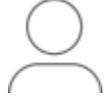


What didn't happen at the Standards Committee meeting on 6 September



Harrower, Graeme <Graeme.Harrower@cityoflondon.gov.uk>

07/09/2019 17:45

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Inbox

To All Members of the Standards Committee and of the Residential Wards

At the meeting of the Standards Committee yesterday, the Chair said that full minutes would be prepared. Since they will be prepared by the City Corporation's premier minute writer, I expect they will give a detailed account of what was said. What is important about this meeting, however, is what was **not** said, as I explain below.

(1) The meeting was attended by just over a third of the committee members. There were fewer committee members present than members of the public. That is remarkable, when you consider that this committee has, for the last five months, been the object of an expression of no confidence by City residents.

(2) Even more remarkable is that if you didn't know this committee had lost the confidence of the public, you would never have guessed it from the discussion during the meeting. Not once during the hour and a half of discussion did anyone mention the residents' petition, two wardmote resolutions, annual residents' meeting or the representations from the City's two largest residents' associations, all calling for fundamental reform, including the grant of "general" dispensations.

(3) Instead, the committee avoided addressing the points made in the two emails below about the grant of "general" dispensations as the only way of resolving the grave democratic deficit and the lack of trust of members' judgment which are both implicit in the current dispensations policy. Regarding the secondary issue of section 618, a couple of members supported making a recommendation for the prompt repeal of this outdated, obscure and repressive provision (something that the committee has done nothing about since it was first raised by a residents' association eleven months ago).

(4) The battle for councillors being granted dispensations generally to speak on matters affecting their constituents was largely won when the committee was compelled by the Court to change its previous repressive policy in this regard last December. One member at yesterday's meeting, though, still seemed to find this too much, and advocated that the right to speak be restricted in some circumstances.

(5) Regarding dispensations to vote, no-one could explain why a councillor should be refused such a dispensation when their interest in a matter was not greater than their constituents', and when the absence of their participation in a vote could distort the outcome against the interest of those constituents.

(6) The grant of “general” dispensations would neatly solve the problem of the "cliff edge" between what is acceptable and what is not. A "general" dispensation would **not** cover a matter that affected a councillor uniquely or more than any of their constituents. That is the kind of matter on which speaking or voting would cause concern about the misuse of public office, and is what the legislation is aimed at. In practice, it should not be difficult to tell whether a matter affects a councillor uniquely or more than any others - it is a simple matter of fact. A “general” dispensation **would** cover a matter that did not affect the councillor more than any of their constituents. In that case, the councillor would - by definition - be speaking and voting on it in the interest of their constituents, which is exactly what the law permits, and democracy requires. In a case where only a small number of constituents are equally affected, the councillor should be trusted to use their judgment as to whether it would be appropriate to rely on the dispensation and to speak and/or vote on the matter.

(7) Regarding the process of requesting dispensations, the discussion parted from reality as much as it did on the substantive issues. It is a fact that a councillor will usually only know of the agenda for a meeting when it is published a week in advance. It was acknowledged by the Standards Chair that it is very difficult to convene a Dispensations Sub-Committee within a short period. The logical conclusion to draw from these two facts is that the current policy of granting dispensations on a case by case basis is inoperable. Bizarrely, the committee’s solution to this problem was to propose having fixed meetings of the Dispensations Sub-Committee every two months. Most requests for dispensations would therefore not be considered until after the meetings for which they were needed had taken place. The urgency procedure would have to be used instead. That would be highly undesirable, as it would entail decisions on the ability of elected members to represent their constituents being made on a case by case basis by unelected officials, with only the concurrence of the Chair and Deputy Chair, who supported the previous restriction on speaking and now support the restriction on voting.

Here are some reactions afterwards from residents who attended the meeting:

- There seemed to be some "face saving" going on within the committee.
- There is indeed "confusion" about standards in the City, but it isn't on the part of the residents (as the Standards Chair claimed in response to the petition): it's on the part of this committee.

A decision on whether to change the current dispensations policy, and on the four resubmitted requests for "general" dispensations, is due to be taken at the committee meeting on 4 October. Based on the experience of yesterday's meeting, we can expect a few cosmetic changes to be proposed, and a vague commitment to a more “collegiate” culture (which presumably means less of the vigilantism we have seen in the last couple of years), but with nothing to back it up.

The overriding impression of yesterday’s meeting was of crew members rearranging the deck chairs on the Titanic, still in denial that it had struck an iceberg and was going

to sink. They would be better advised to look for the lifeboat named "general dispensation".

Regards,

Graeme Harrower

PS: Items about standards reform, including emails to the Standards Committee, are posted on Barbican and Golden Lane websites and referenced in blogs. Councillors in other residential wards should feel free to post these items on local websites.

From: Harrower, Graeme <Graeme.Harrower@cityoflondon.gov.uk>

Sent: Thursday, September 5, 2019 11:30 am

To: Addy, Caroline; Anderson, Randall; Colthurst, Henry; Durcan, Mary; Holmes, Ann; Ingham Clark, Jamie; Langley, Susan (Alderwoman); Littlechild JP, Vivienne; Lord, Edward (Deputy); Mainelli, Michael (Alderman); Newman CBE CC, Barbara; Simons CC, Jeremy; Barnes, Judith; Cooke, Nick; Large, Dan

Cc: Barradell, John; Cogher, Michael; Stokley, Gemma; Duhaney, Antoinette; Smith, Jane; Tim Godsmark

Subject: Outcome of the Dispensations Sub-Committee meeting on 4 September

[To All Members of the Standards Committee](#)

Outcome of the Dispensations Sub-Committee meeting on 4 September

The Dispensations Sub-Committee decided at its meeting yesterday to defer making a decision on the four requests for General Dispensations until the Standards Committee had decided either to change or confirm the current dispensations policy at its meeting on 4 October.

Points raised in that meeting which are relevant to the consideration of that policy by the Standards Committee in its meetings on 6 September and 4 October

(1) Previous submission of requests / nature of a General Dispensation

The Sub-Committee Chair said that “we have decided these applications [for General Dispensations] before [at the meeting of the Sub-Committee on 3 July], and can’t decide them differently without a very good reason. We can’t [approve] them for the reasons given last time. Nothing has changed.”

As Councillor Bostock made clear in the email by which he resubmitted his request (and which appears in an agenda supplement after he pointed out that it had been omitted from the agenda pack), the reason for his resubmission was that the previous Sub-Committee had ignored the fact that the original request was for a General Dispensation, and treated it as if were a request for dispensations for specific matters that had been mentioned only to explain the urgency of the request

at that time. The previous Sub-Committee had not addressed, properly or at all, the points made in support of the General Dispensation.

In spite of this, the Chair yesterday continued not to address those points. In the previous meeting, she had described a General Dispensation as a “blank cheque”. In the meeting yesterday, she described it in equivalent terms: it would be a “blanket dispensation”, and allow a member to “do what you like during your term of office”. The co-opted member described it as a “blanket permission to speak and vote” which would be “very dangerous”.

As explained in my email below, this is simply untrue: “a General Dispensation excludes the very matters that cause concern about the misuse of public office, which is what the legislation is aimed at”.

The co-opted member said she was concerned with the wording of the General Dispensation, giving as an example the situation where a member and nine other residents were affected by a planning application that would improve the value of their properties significantly but adversely affect the rest of the ward. She thought that the member should not have the right to vote in those circumstances. The Chair said she had the same concern. In that example, however, a General Dispensation would not, on its own terms, apply. That is because it excludes a situation where a matter affects a member more than their constituents, as it would where the value of the member’s property rose while the value of other residents’ properties fell because of the proposed development.

(2) Public confidence

At the meeting yesterday, an elected member remarked that not allowing a resident member to vote with a General Dispensation could have the effect of “distorting or changing a decision”. (The same point is made in the email below in (2) and (3) under “Standards Chair’s notes”.)

The Chair replied “That’s the price one pays to maintain public confidence”.

The member said “But the public don’t have confidence”.

The Chair said that even if the City residents didn’t have confidence in the dispensations policy [which is clearly the case, having regard to the petition, two wardmote resolutions, the residents’ annual meeting and representations from the associations], “we must look to the wider public”.

The Chair did not indicate who the members of this “wider public” were, why they would be interested in the City’s dispensation policy (which would not affect them as non-residents) or what evidence there was that they would think differently from the residents, whose view has already been tested. In fact, the only thing that non-residents are likely to know about the City’s standards policy is what they read in

the press and online, which is that the City has a serious standards problem caused by the policy and actions of its previous Standards Committee.

(3) Trust in members

The co-opted member said that she was “sure current members would not exploit their position, but [granting general Dispensations] would open the door to future members who might take advantage - the wrong sort of people might join the Corporation.”

The Chair echoed this, saying that “future members may not have the same standards”.

If there has been no problem with members seeking to exploit their position during the last few decades (a point made by one of the elected members), why is there suddenly a concern about the future? In any case, the only way to “join” the Corporation as a member is to be elected. The co-opted - and unelected- member of this Sub-Committee therefore seemed to be concerned that the City residents might elect the “wrong sort of person”. I expect that the City residents - having already been told by the Standards Chair that they were “confused” - will find it offensive to hear that an unelected member of the Standards Committee thinks that they must be protected from the consequences of their electing the “wrong sort of person”. This email is being copied to the two largest residents’ associations, so the residents’ actual views on this matter can be known.

(4) The City Solicitor’s Views

Towards the end of the meeting yesterday, the City Solicitor gave his views. He repeated what he stated in the Report to be presented to the meeting of the Standards Committee tomorrow. The most relevant points were as follows:

”Members are entitled to put in broad applications, for up to four years, and they don’t have to be considered on a case by case basis.”

A dispensation may only be granted if “having regard to all the relevant circumstances” the grant would be in the “interest of persons living in the area”.

The members of the Sub-Committee therefore had a “duty to take account of all the relevant circumstances”. and per the *Tameside* case [mentioned in the Report] to “make reasonable enquiries” to fulfil that obligation.

In the light of the fact that the terms of a General Dispensation exclude matters that would cause concern about the misuse of public office, which is what the legislation is aimed at, and are restricted to matters where the resident member is acting in the interest of persons living in their area, this duty should not be difficult to discharge. The reason for the legislation providing for dispensations is to facilitate democratic representation. That is a fact which did not feature in the comments of the Chair and the co-opted member in the meeting yesterday.

(5) Possible changes to the current dispensations policy

At the meeting yesterday, the co-opted member mooted the possibility of changing the current dispensations policy by perhaps “delegating more” and having a “shorter application form”.

Minor or cosmetic changes of this kind, or some “meet in the middle solution”, will do nothing to address the grave democratic deficit that is inherent in the current policy’s near prohibition on the right to vote (“only in exceptional circumstances”), and the implicit lack of respect for members’ judgment.

Regards,

Graeme Harrower

From: Harrower, Graeme <Graeme.Harrower@cityoflondon.gov.uk>

Sent: Monday, September 2, 2019 1:00 pm

To: Addy, Caroline; Anderson, Randall; Colthurst, Henry; Durcan, Mary; Holmes, Ann; Ingham Clark, Jamie; Langley, Susan (Alderwoman); Littlechild JP, Vivienne; Lord, Edward (Deputy); Mainelli, Michael (Alderman); Newman CBE CC, Barbara; Simons CC, Jeremy; Barnes, Judith; Cooke, Nick; Large, Dan

Cc: Barradell, John; Cogher, Michael; Stokley, Gemma; Duhaney, Antoinette; Smith, Jane; Tim Godsmark

Subject: Dispensations Sub on 4 September and Standards on 6 September

[To All Members of the Standards Committee](#)

As a member who has taken a close interest in standards matters over the last 18 months, I offer below a few thoughts on the matters to be considered by the Dispensations Sub-Committee this Wednesday (4 September) and by the Standards Committee at its meeting this Friday (6 September).

Two wardmote resolutions

The report of the City Solicitor in the agenda pack for the Standards Committee meeting on 6 September (the “**Report**”) refers only to a wardmote resolution passed by the Ward of Aldersgate in similar terms to the petition. Appendix 2 to the Report, though, reproduces a copy of a wardmote resolution passed by the Ward of Cripplegate in similar terms to the petition. To clarify, there were **two** wardmote resolutions passed by the City’s two largest residential wards in similar terms to the petition.

Legal advice

The effect of the legal advice given by the City Solicitor in the Report is that the law does **not** prevent the granting of a request for a “general” dispensation of the kind reproduced in Appendix 5 (a “**General Dispensation**”).

In the Standards Committee meeting on 15 November 2018, the City Solicitor stated that:

“...as a Member led authority,... [the dispensations policy] was ultimately a political issue to be determined by members within the legal framework”, and that “members had a broad authority but not an unlimited one”.

Regarding the legal framework and the scope of members’ authority, he states in the Report that “it would be unlawful to adopt a policy at the extreme ends of the discretion i.e. to always to refuse applications or to always grant them”.

The original dispensations policy proposed by the Standards Committee last year before the Court required the policy to be amended came close to the first of those extremes, restricting resident councillors from even speaking on matters which affected their constituents, and granting dispensations to vote “only in exceptional circumstances”.

By contrast, a General Dispensation goes nowhere near the second of those extremes. It excludes any matter which affects the member concerned uniquely or more than any of their constituents. Rather than being a “blank cheque”, as it was wrongly described by a member of the Dispensations Sub-Committee at its meeting on 3 July 2019, a General Dispensation excludes the very matters that cause concern about the misuse of public office, which is what the legislation is aimed at. Matters in which the member has no greater interest than their constituents are plainly covered by the statutory ground for granting dispensations of being in “the interest of persons living in the authority’s area”. Otherwise, the constituents would be put at a disadvantage because their elected member happened to share with them an interest in a matter to be voted on by that member.

The rule against actual or apparent bias that is summarised in the Report is, as the City Solicitor acknowledges, an entirely separate matter from the dispensations policy. It applies in practice mainly to members of the Planning and Licensing Committees, and no less to “business” members who comprise a majority of those committees than to residential members.

Public confidence

A dispensations policy adopted by elected members needs to have the confidence of the public that elects them. The Corporation’s current dispensations policy does not have the public’s confidence, as evidenced by the petition, the two wardmote resolutions and representations made by two associations representing a majority of the City’s residents. All those documents call for General Dispensations to be granted. Anything short of that is likely to cause the present crisis of confidence in our standards regime to continue and escalate.

Incidental benefits of General Dispensations

(1) The grant of General Dispensations should, in many cases, make the issue of whether a member has an engaged “pecuniary interest” in a matter a moot one, and thus avoid an issue on which the Corporation’s own legal advice seems to have lacked consistency over the last 18 months.

(2) The Corporation’s current policy of granting dispensations on a case by case basis (except for a few peripheral matters, like speaking and voting on council tax) has been proved to be inoperable. Usually a member will only know of the agenda for a meeting when it is published a week in advance, and recent experience has shown that it seems not to be possible to convene a meeting of the Dispensations Sub-Committee within a week. It is obviously undesirable that a matter which involves democratic representation be decided under urgency by unelected officials with the concurrence of just two members. In a recent case, a request for a dispensation made one working hour after the agenda was published and nearly a working week before the meeting was held was not processed even under urgency.

(3) The Corporation’s current policy of granting dispensations on a case by case basis has resulted in its breaching its own policy, as in the case just mentioned. This undermines public confidence in our standards regime generally.

Standards Chair's notes

There is nothing in the Standards Chair's notes in agenda item 9 of the Standards Committee meeting on 6 September which addresses the points above.

I comment on three points in those notes as follows:

(1) The fact that a majority of the residents signing the petition were from the Barbican and Golden Lane estates, and that the "only" comments received in response to the Standards Chair's letter in response to the petition came from the Barbican Association and Golden Lane Residents' Association, is entirely to be expected, because a majority of City residents live in those estates and are represented by those associations.

(2) With regard to granting dispensations to vote, it is stated that "Should Members [of the Planning Committee and Community & Children's Services Committee], with an engaged DPI, be able to vote, their vote would only tend to be significant if there were a relatively close division of opinion amongst members of the committee." That is plainly correct. It is then stated that "By the same token, in this situation, members with an engaged DPI could be seen to be determining the outcome". But what is wrong with that? The members concerned, if granted General Dispensations, could only vote if the matter did not affect them uniquely or more than their constituents. By denying them a vote in circumstances in which they have no greater interest in the matter than their constituents, the outcome of the matter could be determined by other members, including from business wards, who do not directly represent the affected public. How would that "be seen" by the public, and how would that be consistent with democracy?

(3) Regarding section 618, it is stated that "the only major exception [to residential members with an engaged DPI affecting the outcome of a vote] is the BRC....If section 618 were to be removed, however, with a general dispensation to vote that would mean that those with an engaged DPI could form the majority deciding policies, including in regard to charges impacting all residents." As in (2) above, what is wrong with that, as the members could only vote with a General Dispensation in circumstances in which they have no greater interest in the matter than their constituents? There is also the point that - in the City Solicitor's view - section 618 applies not only to Barbican resident members of the BRC, but also to other residential members voting on housing matters in other committees. It would surely serve the interests of transparency and democratic representation for the Standards Committee to recommend to the Policy and Resources Committee that the Corporation lobbies for the repeal of this antique, obscure and repressive provision, and relies on General Dispensations, the exclusions contained in them and members' judgment.

Final observations

The current dispensations policy seems to be based on the unexpressed assumption that residential members are inclined towards unlawfulness in speaking and voting on matters that affect their constituents, and need to be closely controlled in doing so by other members on the Dispensations Sub-Committee. There is no justification for this assumption, as revealed by a comment made by a long standing member of the Court in its meeting last March. If a member did, in future, misuse public office to make money, that would be a matter for the criminal law.

It is worth noting the point made in the requests for the General Dispensations in Appendix 5 that the fact that a member is granted a General Dispensation does not mean that they will necessarily use it. In a situation where, for example, the member does not have a greater interest in a matter than any of their constituents affected by it, but the number of those constituents is very small, the member may decide not to speak or vote on it, notwithstanding that they have a General Dispensation to do so. The judgment of members should be respected by other members, and not replaced by the view of less than a handful of their peers. Ultimately it should be for members' constituents to decide whether they exercise their judgment correctly.

Regards,

Graeme Harrower