

Town Clerk's Department

Gregory Moore

Interim Deputy Town Clerk



Circulated to the Respondent, Objector, and other interested parties

Date 13 February 2024

**Re: City of London Ward Lists – Outcome of hearing
City of London (Various Powers) Act 1957
Representation of the People (England and Wales) Regulations 2001**

I am writing to advise all parties of my decision in relation to the inclusion of Timothy McMahon, Daniel Flynn, Daniel Lewis, Clementine Saulnier, Bradley Moon, Lauren Foster, Lovetta Pring and Tayla Baird in the final Ward List for the Ward of Castle Baynard for 2024 – 2025, as appointed by Ellis Jones Solicitors LLP (“the Firm”) at 107-111 Fleet Street, London EC4A 2AB (“the Premises”).

A hearing was held on 5 February 2024 at the Guildhall before me, Greg Moore, Interim Deputy Town Clerk, under delegated authority from the Town Clerk and Chief Executive. I was assisted by Edward Wood, Assistant City Solicitor and Alice Loynes, Electoral Services and City Occupiers Database Deputy Manager.

In attendance was Common Councillor Eamonn Mullally (“the Objector”), who had submitted the objection to the inclusion of the eight names in the provisional Ward List. He was accompanied by Alderwoman Martha Grekos.

Also in attendance was Daniel Flynn (“the Respondent”), a Senior Associate at the Firm. He confirmed that he was representing the Firm and the other persons objected to, as well as appearing in his own capacity. He was accompanied by Bradley Moon, a Paralegal at the Firm.

In making this decision I have taken into account the written objection dated 16 December 2023 and the oral representations from both the Objector and the Respondent at the hearing. I have also taken into account additional information where indicated below.

It was not disputed by the Objector that the Firm was a qualifying body for the purposes of the City of London (Various Powers) Act 1957 (“the 1957 Act”) and the City of London (Ward Elections) Act 2002 (“the 2002 Act”). Nor was it disputed that the Firm was occupying the Premises for relevant purposes on 1 September 2023 (“the Qualifying Date”)

At the outset of the hearing the Respondent explained that the Firm had reviewed the size of its workforce at the Premises on the Qualifying Date. The Respondent clarified that there had in fact been a total of nine employees, which under section 3 of the 2002 Act gave rise to an entitlement to appoint one voter, rather than eight – assuming that the other criteria were satisfied. The Respondent confirmed that, if eligible, the one voter appointed by the Firm would be Timothy McMahon.

The main issue to be determined at the hearing was whether the Firm was occupying the Premises as owner or tenant, as required under section 6(1)(c) of the 1957 Act.

As part of his objection the Objector had submitted an email from Regus, the leaseholder of the Premises, and the company through which the Firm had procured its office accommodation. The email stated that, “The service we provide our customers are service agreements not leases.”

The Respondent’s contention was that the relevant legislation did not require a qualifying body to hold a particular interest in land and should not be interpreted in that way. He disagreed with the guidance in the Wardmote Book that, “...a simple licence to occupy premises, with no exclusive possession – such as is often found in shared workspaces – would not satisfy [the relevant] requirement.”

I cannot agree with this assessment. The wording of section 6(1)(c) of the 1957 Act is clear and the concepts of ownership and tenancy are, as a matter of law, well understood. The framework governing the distinction between leases and licences has been well established for many years.

The Respondent’s alternative contention was that it didn’t matter how Regus characterised their arrangement, the important thing was what the practical facts of the occupation were, citing the well-known case of *Street v Mountford*, and that this amounted to a tenancy in any event.

The Respondent stated that the Firm’s occupation of the Premises was materially different from the type of WeWork shared office space envisaged in the Wardmote Book. He produced a written statement from Timothy McMahon testifying that Office 319 and Office 320 at the Premises had been used exclusively by the Firm, that the Firm’s employees had their own key cards to access the building and their offices, and that as far as he was aware, the only other entity with access to the offices was Regus.

I asked the Respondent to provide me with the documents governing the Firm’s occupation of the Premises following the hearing. Notwithstanding the Respondent’s stated view that this would not assist me with my decision, he helpfully sent the relevant documents to me on 8 February 2024, together with some additional comments. The documents consisted of General Terms and Conditions, House Rules, and Renewal Agreements for Office 319 and Office 320.

As the Respondent has acknowledged, clause 1.1 of the General Terms and Conditions provides that, “Nature of an agreement: At all times, each Center remains in Our possession and control. YOU ACCEPT THAT AN AGREEMENT CREATES NO TENANCY INTEREST, LEASEHOLD ESTATE, OR OTHER REAL PROPERTY INTEREST IN YOUR FAVOR WITH RESPECT TO THE ACCOMMODATION.”

Paragraph 38 of the House Rules also states that, “Nature of our services agreement: We may assign the services agreement at any time without your consent. This clause reflects the fact that you are taking a serviced office agreement and not a lease and that we retain overall control of the business centre. You have no real-property or commercial property interest of any kind in the building where the business centre is located.”

I accept that a declaration that an agreement does not amount to a tenancy is not determinative by itself, following *Street v Mountford*. In deciding whether there is a tenancy or a licence the test is whether, on the true construction of the agreement, the occupier has been granted exclusive possession of the accommodation for a fixed or periodic term at a stated rent.

However, it should be noted that in *Street v Mountford* it was conceded that the agreement did grant exclusive possession and Lord Templeman noted the importance of the court being astute in spotting shams. In the present case, Regus is a large business providing flexible serviced offices and workspaces using a common business model based on shared space and licence agreements. Likewise, the Firm is a sophisticated commercial party with an understanding of the law. There is no suggestion that this agreement is a sham or device.

Whilst I do not doubt Timothy McMahon’s evidence, the fact that the Firm may not have shared its space with another is not determinative in the absence of a sham. The question is what was granted. Unlike in *Street v Mountford*, the proper construction of this agreement is not that it is a lease, labelled as a licence, conferring exclusive possession; it is clearly an agreement for a serviced licence.

By way of illustration, clause 2.2.3 of the General Terms and Conditions provides that, “Use of the Accommodation: An agreement will list the accommodation We initially allocate for Your use. You will have a non-exclusive right to the rooms allocated to You. Where the accommodation is a Coworking desk, this can only be used by one individual, it cannot be shared amongst multiple individuals. Occasionally to ensure the efficient running of the Center, We may need to allocate different accommodation to You, but it will be of reasonably equivalent size and We will notify You with respect to such different accommodation in advance.”

Further clauses of the General Terms and Conditions that support this conclusion are 1.4, 1.6, 2.1 and 2.2.4. In my view therefore the Firm did not occupy the Premises as owner or tenant on the Qualifying Date, and consequently did not satisfy the full requirements of section 6(1)(c) of the 1957 Act, in order to appoint one or more voters.

Accordingly, Timothy McMahon, Daniel Flynn, Daniel Lewis, Clementine Saulnier, Bradley Moon, Lauren Foster, Lovetta Pring and Tayla Baird will not be included in the final Ward List for the Ward of Castle Baynard for 2024 – 2025.

There is a right of appeal to the Mayor’s and City of London Court in relation to this decision.

Yours sincerely



Greg Moore
Interim Deputy Town Clerk