii. Has the complaint already been the subject of an investigation or other action relating to the code of conduct? Similarly, has the

complaint been the subject of an investigation by other regulatory authorities?

iii. Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

iv. Is the complaint too trivial to warrant further action?

v. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

(8) Initial assessment will normally be completed within "an average of 30 working days".

(9) If there is to be an investigation, the Monitoring Officer may conduct this or determine that someone else will do so. Most investigations will be completed and a report provided within 6 months of assessment. In the report the investigator will "conclude whether or not there had been a failure to observe the code of conduct".

(10) Any hearing will normally be held within 3 months of receipt of the report. It will hear and determine the allegation and find (i) that there has been no failure to comply with the Code or (ii) that there has been a failure to comply but no action is needed or (iii) that there has been a failure to comply and a sanction should be imposed.

(11) The available sanctions are censure, withdrawal of Corporation hospitality for an appropriate period and removal from one or more committees or sub-committees. The sanction may be affected by the member's willingness to apologise, attend training and/or participate in conciliation.

(12) The member may appeal against finding and/or sanction, in writing within 20 working days of being informed of the decision of the Hearing Sub-Committee.

(13) The Appeal Sub-Committee, usually "within an average of 30 working days" will review the decision and decide whether to substitute an alternative decision.

(14) Meetings of these Sub-Committees are subject to the same provisions regarding public access to information as any other City committee.

Decisions will be set out, with reasons, in a written summary which is sent to the parties and, after being sent to the subject member, made available to the public at the City's offices for 6 years.

33. When considering the 2015 complaint, the Hearing Sub-Committee set out its proposed procedure in writing. This is attached as appendix 7. In particular:

(1) It proposed to sit in public session, then determining whether to move into private under the provisions of schedule 12A to the Local Government Act 1972.

(2) The parties were invited to be present throughout and could be accompanied but would answer questions personally.

(3) The Monitoring Officer in a neutral capacity would present his report. Each party could then make a short opening statement. The Chairman would then call witnesses, with the subject member going last. Statements would be taken as read, followed by questions from the committee. Questions from the parties or the Monitoring Officer would be passed to and put by the Chairman. The parties could then make short closing statements, the subject member going last.

(4) In the event of a decision of a breach, the Sub-Committee "may invite" representations on sanction.

(5) A decision would be confirmed in writing within 5 working days and published, with full reasons published at the Sub-Committee's discretion.

(6) The Sub-Committee would have a discretion to vary the procedure as appropriate "to dispose of the matter in a fair and efficient manner".

34. When considering the 2015 complaint the Appeal Sub-Committee also set out its proposed procedure in writing. This is attached as appendix 8. In particular:

(1) It would consider whether to consider the appeal in public, having regard to the fact that the Hearing Sub-Committee had largely proceeded in public.

(2) Documents would be dealt with in the same way as other Committee documents.

(3) A short introductory report by the Town Clerk would be circulated at least 5 clear working days before the meeting.

(4) The Sub-Committee would consider the appeal on the papers and not call witnesses, subject to its discretion under Standing Orders to request or permit attendance. It would decide whether there had been a breach of the Code and, if so, whether the sanctions should be those imposed by the Hearing Sub-Committee, substituting its own decision as necessary.

(5) A decision would be confirmed in writing within 5 working days and published, with full reasons published at the Sub-Committee's discretion, having regard to whether the matter had been considered as a public or non-public item.

(6) The Sub-Committee would have the same discretion to vary the procedure as the Hearing Sub-Committee.

35. I have also been shown the Protocol on Member/Officer Relations, attached as appendix 9. It recites key principles including the need for mutual trust, respect and an understanding of respective roles and responsibilities, the requirement for Members and Committee Chairmen not to do anything which does or may compromise the impartiality of officers and the need to avoid situations which could give an appearance of improper conduct. The Protocol explains the respective roles of Members and Officers and the expectations that each have of the other. A section entitled "Limitations on Behaviour" states that personal relationships between Members and Officers can be problematic, "not least in creating the perception in others that a particular Member of Officer may secure advantageous treatment". Under "Dispute Procedures" the Protocol explains that a complaint by a Member against an Officer will go through a Chief Officer or Town Clerk and may go to the Corporation's Disciplinary Procedure, and that an Officer who is dissatisfied with a Member may raise the matter with the appropriate Chief Officer or the Town Clerk.

36. In terms of structure, the Protocol states that responsibility for upholding it:

> **... rests with the Chief Commoner and, when necessary, the Standards Committee in relation to Members, and with the Town Clerk in relation to Officers".**

37. One Member asked me to clarify the relationship between the Protocol and the Code. As the Protocol states at paragraph 1(2), it is not part of the Code but should be viewed in conjunction with it. The Protocol is a guide to the way in which the Court has decided that Members and Officers should work together. If a problem is caused by a Member departing from the Protocol, the primary responsibility for correcting this is given to the Chief Commoner. Responsibility is also given to the SC "where necessary", which in my view is a reference to cases where there may have been a breach of the Code, and this may require revision if initial assessment of Code complaints becomes the responsibility of the Monitoring Officer rather than the SC (see paragraphs 83-87 below).

38. An Officer who is dissatisfied with a Member's conduct or behaviour in relation to the Protocol should use the Dispute Procedure as per paragraph 35 above. In my view, having regard to paragraph 1(3), the Chief Officer or Town Clerk in such a case should raise the matter with the Chief Commoner if it does not appear to involve a possible breach of the Code, but should raise it with the Standards Committee (or the Monitoring Officer, if he takes over the initial assessment of Code complaints) if it does.

39. If a Member's conduct is thought to be in breach of the Code, this should effectively take precedence over the Protocol. To give a practical example, a Member might exceed his or her role by asking an Officer to prepare a report when such a request ought to come from a committee Chairman. This would be a breach of paragraph 9(1) of the Protocol, who ought to raise it with a Chief Officer or the Town Clerk, who in turn could speak to the Member or ask the Chief Commoner to do so, but on the face of it this would probably not breach the Code. But if the Member were to be abusive or threatening to the Officer, that would appear to be a breach of paragraph 2j of the Code and a complaint

ought to proceed under the Code arrangements, regardless of the fact that the behaviour also infringes paragraph 5(2)(d) of the Protocol.

40. At this point it is necessary to say more about the functions of the Chief Commoner. The Chief Commoner is elected by the Court for a single non-renewable term of one year. Typically this will be a Member who has made a distinguished contribution to the City over a period of years. A job description published by the City defines the overall responsibilities of the office:

> **• The foremost representative of the Commoners in the Court of Common Council with regards to their rights, requirements and privileges, responsible for championing the interests of Common Councilmen on such matters.**
> **• Chairmanship of Sub Committees and Working Parties responsible for the provision of City Corporation hospitality and consideration of the Commoners' privileges and related issues.**

A list of the Chief Commoner's main tasks and responsibilities includes:

> **• To counsel Common Councilmen, as required, with a view to resolving minor problems and in relation to their rights, requirements and privileges.**

41. The pastoral aspect of this role can involve what could be described as a disciplinary element. It has been emphasized to me that a difference between the City and other local authorities is that Members are not organised into party political groupings. In authorities where such groupings exist, a party whip may take responsibility for informal disciplinary matters. In the City the nearest analogue is the Chief Commoner.

42. What does this involve in practice? I have been greatly assisted by discussion with the present incumbent, Michael Welbank MBE. He described the relevant part of his role in these terms:

> **to be available to give advice, listen to concerns, give guidance, provide a shoulder to cry on, issue reproofs, – a role in part taken by a whip in a party political assembly.**

43. Mr Welbank made it clear that the Chief Commoner does not deal with complaints of a breach of the Code, describing his role as "below the complaint radar". He would use his judgment to decide whether anything mentioned to

him could involve a breach of the Code, and would "*remit anything with a hint of breach of the Code to the Standards Committee*".

44. I am instructed that in relation to Aldermen a comparable role to that of the Chief Commoner is played by the Chairman of the Privileges Committee of the Court of Aldermen ("the Privileges Chairman").

45. I have considered the relationship between this pastoral/disciplinary role and the City's arrangements for dealing with conduct and standards. The essential point is that they are different. When there is a written allegation of a breach of the Code, the conduct arrangements take effect (and a person who makes an oral allegation of that kind should be advised to put it in writing). In those circumstances the Chief Commoner and the Privileges Chairman play no part, unless at assessment stage the case is judged suitable for informal resolution and one of them is asked and agrees to assist.

46. Conversely, when the Chief Commoner or the Privileges Chairman discharges his role as described above, he is not enforcing the Code. If he receives an allegation of a breach of the Code he should refer the matter to be dealt with under the conduct arrangements described above, as I have said. But if a matter is within his competence and does not engage the Code e.g. in a mundane case where one Member complains that another has offended them in some way, it is for him to deal with the matter if he can.

47. My inquiries have revealed that this distinction is clearly understood by those who presently discharge those roles. It would be appropriate for Members and office-holders to be reminded of it in the course of training from time to time. I return to this subject below in relation to the SC's terms of reference.

48. I have been told about one other arrangement of conceivable relevance. The Guildhall Club is, as I understand it, a Members' Dining Room. It has certain rules such as dress codes. Violation of these or misbehaviour on the premises may result in a Club sanction such as a temporary ban on the use of its

facilities. As described to me, this is a private or internal system and is not strictly relevant to the City's conduct and standards arrangements which I have been asked to review. I have no doubt that if a breach of the Code occurred on Club premises, the City would deal with it under its conduct and standards arrangements and it would be right to do so. For the avoidance of doubt, I do not think that the Standards Committee (or any other body which might assume its functions) need concern itself with the Club's own disciplinary arrangements. But if there were any lack of clarity among Members over the relationship (or lack of it) between Club rules and the Code of Conduct, this could be addressed in training.

5. Discussion

(1) The Code of Conduct

49. I have considered the City's Code and have compared it with some of those used elsewhere. I should also record that nobody has expressed any discontent to me about the specific contents of the Code.

50. In my view the Code, based as it is around text suggested by the DCLG and the LGA, is not unusual and is broadly fit for purpose though in need of some updating. It complies with those provisions of section 28 of the 2011 Act which apply to codes of conduct. The length of the Code and the degree of detail contained in it are sensible.

51. In considering whether the Code can be improved, I have noted the views of the CSPL in the 2016 report (referred to at paragraph 10 above), though bearing in mind that the focus of that report was on regulators rather than local authorities or other public bodies. It identified as good practice that Codes should be[4]:

[4] *Striking the Balance: upholding the seven principles of public life in regulation*, page 33.

• Proportionate, giving enough detail to help guide actions without being so elaborate that people lose sight of the underlying principles;
• Adapted to the needs and context of each organisation;
• Clear about the consequences of not complying with the code, both for the individual and others.
• Framed positively wherever possible;
• Personalised, as active personal commitment can have a big impact on encouraging people to behave in the right way; and
• Reinforced by positive leadership and embedded in the culture of the organisation.

52. 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. This could be part of a wider training topic with updates on equality and diversity. It would be appropriate to require attendance as a condition for serving on committees (which in most cases would be better than trying to enforce attendance by way of a complaint under the Code). The first objective of such training would be to explain why the training itself should be regarded as essential for all those who serve the public. 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. Giving visibility and emphasis to this requirement would bring the City into line with the professions where such requirements are increasingly a matter of course.

53. There are other respects in which I consider the Code could usefully be updated.

54. The first two paragraphs are built around the Nolan principles. In its 2013 report the CSPL adopted revised descriptions of those principles in light of experience and feedback. These are applied e.g. in the 2016 report. In the case of Honesty, for example, the description has changed radically, switching the

focus from conflicts of interest to the need to be truthful. In my view it would improve the Code to adopt the revised descriptions (other than the Preamble although I have quoted this for completeness) which are as follows[5]:

Principle	Revised description
Preamble	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.
Selflessness	Holders of public office should act solely in terms of the public interest.
Integrity	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

[5] See *Standards Matter: a review of best practice in promoting good behaviour in public life*, page 24.

Openness	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
Honesty	Holders of public office should be truthful.
Leadership	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

55. Another recommended update is a reference to equality and diversity. At present paragraph 2h refers to the need to behave in accordance with the Corporation's legal obligations and paragraph 2k refers to the need to treat all people with respect, and the revised description of Objectivity refers to the need to avoid discrimination, but in my view best practice calls for a more clear and explicit requirement for Members to comply with the Equality Act 2010, avoid discrimination and promote equal treatment.

56. By way of example, Birmingham City Council's Code in a paragraph roughly corresponding with the City's paragraph 2k, provides:

> **Respect for others — members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.**
>
> (emphasis added)

57. Birmingham's code also includes a list of "dos and don'ts". Among the nine "don'ts" are:

> **(a) Bring your authority or office into disrepute.**
> ...
> **(d) Discriminate against people on the grounds of race, gender, disability, religion or belief, sexual orientation and age.**
> **(e) Bully, intimidate or attempt to intimidate others.**
> ...

(h) Disclose confidential information, other than in exceptional circumstances – refer to the Monitoring Officer if you are unsure.
(i) Prevent anyone getting information they are entitled to.

58. Item (d) underlines the equality point made above. Other Codes, e.g. in Leicester, also require members to uphold their authorities' obligations relating to the public sector equality duty under section 149 of the Equality Act 2010, although this might be thought an overly technical provision.

59. Items (a), bringing the office into disrepute, and (e) bullying and intimidation, do not expressly appear in the City's Code. Items (h) and (i) regarding confidentiality can be extracted from the City's paragraph 2g but could be given greater prominence. These are among provisions which were contained in the model codes of conduct which Government published from time to time under the Local Government Act 2000 (the last one being contained in the schedule to the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159). They have survived in most of the current Codes which I have looked at.

60. In my view best practice would call for revisions to address these points.

61. I also recommend updating of the Guidance to Members on the Code. Obviously this may have to respond to any revisions to the Code itself. But I would also observe that the Guidance presently focuses almost entirely on questions about interests, gifts and hospitality. The City should consider whether there are more general aspects of conduct which the Guidance can be used to emphasize in the light of experience. Some councils use a list of "dos and don'ts" in their Codes, but such lists are also a potentially helpful illustrative tool to use in guidance.

62. I have not attempted to draft a revised Code or Guidance. It would be for the City to consider how to go about this, having regard to any necessary variations in the wording (e.g. in the descriptions of the Nolan Principles) to

accommodate its particular circumstances, and with or without any internal or external legal or other advice.

(2) The Standards Committee

63. As I have said, authorities were required to have a Standards Committee under the Local Government Act 2000 but this became optional under the Localism Act 2011. Nevertheless, my experience and research suggests that a majority of local authorities have retained their Standards Committees[6].

64. In some authorities more than one function is combined e.g. in an Audit and Standards Committee.

65. Since the determination of the 2015 complaint some Members have expressed dissatisfaction with the SC. It is not my role to determine whether that dissatisfaction is well founded, but it is important for the City to address the existence of the dissatisfaction so as to maintain confidence in its standards and conduct arrangements.

66. I would add that dissatisfaction with the current committee does not, by itself, mean that there should not be a Standards Committee. Whilst conduct and standards could be adopted by one of the other committees (Policy and Resources has been suggested by some), there would in my view be disadvantages to taking this course.

67. First, such a move could create a perception of the City being less committed to its standards and conduct arrangements. To have a committee devoted to these matters demonstrates commitment and is a visible part of embedding standards in the organisation. I cannot quantify the reputational risk arising from giving the contrary perception but it should be kept in mind. So should

[6] A national survey of Monitoring Officers in 2012 suggested two thirds of respondent authorities were keeping their Standards Committees: *Preparing for the new Standards regime in English local government*, Macaulay and others, Teesside University.

any risk of Members themselves perceiving conduct and standards to be insufficiently important to warrant a dedicated committee.

68. Second, if and when dealing with one or more complaints (or other standards and conduct issues) becomes burdensome, it could create a resources issue for another existing committee to have this added to its workload. Any lack of resource in terms of available committee members could in turn contribute to negative perceptions of the kind discussed in the last paragraph.

69. Third, as the history of the 2015 complaint shows, dealing with conduct complaints can be controversial. Dissatisfaction with the Standards Committee is a problem in itself, but to import that dissatisfaction into another existing committee by way of its complaints workload could be an undesired side-effect of the change.

70. The goal should be to get the culture right. On the one hand it is essential for Members to take conduct and standards seriously and, therefore, to accept that breaches of the Code must be dealt with robustly for the good of the City as a whole. On the other hand it is essential for those with an enforcement role to be well informed and to act with judgment and sensitivity, reliably determining the seriousness and the merits of cases when they arise.

71. This Review presents an opportunity to improve the arrangements for dealing with complaints, and this is explored further below. One of my recommendations will be to provide training on complaint handling to all of those responsible for the process. I would hope that an improvement in procedures, together with training which improves the expertise and, just as important, the consistency with which conduct matters are handled, should in time help confidence in the SC to be restored.

72. I will also recommend that the SC should operate fewer stages of the complaint handling process, with appeals decided separately. Again, this is discussed below. The effect would be that the SC will "own" the process in the sense of

having responsibility for it but will administer less of it. This should help to ensure the appearance of impartiality as well as impartiality itself.

73. I note also that most members of the SC are elected by the Court and are therefore accountable and, ultimately, replaceable. The City may wish to consider how long an appointment to the SC should last; the current maximum is 8 years.

74. Having regard to all of these matters, I recommend that the City retain a Standards Committee which will keep abreast of all of the City's activities relating to conduct and standards, including training.

75. The SC's core function should be to keep the Code and related arrangements under review, in respect both of their contents and of their efficacy. This should include having responsibility for and oversight of the arrangements for dealing with complaints of breaches of the Code, but that does not mean that members of the SC should control all parts of the practical process of deciding a complaint of breach.

76. Should the SC's remit include oversight of the informal disciplinary role of the Chief Commoner and the Privileges Chairman? At present its terms of reference include responsibility for promoting and maintaining high standards of conduct and not just the observance of the Code of Conduct. So if the Chief Commoner and the Privileges Chairman become aware, in the course of their work, of more general conduct issues, then it would be proper for these to be made known to the Standards Committee.

77. However, the Chief Commoner and Privileges Chairman play a sensitive and valuable role. In my view there is a need to ensure that Members continue to feel able to approach them. My recommendation is that the Chief Commoner and Privileges Chairman should have a discretion to share with the SC information which may be useful to it. It should be permissible for the SC to ask them, from time to time, whether there is any such information to be

shared. However I do not recommend that the SC have a formal role of monitoring these activities of the Chief Commoner and Privileges Chairman.

78. By way of caveat to the above, it would be most unfortunate if this informal pastoral channel were misused as a means of disposing quietly of non-trivial conduct issues. Whilst quiet disposal might seem convenient in the short term, it could be very damaging to the City's reputation in the longer term. It is to be hoped that there will be such reasonable and sensible exchange of information as will give confidence to the Standards Committee (or any responsible body which replaces it) in the present arrangements.

79. I also recommend that the City should (1) overhaul the complaints arrangements as discussed below and (2) provide training for those dealing with complaints to ensure that they are dealt with expertly and consistently, in addition to the recommendation of some periodic training on conduct and standards for all Members.

(3) Arrangements for dealing with allegations of breaches of the Code

80. It is necessary to consider the following stages in the determination of a complaint of breach of the Code:

(i) Initial assessment
(ii) Informal resolution
(iii) Investigation
(iv) Hearing
(v) Sanction
(vi) Appeal.

81. Under the present arrangements summarised at paragraph 32 above, the SC is responsible for stages (i), (iv), (v) and (vi). As for (iii), the investigation is normally carried out by the Monitoring Officer i.e. the Comptroller and City Solicitor. Stage (ii) does not figure in the present arrangements once a complaint has gone to the SC.

82. For all of the other four stages to be carried out by the SC is unusual in my experience. In the 2015 complaint it seems to me that this contributed to a lessening of confidence in the process overall. Some Members felt – rightly or wrongly – that the SC took too strong a line against the Member in question. Their confidence in each stage of the process was therefore undermined by the fact that the same committee was involved, even though there were separate sub-committees.

(i) Initial assessment

83. A complaint could come from any member of the public, another Member, an Officer, the Chief Commoner or anyone else. Upon receipt it should be assessed and a decision made as to whether it should be investigated. The present process, described at paragraph 32(1)-(8) above, involves a decision by a sub-committee of the SC.

84. So far as I have been able to ascertain, most large local authorities give this assessment function to their Monitoring Officers.

85. There are variations. In Manchester, for example, assessment can "in exceptional circumstances" be referred to a sub-committee of the Standards Committee. In Birmingham assessment is by the Chairman of Standards in consultation with the Monitoring Officer. In Westminster assessment is by the Monitoring Officer but with a right of appeal to the Chief Executive.

86. I recommend that the City should follow the most widespread practice by giving the assessment function to the Monitoring Officer, with a limited discretion to assign the function to another officer where necessary e.g. in a case of conflict of interest.

87. In my view this has the advantage of a separation of powers at an early stage of the process. So if in some future case, assessment by the Monitoring Officer

proved to be subject to some bias or other defect, this could be cured later in the process.

88. What is the nature of the initial assessment? The current criteria are set out at paragraph 32(7) above. These are broadly typical of what is seen in other authorities. To proceed, a complaint must be technically valid (i.e. what it alleges must be a breach of the Code, the respondent must have been a Member at the relevant time etc.) and it may not be proceeded with if it appears in some way vexatious, e.g. because it duplicates a previous complaint or is stale or is a "tit for tat" complaint.

89. In my view this decision will require the relevant person(s) (currently a sub-committee, but in my recommendation the Monitoring Officer) to exercise a discretion on a rational basis. If a complaint is invalid e.g. because what it alleges is not a breach of the Code, the only rational exercise of the discretion would be to dismiss the complaint. But if, taking different examples, the complaint is stale because the relevant matters occurred long ago, or it has a "tit for tat" element in that the complainant has been the subject of a complaint by the respondent, a range of options may be open to the decision-maker. In the case of a stale complaint the decision-maker must decide why the delay has occurred, whether it prejudices the respondent's ability to respond to the complaint and whether it lessens the public interest in having the matter dealt with. In the case of a "tit for tat" complaint, the decision-maker must decide whether it is reasonable to assume that it is not the expression in good faith of a genuine concern, or whether in fact the complaint is genuine and serious despite its "tit for tat" nature.

90. I recommend that an Independent Person take part in this process, at least unless it is obvious that the complaint either should or should not proceed. As I have said, section 28(7)(b) of the Localism Act provides that the IP's views "may be sought" in circumstances other than the final decision on an allegation. I recommend that the City adopt a rule providing that an IP's views will be

sought by the Monitoring Officer unless this is considered unnecessary. This should support Members' confidence in initial assessment decisions.

91. I also recommend that the published arrangements refer to the possibility of the IP's views being sought at this stage by the respondent to an allegation. As I interpret section 28(7)(b)(ii), it gives Members the right to seek the IP's views as soon as there is a written allegation that they have breached the Code. I return to this subject at paragraphs 176-187 below.

92. Finally I recommend that decisions on initial assessment be accompanied by concise written reasons which enable the complainant and the respondent to understand (1) whether any of the grounds for not proceeding are present and if so (2) the reasons for the decision on whether and how to proceed.

(ii) Informal resolution

93. At present the options on assessment are (i) refer the complaint to the Monitoring Officer for formal investigation, (ii) direct the Monitoring Officer (having sought his/her advice) to arrange training, conciliation or other appropriate steps or (iii) decide to take no further action. This section of my report concerns option (ii).

94. I am not sure that it is necessary to change the way in which this option is described in the City's published arrangements. The nature of informal resolution may vary infinitely according to the facts of a complaint. Some complaints may be appropriately resolved by an apology or a handshake. Others may call for training or some other practical solution.

95. The other possibility mentioned in the arrangements is conciliation. I have considered whether the City should formulate a written procedure for conciliation which can be used where appropriate but I have come to the conclusion that this is unnecessary. It should be for the skill and judgment of the Monitoring Officer, assisted where appropriate by the views of the parties

and/or by input from the Member(s) concerned, or officers, or other individuals of influence in the City, to decide how two parties can be helped to resolve their differences.

96. One obvious possibility is to ask the Chief Commoner (or the Privileges Chairman) to help parties in this way. In my view it would not be constructive to try to write rules for such a process. An attempt to formalise the pastoral role of the Chief Commoner could jeopardise that role which presently depends on personal confidence and respect rather than formal rules.

97. The Chief Commoner and the Privileges Chairman are not the only individuals who could assist in conciliation. Committee Chairs and senior Officers or former office-holders could also be appropriate choices.

98. I would sound a note of caution about informal resolution. At the initial assessment stage the decision maker should always consider whether the allegation is sufficiently serious to require investigation. If it passes that threshold it may not appropriate for informal resolution. In my view this has reputational importance for the City as an elected body. The City should show the outside world that it is prepared to police its Members. Informal resolution can be a good way of resolving complaints which, in reality, involve personal differences of opinion or matters of personal offence rather than a Member's probity, but it must not be used to cover up matters which the public interest requires to be investigated and aired.

(iii) Investigation

99. Not all authorities have a formal investigation stage. In Leeds, for example, if a complaint survives initial assessment and is not locally resolved, it goes to a standards committee to be resolved. However, the great majority provide for a formal investigation of the facts after assessment and before final hearing.

100. In considering this stage and the hearing stage it is necessary to keep in mind the legal structure of decision-making by the Court of Common Council.

101. The City is subject to section 101 of the Local Government Act 1972 which enables its functions to be discharged by committees, sub-committees, officers and/or other local authorities. Although the City also has the "general power of competence" conferred by section 1 of the Localism Act 2011, this does not extend to altering the arrangements for the discharge of functions or contracting out.

102. Section 102 allows ordinary committees to include non-Members but section 13(1) of the Local Government and Housing Act 1989 provides that these must be non-voting. Section 102 also permits the appointment of a purely advisory committee and this may include or indeed consist of non-Members who have voting rights.

103. Under the Court's Standing Orders and Scheme of Delegations, officers are authorised to implement agreed policies and to act on the City's behalf in the discharge of its functions. They are authorised to purchase services but cannot delegate their own functions. The Comptroller and City Solicitor has authority (inter alia) to "instruct counsel, witnesses, experts and external solicitors as appropriate" and to "act as Monitoring Officer pursuant to section 5 of the Local Government and Housing Act 1989".

104. Under the City's present arrangements, at the conclusion of the assessment phase the assessment sub-committee, if it does not dismiss the complaint or refer it for informal resolution, may refer it to the Monitoring Officer to investigate. The arrangements at paragraph 37 state:

> **It is recognised that the Monitoring Officer may not personally conduct a formal investigation but it will be for the Monitoring Officer to determine who to instruct to conduct a formal investigation.**

105. I bear in mind that investigation of complaints is a function of the City under the 2011 Act and so care should be taken about delegation. Although it is

commonplace for local authorities' arrangements to offer the alternative of appointing an external investigator, in my view it is nevertheless prudent to specify that an Officer retains responsibility for the investigation.

106. If the City follows my recommendation that the Monitoring Officer have responsibility for the assessment phase, I would then recommend that a different individual should be responsible for the investigation.

107. In many authorities where initial assessment is by the Monitoring Officer, investigation is by "another officer" or "another senior officer". Some authorities specify that it should be a council lawyer. Others give the alternative of an officer or a lawyer from another authority. Manchester, Westminster, Newcastle and Sheffield (among others) give the alternative of an "external investigator" or "external agent". Where the authorities offer a choice, this is usually to be exercised by the Monitoring Officer who is making the reference.

108. On the whole I recommend that the relevant option at the end of the assessment process should be framed in terms (borrowed from City Councils such as Westminster and Manchester but with some changes) such as:

> **Refer the allegation for investigation by an Investigating Officer who may be another officer of the Corporation or an officer from another local authority. Where appropriate the Investigating Officer may be assisted by an external investigator.**

109. In my view it is sensible to have this flexibility, bearing in mind the range of possible complaints. Sometimes it may be valuable for the investigator to be a lawyer or to receive legal advice. The option of using an officer from another council can be especially valuable in a sensitive case, and I understand that some authorities have reciprocal arrangements for investigating each other's complaints. However the present arrangements whereby "it will be for the Monitoring Officer to determine who to instruct to conduct a formal investigation" are more open-ended than they need to be.

110. What should the investigation consist of? The present arrangements say almost nothing about this. I recommend that it be made the subject of a concise but sufficiently detailed protocol, albeit one which leaves a discretion for the shape of an investigation to be determined by the nature of the individual case, always having regard to fairness and proportionality. It should cover:

(1) timescales and communication with the parties during the process;

(2) confidentiality;

(3) record keeping i.e. preservation of all interview notes and evidence;

(4) meeting the complainant to explore the complaint and identify supporting evidence and/or witnesses;

(5) interviewing witnesses;

(6) interviewing the Member subject to the complaint;

(7) provision of a draft report to the parties for comments; and

(8) provision of a final report.

111. I recommend that at step (4) the Member have the right to be accompanied by a person of their choice. This could be a lawyer although it may be helpful for the protocol to record that the process is an interview with the Member rather than a hearing involving advocacy.

112. Paragraph 38 of the present arrangements requires the investigator "to conclude whether or not there has been a failure to observe the code of conduct". This is not unusual. Many authorities similarly require an investigator to reach a firm conclusion. Others (such as Birmingham, Barnet and Oxford) use a template which refers to the investigator finding that there either is or is not evidence of a breach of the Code. Westminster's arrangements just refer to compiling a report and do not prescribe the question which the report must answer.

113. My recommendation is to follow the Birmingham model and invite the investigator to report on whether there is or is not evidence of a breach. This could equally be framed as whether there is a case to answer (a formulation

used, for example, by the Royal Borough of Greenwich). Whilst many authorities do invite a finding of whether or not there has been a breach, in my view that is unsatisfactory because that is the question to be asked at the hearing stage. If it has already been answered in the affirmative, it may be more difficult for the respondent Member to have confidence in the fairness and efficacy of the subsequent hearing.

114. If the scope of the report is limited in this way, it is probably not necessary to require the Investigating Officer to consult the IP although he/she could be given a power to choose to do so. I have recommended involving the IP at the earlier Assessment stage and the IP must be involved at the hearing stage when the complaint either is or is not upheld. And as I have noted above, a Member when subject to an allegation has a statutory right to seek the IP's views.

(iv) Hearing

115. If the investigation report finds no case to answer or no evidence of a breach, the parties should be informed that the complaint will go no further.

116. Where an investigation report does find a case to answer or evidence of a breach, it is not unusual for arrangements to refer (again) to the possibility of informal resolution. The comments at paragraphs 94-98 above can be applied at this stage too, though I would note that if local resolution has been considered and rejected at the assessment stage it seems less likely that it will be acceptable following the investigation stage.

117. Otherwise in those circumstances it will be necessary to proceed to the hearing stage.

118. At present the hearing is conducted by a sub-committee of the Standards Committee: see paragraph 32(4).

119. In relation to the 2015 complaint an issue has been raised about whether the appointment of the sub-committee complied with the City's Standing Orders. It is not my role to resolve that issue of fact but it is worth emphasizing that if a sub-committee structure is retained, careful and visible compliance with Standing Orders is essential in order to maintain the integrity of the process and confidence in it.

120. My discussions with Members revealed a divergence of views as to who should conduct hearings. There is support for a greater degree of independence and/or for the procedure to bear a closer resemblance to that of a court or tribunal. However, from my "dip sample" of views I cannot predict the view of the majority of the Court.

121. In a majority of the local authorities whose arrangements I have seen, hearings of complaints are by a Standards Committee or a sub-committee of it.

122. In some others, complaints are determined by the Monitoring Officer. An example is Cornwall County Council which has a Standards Committee but where the Monitoring Officer determines the complaint in a process resembling what I describe as the investigation stage but with input from an Independent Person.

123. I have not encountered any model elsewhere which involves an external decision maker. This is no doubt because of the statutory strictures on local authority decision making set out above. The function of making a decision on a complaint must be discharged by the authority itself, a committee or sub-committee, an officer or another authority. See paragraphs 101-103 above.

124. Whilst it might be possible to appoint someone who is neither a committee member nor an officer to chair a hearing panel, they would not be able to vote. This would be unsatisfactory and would not accord with best practice.

125. I therefore do not recommend a solution of that kind. Instead I recommend that hearings continue to be conducted by a committee or sub-committee. My recommendations seek to build safeguards into the assessment, investigation and appeal processes. In my view these, together with the involvement of at least one (non-voting) co-opted member and the mandatory role of the IP, should be sufficient to ensure fairness overall.

126. Should the Standards Committee retain this role? Its handling of the 2015 complaint has been criticised in some quarters. It is for the Court to decide whether it wishes to respond by giving responsibility for complaints to another committee. However, I have not identified any reason of principle why the SC should not retain the role. As I have said, most authorities still use a standards committee for this stage of the process. This is unsurprising given that such a committee can be expected to be closest to, and most up-to-date on, the Code of Conduct. Meanwhile this Review presents an opportunity to update and improve the present procedures. The hope is that this will benefit whichever committee inherits the updated arrangements.

127. To promote confidence in the procedures generally, it is important to avoid surprises when they are applied to a particular case. Therefore, although I would not wish to encumber the City with an overly lengthy and detailed "rule book", I nevertheless recommend that there be more detailed published guidance on what to expect.

128. Some authorities have a pre-hearing process, designed to identify the issues and decide what (if any) witnesses need to attend the final hearing. This may save much time in a case where most or all of the report of the Investigating Officer can be agreed. It also presents an opportunity for any procedural issues to be aired and resolved. I recommend that such a process be followed save where all parties consider it unnecessary.

129. As at present, the committee should conduct a hearing in public session, subject to its statutory powers to move into confidential session under Part VA of and schedule 12A to the Local Government Act 1972.

130. According to the current "proposed hearing procedure", the complainant and respondent are entitled to be accompanied but there is no reference to representation. Each is permitted to make a brief opening and closing statement. They are to give their evidence and answer questions personally. If they have questions for witnesses, these are to be put by the Chairman.

131. I recommend that the procedure state expressly that the respondent may be legally represented. Whilst there is a danger of internal processes coming to resemble litigation and thereby becoming more lengthy and expensive, it seems to me that the reputational issues involved in a Code complaint are such as to make representation appropriate if it is desired.

132. Some have expressed the view that there should be provision, in an appropriate case, for the City to fund such representation. I have not seen such a provision anywhere else. It is for the City to decide whether its own circumstances call for such a discretion to exist but I make no specific recommendation.

133. In my view it is proper for respondents or their representatives to be allowed to question witnesses. The alternative practice of having all questions put by the Chairman is nowadays employed in public inquiries which, typically, have to compress a great deal of business into a limited time. Forensically, however, it can be unsatisfactory, for example by not accommodating follow-up questions. However, the right to question should be subject to the Chairman's discretion to set a timetable which may limit the time for questioning. This is an important aspect of robust chairing which should be covered in training.

134. The most important omission from the "proposed hearing procedure" is the role of the IP. I recommend that this should be set out in writing.

135. More is said about this role at paragraphs 168-188 below, but it is convenient to deal here with the IP's input into a hearing. The practice in other authorities varies considerably. Three London examples can be used to demonstrate this.

136. The arrangements published by Southwark Council state that after opening statements and evidence and before closing statements, the committee will ask for the IP's views, the investigating officer may ask questions of the IP and the respondent or his/her representative may ask questions of the IP. Then the panel retires and its "legal adviser (who will be a different legal officer from the investigating officer) and committee clerk will retire with them to provide legal advice or advice regarding the evidence/submissions".

137. In Camden, on the other hand, after evidence and submissions the panel retires (or adjourns) "to consult the Independent Person and or to seek advice from the Borough Solicitor".

138. In Westminster the committee usually considers a case on the papers only. In exceptional cases the respondent may make oral representations but he or she is not entitled to a legal representative. Then "the Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code, and dismiss the complaint. If the Committee concludes that the Member did fail to comply with the Code, the Chairman will inform those present at the meeting of this finding and the Committee will then consider what action, if any, the Committee should take ...".

139. I recommend the Southwark model as the best of these three. It seems to me fairer and more appropriate for the IP to answer questions and express views in the presence of all those attending the hearing. This should promote confidence in the IP's role and help to prevent any danger, impression or suspicion of that role being bypassed or used as a rubber stamp. This process also ensures a right of reply where the IP's view is adverse to the respondent.

140. I also recommend that the arrangements emphasize the importance of the IP's role. If the IP disagrees with the views of a hearing panel or disapproves of its procedure, he or she must be prepared to challenge the panel robustly.

141. Provision for the committee to take legal advice is also recommended, and the published arrangements should make clear that this role is separate from that of the IP.

142. It may also be helpful for the arrangements to clarify that the question whether there has been a breach of the Code must be answered on the balance of probabilities.

143. The arrangements should also reiterate that the views of an IP may also be sought by the respondent. See also paragraphs 176-187 below.

144. Finally I recommend that Members should not serve on hearing panels without receiving training on the hearing process.

(v) Sanction

145. The Localism Act 2011 does not identify the available sanctions for a breach of the Code, but case law predating the now-abolished Standards regime sheds some light on the common law powers to apply sanctions.

146. Sanctions cannot interfere with the will of the electorate. That is why disqualification and suspension of councillors are no longer available. In *R v Broadland District Council ex parte Lashley* (2000) 2 LGLR 93, Munby J commented that the council could not restrain a member's right to perform her functions as a councillor. Available sanctions were therefore limited. Removing a member from a committee would be subject to the constitutional provisions for appointing members to committees; this explains why the City's present arrangements explain that "removal" involves making a recommendation to the relevant appointing body. However the council could make a finding of breach

and could criticise, reprimand or censure – "naming and shaming". The Judge's decision was upheld by the Court of Appeal: [2001] LGR 264.

147. The limited range of powers is set out at paragraph 25 above. The City's current arrangements are summarised at paragraph 32(11) above.

148. I recommend that the arrangements make clear that, before any decision, the IP's views must also be sought on the question of sanction.

149. It is also important that a hearing panel give concise but clear reasons for its decision as these may be needed in case of legal challenge.

150. Particular care is needed in cases which affect a Member's right to freedom of expression under Article 10 of the European Convention on Human Rights, either because the alleged breach of the Code consists of a communication of some kind or because the sanction, e.g. removal from a committee, may interfere with the Member's ability to exercise the right. Such interference may be justified under Article 10(2):

> **The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.**

151. In *R (Calver) v The Adjudication Panel for Wales* [2012] EWHC 1172 (Admin) Beatson J held that in applying conduct arrangements, an authority gives effect to the public interest in maintaining confidence in local government whilst at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere. Meanwhile in *Sanders v Kingston* [2005] EWHC 1145 (Admin) Wilkie J set out three questions to be answered when a decision is challenged on the basis of Article 10:

> **72. In my judgment the questions that I must answer are as follows:**

1. Was the Case Tribunal entitled as a matter of fact to conclude that councillor Sanders' conduct was in breach of paragraph 2(b) and/or paragraph 4 of the Code of Conduct ?
2. If so, was the finding in itself or the imposition of a sanction prima facie a breach of article 10?
3. If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)?

152. *Sanders* also makes the point that "political expression" or "the expression of a political view" attract a higher degree of protection than expressions of views in personal or abusive terms.

153. The sanction of censure has attracted a certain amount of comment. I do not consider it to be a legal term of art. It is generally understood to mean a formal expression of severe disapproval. So, as suggested in *Heesom*, it is distinct from a mere finding of breach which might or might not attract "severe" disapproval and, conceivably, might or might not call for a formal announcement. I therefore recommend that the list of available sanctions draws a distinction between finding of breach and censure.

154. Meanwhile the question of the timing of any censure or other announcement is considered further below.

(vi) Appeal

155. Under the now abolished Standards regime, there was an appeal to an independent tribunal but this is no longer available.

156. In my survey of the arrangements of local authorities, provisions for appeals against decisions of hearing panels are unusual though not unknown. Many authorities expressly state that there is no such right. Some authorities add that in some cases a complainant could have recourse to the Ombudsman[7] under

[7] The briefing paper *Local government standards in England* (see paragraph 10 above) expresses the view that the Local Government Ombudsman does not have a role in respect of councillors' conduct. However the archive of decisions on the Ombudsman's website reveals that complaints are entertained about authorities' decisions on allegations of Code breaches and occasionally some are upheld.

the Local Government Act 1974 whilst either party to a complaint could in theory challenge a decision in Court by way of judicial review.

157. For the City's present arrangements see paragraph 32(12) above.

158. At present the complainant has no right of appeal. In my view there is no strong reason to introduce such a right.

159. I recommend that the respondent Member continue to have a right of appeal against finding of breach and/or sanction, albeit that appeals are somewhat unusual. Whilst appeal procedures bring their own complications, it seems to me that the right of appeal will help to maintain confidence in the overall process. Judicial review will usually not be a realistic alternative for the Member concerned, in view of the burden of legal costs. The right should be subject to a written appeal being delivered within a reasonable time limit, perhaps 14 days.

160. I also recommend that those deciding an appeal should not be part of the Standards Committee. Reaction to the 2015 complaint included some lack of confidence in one committee providing an effective appeal against a decision by its own members. In my view confidence would be increased by separating the hearing and appeal powers.

161. However, this change would entail some further changes. At present the appeal sub-committee can substitute a new decision for that of the hearing sub-committee. In my view it would be unsatisfactory to divide overall decision-making powers between different bodies. It would be better for an appeal panel to receive a written appeal, review the decision and decide whether to remit it to the SC to be re-decided by different members. The review could be rapid, but there would be the disadvantage of delay in a case which has to be re-heard.

162. If the result of a successful appeal is a re-hearing, I recommend that there be no further right of appeal following the re-hearing. Otherwise a final outcome and the announcement of it could be delayed indefinitely.

163. An example of a similar approach can be seen in the arrangements of Newcastle City Council where the Member may seek a review by an Independent Person of another local authority who may send the case for re-hearing.

164. Who should sit on an appeal panel? This could be a sub-committee of another committee, perhaps the Policy and Resources Committee which plays a central role in the City's affairs. But if the function of this panel is to be limited to reviewing, rather than re-deciding, it could be quite differently constituted. For example, it could consist of one or more respected individuals such as senior officers, Committee chairmen and/or ex-holders of offices of Chief Commoner, Privileges Chairman or Lord Mayor. When the Court decides who should be eligible to sit on an appeal panel, it should also consider whether it will be feasible for such individuals to receive training.

165. I do not make a specific recommendation about the constitution of the appeal panel, but would suggest the Court consider these questions:

(1) Does it wish to retain a right of appeal?

(2) If so, does it wish to separate the appeal process from the Standards Committee?

(3) If so, does it wish for a different committee to substitute a new decision when it allows an appeal?

(4) If not (i.e. if the power will just be to direct a re-hearing), what sort of panel should discharge this role?

(5) In view of the answer to question (4), should there be a training requirement for those who discharge this role?

166. I also recommend that any appeal panel should receive the views of an IP before making its decision. The process could be strengthened by requiring this to be, if possible, an IP who was not involved at or before the hearing stage.

167. Finally I recommend that the formal announcement of any findings and/or sanction at the hearing stage should be delayed until either (1) the appeal time

limit passes and no appeal is received or (2) an appeal is dismissed or (3) a new finding is made and/or a sanction is imposed at a re-hearing. This recommendation is discussed further at paragraphs 191-199 below, but is based principally on the fact that the main available sanction – naming and shaming – is difficult if not impossible to reverse once it has happened. I do not suggest that the hearing should go into private session, and therefore those present will know the outcome and it may be reported more widely. In my view it would not be proper or practicable for the outcome actually to be kept secret for what could be an extended period. However, at this stage there should be no formal announcement by the Corporation.

(4) The role(s) of the Independent Person

168. Some specific recommendations about the role of IP are made above and are listed at the end of this document. I now consider that role more generally.

169. The Localism Act 2011 does not explain what the role should consist of, save by prescribing its basic components of giving "views" when these are sought (1) by the authority before deciding on an allegation, (2) by the authority "in relation to an allegation" in other circumstances or (3) by the person whose behaviour is the subject of an allegation.

170. Surveys since the statutory changes have revealed uncertainty among local authorities about the purpose of the role and how precisely it should work. Some important questions are not answered by the 2011 Act and so far have not been answered by case law. It should therefore be borne in mind that future legal challenges and court decisions could undermine any arrangements which are made on the basis of my recommendations about the IP.

171. Under the previous statutory regime, standards committees had to be chaired by an independent member[8]. So did the sub-committees which assessed written allegations and decided whether to refer them onwards[9].

172. Today, by contrast, authorities must appoint at least one IP who cannot have been a member or a co-opted member of the authority within the 5 years before appointment. Co-opted members include those who are not members of an authority but who are members of one of its committees, and thus include those who were independent members under the previous regime.

173. Therefore the creation of the new "Independent Person" is a clear move away from the previous policy of having independence guaranteed by individuals who would be committee members.

174. In light of this change, I recommend that the City's IPs should not routinely attend meetings of the Standards Committee other than (1) hearings where they have a statutory role and (2) meetings at which the role of IP is under discussion and they may contribute useful information. They should however be supplied with all such agendas, minutes and other documents as will enable them to remain abreast of the SC's discussions and decisions about the Code and conduct matters generally. The key point of the legislation appears to be that those making decisions on conduct allegations will have input from somebody who is not closely connected with them. This recommendation represents my personal view[10]. The published arrangements of many authorities are silent on whether IPs should attend SC meetings.

175. The first two of the activities listed at paragraph 169 above are reasonably straightforward. At the hearing stage, and at other stages of a complaint if it

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[8] Local Government Act 2000 section 53(4).
[9] Local Government Act 2000 section 57A, Standards Committee (England) Regulations 2008 (SI 2008/1085) reg 6.
[10] My recommendation also bears in mind that, according to *Local government standards in England* (see paragraph 10 above), Baroness Hanham said during the Localism Bill debates in the House of Lords that the IP "will act outside the committee systems" (31 October 2011).

wishes, the City will seek an IP's views on the case. The obvious purpose is to provide a sense check for an authority's approach to a case, giving an opportunity for that approach to be challenged if necessary.

176. However the third activity, expressing views at the request of a Member who is subject to an allegation, raises more questions.

177. First, what is the purpose of this function? The Act gives no clue. The most likely answer in my view is that the Member, when deciding how to respond to an allegation, may be helped by a well informed and disinterested opinion on whether he has in fact breached the Code. That opinion might also give the Member some insight into what views decision makers will be receiving from an IP before they reach their decision. Conceivably an IP might also feel able to express a view on the procedure by which an allegation should be dealt with although it is less clear that this falls within their remit.

178. Second, a question which I was asked by one of the IPs at the meeting with the Court on 7 November 2016. Can the same IP can advise both the respondent and the authority?

179. Under the Localism Act the answer must be yes. Section 28 requires an authority to appoint "at least one" IP. Therefore it is lawful to appoint only one. Since the section gives that person both functions, it must be lawful for one IP to discharge both functions.

180. However, it is not unusual to separate the two functions. Some authorities' arrangements state that they appoint several IPs in order to enable this separation. At the meeting with the Court on 7 November 2016 a Member told me that the City has three IPs for this very reason.

181. In my view the choice is between (1) insisting on separation, (2) insisting on the use of the same IP and (3) allowing the respondent Member to choose.

182. My tentative recommendation is for (3), having regard to the advantages and disadvantages of the same IP discharging both functions.

183. The main apparent advantage of using one IP is consistency of approach. Parliament may have intended the respondent Member to benefit from hearing the IP's views before these are shared with a hearing panel, not least because he or she might then have the opportunity to call evidence or make submissions at the hearing which could change those views. But if the panel will be hearing the views of a second IP, there is limited value in knowing the views of the first IP.

184. On the other hand, a disadvantage is that if the respondent consults the same IP who will advise the panel, issues of fairness and confidentiality arise. An IP might be placed in a difficult position if the Member shared information which was damaging to his or her case, not intending this to be shared with the hearing panel.

185. Meanwhile the Act is unhelpfully silent on whether any consultation under section 28(7)(b)(ii) should be confidential.

186. On balance I favour a solution of offering the Member a choice between a non-confidential consultation with the IP who will advise the hearing panel and a confidential consultation with an IP who will not.

187. It should also be made clear that the purpose of either type of consultation is for the respondent to seek the IP's views, not to influence them. It would also be wise for a note to be kept of what is said.

188. Finally I note that when the City selects and appoints IPs, it must keep in mind the demands of all aspects of the role. In saying this, I am neither expressing nor implying any opinion about the current holders of the role or the handling of the 2015 complaint. However some Members believe that the SC should have been robustly challenged in its handling of that case and are not convinced that this occurred. The Localism Act does not prescribe any qualification for an IP

other than independence, and obviously different qualities and qualifications will be valuable in different cases. Local authority experience may be essential in one case; in another, a legal or judicial background may be called for. However it seems to me that a defining characteristic of the role is the ability to influence decision-makers when expressing views under section 28(7)(a) and (b)(i). It follows that those appointed as IP should have a sufficient degree of experience, seniority and authority to be able to achieve this.

(5) Publicity

189. Publicity given to the 2015 complaint has caused concern among many Members. Some stated that, immediately after the hearing of the complaint and the finding of a breach of the Code, a notice was placed on a notice board in the Guildhall which named the Member and set out the finding, and they thought this was unfair. They point out that the sanction of censure took effect as soon as it was made public and therefore there was limited value to the Member in the appeal panel's later decision to overturn that sanction. Further objections were then made to the SC's annual report to the Court on 23 June 2016 which included details of the complaint and findings, identifying the Member, and the report was referred back to the SC.

190. When a committee conducts a hearing, in my view there is no reason to depart from the normal practices as to admission or exclusion of the public or access to documents. See paragraph 129 above.

191. I have already recommended that a formal announcement of a finding against a Member and any sanction should await the outcome of the appeal stage (paragraph 167 above). One particular reason is that a public announcement has been recognised as, in itself, a sanction: see paragraph 25 above.

192. However, I considered whether that recommendation should give way to a policy of open justice. There is a case for announcing the outcome of a hearing

even if it is subject to appeal. Indeed, there is a case for allowing the public to know that an allegation has been made, even before a hearing. It is commonplace for professional regulators to publish details of upcoming hearings as well as the outcome of hearings which may be subject to appeal. Similarly when a person is accused of a criminal offence, normally they have no entitlement to privacy or anonymity. On the whole and in the longer term, I would expect the City's reputation to be enhanced by a policy which favours openness over privacy.

193. Nonetheless, there are also respectable reasons for placing controls on publicity. Since Members are elected, it is obvious that a complaint, and *a fortiori* a finding, may harm their prospects of re-election. Publicity given to a false complaint or a wrong hearing decision therefore could interfere with the democratic process, although it can also be argued that the electorate has a right to know information bearing on the fitness of candidates.

194. There can also be legal strictures on publicity. Information about a Member's conduct may well be personal data under the Data Protection Act 1998 which imposes an obligation that any processing of the data should be fair. Disclosure of personal information may also engage Members' right to respect for their private life under Article 8 of the European Convention on Human Rights. The City as a public body would infringe the Human Rights Act 1998 if it interfered with those rights without justification.

195. These concerns arose in a very recent decision of the First Tier Tribunal[11] in *Thompson v Information Commissioner and Cheshire East Council* (7 November 2016). A conduct allegation was made against a councillor. After receiving his response which, under the local authority's procedure, was sought in confidence, the local authority decided to take no further action. The complainant requested sight of the response under the Freedom of Information Act 2000. This was resisted by the local authority in reliance on the exemptions

[11] I do not know whether the case is subject to any further appeal.

under sections 40 and 41 which relate respectively to personal data under the Data Protection Act 1998 and information provided in confidence. The Information Commissioner and the Tribunal found in favour of the local authority, ruling that information relating to the complaint was indeed personal data and its release would be unwarranted. This was because:

> - **Notwithstanding that the Councillor held a public office and the withheld information related to the Councillor's public function rather than private life, we accept that information relating to complaints against individuals carries a very strong general expectation of privacy. This is due to the likelihood that disclosure could cause the individual distress and potential damage to future prospects and general reputation. Even where the investigation exonerates the individual, the matter can be potentially distressing or stressful if it is thought in time that it might be revealed to the world. Likewise, as the IC states, even if the complaint is unmeritorious, its existence can be potentially damaging to an individual. It is foreseeable for some to conclude "there's no smoke without fire".**
>
> ...
>
> - **We accept that the "legitimate interests" in disclosing the requested information included generic interests in accountability and transparency and specific interests in understanding better how the complaint against the Councillor had been handled and due process. We accept that** [sic] **elected members of local government, councillors should be open to scrutiny and accountability.**
> - **However the collective weight of interest in disclosure is vastly outweighed by the Councillor's rights and freedoms or legitimate interest in not disclosing to the world at large material related to a complaint about his conduct where the Council did not find the complaint to be merited.**

196. These considerations would of course be different if the Council did find the complaint to be merited.

197. The practice in other authorities varies. Most include publication in a list of the actions which can be taken when a finding is made. Newcastle City Council has a distinctive provision that if the complaint is rejected at the hearing, the Member may require that no decision notice or summary be published. However, although Newcastle provides a right of appeal, it does not provide for any publicity to be stayed pending appeal. Kent County Council sets a period of 10 days for publication of a hearing outcome, positive or negative. Although the 10 days is a maximum rather than a minimum, it could in practice provide a window in which any challenge to publication could be made.

198. In my view a "one size fits all" policy on publicity is inadvisable. A case by case approach will enable proper regard to be had to the need for open government and transparency and, with advice from the IP and legal advice where necessary, to the legal rights of the parties. However, sufficient guidance should be given so that Members will know broadly what to expect, avoiding some of the discontent which has been voiced about the 2015 complaint.

199. Therefore my recommendations are:

(1) before any finding of breach there should be a presumption against publication of details of a case;

(2) where a hearing makes a finding of breach, publication of the finding should be an available sanction and the usual course, but this should be delayed as recommended at paragraph 167 above; and

(3) in all other circumstances (including dismissal of a complaint after a hearing) the SC should have a discretion as to publication, to be exercised having regard to legal advice where appropriate, to the views of the IP and to all the circumstances including:

i. the nature of the allegation(s);
ii. the stage the process has reached;
iii. any information already in the public domain;
iv. where relevant, the proximity of any election;
v. the effect of publication on the respondent;
vi. the views of the parties; and
vii. the public interest.

200. I have no strong view on whether the SC's annual report should include details such as the name of a Member against whom a finding has been made. However, in light of the controversy over the report of June 2016, it would be sensible for the Court to adopt a clear policy on whether such information should or should not be included.

6. Conclusion

201. Overall I have found that the City's Code and arrangements are lawful and are not unusual but are in need of some updating, and they can be strengthened.

202. In particular the 2015 complaint revealed that the arrangements for dealing with Code complaints were insufficiently detailed. This meant that both the hearing and assessment sub-committees had to adopt their own more detailed procedures. So far as I can ascertain, this contributed to a lack of confidence in some of the procedures and a sense that some of the detailed procedural arrangements came as a surprise to Members.

203. There is therefore an opportunity to update the Code and to draft more detailed arrangements for dealing with complaints. I have made recommendations which the Court will wish to consider adopting in the course of this process. My recommendations reflect my understanding of the law, best practice in authorities around England and the tentative conclusions which it seems to me can be drawn from the experience of the 2015 complaint.

204. In my view this presents an important opportunity to clarify the role of the Independent Person. If there has so far been a lack of clarity about this role, I would be slow to blame the City for it. Instead it reflects a lack of clarity in the legislation which has posed difficult questions for all authorities. My recommendations reflect my interpretation of the law. This will not be shared by everyone and may or may not be upheld by courts in any future litigation.

205. From the controversy over the 2015 complaint I draw two conclusions.

206. The first conclusion is that there is a need to increase Members' confidence in the complaints process, and my recommendations are aimed at achieving this by distributing roles more widely between the Standards Committee, other Members, Officers and (where appropriate) external agents.

207. The second conclusion is that the City's statutory duty to promote and maintain high standards of conduct needs to be emphasized. Members should be encouraged to recognise that it is essential to deal with complaints of breach of the Code of Conduct openly and effectively, notwithstanding the difficulty and sensitivity of cases of this kind.

208. That is the basis for my recommendation that the City should retain a Standards Committee with overall responsibility for conduct matters. Whether or not that recommendation is followed, I consider it important that the City maintain sufficiently visible arrangements to promote high standards of conduct.

7. Summary of Recommendations

209. The recommendations made above are:

(1) Members should be required to attend such training on conduct and standards matters as the City may provide from time to time. (52)

(2) The Code of Conduct should adopt the CSPL's revised descriptions of the Nolan Principles. (54)

(3) The Code should contain more express requirements in respect of equality and diversity. (55)

(4) The Code should prohibit Members from bringing their office into disrepute, engaging in any bullying and intimidation or breaching obligations of confidentiality to the City. (59-60)

(5) The Guidance to Members on the Code should be updated to reflect changes to the Code and also to deal with conduct matters generally, rather than only with the declaration of interests. (61)

(6) The City should retain a Standards Committee which will keep abreast of all of the City's activities relating to conduct and standards, including training. (74)

(7) The Chief Commoner and Privileges Chairman should have a discretion to share with the Standards Committee information which may be useful

to it. Whilst the Standards Committee may ask them, from time to time, whether there is any such information to be shared, the Standards Committee should not have a formal role of monitoring the pastoral activities of the Chief Commoner and Privileges Chairman. (77)

(8) There should be more detailed published guidance on the procedure for dealing with complaints, especially at the hearing stage. (127)

(9) The City should provide training for all Members and Officers who deal with complaints (and appeals) to ensure that they are dealt with expertly and consistently. (79, 144)

(10) Initial assessment of a complaint should be by the Monitoring Officer, with a limited discretion to assign the function to another officer (or an officer of another authority) where necessary e.g. in a case of conflict of interest. (86)

(11) A rule should require that an Independent Person's views be sought at the assessment stage unless this is considered unnecessary. (90)

(12) The published arrangements should refer to the possibility of the Independent Person's views being sought at the assessment stage by the respondent to an allegation. (91)

(13) Decisions on initial assessment should be accompanied by concise written reasons which enable the complainant and the respondent to understand (1) whether any of the grounds for not proceeding are present and if so (2) the reasons for the decision on whether and how to proceed. (92)

(14) If assessment is carried out by the Monitoring Officer and if the complaint is not dismissed or resolved informally, it should be referred for investigation by an Investigating Officer who may be another officer of the Corporation or an officer from another local authority, with provision for the Investigating Officer to be assisted by an external investigator where appropriate. (108)

(15) Investigation should be the subject of a concise but sufficiently detailed protocol covering the matters set out at paragraph 110 above.

(16) When interviewed by the Investigating Officer, the Member should have the right to be accompanied by a person of their choice. This could be a lawyer although the process should be an interview with the Member rather than a hearing involving advocacy. (111)

(17) The Investigating Officer should report on whether there is or is not evidence of a breach, or whether the allegation of breach of the Code of Conduct raises a case to answer. (113)

(18) Hearings should be conducted by a committee or sub-committee including at least one (non-voting) co-opted member. (125)

(19) A pre-hearing process should be used to identify the issues and decide what (if any) witnesses need to attend the final hearing unless all parties consider it unnecessary. (128)

(20) The committee should continue to conduct hearings in public session, subject to its statutory powers to move into confidential session under Part VA of and schedule 12A to the Local Government Act 1972. (129)

(21) The procedure should state that the respondent may be legally represented. Respondents or their representative should be allowed to question witnesses, subject to the Chairman's discretion to set a timetable which may limit the time for questioning. (131, 133)

(22) The role of the Independent Person at a hearing (and generally) should be set out in writing, emphasizing its importance. The Independent Person should answer questions and express views in the presence of all those attending the hearing. Where a panel finds a breach of the Code of Conduct, the views of the Independent Person should be sought on sanction (134, 139, 148).

(23) The arrangements should reiterate that an Independent Person's views may also be sought by the respondent at the hearing stage. (143, 176-187)

(24) The written procedure should also make separate provision for the committee to take legal advice where necessary. (141)

(25) The arrangements should clarify that the question whether there has been a breach of the Code must be answered on the balance of

probabilities. The panel should give concise but clear reasons for its decisions in relation to breach and sanction. (142, 149)

(26) The list of available sanctions should draw a distinction between a finding of breach and the sanction of censure. (153)

(27) A respondent Member should continue to have a right of appeal against finding of breach and/or sanction, subject to a written appeal being delivered within a reasonable time limit such as 14 days. (159)

(28) Those deciding an appeal should not be part of the body (e.g. the Standards Committee) from which the hearing panel is constituted. (160)

(29) It may be better for a separate individual or panel to receive a written appeal, review the decision and decide whether to remit it to a differently constituted hearing panel (161). If this course is taken there should be no right of appeal against the outcome of the re-hearing. (162)

(30) The Court should decide how to design its appeal arrangements by considering the questions set out at paragraph 165 above.

(31) Any appeal panel should receive the views of an Independent Person before making its decision, preferably one who was not involved at or before the hearing stage. (166)

(32) The City's Independent Persons should not routinely attend meetings of the Standards Committee other than (1) hearings where they have a statutory role and (2) meetings at which their role is under discussion and they may contribute useful information. They should however be supplied with all such agendas, minutes and other documents as will enable them to remain abreast of the Standards Committee's discussions and decisions about the Code and conduct matters generally. (174)

(33) A respondent Member exercising the right to seek the views of an Independent Person should be given a choice between a non-confidential consultation with the Independent Person who will advise the hearing panel and a confidential consultation with an Independent Person who will not. Arrangements should state that the purpose of either type of consultation is for the respondent to seek the Independent

Person's views, not to influence them, and a note should be kept of what is said. (181-187)

(34) Before any finding of breach there should be a presumption against publication of details of a case. (199)

(35) The announcement of any findings and/or sanction at the hearing stage should be delayed until either (1) the appeal time limit passes and no appeal is received or (2) an appeal is dismissed or (3) a new finding is made and/or a sanction is imposed at a re-hearing. (167)

(36) After a finding of breach, publication of the finding should be an available sanction and the usual course, subject to recommendation 35 above. Otherwise the Standards Committee should have a discretion as to publication, to be exercised having regard to legal advice where appropriate, the views of the Independent Person and all the circumstances as set out at paragraph 199 above.

CHARLES BOURNE Q.C.

11KBW Chambers

16 December 2016

Appendix 1

	Document	Date
1.	Constitution and terms of reference of the Standards Committee	
2.	Members' Code of Conduct	
3.	Guidance to Members – Members' Code of Conduct	
4.	Procedure for dealing with Complaints to the Standards Committee	October 2015
5.	Protocol on Member/Officer Relations	
6.	Hearing Sub (Standards) Committee – Proposed Hearing Procedure	
7.	Appeals (Standards) Sub-Committee – Proposed Appeal Procedure	
8.	Standing Orders of the Court of Common Council	
9.	Report of Town Clerk and Comptroller and City Solicitor for meetings of Police Committee on 1 June 2012 and Standards Committee and Policy and Resources Committee on 7 June 2012	
10.	Report of Standards Committee on the Standards Regime under the Localism Act 2012	7.6.12
11.	Register of Interests, Mr A.J.N. King	11.2.15
12.	The 2015 complaint and exchange of emails on receipt	18-19.11.15
13.	Emails to/from Committee and Member Services Officer and Standards Committee chairman re convening assessment sub-committee	2.12.15
14.	Covering email from Committee and Member Services Officer with papers for assessment sub-committee	8.12.15
15.	Email from Committee and Member Services Officer to Standards Committee convening hearing sub-committee on 29.1.16	21.12.15
16.	Emails from Principal Committee and Member Services Manager re summons to hearing sub-committee on 29.1.16	21-22.1.16
17.	Email from Committee and Member Services Officer enclosing proposed hearing procedure and information from respondent	27.1.16
18.	Emails from Committee and Member Services Officer enclosing hearing procedure	9 and 15.2.16
19.	Email from Committee and Member Services Officer enclosing additional papers for further hearing meeting on 23.2.16	15.2.16
20.	Emails re convening of further meeting to consider sanction	26.2.16-3.3.16
21.	Register of Interests, Mr E. Lord	10.3.16

22.	Emails re convening appeal sub-committee	30.3.16 and 4.4.16
23.	Notice of Appeal re the 2015 complaint	6.4.16
24.	Emails from Committee and Member Services Officer enclosing papers for appeal hearings on 25.4.6 and 6.5.16	13.4.16-5.5.16
25.	Letter from City Surveyor to Leighton McDonnell	8.4.16
26.	Resolution to appoint Standards Committee from April 2016 to April 2017	21.4.16
27.	Agenda and note of decision, Appeal Sub (Standards) Committee	6.5.16
28.	Annual Report of the Standards Committee to the Court of Common Council on 23 June 2016	13.5.16
29.	Letter from chairman of Staff Appeal Committee to Leighton McDonnell	24.5.16
30.	Letter to members of the Standards Committee from chairman following the Meeting of Common Council on 23 June 2016	
31.	Letter from the Chief Commoner to the Principal Committee and Member Services Manager	27 June 2016
32.	Public document pack for Agenda items 3 and 8, Standards Committee 8 July 2016	
33.	Minutes, Standards Committee meeting on 8 July 2016	
34.	Report of the Standards Committee to the Court of Common Council on 21 July 2016	8.7.16
35.	Annual Report of the Standards Committee to the Court of Common Council on 21 July 2016	8.7.16
36.	Letter before claim to the Town Clerk re the 2015 complaint	20.7.16
37.	Reply from the Comptroller and City Solicitor to letter before claim	3.8.16

Appendix 2

Written representations were received from:

Mark Boleat

John Chapman

Ann Holmes

Catherine McGuinness

John Scott JP