

## APPEAL SUB (STANDARDS) COMMITTEE

Friday, 28 September 2018

**Minutes of the meeting of the Appeal Sub (Standards) Committee held at the Guildhall EC2 at 10.30 am**

### **Present**

#### **Members:**

Dan Large (Chairman)  
Chris Boden

Michael Hudson  
Jeremy Simons

#### **In attendance:**

Chris Taylor (Independent Person)

Susan Pearson  
Graeme Harrower (adviser to above)

#### **Officers:**

Martin Newton - Town Clerk's Department  
Peter Oldham, QC - Legal adviser to the Appeal Sub (Standards) Committee

#### **1. APOLOGIES**

There were no apologies for absence.

#### **2. DECLARATIONS OF INTEREST IN RESPECT OF ITEMS ON THE AGENDA**

There were no declarations of interest.

#### **3. PUBLIC MINUTES OF LAST MEETING**

**RESOLVED** – That the public minutes of the meeting held on 25 July 2018 be confirmed and signed as a correct record.

#### **4. CODE OF CONDUCT AND GUIDANCE**

The Code of Conduct and guidance to members in force at the time of the alleged breach of the Code were noted.

RECEIVED.

#### **5. LOCALISM ACT 2011 AND DCLG GUIDANCE**

The extract from the Localism Act 2011 and the DCLG guidance were noted.

RECEIVED.

#### **6. QUESTIONS RELATING TO THE WORK OF THE SUB-COMMITTEE**

There were no questions relating to the work of the Sub Committee.

7. **ANY OTHER PUBLIC BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**

There was no urgent business.

8. **EXCLUSION OF THE PUBLIC**

Following discussion, and after considering comments from Mr Harrower, the appellant's representative, it was

**RESOLVED** – That the appeal be conducted in public session, with the Sub Committee moving into non-public session only to consider the previous non-public minutes and associated matters and to deliberate on its final decision.

9. **STANDARDS APPEAL**

Ms Pearson entered the Committee Room at 10.45am.

The Sub Committee had before them the covering report of the Town Clerk relating to the appeal against the decision and sanction of the Hearing Sub (Standards) Committee, that Ms Pearson had breached paragraph 13 of the Members' Code of Conduct in speaking and voting on a matter in which she had a disclosable pecuniary interest (DPI) at the Planning and Transportation Committee in January 2018 without a dispensation to do so, and that a sanction of censure be imposed.

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10. **APPEAL PROCEDURE**

The Sub Committee noted the previously agreed procedure for conducting the appeal.

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11. **WRITTEN GROUNDS FOR APPEAL**

The Chairman then invited Mr Harrower, on behalf of Ms Pearson, to set out the grounds for the appeal.

Mr Harrower firstly made reference to the failure of the Corporation (as represented by the Comptroller and City Solicitor) to make written representations in response to the appeal, or to attend the appeal, and put forward the view that as no written representations had been made in response to the written appeal, and in the absence of the Corporation attending the appeal hearing, there was no opposition to the appeal on breach and sanction and that the appeal should therefore be allowed for this reason alone.

Mr Harrower then went on to outline the 6 grounds for the appeal set out in the circulated documentation, in summary:-

(1) Ms Pearson had no DPI in the item considered at the Planning and Transportation Committee on 29 January as the item (whether or not to delegate determination of a planning application to London Borough of

Islington) was an inter-authority jurisdictional matter rather than determination of the planning application itself.

(2) There was no breach of paragraph 13 of the Code because the decision on 29 January could not and/or did not have an impact on the value of the DPI, i.e. the lease of the flat in Hatfield House.

(3) There was no breach of paragraph 13 because Ms Pearson was unaware that she had a DPI in the matter being considered on 29 January.

(4) There was no breach of paragraph 13 because there was a reasonable excuse for Ms Pearson's participation in the meeting on 29 January in that the item was added at a very late stage to the agenda for that meeting and with the resulting impact on the opportunity to obtain a dispensation.

(5) In deciding that there had been a breach of paragraph 13 of the Code, the Hearing Sub (Standards) Committee took into account the fact that Ms Pearson should have sought guidance from the Monitoring Officer or Clerk to the Committee before participating in the meeting on 29 January and that this was an irrelevant factor.

(6) There were procedural irregularities on the part of the Corporation in the decision making process leading up to and including the delegation decision on 29 January, and in the complaint against Ms Pearson which followed, such as to amount, singly or in any combination, to an abuse of process which should prevent any finding of breach of the Code against her.

Mr Harrower also referred to the Hearing Sub Committee's decision to impose a sanction and contended amongst other things that this was wrongly imposed by reason that Ms Pearson had refused to comply with a condition which that Sub Committee sought to impose without authority to do so.

The Sub Committee then heard from Ms Pearson, noting her comments and clarification on the matter, including the seeking of advice from Mr Harrower on her potential interest and the personal impact on her since being informed that her actions at the January meeting constituted a possible breach of the Code and Localism Act and the resulting stress of the investigation and hearing process.

The Sub Committee then briefly adjourned at 11.17am and reconvened at 11.22am.

Discussion and questions then commenced and relating to the first point made by Mr Harrower regarding the lack of written submissions and attendance by the Corporation, the Sub Committee noted the Chairman's statement that the email contained in the agenda pack under item 13 confirmed that, whilst the Comptroller and City Solicitor would be submitting no further written representations on the grounds of appeal, the Sub Committee should refer to the documentation considered by the Hearing Sub (Standards) Committee.

The Sub Committee then proceeded to consider the 6 grounds of appeal, referring to the detailed documentation in the agenda pack and asking questions to elicit further information and to clarify particular points raised, and Mr Harrower explained the background to Ms Pearson's request to him for advice on her ability to take part in the urgent item at the Planning and Transportation meeting and the timescale available to her for seeking a dispensation. Ms Pearson said that she was the only person that could 'speak for the residents on the matter' and Mr Harrower put forward the view that an email to other committee members outlining her views would not have been as effective as speaking at the meeting. The Sub Committee noted the contention that there was no obligation for Ms Pearson to seek advice from the Comptroller and City Solicitor or the Clerk to the Committee in respect of interests.

Discussion continued and a member of the Sub Committee asked whether Ms Pearson had regarded the delegation as an important decision, and members noted her reply that it was important for residents to have the ability to have 'a say' in the matter and whether the planning application should be dealt with by the City of London, with more residences in the City than Islington potentially affected by the application. Ms Pearson also said that there could be no effect on her property value in where a vote on the actual application was to be taken.

Members then considered the view of Mr Harrower that the "matter" being considered on 29 January, for the purposes of paragraph 13 of the Code, could and should not be conflated with a determination of the planning application and noted his summary of the views of James Goudie, QC and Thomas Sharpe, QC on this point. Mr Harrower also told the meeting that the view of the Investigating Officer, John Austin was that there was no evidence of impact on property value arising from the 29 January meeting decision.

The Sub Committee adjourned for lunch at 12.45pm and reconvened again at 1.30pm

Members continued with questions and Mr Harrower raised the matter of perception, making the point that this term is not used in paragraph 13 of the Code of Conduct and that in his view perception was therefore not a 'valid test'. He then went on to raise the matter of the condition for criminal liability in s 34(1) of the 2011 Localism Act (no reasonable excuse) that he considered should be imported into paragraph 13 of the Code. The Sub Committee noted the contention that since Ms Pearson was not aware on 29 January that she had a DPI in the decision to be taken, there was no breach of paragraph 13 of the Code. Mr Harrower also contended that s 31(1)(c) of that Act (awareness of DPI) ought also to be imported into paragraph 13. Mr Oldham, QC then asked questions to clarify these views and the Sub Committee duly noted Mr Harrower's comments that the Code was to be read by laymen and that whilst the essence is set out in paragraph 13, it would be appropriate for the sensible interpretation of it to also be based on other relevant material.

Debate then turned to guidance on the matter and Mr Harrower made the point that, with the timescale available, Ms Pearson had turned to him as a former

solicitor for legal advice as he was available to offer it. Mr Harrower stated that it would be wrong to contend that the Monitoring Officer was required to be consulted, as the Code did not provide for this, and that it would be inappropriate to say that the Clerk to the Committee should have been consulted as that person did not have a legal qualification. Mr Harrower said that he had practised law for 30 years and did not consider that a DPI was applicable on 29 January as there was no financial consequences for Ms Pearson and the item for consideration was not the planning application itself. Members also noted Ms Pearson's confirmation that for another committee meeting she had been able to consult the Comptroller's representative and had taken that officer's view that she should not take part in that particular item.

The Sub Committee then considered Mr Harrower's comments on alleged procedural irregularities, in both the handling of the delegation issue item at Planning and Transportation Committee and the instigation of proceedings that followed against Ms Pearson, and his contention that these amounted to an abuse of process that should be taken account of as part of the appeal in view of 'justice and fairness'. At the conclusion of this part of the hearing, and in response to questions from the Sub Committee, Ms Pearson again confirmed that she had suffered personal stress as a result of the case that had made her question whether she would stand again in future elections.

The Sub Committee adjourned for a short period at 3.25pm and reconvened again at 3.38pm.

Mr Harrower then reaffirmed his earlier comments in support of Ms Pearson's grounds of appeal and the Chairman, on behalf of the Sub Committee thanked Ms Pearson and Mr Harrower for their contributions, both written and oral.

**12. WRITTEN REPRESENTATIONS - COMPTROLLER AND CITY SOLICITOR'S DEPARTMENT (CITY OF LONDON CORPORATION)**

The Comptroller and City Solicitor's written confirmation of no further representations from the Corporation in relation to the submitted grounds of appeal was noted, along with the Comptroller's confirmation that the Sub Committee should refer to the previous material provided to the Hearing Sub Committee for its 21 May meeting and the resulting decision and sanction letters that were issued by that body.

**13. EXCLUSION OF THE PUBLIC**

**RESOLVED** - That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following items on the grounds that they may involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act.

**14. NON-PUBLIC MINUTES OF THE LAST MEETING**

**RESOLVED** – That the non public minutes of the meeting held on 25 July 2018 be confirmed and signed as a correct record.

15. **WRITTEN GROUNDS FOR APPEAL (CONT'D)**

The Sub Committee then proceeded to discuss the grounds of appeal in detail and with advice from Mr Oldham, QC.

Arising from its deliberations, the Sub Committee was of the view that on the point raised about the Corporation submitting no further written comments in relation to the grounds of the appeal, it understood that the appeal was not being conceded and the Sub Committee was being asked to take account of the written material that had been before the Hearing Sub Committee and its decision and sanction letters in deciding how to resolve the appeal. Members were advised by Mr Oldham, and accepted, that a lack of further written response from the Corporation and/or the Corporation's non-attendance at the hearing were not grounds, under the adopted appeal procedure, for allowing the appeal.

Accordingly, Members proceeded to consider the written grounds of appeal.

**(1) There was no DPI in the "matter" being considered on 29th January**

The Sub Committee agreed that the delegation decision being considered on 29 January should not be conflated with any later determination of the planning application. Mr Oldham advised that whether Ms Pearson had a DPI in the delegation decision depended on if, in the Sub Committee's view, and on the particular facts of the case, there was a sufficient material connection between the delegation decision and the substantive determination of the planning application which might follow.

The Sub Committee were in agreement there was sufficient material connection, noting that the matter of whether the Corporation or Islington was to determine the planning application was contentious. The Sub Committee considered that members must have regarded the issue as having at least the potential to affect the outcome of the planning application and noted that, had the delegation been agreed at the 29 January meeting, that resolution would have ended the Corporation's involvement in the application. As a result, the Sub Committee came to the conclusion that Ms Pearson had a DPI in the delegation decision.

**(2) There was no breach of paragraph 13 of the Code because the decision on 29 January could not and/or did not have an impact on the value of the DPI, i.e. the lease of the flat in Hatfield House**

Members noted that paragraph 13 of the Code refers to a "pecuniary interest" in the matter under consideration and deliberated whether that meant that the matter under consideration must or might affect the value of the interest.

The Sub Committee were advised by Mr Oldham and accepted that the contention that there is no DPI without an impact on the value of the interest would be a misreading of the legislative scheme, and thereby of paragraph 13, an understanding of which should be informed by that scheme.

Accordingly, and whilst accepting Ms Pearson was not seeking pecuniary advantage, the Sub Committee did not agree with this ground of appeal.

**(3) There was no breach of paragraph 13 because Ms Pearson was unaware that she had a DPI in the matter being considered on 29 January**

The Sub Committee noted that this ground of appeal contended that, actually or in effect, s 31(1)(c) of the 2011 Localism Act ought to be imported into paragraph 13 of the Code.

Members considered the contention that, since Ms Pearson was not aware on 29 January that she had a DPI in the decision to be taken, there was no breach of paragraph 13 of the Code. Mr Oldham advised that the “awareness” element referred to in s 31(1)(c) was not imported into paragraph 13 of the Code. The Sub Committee were advised that an understanding of paragraph 13 was to be informed by section 31(1)(b); but whether paragraph 13 could be said to “give effect to” s 31(1)(b) was possibly not a strictly accurate way of describing the relationship between the two. S 31(1)(b) and paragraph 13 had different purposes: one was a statutory provision breach of which had certain consequences specified in the 2011 Act, and the other was part of a Code adopted by the Corporation, breach of which had other consequences.

Members were in agreement that, even if it were right to say that paragraph 13 gives effect to s 31(1)(b), there is no reason why it must be interpreted as giving effect to s 31(1)(c), particularly when paragraph 13 makes no mention of the state of awareness or knowledge of the member.

Accordingly, the Sub Committee did not accept this ground of appeal.

**(4) There was no breach of paragraph 13 because there was a reasonable excuse for Ms Pearson’s participation in the meeting on 29 January**

The Sub Committee accepted Mr Oldham’s advice that it would be incorrect to read the Code as being subject to a “reasonable excuse” defence as such a defence was not referred to in the Code, and the legislation refers to it only in the context of criminal liability.

Accordingly, the Sub Committee did not accept this ground of appeal, but were in agreement that had it taken the view that there was a “reasonable excuse” defence to breach of the Code, it would have found the defence made out, largely for the reasons explained below in relation to sanction.

**(5) In deciding that there had been a breach of paragraph 13 of the Code, the Hearing Sub Committee took into account the fact that Ms Pearson should have sought guidance from the Monitoring Officer or Clerk to the Committee before participating in the meeting on 29 January**

The Sub Committee was of the view that the Hearing Sub Committee’s letter should not be understood as meaning that the Hearing Sub Committee had reached its decision on breach of the Code because Ms Pearson had not sought advice from the Monitoring Officer or Clerk to the Committee.

Accordingly, the Sub Committee did not accept this ground of appeal.

However, in deciding there was a breach of paragraph 13 of the Code, the Sub Committee did not take into account whether (as the Hearing Sub Committee believed) Ms Pearson should have sought advice from the Monitoring Officer or the Clerk.

**(6) There were procedural irregularities on the part of the Corporation in the decision making process leading up to and including the delegation decision on 29 January, and in the complaint against Ms Pearson which followed, such as to amount, singly or in any combination, to an abuse of process which should prevent any finding of breach of the Code**

The Sub Committee noted Mr Oldham's advice that as a matter of law, the procedural irregularities, if made out, would not be relevant to its determination of whether a breach of the Code had occurred.

Accordingly, the Sub Committee did not accept this ground of appeal, and did not think that it was generally necessary or appropriate to make findings on the various instances of alleged procedural irregularity, with the exception that the Monitoring Officer had not "compl[ie]d with the Corporation's standard procedure of requiring a formal complaint to be made by an identified complainant". On this matter, the Sub Committee's legal advice, which it accepted, is that this departure did not invalidate the standards process such as to mean that the appeal against a finding of breach of the Code should succeed. Under s 28(6)(a) of the 2011 Act, the Corporation must have in place arrangements under which allegations of a breach of the Code can be made and investigated. The fact that the Corporation has a written complaints procedure does not prevent the initiation and investigation of complaints in a different fashion.

**Conclusion of Sub Committee's consideration of the appeal against the decision that a breach of paragraph 13 of the Code took place**

For the above reasons, the Sub Committee did not accept any of the grounds of appeal against the decision of the Hearing Sub Committee on whether there had been a breach of the Code.

Members then proceeded to consider the appeal against sanction decision.

**Sanction Decision**

The Sub Committee were in agreement that they had sympathy with Ms Pearson's position, and accepted that her sole motivation for wishing to participate in the debate and to vote on 29 January was so that constituents of her ward could have a voice in the decision to be taken, and that her actions were not motivated by any possible impact, financial or otherwise, on the lease of her flat in Hatfield House.

Members noted that the item in question on 29 January was added to the agenda urgently on a Friday afternoon for the following Monday at 10.00am, giving virtually no time to seek advice as to whether to participate. The Sub Committee was clear in its view that it would draw no inference against Ms Pearson for not seeking advice from officers over the weekend. Members also acknowledged that advice had been sought in good faith from Mr Harrower and

the advice provided, also given in good faith and to the best of his ability, was that the Code did not prevent Ms Pearson from participating. The Sub Committee's opinion, however, was that the advice was incorrect and the proper source of advice would have been the Monitoring Officer, or the Assistant City Solicitor or Clerk to the Committee attending the meeting, either on Friday afternoon or before the meeting began on Monday, whilst acknowledging the short timescale to seek this advice. Members also considered that, in the absence of such advice beforehand, the matter could have been raised at the meeting itself.

The Sub Committee noted that Ms Pearson was a relatively inexperienced Common Councilman when the meeting on 29 January took place, that she had attended induction training soon after election in March 2017 and again in January 2018, and that her representations during the appeal made it very clear that she had rightly taken the complaint very seriously, and that its impact on her had been very considerable.

### **Conclusion of Sub Committee's consideration of the appeal against sanction**

The Sub Committee was in agreement that the Hearing Sub Committee's decision to impose the sanction of censure was wrong and that no sanction should be imposed.

### **Other Matters**

The Chairman of the Sub Committee asked that the Town Clerk draft a note for him to send to the Chairman of the Standards Committee on lessons to be learnt from the overall process.

### **RESOLVED – That**

- (a) the Sub Committee agree that Ms Pearson breached paragraph 13 of the Code of Conduct for Members, by participating in and voting on a matter in which she had a disclosable pecuniary interest at the Planning and Transportation Committee on 29 January 2018 without a dispensation to do so, and that the appeal against the decision by the Hearing Sub Committee on 21 May 2018 not be allowed;
- (b) no sanction should be imposed for that breach and that the appeal against the sanction imposed by the Hearing Sub Committee on 21 June 2018 be allowed;
- (c) the minutes of the entire meeting (including the non public session) be made publicly available; and
- (d) the Town Clerk be instructed to draft a note from the Chairman of the Sub Committee to the Chairman of the Standards Committee on lessons to be learnt from the overall process.

16. **QUESTIONS ON THE WORK OF THE SUB-COMMITTEE (EXEMPT INFORMATION)**

There were no other non public questions on the work of the Sub Committee.

17. **ANY OTHER NON-PUBLIC BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**

There were no other urgent non public matters.

18. **WRITTEN GROUNDS FOR APPEAL (CONT'D)**

The Sub Committee returned to public session at 5.08pm and Ms Pearson, Mr Harrower and the member of the public returned to the committee room.

The Chairman then advised all present that the Sub Committee had considered and taken account of all relevant matters in determining the appeal, and that its decision was that Ms Pearson had breached paragraph 13 of the Code of Conduct for Members by participating and voting on a matter in which she had a disclosable pecuniary interest at the Planning and Transportation Committee on 29 January 2018 without a dispensation to do so, but that no sanction should be imposed for that breach. The Chairman confirmed that Ms Pearson's appeal from the decision of the Hearing Sub (Standards) Committee set out in its letter of 29 May 2018, in which it decided that the Code had been breached, was therefore not allowed, but the appeal from its decision on sanction set out in its letter of 26 June 2018, in which it imposed the sanction of censure, was allowed.

The Chairman explained that written reasons for the Sub Committee's decision would follow in due course.

**The meeting closed at 5.10 pm**

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Chairman

**Contact Officer: Martin Newton**  
**0207 332 3154**  
**[martin.newton@cityoflondon.gov.uk](mailto:martin.newton@cityoflondon.gov.uk)**