Public Document Pack

Appeal Sub (Standards) Committee

Date: **FRIDAY, 28 SEPTEMBER 2018**

Time: **10.30 am**

Venue: **COMMITTEE ROOM 2 - 2ND FLOOR, WEST WING, GUILDHALL**

Members:
Chris Boden
Michael Hudson
Dan Large (Chairman)
Jeremy Simons

Chris Taylor (Independent Person)

Enquiries: **Martin Newton**
0207 332 1409
martin.newton@cityoflondon.gov.uk

Lunch will be served in the Guildhall Club at 1pm
NB: Part of this meeting could be the subject of audio or video recording

John Barradell
Town Clerk and Chief Executive

AGENDA

1. **APOLOGIES**

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

3. **PUBLIC MINUTES OF LAST MEETING**
To consider the public minutes of the last meeting of the Appeal Sub (Standards) Committee held on 25th July 2018.

For Decision
(Pages 1 - 2)

4. **CODE OF CONDUCT AND GUIDANCE**
Code of Conduct and Guidance in force January 2018.

For Information
(Pages 3 - 14)

5. **LOCALISM ACT 2011 AND DCLG GUIDANCE**
Extract from Localism Act 2011 and DCLG Guidance to councillors on openness and transparency on personal interests

For Information
(Pages 15 - 40)

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

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

8. **EXCLUSION OF THE PUBLIC**
MOTION – That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the remaining items on the ground that they involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A (paragraphs 1 and 2) of the Local Government Act.

For Decision

9. **NON-PUBLIC MINUTES OF THE LAST MEETING**
To consider the non-public minutes of the last meeting of the Appeal Sub (Standards) Committee held on 25th July 2018.

For Decision
(Pages 41 - 42)

10. **STANDARDS APPEAL**
Report by the Town Clerk.

For Decision
(Pages 43 - 44)

11. **APPEAL PROCEDURE**

For Information
(Pages 45 - 50)

12. **WRITTEN GROUNDS FOR APPEAL**
Grounds of appeal and supporting documentation.

(Pages 51 - 188)

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

For Information
(Pages 189 - 190)

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

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

This page is intentionally left blank

APPEAL SUB (STANDARDS) COMMITTEE

Wednesday, 25 July 2018

Minutes of the meeting of the Appeal Sub (Standards) Committee held at the Guildhall EC2 at 3.35 pm

Present

Members:
Michael Hudson
Jeremy Simons
Dan Large (Co-opted Member)

Officers:
Lorraine Brook - Town Clerk's Department

Also Present: Jonathan Swift QC (legal adviser to the Sub-Committee)

[Those present agreed to delay the start time of the meeting for five minutes as one Member was not present at 3.30pm.]

[With the Sub-Committee's consent, the order of business was amended as below to allow for declarations of interest to be made by those present.]

1. **ELECTION OF A CHAIRMAN**
   Those present considered the election of a Chairman.

   RESOLVED:- That Dan Large (Co-opted Member) be elected as the Chairman of the Appeal Sub (Standards) Committee.

2. **DECLARATIONS OF INTEREST IN RESPECT OF ITEMS ON THE AGENDA**
   Those present confirmed that as Members of the Standards Committee they had not, to date, had any involvement with the complaint at any stage of the complaints process.

3. **QUESTIONS RELATING TO THE WORK OF THE SUB COMMITTEE**
   There were none.

4. **ANY OTHER PUBLIC BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**
   There was none.

5. **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 remaining items of business on

the grounds that they involve the likely disclosure of exempt information as defined in Part 1 (paragraphs 1 and 2) of Schedule 12A of the Local Government Act.

6. **APPEAL PROCEDURE**

The Sub-Committee considered a report of the Town Clerk relative to the procedure that would be followed by the Sub-Committee for an appeal by a Common Councilman against decisions of the Hearing Sub (Standards) Committee that there had been a breach of the Members' Code of Conduct and sanctions should be applied.

It was noted that as the complaint against the elected member had been considered under the City Corporation's former complaints procedure, rather than the new procedure which was implemented on 19 July 2018, the appeal process would also be managed based on the old procedure. Consequently, as there was no established procedure for the conduct of an appeal under the old complaints process, Members were asked to agree the procedure for hearing the appeal.

RESOLVED: - That –

(i) the procedure for hearing the appeal by the Common Councilman by this Sub-Committee be approved and circulated to Members and all other relevant parties once drafted by Jonathan Swift QC (the Sub-Committee's legal adviser); and

(ii) the appeal hearing be scheduled to take place on 27 or 28 September 2018 subject to the availability of an Independent Person and room availability.

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

There was none.

The meeting closed at 4.50 pm

Chairman

Contact Officer: Lorraine Brook
lorraine.brook@cityoflondon.gov.uk

Figure 1 - Crest

CODE OF CONDUCT FOR MEMBERS

IN RESPECT OF THE CITY OF LONDON CORPORATION'S LOCAL AUTHORITY, POLICE AUTHORITY AND NON-LOCAL AUTHORITY FUNCTIONS

1. You are a member of the City of London Corporation ("the Corporation") or a member of a committee of the Corporation (in this Code collectively referred to as a "Member") and hence you shall have regard to the Seven Principles of Public Life –

    a. **SELFLESSNESS**: Holders of public office should act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, a friend or close associate.

    b. **INTEGRITY**: Holders of public office should not place themselves under a financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties. NB – This Principle applies only to conduct by a Member in their capacity as a Member which may foreseeably lead to the Member being subjected to inappropriate influence in the performance of their duties. It does not apply to contracts of employment, service or other formal and informal business relationships entered into by Members in their private capacities and which are dealt with by the rules on disclosable pecuniary and non-pecuniary interests.

    c. **OBJECTIVITY**: When carrying out public duties, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, holders of public office should make all choices on merit.

    d. **ACCOUNTABILITY**: Holders of public office are accountable for their decisions to the public and should co-operate fully with whatever scrutiny is appropriate to their office.

    e. **OPENNESS**: Holders of public office should be as open as possible about their decisions and actions and the decisions and actions of their authority and should be prepared to give reasons for those decisions and actions.

f. **HONESTY**: Holders of public office have a duty to declare any private interests that relate to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

g. **LEADERSHIP**: Holders of public office should promote and support high standards of conduct when serving in their public post, in particular as characterised by the above requirements, by leadership and example.

2. As a Member your conduct shall in particular address the Seven Principles of Public Life by:

a. Championing the public interest, taking into account the needs of your constituents, including those that did not vote for you, and the community as a whole.

b. Dealing with representations or enquiries from residents, City voters, members of our communities and visitors fairly, appropriately and impartially.

c. Not allowing other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Corporation or the good governance of the Corporation in a proper manner.

d. Exercising independent judgement and not compromising your position by allowing individuals or organisations to improperly influence you in the performance of your official duties by means of any financial or other obligations.

e. Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

f. Being accountable for your decisions and co-operating when scrutinised internally and externally, including by constituents.

g. Contributing to making the Corporation's decision-making processes as open and transparent as possible to enable constituents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account but restricting access to information when the wider public interest or the law requires it.

h. Behaving in accordance with all the Corporation's legal obligations, alongside any requirements contained within the Corporation's policies, protocols or procedures, including on the use of the Corporation's resources.

i. Ensuring that, when using or authorising the use by others the resources of the Corporation, such resources of the Corporation, such resources are not used improperly for political purposes (including party political

purposes) and having regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

j. Valuing your colleagues and officers of the Corporation and engaging with them in an appropriate manner and one that underpins the mutual respect that is essential to good local governance.

k. Always treating people with respect, including the organisations and constituents that you engage with and those that you work alongside.

l. Registering and declaring any private interests, both pecuniary and non-pecuniary, that relate to your public duties in a manner conforming with the procedures set out below.

m. Providing leadership through behaving in accordance with these principles when championing the interests of constituents with other organisations as well as within the Corporation.

Registering and declaring pecuniary and non-pecuniary interests

3. You must, within 28 days of taking office as a Member, notify the Town Clerk (on behalf of the Corporation's monitoring Officer) of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife or as if you were civil partners, together with any non-pecuniary interests of yours described in paragraph 7 below and thereafter maintain an up to date register of any such interests.

4. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (Appendix 1) currently define disclosable pecuniary interests under the following categories:

    a. Employment, office, trade, profession or vocation
    b. Sponsorship
    c. Contracts
    d. Land
    e. Licences
    f. Corporate tenancies
    g. Securities

5. Where you believe you have a sensitive record[1], you should apply to the Monitoring Officer (via the Town Clerk) for exemption from the requirement that details of the interest be published and made available for inspection.

[1] A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

6. In addition, you must, within 28 days of taking office as a Member, and thereafter on an on-going basis, notify the Corporation's Monitoring Officer (via the Town Clerk) of any other pecuniary interest or non-pecuniary interest which you consider should be included on your Members' Declaration form if you are to fulfil your duty to act in conformity with the Seven Principles of Public Life.

7. In any event you are required to disclose your membership of any:

    a. Management board or similar organ of any charity or body directed to a charitable purpose (e.g. a trustee or director) but excluding any charity or other such body administered by the Corporation.

    b. Club or Society active in the City of London or which relates to any functions of the Corporation.

    c. Fraternal or Sororal Societies.

    d. Livery Company, City Company without Livery, Guild or Company seeking Livery.

    e. Political Party.

    f. Organisation, one of whose principal purposes includes the influence of public opinion or policy, and which is likely to seek to affect the policy of the Corporation or which may have an impact on its services or stakeholders.

    g. Professional Association.

    h. Trade Association.

    i. Trade Union.

    j. Management board or similar organ of any organisation not falling within paragraph 3 or sub-paragraphs a-i above.

8. You must also notify the Corporation's Monitoring Officer (via the Town Clerk) of any gift or hospitality received by you as a Member with a value of £100 or more, or multiple gifts and/or instances of hospitality with a cumulative value of £200 or more when received from a single donor within a rolling twelve month period. Such notification must be made within 28 days of receipt, or within 28 days of reaching the cumulative threshold, as appropriate.

9. Special provision shall be made for the Lord Mayor and other holders of special offices in relation to the registration of gifts and hospitality to be set out in Guidance to be issued by the Standards Committee.

10. Entries shall be retained in the register of gifts and hospitality for three years – older entries will be removed.

11. If an interest has not been entered onto the Corporation's register, then the Member must disclose the interest to any meeting of the Corporation at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.[1]

12. Following any disclosure of an interest not on the Corporation's register of the subject of notification[2], you must notify the Monitoring Officer (via the Town Clerk) of the interest within 28 days beginning with the date of the disclosure.

13. Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State.

14. Your participation in any item of business:

    a. in which you have any other interest; or
    b. that affects a donor from whom you have received any gift or hospitality;

    that is registered, or ought to be registered as set out above, will need to be considered by you on a case by case basis. You will only be expected to exclude yourself from speaking or voting in exceptional circumstances, for example where there is a real danger of bias.

15. If in doubt about any of the above matters you are encouraged to seek advice from the Town Clerk or the Corporation's Monitoring Officer.

[2] This is where an interest has been notified to the Monitoring Officer but has not yet been entered on the register.

This page is intentionally left blank

Guidance to Members – Members' Code of Conduct

General

1. This Guidance is supplemental to the City of London Corporation's Code of Conduct for Members ("the Code"). As in the Code, any reference to a "Member" includes both a member of the Corporation and a member of a committee of the Corporation.

2. It is not possible to cover every scenario or eventuality in this Guidance, which is intended as an aid for Members. It is not meant to be construed in an overly forensic or legalistic fashion. Rather, Members should consider how their actions might be perceived by the general public. In interpreting this Guidance and the Code, Members should at all times have regard to the Seven Principles of Public Life – selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. Further advice on the requirements of the Code can be obtained from the Corporation's Monitoring Officer (the Comptroller & City Solicitor) or the Committee and Member Services Team.

Register of Member Interests

3. All information provided on a Member Declaration Form will be published and made available for inspection – the only exception is where specific information is deemed to be sensitive, as set out in the Code.

4. A Member's register of interests will be published via the respective Member's page on the Corporation's website. The register includes sections on disclosable pecuniary interests, non-pecuniary interests and gifts and hospitality.

5. The Code sets out the relevant timescales for registering interests. One requirement is to notify the Monitoring Officer (via the Town Clerk) of any disclosable pecuniary interest, and specified non-pecuniary interests, within 28 days of taking office as a Member. Accordingly, a Member Declaration Form will be sent to Members following election or appointment.

6. Where a Member has been re-elected or re-appointed, the requirements of the Code are satisfied if the register is updated – it is not necessary to register interests that have previously been notified to the Town Clerk.

7. The Code also states that a Member must maintain an up to date register of interests and Members are encouraged to regularly review their register entries. In addition, Members will be contacted individually once a year to review and where necessary

* Via the Town Clerk's Department

update their register of interests and will also be reminded of the arrangements in respect of requests for dispensations.

8. Where you wish to register any interest, please use the Declaration Form provided (where appropriate) or contact the Committee and Member Services Team via email at declarations@cityoflondon.gov.uk or telephone: 020 7332 1407 or 020 7332 1409.

Disclosable Pecuniary Interests

9. The Code requires Members to register their disclosable pecuniary interests, as defined by regulations made by the Secretary of State – the current regulations are included in Appendix 1 of the Code.

10. It is essential that Members follow the rules on disclosable pecuniary interests because failure to do so may result in prosecution, a fine and/or disqualification as a member for up to 5 years. Investigations and sanctions regarding breaches of this aspect of the Code will be a matter for the Director of Public Prosecutions.

Declaring interests in Securities

What are Securities?

11. For these purposes "securities" means "shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and any other securities of any description other than money deposited with a building society" (Regulation 1 of The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012).

What Securities must be registered?

12. Members must register any beneficial interest in securities where:-

(a) The body, to the member's knowledge has a place of business or land within the City of London's area; and

(b) either-
   (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body (whichever is the lower); or
   (ii) if the share capital of that body is of more than one class, the total nominal value of the shares in any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

What is a "beneficial interest"?

13. A beneficial interest arises where there is a right to the economic benefit of the securities i.e. a right to the income from the securities or a share of it and a right to the proceeds of sale or part of the proceeds.

What degree of knowledge is required?

14. A Member will be taken to have knowledge of the necessary facts if:-
They have actual knowledge; or

They wilfully shut their eyes to the obvious; or
They wilfully and recklessly fail to make such inquiries as an honest and reasonable man would make; or
They have knowledge of circumstances which would indicate the facts to an honest or reasonable man; or
They have knowledge of circumstances which would put an honest and reasonable man on enquiry.

Thus genuine and reasonable ignorance of the facts is required if the obligation to register a disclosable pecuniary interest is to be avoided.

15. There is no general obligation to undertake extensive enquiries and thus a Member with significant holdings in, say, a unit trust is unlikely to be required to ascertain the value of the beneficial interest in each company within the trust and whether they have a place of business in the City provided that this is not apparent from the material routinely supplied to unit trust holders.

What is a "reasonable excuse"?

16. There is no statutory definition and whether a "reasonable excuse" for failure to register a disclosable pecuniary interest exists will depend on all the circumstances of the case. The Court will consider the actions of a Member from the perspective of a prudent person exercising reasonable foresight and due diligence having proper regard to their responsibilities.

Non-pecuniary interests

17. Members are also required to register specific non-pecuniary interests as set out in the Code. Some illustrative examples of the types of organisations and bodies intended to be included in particular categories in paragraph 7 of the Code are set out below:

    - Fraternal or Sororal Societies would include Freemasonry and the Royal Antediluvian Order of Buffaloes;
    - Club or Society active in the City of London would include a Ward Club;
    - Club or Society which relates to any functions of the Corporation would include the Heath & Hampstead Society.

18. This does not do away with the general obligation, in accordance with the Nolan Principles and the general duties set out in the Code, that Members are also required to notify the Town Clerk of any other interest that warrants disclosure.

Gifts and hospitality

19. Members must also notify the Corporation's Monitoring Officer (via the Town Clerk) of any gift or hospitality received that, when valued in accordance with this Guidance, meets or exceeds the relevant thresholds set out in the Code (being £100, or a cumulative value of £200 within a twelve month period). Hospitality can be defined as any food, drink, accommodation or entertainment freely provided or heavily discounted.

20. Please contact the Committee and Member Services Team within 28 days of receipt of any disclosable gift or hospitality specifying the following details:

- description of the gift or hospitality (i.e. tickets to a theatre performance);
- the date it was received;
- from whom the gift or hospitality was received (where the person who invites a Member to an event is not the person paying for the event, the identities of both persons (or organisations, etc.) must be specified if known).

21. It is acknowledged that special arrangements are required in relation to gifts and hospitality provided to the Lord Mayor and Sheriffs, and these arrangements are set out in Appendix 1.

Gifts and hospitality that do not need to be disclosed

22. The following do not need to be disclosed:

- gifts and hospitality provided by the Corporation, including committee dinners or lunches associated with committee visits and hospitality offered by the Corporation at external events such as MIPIM;
- tickets to events at the Barbican Centre or Guildhall School of Music and Drama, where the Chairman, Managing Director or Principal (i.e. the Corporation) is the host – but this does not include invitations from external organisations e.g. the London Symphony Orchestra, or the Royal Shakespeare Company;
- any invitation from Her Majesty The Queen.

23. In addition, a Member only has to disclose gifts or hospitality received by virtue of being a Member – this will not normally include gifts or hospitality received from friends or family. Members should apply common sense when they consider how receipt of a gift or hospitality might be interpreted. For example, if the Member is a member of the Planning and Transportation Committee, and a birthday present arrives from an applicant just before a planning application is due to be considered, then the Member should think about how this would be interpreted by a reasonable member of the public. If in doubt, the Member should disclose the interest.

24. Members do not need to disclose gifts and hospitality that do not reach the relevant thresholds.

How should Members assess the value of gifts and hospitality received?

25. Members should assess all of the hospitality on offer at any event attended, whether it is accepted or not. This approach is in the interests of transparency, certainty and accountability; and avoids Members being drawn into a debate about exactly what they ate or drank on a particular occasion. Members should consider how much a person could reasonably expect to pay to attend an equivalent function or event run on a commercial basis. Likewise, in relation to gifts, Members should consider how much a person could reasonably expect to pay for an equivalent item on a retail basis. Where a Member is in any doubt as to value, the prudent course is to err on the side of caution and register the gift or hospitality in question.

26. Some examples of gifts and hospitality that are unlikely to reach the individual threshold are as follows:

- drinks receptions (where only drinks and canapés are served);

- standard commemorative gifts including pin badges, published materials, ties, paper weights, plaques.

27. Some examples of gifts and hospitality that are likely to reach the individual threshold are as follows:

    - overseas trips or overnight accommodation;
    - formal luncheons or evening dinner events;
    - bespoke gifts that have been sourced/ made specifically for the Member (e.g. an engraved crystal vase, or a gold picture frame with a signed limited edition print);
    - hospitality packages including lunch or dinner and tickets to a sporting or cultural event.

28. Gifts and hospitality received by friends and family of a Member, by virtue of the latter being a Member, should also be treated as having been received by the Member and registered accordingly.

Additional caution

29. Caution should be exercised where the offer of any gift or hospitality is over and above what could reasonably be viewed as ancillary to the business being conducted, or is wholly unrelated to the business being conducted.

30. Particular caution should also be exercised by Members involved in determining regulatory matters (licensing, planning) and making decisions that affect the financial position of others.

31. Where a Member has reservations about accepting a gift, but is concerned that a refusal to accept the gift might cause offence, one available course of action would be to pass the gift on to the Corporation, rather than retaining it personally.

32. Members also need to be mindful of where their private activities might cross over with or be perceived to cross over with their activities as a Member.

33. Interests under the Code may also give rise to obligations in a Member's other capacities e.g. to an employer, or a charity for which one works in a personal capacity, and Members are advised to independently verify the requirements of such bodies.

Further information

For further information regarding the Members' Code of Conduct, please contact:

Michael Cogher (Comptroller & City Solicitor)
Tel: 020 7332 3699
Email: Michael.cogher@cityoflondon.gov.uk

Lorraine Brook (Principal Committee and Member Services Manager)
Tel: 020 7 3321409
Email: lorraine.brook@cityoflondon.gov.uk

Appendix 1

Gifts and hospitality – Lord Mayor

The same financial thresholds for the registration of gifts and hospitality apply to the Lord Mayor as to other Members. However, due to the sheer number of events attended, the details of gifts and hospitality received will be presented on a quarterly basis. This will be via a log maintained on the Lord Mayor's webpages by staff at Mansion House, with a link from the Lord Mayor's "Member's" web page during their term of office.

The log will include disclosable gifts and hospitality received by the Lady Mayoress or Lord Mayor's Consort, as well as gifts and hospitality received by a Lord Mayor Locum Tenens or Sheriff in the place of and on behalf of the Lord Mayor.

There are rare instances where the disclosure of a specific item of hospitality or related gift into the public domain may give rise to diplomatic, commercial or political sensitivities. In such cases that item will not appear on the public register but the relevant details will be notified to the Standards Committee.

It is acknowledged that failure to register gifts, on the basis that they do not meet the relevant value threshold, may cause offence in some cases. Therefore, in the same way that any Member can choose to register gifts with a lesser value, it has been agreed that the Lord Mayor will register all gifts received. For the same reason, in no case will the description of a gift include an approximate value.

Although the Lord Mayor can expect to receive many gifts during his or her year in office as a matter of courtesy, the large majority of those gifts are not retained by the Lord Mayor personally. Whilst the Standards Committee considers that it is important that it receives details of those gifts that are retained, it is acknowledged that this information may again give rise to diplomatic, commercial or political sensitivities and the relevant details will not therefore be released into the public domain.

Gifts and hospitality – Sheriffs

The arrangements for the registration of gifts and hospitality by the Sheriffs will as far as possible mirror the arrangements for the Lord Mayor. The Sheriffs, be they Aldermanic or non-Aldermanic, are subject to the Code and will have an individual register of interests. The details of gifts and hospitality received by the Sheriffs in that capacity will also be presented on a quarterly basis but via a log maintained by Old Bailey staff and published on the Corporate Governance webpages. Again, there will be a link from the "Member's" web page of both Sheriffs during their term of office.

As set out above, disclosable gifts and hospitality received by a Sheriff in the place of and on behalf of the Lord Mayor will be recorded in the log maintained by staff at Mansion House and not the log maintained by staff at the Old Bailey.

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/27 Duty to promote and maintain high standards of conduct

27 Duty to promote and maintain high standards of conduct

(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.

(3) A relevant authority that is a parish council--

(a) may comply with subsection (2) by adopting the code adopted under that subsection by its principal authority, where relevant on the basis that references in that code to its principal authority's register are to its register, and

(b) may for that purpose assume that its principal authority has complied with section 28(1) and (2).

(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.

[(4A) In this Chapter "co-opted member" includes a police and crime commissioner who--

(a) is entitled to participate in meetings of a county or district council by virtue of paragraph 6ZA of Part 1 of Schedule 12 to the Local Government Act 1972, or

(b) is entitled to participate in meetings of an executive of a county or district council by virtue of paragraph 4A of Schedule A1 to the Local Government Act 2000.]

(5) A reference in this Chapter to a joint committee or joint sub-committee of a relevant authority is a reference to a joint committee on which the authority is represented or a sub-committee of such a committee.

(6) In this Chapter "relevant authority" means--

(a) a county council in England,

(b) a district council,

(c) a London borough council,

(d) a parish council,

(e) the Greater London Authority,

(f) . . .

(g) the London Fire and Emergency Planning Authority,

(h) the Common Council of the City of London in its capacity as a local authority or police authority,

(i) the Council of the Isles of Scilly,

(j) a fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,

(k) . . .

(l) a joint authority established by Part 4 of the Local Government Act 1985,

(m) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009,

(n) a combined authority established under section 103 of that Act,

(o) the Broads Authority, or

(p) a National Park authority in England established under section 63 of the Environment Act 1995.

(7) Any reference in this Chapter to a member of a relevant authority--

(a) in the case of a relevant authority to which Part 1A of the Local Government Act 2000 applies, includes a reference to an elected mayor;

(b) in the case of the Greater London Authority, is a reference to the Mayor of London or a London Assembly member.

(8) Functions that are conferred by this Chapter on a relevant authority to which Part 1A of the Local Government Act 2000 applies are not to be the responsibility of an executive of the authority under executive arrangements.

(9) Functions that are conferred by this Chapter on the Greater London Authority are to be exercisable by the Mayor of London and the London Assembly acting jointly on behalf of the Authority.

(10) In this Chapter except section 35--

(a) a reference to a committee or sub-committee of a relevant authority is, where the relevant authority is the Greater London Authority, a reference to--

(i) a committee or sub-committee of the London Assembly, or

(ii) the standards committee, or a sub-committee of that committee, established under that section,

(b) a reference to a joint committee on which a relevant authority is represented is, where the relevant authority is the Greater London Authority, a reference to a joint committee on which the Authority, the London Assembly or the Mayor of London is represented,

(c) a reference to becoming a member of a relevant authority is, where the relevant authority is the Greater London Authority, a reference to becoming the Mayor of London or a member of the London Assembly, and

(d) a reference to a meeting of a relevant authority is, where the relevant authority is the Greater London Authority, a reference to a meeting of the London Assembly;

and in subsection (4)(b) the reference to representing the relevant authority is, where the relevant authority is the Greater London Authority, a reference to representing the Authority, the London Assembly or the Mayor of London.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Sub-ss (1)-(5), (6)(a)-(e), (g)-(j), (l)-(p), (7)-(10): Appointment (for certain purposes): 7 June 2012: see SI 2012/1463, art 2(a).
Sub-ss (1)-(5), (6)(a)-(e), (g)-(j), (l)-(p), (7)-(10): Appointment (for remaining purposes): 1 July 2012: see SI 2012/1463, art 5(b); for transitional provisions and savings see arts 6, 7 thereof.

Extent

This section does not extend to Scotland: see s 239(1).

Amendment

Sub-s (4A): inserted by the Policing and Crime Act 2017, s 7(13), (14).

Date in force: 3 April 2017: see SI 2017/399, reg 2, Schedule, para 3.

Sub-s (6): para (f) repealed by ss 36(a), 237, Sch 25, Pt 5 hereof.

Date in force: 15 January 2012: see SI 2012/57, art 4(1)(e).

Sub-s (6): para (g) repealed by the Policing and Crime Act 2017, s 9(3)(c), Sch 2, Pt 2, paras 118, 119.

Date in force: to be appointed: see the Policing and Crime Act 2017, s 183(1).

Sub-s (6): para (k) repealed by ss 36(b), 237, Sch 25, Pt 5 hereof.

Date in force: 22 November 2012: see SI 2012/2913, arts 1(2), 2(a), (c).

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/28 Codes of conduct

28 Codes of conduct

(1) A relevant authority must secure that a code adopted by it under section 27(2) (a "code of conduct") is, when viewed as a whole, consistent with the following principles--

(a) selflessness;

(b) integrity;

(c) objectivity;

(d) accountability;

(e) openness;

(f) honesty;

(g) leadership.

(2) A relevant authority must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of--

(a) pecuniary interests, and

(b) interests other than pecuniary interests.

(3) Sections 29 to 34 do not limit what may be included in a relevant authority's code of conduct, but nothing in a relevant authority's code of conduct prejudices the operation of those sections.

(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.

(5) A relevant authority may--

(a) revise its existing code of conduct, or

(b) adopt a code of conduct to replace its existing code of conduct.

(6) A relevant authority other than a parish council 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),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

(iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

(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,

(ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority, or

(iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);

(b) a person may not be appointed under the provision required by subsection (7) if at any time during the 5 years ending with the appointment the person was--

(i) a member, co-opted member or officer of the authority, or

(ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;

(c) a person may not be appointed under the provision required by subsection (7) unless--

(i) the vacancy for an independent person has been advertised in such manner as the authority considers is likely to bring it to the attention of the public,

(ii) the person has submitted an application to fill the vacancy to the authority, and

(iii) the person's appointment has been approved by a majority of the members of the authority;

(d) a person appointed under the provision required by subsection (7) does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.

(9) In subsections (6) and (7) "allegation", in relation to a relevant authority, means a written allegation--

(a) that a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or

(b) that a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council's code of conduct.

(10) For the purposes of subsection (8) a person ("R") is a relative of another person if R is--

(a) the other person's spouse or civil partner,

(b) living with the other person as husband and wife or as if they were civil partners,

(c) a grandparent of the other person,

(d) a lineal descendant of a grandparent of the other person,

(e) a parent, sibling or child of a person within paragraph (a) or (b),

(f) the spouse or civil partner of a person within paragraph (c), (d) or (e), or

(g) living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.

(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.

[(11A) Subsections (11B) to (11D) apply if a police and crime commissioner is a member or co-opted member of a relevant authority in the commissioner's capacity as such.

(11B) Arrangements put in place under subsection (6)(b) by the relevant authority must include provision for an allegation against the commissioner to be referred to the police and crime panel for the commissioner's police area.

(11C) If, in response to an allegation referred to it by virtue of subsection (11B), the police and crime panel makes a report or recommendation to the police and crime commissioner under section 28(6) of the Police Reform and Social Responsibility Act 2011, the panel may also make a report or recommendation on the allegation to the relevant authority.

(11D) The relevant authority must take any such report or recommendation into account in determining--

(a) whether the police and crime commissioner has failed to comply with the authority's code of conduct,

(b) whether to take action in relation to the commissioner, and

(c) what action to take.]

(12) A relevant authority must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area.

(13) A relevant authority's function of adopting, revising or replacing a code of conduct may be discharged only by the authority.

(14) Accordingly--

(a) in the case of an authority to whom section 101 of the Local Government Act 1972 (arrangements for discharge of functions) applies, the function is not a function to which that section applies;

(b) in the case of the Greater London Authority, the function is not a function to which section 35 (delegation of functions by the Greater London Authority) applies.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Appointment (for certain purposes): 7 June 2012: see SI 2012/1463, art 2(b); for transitional provisions and savings see arts 6, 7 thereof.
Appointment (for remaining purposes): 1 July 2012: see SI 2012/1463, art 5(c); for transitional provisions and savings see arts 6, 7 thereof.

Extent

This section does not extend to Scotland: see s 239(1).

Amendment

Sub-ss (11A)-(11D): inserted by the Policing and Crime Act 2017, s 7(13), (15).

Date in force: 3 April 2017: see SI 2017/399, reg 2, Schedule, para 3.

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/29 Register of interests

29 Register of interests

(1) The monitoring officer of a relevant authority must establish and maintain a register of interests of members and co-opted members of the authority.

(2) Subject to the provisions of this Chapter, it is for a relevant authority to determine what is to be entered in the authority's register.

(3) Nothing in this Chapter requires an entry to be retained in a relevant authority's register once the person concerned--

(a) no longer has the interest, or

(b) is (otherwise than transitorily on re-election or re-appointment) neither a member nor a co-opted member of the authority.

(4) In the case of a relevant authority that is a parish council, references in this Chapter to the authority's monitoring officer are to the monitoring officer of the parish council's principal authority.

(5) The monitoring officer of a relevant authority other than a parish council must secure--

(a) that a copy of the authority's register is available for inspection at a place in the authority's area at all reasonable hours, and

(b) that the register is published on the authority's website.

(6) The monitoring officer of a relevant authority that is a parish council must--

(a) secure that a copy of the parish council's register is available for inspection at a place in the principal authority's area at all reasonable hours,

(b) secure that the register is published on the principal authority's website, and

(c) provide the parish council with any data it needs to comply with subsection (7).

(7) A parish council must, if it has a website, secure that its register is published on its website.

(8) Subsections (5) to (7) are subject to section 32(2).

(9) In this Chapter "principal authority", in relation to a parish council, means--

(a) in the case of a parish council for an area in a district that has a district council, that district council,

(b) in the case of a parish council for an area in a London borough, the council of that London borough, and

(c) in the case of a parish council for any other area, the county council for the county that includes that area.

(10) In this Chapter "register", in relation to a relevant authority, means its register under subsection (1).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Appointment (for certain purposes): 7 June 2012: see SI 2012/1463, art 2(c).
Appointment (for remaining purposes): 1 July 2012: see SI 2012/1463, art 5(c).

Extent

This section does not extend to Scotland: see s 239(1).

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/30 Disclosure of pecuniary interests on taking office

30 Disclosure of pecuniary interests on taking office

(1) A member or co-opted member of a relevant authority must, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority, notify the authority's monitoring officer of any disclosable pecuniary interests which the person has at the time when the notification is given.

(2) Where a person becomes a member or co-opted member of a relevant authority as a result of re-election or re-appointment, subsection (1) applies only as regards disclosable pecuniary interests not entered in the authority's register when the notification is given.

(3) For the purposes of this Chapter, a pecuniary interest is a "disclosable pecuniary interest" in relation to a person ("M") if it is of a description specified in regulations made by the Secretary of State and either--

(a) it is an interest of M's, or

(b) it is an interest of--

(i) M's spouse or civil partner,

(ii) a person with whom M is living as husband and wife, or

(iii) a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest.

(4) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (1), the authority's monitoring officer is to cause the interests notified to be entered in the authority's register (whether or not they are disclosable pecuniary interests).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Appointment (for the purpose of making regulations): 31 January 2012: see SI 2012/57, art 5(1)(b).
Appointment (for remaining purposes): 1 July 2012: see SI 2012/1463, art 5(c).

Extent

This section does not extend to Scotland: see s 239(1).

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

Subordinate Legislation

Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, SI 2012/1464 (made under sub-s (3)).

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/31 Pecuniary interests in matters considered at meetings or by a single member

31 Pecuniary interests in matters considered at meetings or by a single member

(1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority--

(a) is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority,

(b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and

(c) is aware that the condition in paragraph (b) is met.

(2) If the interest is not entered in the authority's register, the member or co-opted member must disclose the interest to the meeting, but this is subject to section 32(3).

(3) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member or co-opted member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure.

(4) The member or co-opted member may not--

(a) participate, or participate further, in any discussion of the matter at the meeting, or

(b) participate in any vote, or further vote, taken on the matter at the meeting,

but this is subject to section 33.

(5) In the case of a relevant authority to which Part 1A of the Local Government Act 2000 applies and which is operating executive arrangements, the reference in subsection (1)(a) to a committee of the authority includes a reference to the authority's executive and a reference to a committee of the executive.

(6) Subsections (7) and (8) apply if--

(a) a function of a relevant authority may be discharged by a member of the authority acting alone,

(b) the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function, and

(c) the member is aware that the condition in paragraph (b) is met.

(7) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date when the member becomes aware that the condition in subsection (6)(b) is met in relation to the matter.

(8) The member must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).

(9) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (3) or (7), the authority's monitoring officer is to cause the interest notified to be entered in the authority's register (whether or not it is a disclosable pecuniary interest).

(10) Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate.

(11) For the purpose of this section, an interest is "subject to a pending notification" if--

(a) under this section or section 30, the interest has been notified to a relevant authority's monitoring officer, but

(b) has not been entered in the authority's register in consequence of that notification.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Sub-ss (1)-(9), (11): Appointment: 1 July 2012: see SI 2012/1463, art 5(c).
Sub-s (10): Appointment (for certain purposes): 7 June 2012: see SI 2012/1463, art 2(d).
Sub-s (10): Appointment (for remaining purposes): 1 July 2012: see SI 2012/1463, art 5(c).

Extent

This section does not extend to Scotland: see s 239(1).

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/32 Sensitive interests

32 Sensitive interests

(1) Subsections (2) and (3) apply where--

(a) a member or co-opted member of a relevant authority has an interest (whether or not a disclosable pecuniary interest), and

(b) the nature of the interest is such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

(2) If the interest is entered in the authority's register, copies of the register that are made available for inspection, and any published version of the register, must not include details of the interest (but may state that the member or co-opted member has an interest the details of which are withheld under this subsection).

(3) If section 31(2) applies in relation to the interest, that provision is to be read as requiring the member or co-opted member to disclose not the interest but merely the fact that the member or co-opted member has a disclosable pecuniary interest in the matter concerned.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Appointment: 1 July 2012: see SI 2012/1463, art 5(c).

Extent

This section does not extend to Scotland: see s 239(1).

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/33 Dispensations from section 31(4)

33 Dispensations from section 31(4)

(1) A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.

(2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority--

(a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area,

(d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

(e) considers that it is otherwise appropriate to grant a dispensation.

(3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

(4) Section 31(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Appointment (for certain purposes): 7 June 2012: see SI 2012/1463, art 2(e).
Appointment (for remaining purposes): 1 July 2012: see SI 2012/1463, art 5(c).

Extent

This section does not extend to Scotland: see s 239(1).

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

UK Parliament Acts/L/LO-LT/Localism Act 2011 (2011 c 20)/Part 1 Local Government (ss 1-47)/34 Offences

34 Offences

(1) A person commits an offence if, without reasonable excuse, the person--

(a) fails to comply with an obligation imposed on the person by section 30(1) or 31(2), (3) or (7),

(b) participates in any discussion or vote in contravention of section 31(4), or

(c) takes any steps in contravention of section 31(8).

(2) A person commits an offence if under section 30(1) or 31(2), (3) or (7) the person provides information that is false or misleading and the person--

(a) knows that the information is false or misleading, or

(b) is reckless as to whether the information is true and not misleading.

(3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A court dealing with a person for an offence under this section may (in addition to any other power exercisable in the person's case) by order disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority.

(5) A prosecution for an offence under this section is not to be instituted except by or on behalf of the Director of Public Prosecutions.

(6) Proceedings for an offence under this section may be brought within a period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.

(7) But no such proceedings may be brought more than three years--

(a) after the commission of the offence, or

(b) in the case of a continuous contravention, after the last date on which the offence was committed.

(8) A certificate signed by the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(9) The Local Government Act 1972 is amended as follows.

(10) In section 86(1)(b) (authority to declare vacancy where member becomes disqualified otherwise than in certain cases) after "2000" insert "or section 34 of the Localism Act 2011".

(11) In section 87(1)(ee) (date of casual vacancies)--

(a) after "2000" insert "or section 34 of the Localism Act 2011 or", and

(b) after "decision" insert "or order".

(12) The Greater London Authority Act 1999 is amended as follows.

(13) In each of sections 7(b) and 14(b) (Authority to declare vacancy where Assembly member or Mayor becomes disqualified otherwise than in certain cases) after sub-paragraph (i) insert--

"(ia) under section 34 of the Localism Act 2011,".

(14) In section 9(1)(f) (date of casual vacancies)--

(a) before "or by virtue of" insert "or section 34 of the Localism Act 2011", and

(b) after "that Act" insert "of 1998 or that section".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 240(2).

Appointment

Appointment: 1 July 2012: see SI 2012/1463, art 5(c).

Extent

This section does not extend to Scotland: see s 239(1).

See Further

See further, in relation to the application of this Chapter, with modifications, for the purposes of the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012: the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012/2734, regs 3, 4, 6, Schedule, Pt 1, para 8, Pt 2, para 23.

Department for Communities and Local Government

Openness and transparency on personal interests

A guide for councillors

September 2013
Department for Communities and Local Government

This document/publication is also available on our website at www.gov.uk/dclg

If you have any enquiries regarding this document/publication, email contactus@communities.gov.uk or write to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: https://twitter.com/CommunitiesUK

September 2013

ISBN: 978-1-4098--3604-9

The Guide

This guide on personal interests gives basic practical information about how to be open and transparent about your personal interests. It is designed to help councillors, including parish councillors, now that new standards arrangements have been introduced by the Localism Act 2011[1].

Why are there new rules?

Parliament has abolished the Standards Board regime and all the rules under it. It has done this because that centrally-imposed, bureaucratic regime had become a vehicle for petty, malicious and politically-motivated complaints against councillors. Rather than creating a culture of trust and openness between councillors and those they represent, it was damaging, without justification, the public's confidence in local democratic governance.

The new standards arrangements that Parliament has put in place mean that it is largely for councils themselves to decide their own local rules. It is essential that there is confidence that councillors everywhere are putting the public interest first and are not benefiting their own financial affairs from being a councillor. Accordingly, within the new standards arrangements there are national rules about councillors' interests.[2]

Such rules, in one form or another, have existed for decades. The new rules are similar to the rules that were in place prior to the Standards Board regime. Those rules, originating in the Local Government Act 1972 and the Local Government and Housing Act 1989, involved local authority members registering their pecuniary interests in a publicly available register, and disclosing their interests and withdrawing from meetings in certain circumstances. Failure to comply with those rules was in certain circumstances a criminal offence, as is failure to comply in certain circumstances with the new rules.

Does this affect me?

Yes, if you are an elected, co-opted, or appointed member of:

- a district, unitary, metropolitan, county or London borough council
- a parish or town council
- a fire and rescue authority
- a transport or other joint authority
- a combined authority or an economic prosperity board
- the London Fire and Emergency Planning Authority
- the Broads Authority

---

[1] The Guide should not be taken as providing any definitive interpretation of the statutory requirements; those wishing to address such issues should seek their own legal advice.
[2] The national rules are in Chapter 7 of the Localism Act 2011 and in the secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012/1464).

- a National Park authority
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

How will there be openness and transparency about my personal interests?

The national rules require your council or authority to adopt a code of conduct for its members and to have a register of members' interests.

The national rules require your council's code of conduct to comply with the Seven Principles of Public Life, and to set out how, in conformity with the rules, you will have to disclose and register your pecuniary and your other interests. Within these rules it is for your council to decide what its code of conduct says. An illustrative text for such a code is available on the Department's web site.[3]

Your council's or authority's monitoring officer (or in the case of a parish council the monitoring officer of the district or borough council) must establish and maintain your council's register of members' interests. Within the requirements of the national rules it is for your council or authority to determine what is to be entered in its register of members' interests.

What personal interests should be entered in my council's or authority's register of members' interests?

Disclosable pecuniary interests, and any other of your personal interests which your council or authority, in particular through its code of conduct, has determined should be registered.

Any other of your personal interests which you have asked the monitoring officer, who is responsible for your council's or authority's register of members' interests, to enter in the register.

As explained in the following section, your registration of personal interests should be guided by your duty to act in conformity with the seven principles of public life. You should ensure that you register all personal interests that conformity with the seven principles requires. These interests will necessarily include your membership of any Trade Union.

What must I do about registering my personal interests?

Under your council's code of conduct you must act in conformity with the Seven Principles of Public Life. One of these is the principle of integrity – that **'**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

---

[3] https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2

order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships.'**[4].

Your registration of personal interests should be guided by this duty and you should give the monitoring officer who is responsible for your council's or authority's register of members' interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register.

All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority's code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union. Any suggestion that you should tell the monitoring officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty, with which you must comply.

If you have a disclosable pecuniary interest which is not recorded in the register and which relates to any business that is or will be considered at a meeting where you are present, you must disclose[5] this to the meeting and tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must tell the monitoring officer within 28 days of disclosing the interest. For this purpose a meeting includes any meeting of your council or authority, of its executive or any committee of the executive, and of any committee, sub-committee, joint committee or joint sub-committee of your authority.

If you have a disclosable pecuniary interest which is not shown in the register and relates to any business on which you are acting alone, you must, within 28 days of becoming aware of this, tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must also stop dealing with the matter as soon as you become aware of having a disclosable pecuniary interest relating to the business.

When you are first elected, co-opted, or appointed a member to your council or authority, you must, within 28 days of becoming a member, tell the monitoring officer who is responsible for your council's or authority's register of members' interests about your disclosable pecuniary interests. If you are re-elected, re-co-opted, or reappointed a member, you need to tell the monitoring officer about only those disclosable pecuniary interests that are not already recorded in the register.

What are pecuniary interests?

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider

---

[4] http://www.public-standards.gov.uk/about-us/what-we-do/the-seven-principles/

[5] If the interest is a sensitive interest you should disclose merely the fact that you have such a disclosable pecuniary interest, rather than the interest. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

financial interests they might have (for example trust funds, investments, and assets including land and property).

Do I have any disclosable pecuniary interests?

You have a disclosable pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see annex). Interests or your spouse or civil partner, following the approach of the rules under the 1972 and 1989 Acts, are included to ensure that the public can have confidence that councillors are putting the public interest first and not benefiting the financial affairs of themselves or their spouse or civil partner from which the councillor would stand to gain. For this purpose your spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is **your** disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.

Does my signature need to be published online? Won't this put me at risk of identity theft?

There is no legal requirement for the personal signatures of councillors to be published online.

Who can see the register of members' interests?

Except for parish councils, a council's or authority's register of members' interests must be available for inspection in the local area, and must be published on the council's or authority's website.

For parish councils, the monitoring officer who is responsible for the council's register of members' interests must arrange for the parish council's register of members' interests to be available for inspection in the district of borough, and must be published on the district or borough council's website.

Where the parish council has its own website, its register of members' interests must also be published on that website.

This is in line with the Government's policies of transparency and accountability, ensuring that the public have ready access to publicly available information.

Is there any scope for withholding information on the published register?

Copies of the register of members' interests which are available for inspection or published must not include details of a member's sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

When is information about my interests removed from my council's register of members' interests?

If you cease to have an interest, that interest can be removed from the register. If you cease to be a member of the authority, all of your interests can be removed from the register.

What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

In certain circumstances you can request a dispensation from these prohibitions.

Where these prohibitions apply, do I also have to leave the room?

Where your council's or authority's standing orders require this, you must leave the room. Even where there are no such standing orders, you must leave the room if you consider your continued presence is incompatible with your council's code of conduct or the Seven Principles of Public Life.

Do I need a dispensation to take part in the business of setting council tax or a precept?

Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.

If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.

Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.

When and how can I apply for a dispensation?

The rules allow your council or authority in certain circumstances to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are where the council or authority considers that:

- without the dispensation so great a proportion of the council or authority would be prohibited from participating in that business as to impede the council's or authority's transaction of that business,
- without the dispensation the representation of different political groups dealing with that business would be so upset as to alter the likely outcome of any vote,
- the granting of the dispensation is in the interests of people living in the council's or authority's area,
- without the dispensation each member of the council's executive would be prohibited from participating in the business, or
- it is otherwise appropriate to grant a dispensation.

If you would like your council or authority to grant you a dispensation, you must make a written request to the officer responsible for handling such requests in the case of your council or authority.

What happens if I don't follow the rules on disclosable pecuniary interests?

It is a criminal offence if, without a reasonable excuse, you fail to tell the monitoring officer about your disclosable pecuniary interests, either for inclusion on the register if you are a newly elected, co-opted or appointed member, or to update the register if you are re-elected or re-appointed, or when you become aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter;

- that will be or is being considered at a meeting where you are present, or
- on which you are acting alone.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of your authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which you have a disclosable pecuniary interest.

If you are found guilty of such a criminal offence, you can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

Where can I look at the national rules on pecuniary interests?

The national rules about pecuniary interests are set out in Chapter 7 of the Localism Act 2011, which is available on the internet here:

http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted

and in the secondary legislation made under the Act, in particular The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which can be found here:

http://www.legislation.gov.uk/uksi/2012/1464/contents/made

Annex A

Description of Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your **disclosable pecuniary interests** under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.

- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
    - under which goods or services are to be provided or works are to be executed; and
    - which has not been fully discharged.

- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

- Any tenancy where (to your knowledge) –
    - the landlord is your council or authority; and
    - the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

- Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where –
    - (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
    - (b) either –
        - the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
        - if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

This page is intentionally left blank

APPEAL SUB (STANDARDS) COMMITTEE

WEDNESDAY, 25 JULY 2018

NOT FOR PUBLICATION

By virtue of paragraphs 1 & 2 of Part I of Schedule 12A of the Local Government Act 1972.

6. **APPEAL PROCEDURE**

The Sub-Committee considered a report of the Town Clerk relative to the procedure that would be followed by the Sub-Committee for an appeal by Susan Pearson, a Common Councilman, against decisions of the Hearing Sub (Standards) Committee that there had been a breach of the Members' Code of Conduct and sanctions should be applied.

It was noted that as the complaint against Susan Pearson had been considered under the City Corporation's former complaints procedure, rather than the new procedure which was implemented on 19 July 2018, the appeal process would also be managed on the basis of the old procedure. Consequently, as there was no established procedure for the conduct of an appeal under the old complaints process, Members were asked to agree the procedure for hearing the appeal.

Jonathan Swift QC made a number of suggestions for consideration by the Sub-Committee including the adoption of a reasonable and fair procedure that assessed whether the decision taken by the Hearing Sub-Committee had been right rather than reasonable and the substitution of sanctions if the decision was found to be wrong; consideration of oral representations from both sides within an appropriate time period; the allocation of time for questions and right of reply; a request for written grounds for appeal and access by the Sub-Committee to relevant documentation where beneficial such as the decision letters arising from the earlier sub-committee meetings, and also to request additional information where this may assist the Sub-committee with its deliberations. The Sub-Committee AGREED that the appeal would be heard in public, but it would consider a request for holding the meeting in private if one was made. It was further AGREED that the Sub-Committee would take legal advice on the consideration of preliminaries as part of the appeal if the appellant's submission included these as part of their argument.

With reference to the report before Members, it was noted that Susan Pearson's representative (Mr Harrower) had raised several points and various issues had been addressed as preliminaries at the hearing stage. It was AGREED that if Mr Harrower wished to raise any matters at the appeal stage, he would be asked to explain why they should be considered to ensure that the Sub-Committee could focus on whether the Hearing Sub-committee's earlier decision was right.

In noting the views of the Sub-Committee, Mr Swift advised Members that he would draft the agreed procedure which would then be circulated to Members. Following some discussion regarding the timescales for requesting written grounds for appeal from Susan Pearson and a written response from the City Corporation's legal representative (Comptroller & City Solicitor's Department), it was AGREED that the next meeting of the Appeal Sub-Committee, at which the appeal would be heard, would take place on the 27 or 28 September subject to the availability of an Independent Person and room availability. All relevant parties would be advised of the agreed arrangements by the Town Clerk forthwith.

It was noted that Mr Swift would not be available to advise the Sub-Committee in due course as result of work commitments but, with the Sub-Committee's consent, a colleague from Chambers would advise the Sub-Committee at the future proceedings.

RESOLVED: - That –

(i) the procedure for hearing the appeal from Susan Pearson by this Sub-Committee be approved and circulated to Members and all other relevant parties once drafted by Jonathan Swift QC (the Sub-Committee's legal adviser); and

(ii) the appeal hearing be scheduled to take place on 27 or 28 September 2018 subject to the availability of an Independent Person and room availability.

The meeting ended at 4.50 pm

Chairman

Contact Officer: Lorraine Brook
lorraine.brook@cityoflondon.gov.uk

Committee: Appeal Sub (Standards) Committee	**Date:** 28 September 2018
Subject: Standards Appeal – Ms Susan Pearson	**Non-Public**
Report of: Town Clerk	**For Decision**
Report author: Martin Newton Committee and Member Services Officer	

NOT FOR PUBLICATION

By virtue of paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972

Summary

The details of an appeal by Susan Pearson relating to the decision of the Hearing Sub (Standards) Committee on 21 May 2018, that Susan Pearson had breached the Members' Code of Conduct in January 2018 by speaking and voting on a matter at the Planning and Transportation Committee in which she had a direct pecuniary interest without a dispensation to do so, are set out in agenda item 12.

The agreed procedure for the appeal is set out in agenda item 11. After all representations have been heard, the members of the Sub Committee should deliberate in private to reach its decision on the appeal.

Recommendation:

That after considering all relevant matters the Sub Committee decide whether the decisions of the Hearing Sub (Standards) Committee, which are the subject of the appeal, were correct. The Sub Committee may substitute any alternative decision that it considers appropriate, providing it is a decision that the Hearing Sub Committee had the power to make.

Main Report

Background

1. The Assessment Sub (Standards) Committee that met on 13 March 2018 authorised an investigation into a potential breach of the Members' Code of Conduct by Susan Pearson. An external investigator (John Austin) was subsequently appointed by the Monitoring Officer, in consultation with the Chairman of the Assessment Sub (Standards) Committee, to carry out the formal investigation.

2. The Hearing Sub (Standards) Committee duly considered the investigation officer's report on 21 May 2018 and concluded that Susan Pearson had breached the Members' Code of Conduct in January 2018 by speaking and voting on a matter at the Planning and Transportation Committee in which she had a direct pecuniary interest without a dispensation to do so. A subsequent meeting of the Hearing Sub (Standards) Committee in June 2018 decided to impose a sanction in relation to its findings that a breach had occurred.

3. Following the Hearing Sub (Standards) Committee in May an appeal was formally lodged by Susan Pearson and grounds for the appeal were received by the Town Clerk in August 2018

Documents

4. The documents that are required to be considered in relation to the appeal are attached to the agenda and were circulated to Sub Committee members on 5 September.

Conclusion

5. Following the appeal hearing, your Sub-Committee is asked to determine whether the decisions of the Hearing Sub (Standards) Committee, which are the subject of the appeal, were correct. The Sub Committee may substitute any alternative decision that it considers appropriate, providing it is a decision that the Hearing Sub Committee had the power to make.

Contacts:

Martin Newton
Committee and Member Services Officer
020 7332 3154
martin.newton@cityoflondon.gov.uk

PROCEDURE FOR HEARING MS PEARSON'S APPEAL

1. Ms. Pearson shall provide her Grounds of Appeal, and written representations in support of those grounds of appeal to the Town Clerks' Office by 4pm on Thursday, 16th August 2018.

2. The Corporation's written representations in response to the appeal shall be provided to the Town Clerk's Office by 4pm on Thursday, 30th August 2018.

3. Following receipt of the respective written representations, the Appeal Sub (Standards) Committee ("the Sub Committee") shall consider them, and shall decide whether to seek further written representations from either Ms. Pearson or the Corporation on any matter or matters. If the Sub Committee decides that any such representations should be sought, it will request them, in writing and specify the date by which they are to be provided.

4. The Sub Committee shall meet, as soon as practicable, following the completion of steps 1 – 3 above, to determine the merits of the appeal.

5. The Sub Committee meeting shall open in public session. The Sub Committee shall determine whether it moves into confidential session with the press and public excluded, in accordance with the provisions of Part VA of and Schedule 12A to the Local Government Act 1972. For this purpose the Sub Committee will take into account any representations made by Ms. Pearson or by any other person present at the public session.

6. Ms. Pearson, together with any representative, shall be permitted to attend the Sub Committee meeting. She shall be permitted to make oral representations (a) in support of the Grounds of Appeal and written representations provided in response to 1 above; and (b) in response to any matters relied on by the Corporation.

7. The order of proceedings at the meeting of the Sub Committee shall be as follows (subject always to any further decision of the Sub Committee).

(1) Ms. Pearson or her representative may make representations in support of the appeal.

(2) The Corporation may make representations in response to the appeal.

(3) Ms. Pearson or her representative may make representations in reply to the representations made under (2) above.

At any time during the proceedings, the members of the Sub-Committee may ask questions either of Ms. Pearson and her representative, or of the Corporation.

8. After all representations have been heard, the members of the Sub Committee will deliberate in private to reach its decision on the appeal. The Sub Committee will decide whether the decisions of the Hearing Sub (Standards) Committee which are the subject of the appeal, were correct. The Sub Committee may substitute any alternative decision that it considers appropriate, providing it is a decision that the Hearing Sub Committee had the power to make.

9. There will be no further right of appeal against the decision of the Sub Committee.

10. After the Appeal Sub-Committee has reached a decision, it will write to the complainant and the subject member to advise them of the outcome. The decision letter will include

(a) the main points of the matter considered on appeal;

(b) the decision reached;

(c) clear and concise reasons for the decision in relation to breach, and clear and concise reasons for the decision in relation to sanction.

11. Meetings of the Appeal Sub-Committee are subject to the same provisions regarding public access to information following a meeting as any other Committee. Therefore, under section 100C of the Local Government Act 1972, the following documents will be made available for the public to inspect at the Corporation's offices for six years from the date of the meeting

(a) a copy of the agenda for the meeting;

(b) a copy of any report considered in public session;

(c) the minutes of the proceedings held in public session;

(d) a written summary of the proceedings held in non-public session (excluding exempt information).

Under section 100D of the Local Government Act 1972 a copy of the background papers for any report considered in public session will be made available for the public to inspect at the Corporation's offices for four years from the date of the meeting. However, the Corporation is not required to disclose to the public any document or part of a document that contains exempt information.

12. The Corporation will not automatically publish the minutes and/or written summary and any other documents available for public inspection on its website, or further disseminate the decision. The Appeal Sub-Committee will decide whether a formal announcement is called for as to its findings and any sanctions imposed. This might, for example, take the form of a notice on the members' notice board, a statement to the Court of Common Council and/or a statement on the Corporation's website.

13. In the absence of a finding that there has been a breach the code of conduct there will be a presumption against a formal announcement being made. If the Appeal Sub-Committee finds that a there has been a breach of the code of conduct, there will be a presumption in favour of a formal announcement being made. However, the Appeal Sub-Committee will have regard to all of the circumstances of the case including:

(a) the nature of the allegation(s);

(b) any information already in the public domain;

(c) where relevant, the proximity of any election;

(d) the effect of publication on the subject member;

(e) the views of the parties; and

(f) the public interest.

14. For the avoidance of doubt, the Sub Committee retains the power to vary the procedure set out above, if it considers appropriate to do so.

This page is intentionally left blank

APPEAL CASE OF SUSAN PEARSON

This document sets out the grounds of appeal (with supporting representations) of Susan Pearson against:

a. the decision of the Hearing Sub Committee on breach set out in a letter dated 29 May 2018 from the Corporation to Ms Pearson (the "**Breach Decision Letter**"); and

b. the decision of the Hearing Sub Committee on sanction set out in a letter dated 26 June 2018 from the Corporation to Ms Pearson (the **"Sanction Decision Letter**").

This appeal case has been prepared by Ms Pearson's legal advisors, Thomas Sharpe QC and Graeme Harrower (retired solicitor), and has been reviewed and approved by her.

Documents

Copies of the following documents are appended, and are referred to in this appeal case by the relevant document number:-

Document 1: Breach Decision Letter

Document 2: Sanction Decision Letter

Document 3: Document entitled "How complaints submitted to the City of London Corporation's Standards Committee will be dealt with" - October 2015 edition (applicable to this case) (the "**Complaints Procedure**")

Document 4: Report dated 29 January 2018 to the Planning and Transportation Committee

Document 5: Opinion dated 26 February 2018 of James Goudie QC, instructed by the Monitoring Officer on behalf the Corporation

Document 6: Report dated 13 March 2018 of the Monitoring Officer to the Assessment Sub Committee

Document 7: Opinion dated 24 March 2018 of Thomas Sharpe QC, instructed by Graeme Harrower on behalf of Ms Pearson

Document 8: Email correspondence in April 2018 between John Austin (external investigator) and Edward Wood (Corporation)

Document 9: Investigation report dated May 2018 by John Austin (the "**Investigation Report**")

Document 10: Non-public minutes of the meeting of the Hearing Sub Committee on 21 May 2018 regarding breach (the "**Minutes**")

Document 11: Email correspondence in June 2018 between the Clerk to the Hearing Sub Committee and Ms Pearson regarding sanction

Document 12: Non-public minutes of the meetings of the Hearing Sub Committee on 11 and 21 June 2018 regarding sanction (the "**Sanction Minutes**")

A. GROUNDS OF APPEAL (WITH SUPPORTING REPRESENTATIONS) AGAINST THE DECISION ON BREACH

Introduction

We set out in (a) to (m) below a summary of the material facts and background.

(a) Following her election as a Councilman in March 2017, Ms Pearson registered her disclosable pecuniary interest in her flat on Golden Lane Estate in accordance with the Code of Conduct (see paragraph 4 of **Document 1**).

(b) She is the only Councilman who lives on Golden Lane Estate, and was elected with the highest number of votes (558) of any Councilman in the March 2017 elections (see 2.1.2 below).

(c) She attended training on the Code of Conduct twice before the meeting mentioned in (d) below (see paragraph 17 on page 5 of **Document 1**), and was aware of its provisions, including paragraph 13. She had previously sought and followed advice in this regard from Ms Cluett, one of the Monitoring Officer's staff, in May 2017 about not participating in consideration by the Planning and Transportation Committee (the "**Planning Committee**") of a planning application for Bernard Morgan House, which affected Golden Lane Estate (see 3.2.1 and 3.2.5 below).

(d) After 4pm on Friday 26 January 2018, officers sent by email to members of the Planning Committee, of which Ms Pearson was a member, a report to be considered as an urgent matter at the meeting of that Committee at 10am on Monday 29 January. This report proposed that the determination of the planning application for the redevelopment of the former Richard Cloudesley School site, which straddled the boundary between Islington and the City, be delegated to Islington (the "**Delegation**"), "in the light of the small extent of the site falling within the City's administrative boundary" (**Document 4**) (but see (l) below for what turned out to be the main reason).

(e) During the debate on the Delegation, the following points were made:

(i) although the majority of the site fell within Islington, the majority of the residents affected were those within the City, significantly Golden Lane Estate and within Ms Pearson's Ward, so both authorities should make the decision rather than just Islington; and

(ii) the officer presenting the report, when explaining its urgency, said that although the planning application had been made in both Islington and the City five months earlier, the matter of its Delegation had not been brought to the City's Planning Committee before now because the Corporation was unsure as to whether Islington would accept the Delegation, but in response to a question from a member the officer confirmed that at the time of that meeting it was still uncertain as to whether Islington would do so.

The recommendation was put to the vote, and defeated 11 to 9.

(All the above was recorded in the minutes of that meeting.)

(f) The Delegation decision would have had no substantive effect on the determination of the planning application, which was subsequently approved by a large majority of votes in both Islington and the City (20 to 3 in the latter case) (see 1.1.2 below).

(g) The Delegation decision was of a kind that conferred no pecuniary advantage on Ms Pearson or anyone else (see paragraph 17 on page 5 of **Document 1**, and paragraph 11 of **Document 6**).

(h) Ms Pearson spoke and voted at the meeting. She did so without a dispensation, because it would have been impossible to have obtained one in the time available. In any event, she did not consider that she needed one,

because before she participated in the meeting, she obtained advice from a retired and highly experienced solicitor who, as a fellow Councilman, was familiar with the matter to be considered at the meeting. This advice was to the effect that paragraph 13 of the Code of Conduct should not apply to her participation (for the reasons stated in (f) and (g) above) (see 1.5 and 3.2.2 below).

(i) On 12 February 2018, the Monitoring Officer sent a letter to Ms Pearson informing her that proceedings had been initiated against her in respect of an allegation that by participating in the meeting on 29 January she had breached paragraph 13 of the Code. (No one had made a formal complaint: it only came to light in the course of these proceedings that the person who had made the informal complaint was a political opponent - see 2.1.1 below.) In the same letter, the Monitoring Officer informed her that she may have committed a criminal offence under sections 31 and 34 of the Localism Act 2011, and that he had referred the matter to the City of London Police. The penultimate paragraph of the letter read as follows:

> "Given that a criminal offence may have been committed which at some point may be investigated by the Police, I must also advise you that you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

(j) The Hearing Sub Committee stated that it was:

> "entirely satisfied that Ms. Pearson acted as she did without any thought of personal advantage, but only because she believed it was in the interests of her constituents that she speak and vote at the meeting" (see paragraph 17 on page 5 of **Document 1).**

(k) On 21 May 2018, the Hearing Sub Committee nevertheless decided that Ms Pearson had breached paragraph 13 of the Code, for the reasons set out in the Breach Decision Letter (**Document 1).** We submit that those reasons are wrong (see 1 below).

(l) A significant matter which came to light in the course of these proceedings was that the urgent report to the Planning Committee for its meeting on 29 January 2018 (**Document 4**), which is described in (d) above, did not disclose one of the reasons for the officers making the Delegation recommendation. The undisclosed reason was that the officers did not want the City residents nearby (Ms Pearson's constituents) to be directly represented by their local Councilmen (principally, Ms Pearson) in the determination of that application by the City's Planning Committee. This would have been the case if the determination were not delegated. It is unclear why this reason was not explained earlier to justify the short notice prior to the Delegation decision, but perhaps the obvious reason for this non-disclosure is that it is an improper reason which reflects no credit on the Corporation and would never have justified urgency. It seems clear that the Corporation did not want local opposition, thus the request for the Delegation, and Ms Pearson's actions in opposing this on behalf of her constituents frustrated that objective and led directly to the charge of breach of paragraph 13 and the threat of criminal proceedings. (This is addressed further in 2.1.4 below.)

(m) There were further procedural irregularities which are described below and which were dismissed by the Hearing Sub Committee. Their relevance to this appeal is explained below.

In summary, we submit that the Hearing Sub Committee's decision on breach was wrong, because:

(i) the reasons given for it in the Breach Decision Letter were wrong; and

(ii) as an entirely separate matter, these proceedings should in any event have been dismissed, due to a number of procedural irregularities that collectively constituted an abuse of process.

We set out each of these grounds of appeal (with supporting representations) in sections 1 and 2 below respectively.

1. REASONS FOR THE DECISION ON BREACH

1.1 Paragraph 13 of the Code: "matter being considered at a meeting"

1.1.1 The correct interpretation of paragraph 13

We agree with the advice provided to the Hearing Sub Committee by Mr Swift QC as stated in paragraph 9 of the Breach Decision Letter (**Document 1)**. His advice was as follows:-

1. "Paragraph 13 of the Code was clearly intended to give effect to section 31(1)(b) of the 2011 [Localism] Act, which refers to whether a "member … of a relevant authority … has a disclosable pecuniary interest in any matter to be considered, or being considered at [a meeting of the authority or of any committee] …", and paragraph 13 should be understood accordingly.

2. There were two relevant questions for the Sub-Committee: (a) what was the "matter" being considered at the meeting; and (b) did Ms Pearson have a disclosable pecuniary interest in that matter?

3. The phrase "the matter being considered at the meeting" is not further defined in the 2011 Act. The phrase should therefore be applied on the basis of the ordinary meaning of the words, in the context in which they fall to be applied.

4. The approach to identifying the "matter" being considered at the meeting should be realistic, and should focus on substance rather than form. Whether it is appropriate to break down any single issue (such as a planning application) into distinct parts (each being a different "matter") depends on sensible judgment, taking account of all the circumstances of the situation in hand.

5. In the present case, the question on the application of paragraph 13 of the Code is whether, when identifying the "matter" before the Committee on 29 January 2018, it is appropriate to draw a distinction between a decision on the substantive merits of the planning application, and a decision to determine whether the Corporation was to be responsible [for] determining the substantive merits of the part of the application relating to land within the area for which the Corporation is responsible."

In paragraph (4) of his advice, Mr Swift QC stated that:

> "the approach to identifying the "matter" being considered at the meeting should be realistic, and should focus on substance rather than form".

There is a world of difference between a "matter" which has substantive consequences for the planning application and a "matter" which has no effect on the substantive decision but would affect the process. It is clear that the Delegation would not have affected the substantive outcome of the planning application (and did not, in fact, do so - see (f) in the Introduction above), still less did it have any financial consequences for Ms Pearson (see (g) in the Introduction above). Mr Goudie QC acknowledges his difficulty in finding a breach in his Opinion by adding that only *material* matters should be taken into account (paragraph 25 of **Document 5**), but he offers no guidance as to what is "material". It is submitted that "material" in this case should mean only those matters that are material to the **outcome** of the planning application. This offers a useful way of distinguishing between situations which, while important, are inconsequential to the decision (e.g. a postponement of a decision from one time or date to another) in a common sense way and employing "sensible judgment, taking account of all the circumstances of the situation in hand" (per paragraph (4) of Mr Swift QC's advice). It is submitted that this is how the appeal should be judged, and by this standard the Delegation decision had no substantive consequences while at the same time conferring no pecuniary or any other advantage on Ms Pearson. It was therefore incapable of constituting a breach of paragraph 13.

It is submitted that this is the correct interpretation of paragraph 13. The Corporation's interpretation simply means that there is *deemed* to be a pecuniary advantage when there is no pecuniary advantage, which is odd in itself, but is repugnant because this interpretation means that, notwithstanding none of the mischief which paragraph 13 is designed to prevent, an elected Councilman, Ms Pearson, would have been prevented or inhibited from speaking out on behalf of her constituents, on pain of criminal sanctions, in this case owing to the purported (and it now seems confected) urgency of the matter. (This is addressed further in 1.2.2 below.)

1.1.2 Application of that advice by the Hearing Sub Committee

The Hearing Sub Committee concluded that the answer to the question in paragraph (5) of Mr Swift QC's advice was "no". They thought that a distinction could not be drawn between the decision to delegate the determination of the planning application to Islington and the determination of the planning application itself. They considered that the matter considered at the meeting on 29 January was the determination of the planning application itself or that the Delegation was an essential part of the process and no meaningful distinction could be made.

We submit that that conclusion was wrong in principle. There is a world of difference between a planning decision and the decision as to which body should take that decision, especially as the decision making body would have had no impact on the decision itself. We now know the officers' main reason for recommending the Delegation, which was not disclosed to the Planning Committee, and came to light in non-public documents that were disclosed to Ms Pearson in the course of this case: it is addressed in (l) above and more fully in 2.1.4 below. Moreover, no-one present at the meeting on 29 January could in any event have thought the matter being considered should be elided with the determination of the planning application itself. They were treated as quite distinct. The officers' report (**Document 4**) ran to just three pages, with a plan attached; by contrast, their report for the actual planning application, which was considered at the meeting on 26 March, ran to 336 pages. The report for the matter to be considered at the meeting on 29 January merely drew attention to the fact that only a small part of the site of the proposed development fell within the area of the Corporation, explained the mechanism for one authority to delegate the determination of a planning application to another, and recommended that the Corporation delegate the Determination of this application to Islington. When the officers had presented their short report to the Planning Committee on 29 January, the Chairman told members that he did not want to spend long on this item, as it did not involve the determination of the planning application itself. The Committee did not do so: two members spoke against the recommendation and one in support before it was put to the vote, and lost 11 to 9. By contrast, when the actual planning application was considered at the meeting on 26 March, the Committee heard the following: a detailed presentation by the Chief Planning Officer; two objectors speaking against it; questions put to them by three members; six people speaking in support of it; and questions put to them by nine members. The Committee then had a lengthy debate, with four members speaking against the application and eleven in support. A vote was taken, and the application was approved by 20 to 3.

We submit that the notion that the matter considered at the meeting on 29 January was part of the determination of the planning application itself is therefore unsustainable, even looking no further than the Corporation's own documents relating to the meetings on 29 January and 26 March. The Hearing Sub Committee - perhaps aware of this obstacle to its conclusion - sought to frame its conclusion in terms that the matter considered at the meeting on 29 January was the determination of the planning application itself "so far as concerned the Corporation", because if the officers' recommendation had been approved at that meeting, that would have been the end of the Corporation's involvement with the application (paragraph 14 of **Document 1**). While one may admire the semantic ingenuity of this formulation, it does not withstand scrutiny. Paragraph (4) of the advice of Mr Swift QC states that "the approach to identifying the "matter" being considered at the meeting should be realistic, and should focus on substance rather than form." It is not realistic to treat the decision to delegate the determination of the planning application to Islington, which was actually the matter considered at the meeting on 29 January, as being elided with the determination of the planning application itself, either in principle or as a factual matter, for the reasons given above. To frame the former as being the latter "so far as concerned the Corporation" is, moreover, to focus on semantic form rather than substance, contrary to the advice of Mr Swift QC, which the Hearing Sub Committee accepted and with which we agree.

There was, incidentally, no opportunity to address this point in the Hearing, because it was not raised there. The first time we became aware of it was when we read the Hearing Sub Committee's decision on breach (**Document 1**). Most of the input by the Hearing Sub Committee in the Hearing concerned matters other than paragraph 13 of the Code. They included whether Ms Pearson should have obtained guidance from the Monitoring Officer or the Clerk to the Committee (see 1.5 below); and whether she had breached paragraph 14 of the Code or paragraph 2 of the Guidance on the Code, which the Hearing Sub Committee wished to pursue notwithstanding that the only allegation that Ms Pearson had been made aware of was a breach of paragraph 13. This was patently unfair: it is the equivalent of seeking to convict a person of an offence with which she had not been charged. Consideration of both paragraphs was dropped after Mr Swift QC advised that they had no substantive merit anyway. Paragraph 13 was addressed relatively late in the meeting. When the Hearing Sub Committee returned after its final deliberations to announce its decision on breach, the only reason it gave concerned its view that Ms Pearson should have obtained guidance from the Monitoring Officer or the Clerk to the Committee which, it is submitted, is completely irrelevant to the question of breach (see 1.5 below). The Hearing Sub Committee added that the "legal reasons" would follow in its written decision.

Turning to the written decision: in paragraph 15 of the Breach Decision Letter (**Document 1),** the Hearing Sub Committee rejected the proposition that the Delegation to be considered at the meeting on 29 January was an ancillary or procedural matter rather than the determination of the planning application itself**.** This is just a continuation of its theme in paragraph 14, which we have addressed above.

In paragraph 16 of the Breach Decision Letter (**Document 1)**, the Hearing Sub Committee stated that:

> "the submissions by Mr Harrower included that it was material to the determination of the Planning Application, which authority(ies) considered the application."

This statement is factually incorrect, and is unsupported by the Minutes. In fact, the submissions made by Mr Harrower were to the contrary. Paragraph 5.9 of the Investigation Report (**Document 9**) records Mr Harrower's submissions concerning:

> "...the likelihood of somebody being able to predict how either of the authorities in question would determine the planning application and then vote accordingly on the delegation issue. It was agreed that this would be more difficult in the City's case than in Islington due to the independent nature of their members and their voting habits. Mr Harrower felt that this was actually illustrated by the facts of this case. At the meeting on 29 January, members voted 11 to 9 against the officers' recommendation that the determination of the planning application be delegated to Islington, but at the meeting on 26 March in which the planning application was decided, members (many of whom attended the meeting on 29th January) voted 20 to 3 in favour of the officers' recommendation that the application be approved."

Mr Harrower also indicated that the forthcoming local election in Islington made it less certain how the application would be decided by that authority. The fact of this local election occurring was noted in the Monitoring Officer's report to the Assessment Sub Committee as a factor affecting the planning application (paragraph 2 of **Document 6**.)

1.1.3 Opinion of James Goudie QC

At this juncture, we refer to the Opinion of Mr Goudie QC (**Document 5**), who was instructed by the Monitoring Officer on behalf of the Corporation to provide an opinion in support of the Monitoring Officer's allegation against Ms Pearson. The Monitoring Officer relied on this Opinion in his report to the Assessment Sub Committee in March 2018 (**Document 6**). In paragraph 23(2) of his Opinion, Mr Goudie stated that Ms Pearson:

> "had a key DPI [disclosable pecuniary interest] in the Delegation Decision with respect to which she participated. This is because … The "matter" in which she has this DPI is the Planning Application for the Site…".

Following the meeting of the Assessment Sub Committee, Mr Harrower instructed Mr Sharpe QC to provide an Opinion for Ms Pearson (**Document 7**). In paragraph 17 of his Opinion, Mr Sharpe QC - referring to paragraph 23 (2) of Mr Goudie's Opinion - stated that:

> "...he proceeds to define the *"matter"* as the planning application for the site. Again, this is an assumption or assertion. In fact, the only the *"matter"* under consideration at the meeting (to track the statutory language) was delegation of the planning application not the planning application itself…"

In the advice which he gave to the Hearing Sub Committee, Mr Swift QC did not follow Mr Goudie QC's view that the Delegation decision and the determination of the planning application itself should be elided to identify the "matter" considered at the meeting on 29 January. Rather, in formulating the question in paragraph (5) of his advice (see 1.1.1 above), he recognised - like Mr Sharpe QC - that it was necessary to identify (and not assume or assert) that "matter". The question he formulated contains its own answer, but the Hearing Sub Committee did not follow this cue, and (we submit) erred by reaching a conclusion that was unsupported by both principle and fact.

Considering how much reliance the Monitoring Officer placed on Mr Goudie QC's Opinion in his report to the Assessment Sub Committee, curiously little reliance was placed on it before and at the Hearing. This may have been due to the fact that between the meetings of those Sub Committees, the Investigation Report was produced in which Mr Austin - taking Mr Sharpe QC's Opinion into account - did **not** conclude that Ms Pearson had breached paragraph 13 of the Code (paragraphs 6.12, 6.13 and 6.26 of **Document 9).** We submit that he then strayed by trying to find another paragraph of the Code and a paragraph of the Guidance on which the Hearing Sub Committee could find her guilty; the outcome of that endeavour has already been described (in 1.1.2 above).

1.2 Paragraph 13 of the Code: "disclosable pecuniary interest"

1.2.1 Advice of Jonathan Swift QC

As stated in paragraph 8 of the Breach Decision Letter (**Document 1),** Mr Swift QC provided the following advice to the Hearing Sub Committee specifically in relation to the meaning of "pecuniary interest", which (it is common ground) is defined in the 2012 Regulations as being a beneficial interest in land:

> "It was irrelevant to the determination of the complaint, whether the act complained of could, or did, have any impact on the value of that pecuniary interest."

1.2.2 Alternative view

As already explained (in 1.1 above), this view is consistent with Ms Pearson not having breached paragraph 13 of the Code. That is because if the question formulated in paragraph (5) of Mr Swift QC's advice quoted above is answered correctly, the matter to be considered at the meeting on 29 January was the Delegation decision, which was merely an inter-authority jurisdictional matter in which no-one could conceptually have had a pecuniary interest.

According to this reasoning, which we accept, further consideration of the statement quoted in 1.2.1 above is academic. We would, nevertheless, briefly repeat an alternative view, which is that - for the purpose of paragraph 13 of the Code - a member can only have a pecuniary interest in a matter from which that member could derive a pecuniary advantage. The appeal of this proposition to common sense (in layman's terms) is underpinned by a purposive interpretation of paragraph 13 of the Code (in legal terms). Mr Swift QC advised - and we agree - that:

> "Paragraph 13 of the Code was clearly intended to give effect to section 31(1)(b) of the 2011 [Localism] Act … and paragraph 13 should be understood accordingly" (see 1.2.1 above).

The purpose of section 31 of the Localism Act, and thus also of paragraph 13 of the Code, is clear: it is to prevent a member from using public office and participating in a committee meeting to obtain a pecuniary advantage. If a member participates in a committee meeting on a matter which is, by its nature, incapable of producing a pecuniary advantage for that member or anyone else, that member should not be treated as having a "pecuniary interest" in that matter for the purpose of section 31 and / or paragraph 13. Otherwise, the entirely innocent behaviour of a member acting in the interest of his or her constituents would be criminalised and subject to censure, as already noted in 1.1.1 above. This argument is developed further in Mr Sharpe QC's Opinion (paragraphs 18 to 20 of **Document 7**).

In relation to this case, it was accepted by the Corporation from the outset that Ms Pearson's participation in the matter considered at the meeting on 29 January gave rise to no pecuniary advantage for her. The Monitoring Officer stated in his report to the Assessment Sub Committee that:

> "The fact that there is no pecuniary impact arising from this [the Delegation decision] is, in the Monitoring Officer's opinion, immaterial" (paragraph 11 of **Document 5**).

The Hearing Sub Committee, in its decision on breach, stated that it was:

> "entirely satisfied that Ms. Pearson acted as she did without any thought for personal advantage, but only because she believed it was in the interests of her constituents that she speak and vote at the meeting" (paragraph 17 on page 5 of **Document 1**).

We submit that both paragraph 13 and section 31 have been misapplied to Ms Pearson's participation in the matter considered at the meeting on 29 January, which - properly construed - was not one, by its nature, in which anyone could have had a pecuniary interest (see 1.2 above), and that in any case to find that a member has a pecuniary interest in a matter from which the member can derive no pecuniary advantage is an unduly narrow interpretation of the law and Code, and one which, as here, produces wholly undesirable results.

1.3 Paragraph 13 of the Code: second limb of Ms Pearson's defence - section 31(1)(c) of the Localism Act 2011

For the reasons given in 1.1 and 1.2 above, we submit that the Hearing Sub Committee's decision on breach was wrong.

If those reasons are not accepted by the Appeal Sub Committee (for whatever reason), we were - and remain - of the view that Ms Pearson nevertheless has two other limbs to her defence to the alleged breach of paragraph 13. The second limb is addressed in this section 1.3, and the third is addressed in 1.4 below.

The second limb was raised by Mr Sharpe QC in his Opinion (paragraph 21 of **Document 7**). It consists of the importation into paragraph 13 of the Code of the provision of section 31(1)(c) of the Localism Act, which requires that the member was aware of having a disclosable pecuniary interest in the matter considered at the meeting in order for there to have been a breach.

It is common ground that Ms Pearson obtained advice from an experienced solicitor before participating in the matter considered at the meeting on 29 January, that the advice was to the effect that she did not have a disclosable pecuniary interest in that matter, and that she participated in the informed belief that she did not have such an interest.

In his advice to the Hearing Sub Committee, Mr Swift QC acknowledged that this defence might be material to the criminal offence created by sections 31 and 34 of the Localism Act, but considered that section 31(1)(c) could not be imported into paragraph 13 of the Code (paragraph 11 of **Document 1**).

With respect, we consider this to be incorrect, for the following reasons.

Mr Swift QC advised that:

> "Paragraph 13 of the Code was clearly intended to give effect to section 31(1)(b) of the 2011 [Localism] Act …, and paragraph 13 should be understood accordingly" (paragraph 9(1) of **Document 1**, and see 1.2.1 above).

This involved importing words from section 31(1)(b) into paragraph 13 in the manner indicated in square brackets in paragraph (1) of his advice quoted in 1.1.1 above. It is therefore inconsistent to import words from section 31(1)(b) into paragraph 13, but not also to import the next phrase in section 31(1)(c), particularly as he advised that paragraph 13 should be understood in accordance with section 31.

The explanation which Mr Swift QC gave was that section 31(1)(c) concerned criminal liability. That is correct, but so does section 31(1)(b) from which he considered that words should be imported. In any case, while section 31 concerns criminal liability, paragraph 13 creates an equivalent prohibition in the Code, a breach of which could result in a censure, the local authority equivalent of a criminal conviction, allied to significant reputational damage. There appears to be no reason in principle why section 31 should contain a defence which the corresponding provision in the Code, paragraph 13, does not.

There was again no opportunity to address this point in the Hearing, because it was not raised there. The first time we became aware of it was when we read the Hearing Sub Committee's decision on breach of the Code (**Document 1**). That was due to the Hearing Sub Committee being concerned with matters other than paragraph 13, as mentioned above (in 1.1.2).

Although this point was not raised by Mr Swift QC in his advice as recorded in the Breach Decision Letter (**Document 1)**, we have considered whether Mr Swift QC's view could be justified by arguing that paragraph 13 was intended to have a wider scope of application than section 31. Since the core of both provisions is - in his view, and we agree - the same, that wider scope could only be justified by paragraph 13 covering actions in which the member was unaware of having a disclosable pecuniary interest; in other words, imposing strict liability. There is, however, no reason in principle why a member should be held to a higher level of account under the Code than under the general law. If it would be unjust for a member to be convicted of a criminal offence without the requisite awareness (or *mens rea*), why would it be not be unjust for the member to be subject to a sanction under the Code for the same conduct?

Even if it is still considered that there is some impediment to section 31(1)(c) being imported into paragraph 13, there is a different ground for paragraph 13 being considered to be subject to the same *mens rea* requirement as section 31(1)(b). That ground is that the Code is not drafted with the same legal precision as legislation (which, incidentally, accounts for the immaterial differences in wording between paragraph 13 and section 31(1)(b)), and the Code is to be interpreted in accordance with its spirit rather than in an overly legalistic way. In interpreting the Code in this way in the present case, it is reasonable to treat a breach of paragraph 13 as occurring only when the member was aware of having a disclosable pecuniary interest. Otherwise the unjust situation described in the preceding paragraph would arise.

We therefore consider that even if Ms Pearson had *prima facie* breached paragraph 13 of the Code, she has a valid defence.

1.4 Paragraph 13 of the Code: third limb of Ms Pearson's defence - section 34(1) of the Localism Act 2011

The third limb of the defence consists of the importation into paragraph 13 of the Code of the provision of section 34(1) of the Localism Act, which is that there is no breach if a member who participated in a matter in which he or she had a disclosable pecuniary interest had a "reasonable excuse" for doing so.

As noted in paragraphs (d), (e)(ii) and (h) of the Introduction above, the matter considered at the meeting on 29 January was presented as an urgent item on grounds which, as was subsequently shown, were unjustified, as

reflected in the Planning Committee's decision to reject the recommendation. (The urgency was even less justified by the undisclosed main reason for the recommendation, as described in paragraph (I) of the Introduction.) The confected urgency with which the matter was presented precluded the possibility of Ms Pearson applying for a dispensation to speak and / or vote on it (assuming that such dispensation was required, although in our view it was not - see 1.1 to 1.3 above). We submit, in the alternative, that - in these circumstances, and having regard to the interests of her constituents who were directly affected by the development - Ms Pearson had a "reasonable excuse" for participating in the meeting.

All the points made in 1.3 above in relation to section 31(1)(c) being imported into paragraph 13, or otherwise applying, apply equally to section 34(1).

1.5. Obtaining guidance from the Monitoring Officer

In the Breach Decision Letter, the Hearing Sub Committee stated that "Ms. Pearson should have sought guidance from the Monitoring Officer or the Clerk to the Committee" before participating in the meeting on 29 January 2018 (paragraph 17 on page 5 of **Document 1**). This statement was made as part of the decision on breach. It must therefore be one of the reasons for the Hearing Sub Committee deciding that Ms Pearson breached paragraph 13 of the Code. We submit that this reason is wholly irrelevant to any finding of breech, and accordingly the finding of breach must be set aside. This is so for the following reasons:

a. Paragraph 13 does not require, expressly or impliedly, a member to obtain guidance from the Monitoring Officer or the Clerk to the Committee before participating in a meeting. It cannot therefore be breached by a member not obtaining such guidance. The Hearing Sub Committee's statement that Ms Pearson did not obtain such guidance is accordingly not a valid reason for deciding that she breached paragraph 13 and fails *in limine*.

b. In any case, Ms Pearson did obtain guidance on the application of paragraph 13 before participating in the meeting on 29 January 2018 from Mr Harrower, a retired solicitor, which is a point conceded by the Hearing Sub Committee in its Sanctions Decision Letter (paragraph 2 of **Document 2**). Mr Harrower is a recently retired partner of a firm of City solicitors with thirty years of experience. His advice to Ms Pearson was subsequently endorsed by Mr Sharpe QC in an Opinion given in connection with this case (**Document 7**).

c. Regarding the second part of the Hearing Sub Committee's statement that "Ms Pearson should have sought guidance from the Monitoring Officer *or the Clerk to the Committee*", the Clerk to the Committee - Amanda Thompson - had no legal qualification. We submit that it would be plainly wrong to expect Ms Pearson to seek advice on a point of legal interpretation from someone who was not legally qualified, in preference to a solicitor with thirty years of experience.

d. Regarding the first part of the Hearing Sub Committee's statement that "Ms Pearson should have sought guidance *from the Monitoring Officer* or the Clerk to the Committee", the view of the Monitoring Officer on the application of paragraph 13 - or any other provision - of the Code has no special status in law, and so has no more weight than the view of any other solicitor of equal experience. This point was explained by Mr Harrower in the email which he sent to the Hearing Sub Committee on 12 May 2018, setting out comments on the Investigation Report (**Document 9**) which had been made on the draft sent to Ms Pearson for comment but not reflected by Mr Austin in the final report. During the hearing (the "**Hearing**") before the Hearing Sub Committee nine days later, it appeared that Edward Lord, one of its members, had not read this email. Mr Harrower then read out the section of the email addressing this point, as follows:

> "At the end of paragraph 6.15, Mr Austin states that:
>
> > "The Monitoring Officer has a statutory role in advising members on the Corporation's Code of Conduct and related matters and is in the best position to do so. Both the Code of Conduct (paragraph 15) and the associated guidance (paragraph 2) advise members to contact the Monitoring Officer for advice."

The Monitoring Officer does have a statutory role, provided by section 5 of the Local Government and Housing Act 1989 and Part III of the Local Government Act 2000, but it does *not* include “advising members on the Corporation’s Code of Conduct and related matters”, as claimed by Mr Austin.

His claim that the Monitoring Officer "is in the best position to do so” is not substantiated, and cannot be, because it is not correct. The compliance of a member with the Code is a matter of legal interpretation. This is the role of any lawyer, and ultimately of a court. The fact that the Monitoring Officer may deal with the Code more frequently in his work than other lawyers does not, as a matter of logic, give him superior powers of analysis in interpreting the Code or especial authority.

Paragraph 15 of the Code provides that:

> “If in doubt about any of the above matters you are encouraged to seek advice from the Town Clerk or the Corporation’s Monitoring Officer.”

Paragraph 2 of the Guidance provides that:

> “Further advice on the requirements of the Code can be obtained from the Corporation’s Monitoring Officer (the Comptroller and City Solicitor) or the Committee and Member Services Team.”

Neither of these provisions, on its own terms, obliges a member to seek advice from the Monitoring Officer. They are obviously intended to indicate the availability of a resource for members who do not have free and ready access to legal advice.

Ms Pearson did, however, have free and ready access to legal advice during the short period between her seeing the submission of the delegation report [**Document 4**] as a matter of urgency on the evening of Friday 26 January and the beginning of the meeting of the Planning and Transportation Committee at 10 am on Monday 29 January. The source of this advice was a lawyer who had no less than experience than the Monitoring Officer and who was moreover familiar with the facts of this matter. The position therefore remains that it was unnecessary for her to have tried to contact the Monitoring Officer over that weekend for the same purpose….

Finally, it is unclear as to why Mr Austin is making this point in the first place, because he finds as a fact that Ms Pearson did not act recklessly and did take prior legal advice.”

After Mr Harrower had read out this passage, Mr Austin still insisted that the Monitoring Officer had a statutory role in advising members on the Code.

Mr Harrower pointed out that the Monitoring Officer himself did not hold this view, and read out a passage in an email sent to him by the Monitoring Officer on 17 May 2018, which stated that:

> “As you are aware, under the Localism Act regime the Monitoring Officer has no formal statutory role in relation to the complaints process”.

A member of the Hearing Sub Committee asked Mr Wood for his view on the matter. He said that the Monitoring Officer had a statutory role as regards registering members’ interests.

Mr Harrower agreed, but pointed out that this was irrelevant, as it was common ground that Ms Pearson had registered her disclosable pecuniary interest after being elected. The relevant point was that the Monitoring Officer’s statutory role did not include advising members on the Code.

We would draw attention to the way in which this part of the hearing was recorded in the Minutes, which stated that:

> "The Sub Committee also duly noted the confirmation that the Monitoring Officer role was statutory and also included responsibility for the register of interests" (penultimate sentence of the third paragraph on page 4 of **Document 10**).

This statement is not actually wrong, because (as Mr Harrower mentioned in his comments on the Investigation Report, quoted above) the Monitoring Officer does have certain statutory responsibilities, but none of them includes advising members on the Code, which is the only relevant point in this case. As a summary of the discussion on this point in the Hearing, this statement in the Minutes is therefore grossly misleading.

The Minutes, as a whole, contain many misleading statements, similar to the one just quoted. Others will be identified in the course of this document.

In the representations which we made by email on 6 June 2018 to the Hearing Sub Committee on sanction, as Ms Pearson was invited to do in the Breach Decision Letter (paragraph 17 on page 6 of **Document 1**), we made the following points which relate to the role of the Monitoring Officer:

> "It has also not been explained how it would have been practicable for Ms Pearson to have contacted the Monitoring Officer over the course of a weekend - which is acknowledged to have been the only time available - to obtain advice from him, in the absence of any out of hours telephone number (reasonably assuming that the Monitoring Officer does not spend his weekends looking at work-related emails). Even if the Monitoring Officer had been contactable at that time and had given his advice, it could have no more standing than that given by any other lawyer of similar experience. This is illustrated by considering the scenario in which a Member acts on advice received from the Monitoring Officer from whom the Member has sought it on a point of legal interpretation, and someone then brings a complaint against the Member on the basis of a different legal interpretation of that point and the complaint is upheld….It could not, as a matter of law, be a defence to the Member that he or she had acted on the advice of the Monitoring Officer, because - as was established in the hearing - the law affords no special status to the role of the Monitoring Officer in this regard."

In summary: the Monitoring Officer has no statutory role in advising members on the Code; his views on the application of the Code have no special status in law; the Code provides that he is a resource on which a member may draw for advice, but clearly imposes no obligation on a member to do so; it is therefore legitimate for a member to obtain advice from a lawyer of no less experience than the Monitoring Officer, should that advice be available to the member (as it was in the extremely time constrained circumstances of this case); and the view of that lawyer has accordingly no less standing than that of the Monitoring Officer, making it unnecessary for the member also to consult the Monitoring Officer, as claimed by Mr Austin and as decided by the Hearing Sub Committee. This matter is addressed further in 3.2.2 below.

2. PROCEDURAL IRREGULARITIES

The Breach Decision Letter stated that:

> "This document does not seek to repeat the decisions given during the hearing, on the various preliminary matters" (final sentence of paragraph 3 on page 2 of **Document 1**).

As already noted (in the fourth paragraph of 1.1 above), much time was spent in the Hearing on matters other than paragraph 13. The only one of those matters which is not addressed in the Breach Decision Letter and which we consider needs to be a ground of appeal concerns no less than five procedural irregularities on the part of the Corporation in the conduct of this case.

The Hearing Sub Committee, as recorded in the Minutes (from the foot of page 2 to the middle of page 4 of **Document 10**), decided that each of these irregularities was not relevant to the resolution of this case.

We submit that those decisions were wrong.

We set out the irregularities in 2.1 below. In 2.2 below we explain what we consider to be their relevance to the resolution of this case, which is that they collectively constituted an abuse of process justifying the dismissal of these proceedings. We submit that on this basis they constitute a ground of appeal which is entirely separate from the reasons given by the Hearing Sub Committee for its decision on the breach (addressed in 1 above).

2.1 Description of procedural irregularities

2.1.1 The Monitoring Officer not complying with the Corporation's standard procedure of requiring a formal complaint to be made by an identified complainant

The Complaints Procedure provides for a complainant to make a formal complaint before it is referred to the Assessment Sub Committee for assessment (paragraphs 5 to 14 of **Document 3**). Section 5 of the complaint form (appended to the Complaints Procedure) states as follows (insofar as relevant to this case):

> "In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who made the complaint…We are unlikely to withhold your identity…unless…You have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed…However, it is important that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to."

In his report to the Assessment Sub Committee, the Monitoring Officer stated that:

> "Following the meeting [on 29 January] a member present at the meeting telephoned the Monitoring Officer to express serious reservations about Ms Pearson's conduct in relation to her statutory obligations under s.31 of the Localism Act 2011 and paragraph 13 of the Code of Conduct. However, for various reasons the member was not prepared to make a formal complaint" (paragraph 4 of **Document 6**).

None of these "various reasons" were described to us by the Monitoring Officer when this allegation of a procedural irregularity was put to him in an email on 15 May 2018.

Although the anonymous member was described as expressing "serious reservations" about Ms Pearson's conduct in relation to section 31 and paragraph 13, the member - who was present at the meeting - did not raise them in the course of the meeting, as one might have expected from someone who was genuinely concerned about compliance with the law and the Code.

The member was, moreover, known to the Monitoring Officer to have had "a (non-pecuniary) interest in the outcome of the planning application" (the redacted passage in paragraph 1 on page 1 of **Document 8:** we received an unredacted version in error). This necessarily implies that the member was a supporter of the development which was the subject of the planning application in another committee or on an outside body, and was therefore a political opponent of Ms Pearson in relation to this matter.

These circumstances suggest that the "various reasons" for the member not wishing to make a formal complaint were not acceptable ones.

The Corporation has acknowledged that the anonymous member did not satisfy the criteria set out in section 5 of the complaints form for his identity not to be disclosed (numbered paragraph 2 on page 3 of **Document 8**).

The Monitoring Officer has not explained why, in this case, "the interests of fairness and natural justice", which require that a member knows who has made a complaint, should not apply to Ms Pearson.

We submit that, by instituting proceedings against Ms Pearson without requiring a formal complaint to be made by an identified complainant, the Monitoring Officer failed to comply with the Corporation's standard procedure. The reason he gave for taking this exceptional action is addressed in the following section.

2.1.2 The Monitoring Officer initiating these proceedings by alternative means on an unjustified basis

In his report to the Assessment Sub Committee, the Monitoring Officer stated that:

> "… in circumstances where there are reasonable grounds to believe that a breach of the Code of Conduct has occurred, of which the Corporation is aware from its own knowledge and records, such as participation in a decision despite a disclosable pecuniary interest, the Standards Committee and the Monitoring Officer have taken the view that the Standards Committee, of itself or through officer delegation under the emergency procedure is entitled to convene a meeting of the Assessment Sub-committee to determine whether there should be an investigation in the absence of a complaint. This is to avoid criticism and reputational damage which could arise from the Corporation being seen to ignore potential breaches of the Code and the statutory requirements in relation to disclosable pecuniary interests within its knowledge. Furthermore, it avoids the situation where powerful or influential members can avoid being held to account simply because no individual is prepared to be seen to challenge them. This appears to the Monitoring Officer to be a real issue where turning of an institutional "blind eye" is no longer acceptable and a more desirable approach than a senior officer or member being obliged to take on the role of complainant to achieve the same result" (paragraph 6 of **Document 6**).

Our comments are as follows:-

a. The statement that the Standards Committee had "taken the view that the Standards Committee, of itself or through officer delegation under the emergency procedure is entitled to convene a meeting of the Assessment Sub-committee to determine whether there should be an investigation in the absence of a complaint" is misleading. The only justification which we have been given for the Standards Committee taking this view is a reference to the non-public minutes of an **inquorate** meeting on 26 January 2018 (three days before Ms Pearson's participation in the meeting that gave rise to the Monitoring Officer making the allegation against her). Those minutes report that the members decided that proceedings should be initiated in the absence of a complaint in another case involving a member who admitted subsequently a breach of paragraph 13. A decision reached at an inquorate meeting in private on a particular case does not, we submit, create a change in the Corporation's published standard procedure, such as to justify this action being taken in Ms Pearson's case.

b. The particular case referred to in (a) above concerned a clear breach of paragraph 13, which was admitted by the member concerned. In Ms Pearson's case, there was no self-evident breach, as demonstrated by the fact that neither Mr Sharpe QC nor Mr Swift QC considered there to be one. We therefore submit that there were insufficient "reasonable grounds to believe that a breach of the Code of Conduct has occurred" to justify the taking of this exceptional action in this case.

c. In a case such as Ms Pearson's where there was no self-evident breach, the notion that "a senior officer… [would not be] obliged to take on the role of complainant" where this exceptional action was taken has proved not to be so, and demonstrates the unsoundness of this approach. In this case, the Monitoring Officer effectively took on the role of complainant as "prosecuting counsel" alongside his role of legal advisor to the Standards Committee, thus creating a conflict (addressed in 2.1.5 below).

d. The Monitoring Officer must have known that Ms Pearson was not a "powerful or influential member", yet he specifically gave this as a justification in his report to the Assessment Sub Committee for her case being referred to it.

In relation to (d) above, in the Hearing, the co-opted member asked whether Ms Pearson could be regarded as a "powerful or influential member" because she was elected with the highest number of votes (558) of any Councilman in the elections of March 2017.

Mr Harrower explained that in the City, obtaining a high number of votes did not give rise to power or influence within the Corporation. Several members who were universally regarded as "powerful or influential" had been elected in

small business wards with only double figure votes. Such a member would typically have been a member for some time, a chairman of a major committee and/or have high level connections in the business City. By contrast, Ms Pearson had first been elected only in March 2017, was not a chairman of any committee and had no connections in the business City, being a retired architect. Mr Harrower mentioned that the three elected members of the Hearing Sub Committee would be able to confirm this to the co-opted member. None of them denied what Mr Harrower had said.

The only reference to this discussion in the Minutes is a statement that:

> "Ms Pearson was elected with a high number of votes and could be considered influential" (second paragraph on page three of **Document 10**).

This statement that she "could be considered influential" is false, which we state as a fact that is self-evident to anyone with knowledge of the Corporation, rather than make as a submission.

We therefore conclude that the Monitoring Officer initiated these proceedings against Ms Pearson on an unjustified basis.

2.1.3 The Monitoring Officer instructing Mr Goudie QC to provide an opinion on whether a criminal offence had been committed when this was a matter outside the Monitoring Officer's remit and was likely to have, and did have, an intimidatory effect on Ms Pearson

In his letter of 16 February to Ms Pearson, the Monitoring Officer stated, in relation to his referring the allegation against her under section 31 to the Police, that:

> "I do not advise the City of London Police in relation to criminal matters and what action, if any, they take is entirely a matter for them and the CPS and DPP as appropriate. The City of London Police and their advisers will no doubt consider your submissions in relation to the interpretation of s.31 and 33 of the Localism Act 2011."

Six days later, and notwithstanding his acknowledgment that his remit did not extend to the criminal offence under section 31 / 34, the Monitoring Officer instructed Mr Goudie QC to give an Opinion on (among other things):

> "whether a breach of S. 31... has occurred; if so, whether an offence under s. 34 is likely to have been committed.."

Mr Goudie QC duly gave such an Opinion, stating that:

> "an offence is likely to have been committed under Section 34 of LA 2011" (paragraph 29(4) of **Document 5**).

We submit that the Monitoring Officer's action in instructing Mr Goudie QC to give an Opinion on the commission of a criminal offence, given his limited remit, can only be explained by his intention to create an intimidatory effect on Ms Pearson. It seems plain that the object was to make her more likely to cease contesting the allegation brought by the Monitoring Officer for breach of paragraph 13 of the Code. No explanation by or on behalf of the Monitoring Officer has been given for his instruction of Mr Goudie QC before, at or after the Hearing.

2.1.4 The Monitoring Officer building a case against Ms Pearson on facts which involved officers of the Corporation not disclosing to the Planning Committee at its meeting on 29 January the main reason for their recommendation that the determination of the relevant planning application be delegated to Islington, which was a disreputable one

In paragraph 2 of his report to the Assessment Sub Committee (**Document 6**), the Monitoring Officer stated that:

> "The planning application is a complex one, involving time pressure, some local opposition (largely from City residents nearby), and two planning authorities, one of which, Islington, will be holding local elections in May

> 2018. Given those complexities and the small parcel under the Corporation's jurisdiction, officers concluded that the most efficient and effective method of managing the process would be for the Corporation to delegate the determination of the application in relation to the City land to Islington. Accordingly, a report was presented to the Planning and Transportation Committee on the 29th January 2018, as an urgent item for various reasons involving timing and co-ordination with Islington, recommending that the Committee recommend to the Court of Common Council the delegation of the planning decision in respect of the City parcel to Islington."

The report dated 29 January 2018 to the Planning Committee (**Document 4**) drew attention to the fact that only a small part of the site for the proposed development fell within the area of the City, explained the mechanism for one authority to delegate the determination of a planning application to another, claimed that the matter should be treated as urgent and recommended that the Corporation recommend to the Court of Common Council the delegation of the planning decision in respect of the City parcel to Islington.

The second sentence in the statement quoted above from the Monitoring Officer's report to the Assessment Sub Committee states that the officers concluded that the Corporation should delegate the determination of the planning application to Islington "given those complexities", i.e. the complexities described in the first sentence, and the small parcel under the Corporation's jurisdiction. The "complexities" involving "time pressure…and two planning authorities", and the small parcel under the Corporation's jurisdiction, were reflected in the report to the Planning Committee. Two of those "complexities", however, are notable by their omission from the latter report, namely "some local opposition (largely from City residents nearby)" and Islington holding local elections in May 2018.

It follows from this omission that the report to the Planning Committee did not disclose to the members of that Committee the full reasons for the officers' recommendation concerning delegation. It is not hard to see why. The undisclosed reasons reflect a political calculation that the planning application might be more likely to be approved by Islington (before the local elections) because of "some local opposition (largely from City residents nearby)", and thus reflect a desire on the part of the officers for the planning application not to be heard by the Corporation's Planning Committee, on which where the "City residents nearby" could be directly represented by their local Councilmen.

This was plainly a more cogent reason for making the recommendation than the one given concerning a small part of the site falling within the City, particularly as a majority of residents affected would be in the City (see paragraph (e) (i) of the Introduction above.) This undisclosed reason must therefore have been the main one.

For officers knowingly not to disclose the main reason for a recommendation to a committee, and for that reason to be disreputable, is a grave matter, and one which has not received public attention because the report in which it is revealed, which came into existence as part of these proceedings, is currently non-public (pending the outcome of this appeal). It will be of interest to the constituents in Ms Pearson's Ward.

If the recommendation to the Planning Committee for consideration at its meeting on 29 January had not been deemed urgent, Ms Pearson would not have been placed in the invidious position that she was, of speaking out for her constituents without the possibility of eliminating any risk of breach by obtaining a dispensation.

When this procedural irregularity was raised in the Hearing, Mr Swift QC - when considering its relevance to the allegation of breach of paragraph 13 - mooted the possibility of abuse of process (explained in 2.2 below).

This was recorded, somewhat economically, in the Minutes as:

> "After hearing some further remarks from Jonathan Swift…" (fifth paragraph on page three of **Document 10**).

The Hearing was then adjourned, and the Hearing Sub Committee spent 31 minutes discussing this point. Upon reconvening, the Chairman read out a prepared statement, which was recorded in the Minutes thus:

> "The Sub Committee was content that the late item considered by the Planning and Transportation Committee on 29 January had not been considered irregularly, and that this decision related to the

information provided to the Assessment Sub Committee on 13 March which concluded that the planning application was a complex case, such that it would be more appropriate for it to be considered by one rather than two local authorities, with only a small parcel of affected land within the City and the greater amount within the London Borough of Islington. The Chairman said that the report disclosed no form of impropriety or any plausible argument to that effect" (final paragraph on third page of **Document 10**).

The statement made by the Chairman quoted above consisted of a denial of impropriety and a list of all the reasons that were disclosed to Committee members at the meeting of 29 January, but - like the report for that meeting itself - made no mention of "some local opposition (largely from City residents nearby)", which is at the heart of this issue. We therefore submit that ignoring this key passage renders this finding manifestly wrong.

This finding precluded consideration of the possibility of abuse of process because no impropriety was found to have existed. Nevertheless, the Chairman's statement continued:

> "…even if disregarded, the Sub Committee could see no possible link between any improper issue relating to business transacted at the 29 January Planning and Transportation Committee meeting and the decision to raise the allegation against Ms Pearson that she acted in breach of the Code at that meeting. He went on to confirm that the Sub Committee considered that the contention against Ms Pearson was a matter of substance and that it was further considered by Sub Committee members that there was no reason to discontinue the proceedings against her under paragraph 13 of the Code" (second paragraph on page 4 of **Document 10**).

This point is addressed in 2.2 below in relation to abuse of process.

Finally, although we submit that no further evidence is needed beyond the report to the Assessment Sub Committee to establish that officers of the Corporation did not disclose to the Planning Committee at its meeting on 29 January the full reasons for their recommendation that the determination of the relevant planning application be delegated to Islington and that one of those reasons was disreputable, there were some comments made by the Corporation in the email correspondence between Mr Austin and Mr Wood (which we required to be disclosed to us) which tend to support that primary evidence, as follows:

> "The planning application in question was a contentious matter for the Corporation. As you know, the Corporation was both the applicant and one of the two Local Planning Authorities that needed to determine the matter. The application was strongly opposed by local residents and therefore the elected representatives of the ward…" (numbered paragraph 1 on page 3 of **Document 8**).

2.1.5 The Monitoring Officer acting in the conflicting roles of "prosecution counsel" and of legal advisor to the Standards Committee

It has already been noted (in 2.1.2(c) above) that, by initiating these proceedings in the absence of a complainant, the Monitoring Officer effectively took on the role of complainant and acted as "prosecuting counsel", alongside his normal role of legal advisor to the Standards Committee. This created a fundamental conflict as the latter role would normally demand neutrality and a dispassionate assessment of the situation. Instead it fell to the Monitoring Officer to build a case against Ms Pearson in his report to the Assessment Sub Committee, which he was advising. This took place with a background of the non-disclosure by officers to the Planning Committee of the main, disreputable reason for their recommendation of urgency (see 2.1.4 above).

Mr Harrower raised this conflict directly with the Monitoring Officer before the Hearing in an email on 18 May 2018, the relevant part of which read as follows:

> "You seem to have recognised the existence of a conflict between your role as the Monitoring Officer / legal advisor and the role you had assumed of "prosecution counsel" in this matter by ceding the latter role to Mr Wood, following the meeting of the Assessment Sub-Committee, but this conflict had existed from the outset, so by then it was too late to have avoided it…"

The Monitoring Officer did not respond.

One would have expected the Monitoring Officer to seek to end the conflict after the meeting of the Assessment Sub Committee by not only ceding the role of "prosecution counsel" to Mr Wood, but also ceasing to act as legal advisor to the Hearing Sub Committee. More than a month after the meeting of the Assessment Sub Committee, however, Mr Wood stated in email correspondence with Mr Austin that:

> "Michael [Cogher, the Monitoring Officer] is intending at this stage to act as legal advisor to the Hearing Sub Committee" (first paragraph on page 3 of **Document 8**).

In fact, the Monitoring Officer only declared his intention not to act as legal advisor to the Hearing Sub Committee by email to Mr Harrower on 17 May 2018 (two working days before the Hearing). In that email he indicated that Mr Swift QC had been instructed to fulfil this role instead.

The Minutes stated that:

> "The Chairman went on to say that, as the Monitoring Officer was no longer advising the Sub Committee on this matter, Mr Harrower's concerns on these points o[f] whether the Monitoring [O]fficer was conflicted were no longer relevant" (second paragraph on fourth page of **Document 10**).

This was a welcome if belated admission, but the damage had been done. We submit, however, that the relevance of the conflict is that it resulted in prejudice to Ms Pearson during the period before the Hearing.

2.2 Relevance of procedural irregularities: abuse of process

The concept of "abuse of process" in judicial proceedings may be summarised as follows:-

A court may "stay" (i.e. dismiss) proceedings on the ground of abuse of process where it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case (*R v Horseferry Magistrates' Court ex parte Bennett (No 1) [1994] 1 AC 42).*

The concept exists as a basic measure to ensure that justice is done. For this reason, we submit that it is equally applicable to quasi-judicial proceedings, such those that have been brought against Ms Pearson in this case.

Applying the concept to this case, we submit that the Hearing Sub Committee should have dismissed the proceedings, and not decided (as they did) against Ms Pearson, on the ground that the procedural irregularities which had been raised on her behalf collectively constituted an abuse of process.

We submit that the fourth of those irregularities - concerning the Monitoring Officer building a case against Ms Pearson on the basis of the non-disclosure by officers to the Planning Committee of the main, disreputable reason for their recommendation (see 2.1.4 above) - was alone sufficient to justify a dismissal.

This irregularity did not stand alone, however, but formed part of a sequence which included the other four. Each of the five irregularities had a connection with one or more of the others, particularly the conflict issue (the fifth), which was a common thread. Each of them consisted of either a significant departure from standard procedure or seriously prejudicial conduct which tainted the bringing and pursuit of these proceedings.

We accordingly submit that, if the Hearing Sub Committee had any doubt as to whether it should have dismissed the proceedings against Ms Pearson on the ground that the fourth irregularity constituted an abuse of process (although we submit there was no reason for such doubt), it should have dismissed those proceedings on the ground that all five irregularities collectively constituted an abuse of process.

We repeat that this ground of appeal from the Hearing Sub Committee's decision on breach is entirely separate from the first ground of appeal, which is that the reasons given for the breach in the Breach Decision Letter were wrong (see 1 above). It follows that if the Appeal Sub Committee accepts that the reasons given for the breach in the Breach Decision Letter were wrong (as we submit), with the consequence that it finds that no breach occurred, it will be unnecessary for it to decide whether the Hearing Sub Committee should have dismissed these proceedings on the ground of abuse of process, which is the subject of this second ground of appeal.

B. GROUNDS OF APPEAL (WITH SUPPORTING REPRESENTATIONS) AGAINST THE DECISION ON SANCTION

If the Appeal Sub Committee decides that no breach occurred, the sanction of a censure imposed by the Hearing Sub Committee will automatically be overturned. If the Appeal Sub Committee were to decide that a breach did occur and that proceedings should not have been dismissed, contrary to our submissions on both of these grounds of appeal in Part A above, we submit that the Hearing Sub Committee's decision on sanction was wrong, because:

a. the reasons given for it in the Sanction Decision Letter were unlawful and improper; and

b. the Hearing Sub Committee imposed the sanction only when it imposed a condition which it had no authority to impose and failed to obtain from Ms Pearson an acceptance of that condition.

We set out each of these grounds of appeal (with supporting representations) in sections 3 and 4 below respectively.

3. REASONS FOR THE DECISION ON SANCTION

3.1 Background

3.1.1 Sanctions available

Paragraph 40 of the Complaints Procedure (**Document 3**) states that, following a hearing, the Hearing Sub Committee may make one of the following findings:

i. there has been no breach of the Code;

ii. there has been a breach, but "no action needs to be taken in respect of matters considered at the hearing"; or

iii. there has been a breach, and "a sanction should be imposed".

Paragraph 42 specifies the three sanctions that may be applied in any case, as follows:

i. a censure;

ii. withdrawal of corporate hospitality: and

iii. a recommendation for the removal of a member from a particular committee.

3.1.2 Representations on behalf of Ms Pearson

In the representations which we made by email on 6 June 2018 to the Hearing Sub Committee on sanction, as Ms Pearson was invited to do in the Breach Decision Letter (paragraph 17 on page 6 of **Document 1**), we submitted that - subject to its decision on breach being appealed - the Hearing Sub Committee should decide that "no action needs to be taken in respect of matters considered at the hearing", per paragraph 40 (ii) of the Complaints Procedure.

Our reason was based on findings in paragraph 17 (on page 5) of the Hearing Sub Committee's own Breach Decision Letter, and specifically that:

a. Ms Pearson "had attended initial induction training soon after the election in March 2017 and a further training session on the Code of Conduct…on 22 January 2018, a week prior to the Planning and Transportation Committee meeting"; and

b. "the Sub Committee is entirely satisfied that Ms Pearson acted as he did without any thought for personal advantage, but only because she believed it was in the interests of her constituents that she speak and vote at the meeting."

We submitted that the necessary inference from these comments is that the Hearing Sub Committee considered that there had been a technical breach of paragraph 13 of the Code (which was matter of legal interpretation), and that Ms Pearson's conduct had been above suspicion.

In these circumstances, we submitted that the Hearing Sub Committee should decide that "no action needs to be taken in respect of matters considered at the hearing."

Regarding the available sanctions, we submitted that those in paragraph 42 (ii) and (iii) were plainly inappropriate on the facts of this case, and that the remaining sanction of a censure in paragraph 42 (i) [the highest level of sanction available] would be inappropriate for the same reason that **any** sanction would be inappropriate in these circumstances, as explained above.

3.2 Reasons given in the Sanction Decision Letter

We address below each reason given in the numbered and concluding paragraphs of the Sanction Decision Letter (**Document 2**).

3.2.1 Paragraph 1

The statements made in this paragraph about Ms Pearson being aware of the need for a dispensation are not a valid reason for the imposition of a censure. That is because (as acknowledged in paragraph 2) she had received legal advice that she did not have a disclosable pecuniary interest in the matter considered at the meeting on 29 January, and therefore had no need of a dispensation.

The statements made in this paragraph give the impression that Ms Pearson acted recklessly, by knowing she needed a dispensation but not seeking one. A similar impression was given by the Monitoring Officer's report to the Assessment Sub Committee (in the last two sentences of paragraph 1 of **Document 6**). This impression was, however, addressed in the Investigation Report (paragraph 5.11 of **Document 9**) in the following terms:

> "The Monitoring Officer's report to the Assessment Sub-Committee - paragraph 1 - last two sentences - refers to the previous dispensation request from Ms Pearson that was rejected. Whilst this is factually correct, Mr Harrower felt that it was not relevant to the allegations. It wasn't a factor in the discussion at the Planning Committee on 29 January but it could create in the mind of the reader an inference that because Ms

> Pearson was clearly aware of the procedure she had somehow acted recklessly on 29 January. Mr Harrower said that this inference could not logically be drawn. If it was drawn, it was also wrong. Regarding the last point, he cited the Planning Committee on 23 May 2017, and the application relating to Bernard Morgan House. Ms Pearson had objections but deliberately did not attend the meeting because she felt she may have had a disclosable pecuniary interest. She also felt it inappropriate to apply for a dispensation. This rebuts in his view any inference that she was being reckless on 29 January."

Mr Austin concluded that:

> "I do not think that Ms Pearson acted recklessly" (paragraph 6.29 of **Document 9).**

The Hearing Sub Committee should have been aware of these passages in the Investigation Report, but evidently ignored them in writing this paragraph 1 of the Sanction Decision Letter.

3.2.2 Paragraph 2

This first statement made in this paragraph is that while the Hearing Sub Committee accepted that it was a "sensible step" for Ms Pearson to have sought the advice of Mr Harrower before participating in the matter considered at the meeting on 29 January, it considered that this "was not sufficient". It explained that:

> "Although Mr Harrower had been a councilman for some three years, and by profession had been a solicitor, he could not reasonably be considered to be an expert on matters concerning the Code of Conduct, including paragraph 13…"

It went on to state that she should have sought advice either from Mr Cogher, the Monitoring Officer, or from Ms Cluett, "an Assistant City Solicitor who was in attendance at the Planning and Transportation Committee meeting, as that committee's specialist legal adviser." It added that:

> "Mr Cogher and Ms Cluett are highly experienced on matters relating to local government including the responsibilities of elected council members."

These statements do not amount to a valid reason for the imposition of a sanction, for the following reasons:-

a. In the Breach Decision Letter, the Hearing Sub Committee gave as one of its reasons for a breach occurring that "Ms. Pearson should have sought guidance from the Monitoring Officer *or the Clerk to the Committee*" before participating in the meeting on 29 January 2018 (paragraph 17 on page 5 of **Document 1**). It has already been pointed out (in 1.5 (c) above) that it would plainly be wrong to expect Ms Pearson to seek advice on a point of legal interpretation from the Clerk to the Committee, who was not legally qualified, in preference to a solicitor with thirty years of experience (Mr Harrower). Between writing the Breach Decision Letter and this paragraph in the Sanction Decision Letter, the Hearing Sub Committee appears to have quietly dropped the reference to the Clerk to the Committee which formed part of one of its reasons for the decision on breach, perhaps in response to our drawing attention to this point in the representations on sanction which we made by email on 6 June 2018.

b. This paragraph merely notes that Mr Harrower "by profession had been a solicitor", and does not mention that he was a recently retired partner in a City law firm with thirty years of experience, although this fact was known to the Hearing Sub Committee, because it was mentioned in our representations on sanction; the Investigation Report also noted that Mr Harrower was "a very experienced solicitor" (paragraph 5.4 of **Document 9**).

c. This paragraph states that Mr Harrower "could not reasonably be considered to be an expert on matters concerning the Code of Conduct, including paragraph 13…", and compares him with Mr Cogher and Ms Cluett, who are described as "highly experienced on matters relating to local government including the responsibilities of elected council members". These statements necessarily imply that the Hearing Sub Committee considered

that Mr Harrower was incapable of providing adequate advice to Ms Pearson on paragraph 13 of the Code which was “sufficient” for her to rely on.

d. These statements are not substantiated, nor could they be. According to Mr Swift QC, paragraph 13 of the Code was clearly intended to give effect to section 31(1)(b) of the 2011 [Localism] Act, and paragraph 13 should be understood accordingly (see 1.1.1(1)). Each of Section 31(1) and (4) is a single sentence which does not contain any technical definitions, and which has not been interpreted by case law. Its application, and consequently the application of paragraph 13, is therefore simply a matter of statutory interpretation. This is a basic legal skill, not requiring arcane knowledge of local government law. Over three decades, Mr Harrower practised corporate tax law, which is a branch of law that is based entirely upon statutory interpretation, often involving points of difficulty with substantial financial consequences. We submit that it is irrational (and offensive) to assert, as the Hearing Sub Committee has done, that someone in Mr Harrower’s position was incapable of providing “sufficient” advice to Ms Pearson on the application of a provision as simple (and with such a clear purpose) as section 31 / paragraph 13.

e. Mr Harrower’s advice to Ms Pearson was, moreover, subsequently endorsed by Mr Sharpe QC in his opinion (**Document 7**). Had Ms Pearson sought Mr Sharpe QC ’s advice before participating in the matter considered at the meeting on 29 January instead of Mr Harrower's, his advice would have been the same as Mr Harrower’s. If the Hearing Sub Committee considered that Mr Harrower was incapable of providing “sufficient" advice to Ms Pearson, that would imply that the same advice from Mr Sharpe QC - acknowledged as a leading silk in the field of public law - would also not be “sufficient”. We submit that such a necessary implication underlines the irrationality of the Hearing Sub Committee’s assertion regarding Mr Harrower.

f. As explained comprehensively in 1.5 above, we submit that the notion that the Monitoring Officer has exclusive rights to opine on the Code of Conduct or that his views have a special status in law or that a member is under an obligation to consult him is wrong. What is stated in 1.5 applies equally to Ms Cluett.

At this juncture, we would draw attention to the third paragraph on page one of the Sanction Decision Letter, in which the Hearing Sub Committee stated that the censure which it imposed on Ms Pearson:

> “…will be marked by this letter being published on the City Corporation’s website and by it being reported formally to the Planning and Transportation Committee”.

We note that the Hearing Sub Committee’s decision that the Sanction Decision Letter be formally reported to the Planning Committee, by means of its being included in "the public agenda pack for a future Planning and Transportation meeting” (as specified on page 4 of **Document 12**), has no basis of authority in any of paragraphs 40 to 44 of the Complaints Procedure, which governs the procedure in this case. Those paragraphs do not, moreover, empower the Hearing Sub Committee to devise any specific methods of publication in addition to general publication.

3.2.3 Paragraph 3

This paragraph states that although the matter considered at the meeting on 29 January was taken as urgent, the Hearing Sub Committee considered that Ms Pearson still had sufficient time to raise the matter either with Mr Cogher over the weekend (for example, by email) or with Ms Cluett at the meeting, but did neither.

This statement is predicated on the notion that Ms Pearson, having already obtained legal advice from Mr Harrower, was obliged to obtain it also from Mr Cogher or Ms Cluett, or that their views should take precedence over Mr Harrower’s. As explained comprehensively in 1.5 above, we submit that this is wrong.

We accordingly submit that the statement made in this paragraph 3 is not a valid reason for the imposition of a sanction.

3.2.4 Paragraph 4

This paragraph states that the Hearing Sub Committee considered that Ms Pearson's:

> "failure to seek such advice [from Mr Cogher or Ms Cluett] was a significant error of judgement" and that "the reasonable steps that are necessary include seeking advice from council officers such as the Monitoring Officer, and members of the City Solicitor's Department".

These statements merely repeat the notion that Ms Pearson, having already obtained legal advice from Mr Harrower, was obliged to obtain it also from Mr Cogher, Ms Cluett or another member of the City Solicitor's Department. As explained comprehensively in 1.5 above, we submit that this is wrong.

This paragraph also states that:

> "Compliance with the Code of Conduct is critical for maintenance of public confidence in elected councilmen, and in the Corporation itself. Adherence to the Code of Conduct and to the ethical standards provisions of the Localism Act 2011 is a matter of public interest….." etc.

Neither the Code nor the Localism Act requires a member to obtain advice from the Monitoring Officer or a member of his staff as opposed to a solicitor who is no less qualified to provide that advice. This statement is therefore irrelevant in the context in which it is placed.

We accordingly submit that the statements made in this paragraph 4 do not amount to a valid reason for the imposition of a sanction.

The reference in the last statements to public perception is, incidentally, an echo of a point made by Mr Austin in the Hearing. He said that when he was a monitoring officer, he used to give advice to this effect to a member taking a certain action: "How would it look if this were reported on the front page of a newspaper?" Mr Harrower pointed out that the outcome of the consideration of the Delegation decision at the meeting on 29 January was prominently reported in "City Matters" [on 31 January], and Ms Pearson was reported in the article as speaking against the proposal. Ms Pearson was widely known in the local area as the only Councilman living on Golden Lane Estate, but no complaint was known to have been made by any of the thousand or so residents about her participation in this matter because of the proximity of her flat. Mr Harrower said that this was natural, because the matter considered - the Delegation decision - was obviously of a kind that could produce no pecuniary advantage for Ms Pearson or anyone else (as always accepted by the Corporation). Why, therefore, would there have been an issue of public perception regarding her participation in that matter?

On reflection, if it were known that Ms Pearson would have been prevented from speaking, notwithstanding the absence of any pecuniary interest, the public reaction would have been highly critical of the Corporation.

This discussion was not recorded in the Minutes.

A complaint about Ms Pearson had in fact been made not by a member of the public, but by another member. That member, who remains anonymous, did not want to make the complaint in accordance with the Complaints Procedure, but the Monitoring Officer nevertheless initiated proceedings against Ms Pearson (see 2.1.1 above). It was revealed in email correspondence between Mr Austin and Mr Wood that the anonymous member "may also have had a (non-pecuniary) interest in the outcome of the planning application" (paragraph 1 on page 1 of **Document 8**). This necessarily implies that the member was a supporter of the development which was the subject of the planning application in another committee or on an outside body, and was therefore an opponent of Ms Pearson in relation to this matter. It was accordingly a matter not of public perception, but of political pique. It is regrettable that this only came to light later in the proceedings and was not taken into account by the Monitoring Officer in the exercise of his discretion to initiate proceedings against her.

3.2.5 Paragraph 5

This paragraph states that Ms Pearson's email of 20 June:

> "contained no indication that, having had the opportunity to reflect on events leading to the Planning and Transportation Committee meeting on 29 January and on the decision of the Sub Committee [on breach], you realised that you ought to have acted differently, or that you would act differently were any similar situation to arise in the future".

In the fourth paragraph of page one of the Sanction Decision Letter (**Document 2)**, it was reported that the Hearing Sub Committee:

> "concluded that it is clear from that email that were circumstances similar to those at the meeting on 29 January 2018 to arise again, you would act in the same way again."

Ms Pearson's email was a response to the Hearing Sub Committee's question, which was put to her by email, as follows:

> "What would you now do as a committee member, were you to be faced with a similar or identical situation to that which existed at the January meeting of the Planning and Transportation Committee?"

Certain key passages of her email were omitted in the two statements quoted above from the Sanction Decision Letter. Those passages are indicated in italics in the material part of her email (on page 1 of **Document 11**), which is set out below:

> "In any future situation, *I would follow the Seven Principles of Public Life, as set out in paragraph 1 of the Code*, just as I did at the meeting of the Planning and Transportation Committee on 29 January. *The first principle - "Selflessness" - requires me to act "solely in the public interest".* The Sub Committee accepted in its decision [on breach] that I acted at the meeting on 29 January in the interests of my constituents. *The same principle requires me not to "act to gain financial or material benefits" for myself or others.* The Sub Committee accepted in its decision that I acted as I did at the meeting on 29 January "without any thought for personal advantage". *I confirm that I would follow the Seven Principles in the same way in any future situation.*
>
> On the question of whether I had a "disclosable pecuniary interest" within paragraph 13 of the Code, a common sense interpretation of this paragraph is that one can only have a pecuniary interest in a matter which is capable of conferring a pecuniary advantage, otherwise what is the point of restricting a member from doing his or her job, which is to speak and vote in the interests of their constituents? My legal advisors, Mr Harrower and Mr Sharpe QC, have both advised me that this is also the correct legal interpretation of that paragraph. *On any future point of legal interpretation I would of course seek appropriate legal advice before acting.*"

These extracts should have been reported. We submit that it was unfair and irrational for the Hearing Sub Committee to impose a sanction on Ms Pearson because she indicated that if a similar situation were to arise again, she would again act in accordance with the Code and - on a point of legal interpretation - would seek *appropriate* legal advice before acting.

We draw attention to the fact that Ms Pearson did not, in her email, preclude the possibility that she would in the future "seek appropriate legal advice" from the Monitoring Officer or a member of his staff. A similar urgent situation might arise in the future in which Mr Harrower (and, through him, Mr Sharpe QC) was not available to be consulted, and the only legally qualified person available was the Monitoring Officer or a member of his staff. In fact, this situation has already arisen: in May 2017, Ms Pearson discussed with Ms Cluett whether to participate in the debate on the planning application for Bernard Morgan House (see 3.2.1 above), and followed Ms Cluett's advice not to do so.

The point remains that the Monitoring Officer or a member of his staff is a source of legal advice, but not an exclusive one. We submit that the contrary assertion by Hearing Sub Committee is wrong, as explained comprehensively in 1.5. above.

We therefore submit that the statements made in this paragraph 5 do not amount to a valid reason for the imposition of a sanction.

At this juncture, we refer to the following statements in the Sanction Minutes (on page 3 of **Document 12**), which summarised the discussion of the Hearing Sub Committee that resulted in the preparation of the Sanction Decision Letter:

> "Members discussed whether or not to impose a sanction. Members agreed that they were disappointed with the email response received [from Ms Pearson in her email of 20 June] (as set out above) as it appeared to demonstrate a lack of acceptance of the primacy of the Code of Conduct and observation of it…"

We submit that not only was this statement made wholly without foundation, but it was also made directly in the face of Ms Pearson having clearly indicated that she had acted, and would in the future act, in accordance with the Code (as evidenced by the italicised passages in the text of her email quoted above).

We submit that this underlines the irrationality, and consequent invalidity, of the reason given in paragraph 5 for the imposition of a sanction.

3.2.6 Concluding paragraph

The unnumbered concluding paragraph of the Sanction Decision Letter contains two statements.

The first statement is as follows:

> "The Sub Committee hopes that you will reflect on these matters, and that in future you will recognise the importance of seeking advice from the Monitoring Officer or another properly qualified officer, in any situation where there are grounds for doubt as to what steps should or should not be taken to meet the requirements of the Code of Conduct."

Nearly all the reasons given in numbered paragraphs 1 to 5 of the Sanction Decision Letter are merely different ways of expressing this core reason.

As explained in 1.5 and 3.1.1 to 3.1.5 above, we submit that this is wrong and therefore not a valid reason for the imposition of a sanction.

We submit that if the Appeal Sub Committee were to decide that a breach did occur, contrary to our submissions in Part A above, the only appropriate consequence should be a decision that "no action needs to be taken in respect of matters considered at the hearing", in accordance with paragraph 40 (ii) of the Complaints Procedure (see 3.1 above).

The second statement in the concluding paragraph of the Sanction Decision Letter is as follows:

> "If you consider that you would be assisted by further training on these requirements (either through courses or through individual discussion), the Comptroller & City Solicitor would be happy to make arrangements for this)."

The Hearing Sub Committee acknowledged that Ms Pearson had, prior to the meeting on 29 January, twice attended training courses on the Code and was aware of the relevant requirements: see the Breach Decision Letter (paragraph 17 on page 5 of **Document 1**), the Sanction Minutes (on page 3 of **Document 12**) and the Sanction Decision Letter (in numbered paragraph 1 of **Document 2**).

If this statement is made as a reason for the imposition of a sanction, it is therefore irrational and accordingly invalid.

If it is not, it is irrelevant.

4. HEARING SUB COMMITTEE IMPOSED THE SANCTION ONLY WHEN IT IMPOSED A CONDITION WHICH IT HAD NO AUTHORITY TO IMPOSE AND FAILED TO OBTAIN FROM MS PEARSON AN ACCEPTANCE OF THAT CONDITION

An additional ground of appeal against the Hearing Sub Committee's decision on sanction is that it imposed a censure only after it had failed to obtain from Ms Pearson an acceptance of a condition which it had sought to impose without authority to do so, namely that she recognises that if a similar situation were to arise again, she would seek advice from the Monitoring Officer or a member of his staff.

We consider that the email correspondence between the Clerk to the Committee and Ms Pearson (**Document 11**) and the Sanction Minutes (**Document 12**) reveal the following facts:

(a) the Hearing Sub Committee tried to obtain from Ms Pearson an acknowledgement that if she were faced with a similar situation to that which existed at the meeting of the Planning Committee on 29 January, she would seek advice from the Monitoring Officer or one of his staff; and

(b) if it had obtained that acknowledgement from her, it would not have imposed a censure, or any other sanction (since the only other sanctions available were plainly inappropriate on the facts - see 3.1 above).

In the light of these facts, we submit that:

i. the Hearing Sub Committee had no authority to seek that acknowledgement from Ms Pearson; and

ii. by imposing a censure after it had failed to obtain that acknowledgement from her, it did so on an invalid ground.

Regarding (i), we note that paragraph 44 of the Complaints Procedure (**Document 3**) sets out three matters which the Hearing Sub Committee may take into account in deciding whether to impose a sanction. None of them, expressly or by implication, includes an acknowledgement to consult the Monitoring Officer or a member of his staff. Such an acknowledgement could not, in any event, be taken into account, since it is wrong as a matter of law (as explained in 1.5 above)

Regarding (ii), the Complaints Procedure does not, expressly or by implication, authorise the Hearing Sub Committee to impose a censure as a penalty for a member not giving an acknowledgement which it has no authority to seek. A censure is the highest form of sanction, and should only be imposed where the circumstances objectively justify it. When the Hearing Sub Committee had its first meeting to decide on sanction on 11 June, it had already received full representations from Ms Pearson on sanction. The subsequent email correspondence between the Clerk to the Committee and Ms Pearson (**Document 11**) and the Sanction Minutes (**Document 12**), reveal that the Hearing Sub Committee did not require any clarification of Ms Pearson's representations, or anything else which was properly relevant to making its decision. It therefore could, and should, have decided on whether to impose a censure at that meeting. Its failure to do so, and its failed attempt to compel Ms Pearson to appear before it to give an acknowledgement which it had no authority to seek, necessarily mean that its eventual imposition of a censure cannot be objectively justified, but treated only as an unauthorised penalty for Ms Pearson not giving that acknowledgement.

We therefore submit that the imposition of a censure is invalid on this ground, which is distinct from the first ground of appeal, consisting of the reasons given in the Sanction Decision Letter being wrong (see 3 above).

We set out below the full text of Ms Pearson's email of 18 June 2018 to the Clerk to the Committee (part of **Document 11**), which summarises the correspondence to that date. The Clerk's response was to send an email asking the question about what she would do in a similar future situation (quoted in 3.2.4 above), to which Ms Pearson replied in an email stating that she would seek appropriate legal advice (also quoted in 3.2.4 above).

We consider that the email quoted below reveals that the Hearing Sub Committee made persistent attempts to compel Ms Pearson to appear before it to extract the acknowledgement it wanted, and finally resorted to making a threat based on the false premise that she did not want to answer its questions (see the penultimate paragraph of the email). We also note the use of patronising and slightly emotive language in the Sanction Decision Letter and the Sanction Minutes. In both documents, much is made of the fact that she was a "new member", impliedly in need of assistance. We consider the latter to be a false premise: for someone, like Ms Pearson, who has practised as an architect for four decades and worked on major airport projects, understanding the Code of Conduct is not difficult.

We submit that all these facts underline the notion that the Hearing Sub Committee did not make its decision on whether to impose a censure objectively, as it should have done. Its imposition of a censure should therefore be invalid.

Text of Ms Pearson's email of 18 June 2018 to the Clerk to the Committee

> "The procedure for the meeting of the Hearing Sub Committee on 11 June was that it would make its decision on sanctions taking account of the written representations received from me on 6 June. I was not invited to attend that meeting to make additional representations in person, but only to hear its decision after it had reached its conclusions. The Sub Committee had, in any case, known since 8 June that I would not be able to attend because of my medical condition.
>
> I was disappointed to hear that the Sub Committee had postponed making a decision from 11 to (at the earliest) 21 June, as it prolongs this matter further. The reason given was that the Sub Committee wished to hear from me in person, although it had already received full representations from me on all available sanctions and all matters to be taken into account in imposing sanctions. It was therefore unclear as to what would be the purpose of the Sub Committee hearing from me in person. I asked for clarification of this point twice (in my emails of 12 and 15 June), but on each occasion I received a response to the effect that the Sub Committee wished to hear from me in person, and when would my medical condition permit me to attend its next meeting?
>
> In my last email, I suggested that if the Sub Committee considered that any of the written representations received from me were unclear or incomplete, it should let me know. You confirm in your email below that the Sub Committee has already considered those representations. You should therefore be able to let me know whether it has any questions on them, or on anything else. This would best be done by email, as my medical condition will not make it feasible for me to come to the Guildhall this week, and it is not clear when I shall next be able to attend. If you send me an email today or tomorrow, I should be able to reply before the Sub Committee's meeting scheduled for this Thursday (21 June).
>
> You mention that the Sub Committee is keen to give me an opportunity "to address it directly in support of the representations made on your behalf, and to give you the opportunity to answer questions that Members may wish to ask you." I can say now that I support the representations made on my behalf, which were of course made with my full approval. Nothing would be achieved, except further delay, by my attending the next meeting in person only to repeat this statement. If the Members of the Sub Committee have any questions to ask me, they are welcome to put them to me by email, and I shall reply. This is the most practicable means of communication in my present circumstances, and would avoid further delay.

You say that “the Sub Committee considers it fair and reasonable to take this approach.” I don’t think that it’s fair or reasonable to delay making a decision until I can attend a meeting in person when the Sub Committee already knows that I have nothing to add to the representations it has received from me, and it could ask and have answered by email any questions which its Members may have before its meeting on 21 June.

You go on to say that “The Sub Committee has no power to require you to attend. If, notwithstanding the Sub Committee’s preference, you do not wish to make further representations yourself, or do not wish to answer questions that the Sub Committee has for you, could you let me know please. In that event, the Sub Committee will go ahead, based on the material presently available to it, to reach decisions on whether, and if so why sanction should be imposed.”

I know that the Sub Committee has no power to require me to attend. I did, nevertheless, attend the whole of the hearing on 21 May before the Sub Committee retired to reach its decision on the allegation, even though the facts of the matter weren’t in dispute, and the whole matter concerned a point of legal interpretation. I was therefore represented by my lawyer, Mr Harrower, who drew on expert advice on administrative law from Mr Sharpe QC.

I had the feeling last week that the Sub Committee was trying to compel me to attend its next meeting in person effectively as a condition for reaching its decision on sanctions, in spite of my obvious present difficulty in doing so in the near future. The wording quoted above - “If, notwithstanding the Sub Committee’s preference…..” - takes this a step further, and now sounds like a threat. I’ll address the two parts of that sentence in turn.

“If, notwithstanding the Sub Committee’s preference, you do not wish to make further representations yourself”: as I have indicated, I have nothing to add to the representations already made, but if the Sub Committee considers any of them to be unclear or incomplete, it should let me know by email, and I will respond before 21 June.

“If, notwithstanding the Sub Committee’s preference, ….. you do not wish to answer questions that the Sub Committee has for you”: it is not true that I do not wish to answer any questions: as I have indicated, if the Sub Committee has any questions, it can put them by email, and I will respond before 21 June.

I shall therefore await receiving from you by email within the next couple of days any questions which the Sub Committee may have following its consideration of my representations at its meeting on 11 June, and I will reply. I don’t have much else to do while I convalesce. I believe that, in the circumstances, there is no justification for a decision to be delayed beyond the next meeting scheduled for 21 June. May I ask you please to let me know by email the Sub Committee’s decision following the end of that meeting (presumably around 10 am).”

15 August 2018

Town Clerk and Chief Executive
John Barradell

Ms Susan Pearson CC
Members' Room
Guildhall
EC2P 2EJ

Telephone 020 7332 3154
Fax 020 7796 2621
Email martin.newton
@cityoflondon.gov.uk

BY POST AND EMAIL

Date 29 May 2018
Our ref:
Your ref:

Dear Ms Pearson,

Decision of Hearing Sub (Standards) Committee – Ms Susan Pearson

As you are aware, the Hearing Sub-Committee of the Standards Committee met on 21 May 2018 to consider an allegation referred to them by the Assessments Sub (Standards) Committee. The allegation was that you had breached paragraph 13 of the Member Code of Conduct, insofar as you participated and voted on a matter in which you had a disclosable pecuniary interest at the Planning and Transportation Committee on 29 January 2018, without a dispensation allowing you to do so. I am instructed by the Sub-Committee to inform you of their decision.

The Sub-Committee consisted of Deputy Jamie Ingham Clark (Chairman), Caroline Addy, Deputy Edward Lord and Mark Greenburgh (co-opted member). Also present was Neil Asten, an "Independent Person" appointed under s.28 of the Localism Act 2011, whose views were sought by the Sub-Committee before reaching its decision.

The Sub-Committee's consideration of the matter and its decision was as follows:-

A. The complaint

1. The complaint considered by the Sub-Committee is that Ms. Pearson acted in breach of paragraph 13 of the Code when, in the course of a meeting of the Planning and Transportation Committee that took place on 29 January 2018, she spoke on an item of business motion relating to the Richard Cloudesley Schools site ("the Site"). That matter was taken by the Committee as an urgent matter. The recommendation that the Committee was asked to agree was in the following terms

> *"It is recommended that the Planning and Transportation Committee:-*
>
> - *Request Court of Common Council to delegate the Planning and Transportation Committee's function of deciding planning application ref: 17/00770/FULL (and any amendments) to the London borough of Islington under section 101(1)(b) of the Local Government Act 1972, subject to LB Islington's agreement (and authorise any necessary*

agreement under section 101 of the Local Government Act 1972 to give effect to the delegation.)

- *The Chief Planning Officer and Development Director be authorised to send comments on planning application ref: 17/00770/FULL to the London Borough of Islington, subject to prior consultation on the comments with the Chairman and Deputy Chairman of the Planning and Transportation Committee."*

For sake of convenience in these written reasons, we will refer to this recommendation as "the delegation recommendation". The complaint is that Ms. Pearson should not have spoken or voted on this matter because of a registered disclosable pecuniary interest, namely a lease of property at 21 Hatfield House. Hatfield House is adjacent to the Site.

B. The Hearing

2. At the hearing before the Sub Committee (on 21 May 2018) Ms. Pearson was present together with Graeme Harrower (a Member for Bassishaw) who acted as her representative. The Sub Committee heard from Ms. Pearson, and heard submissions from Mr. Harrower. The Sub Committee heard evidence from John Austin, the Investigating Officer. He spoke to the matters contained in his investigation report dated May 2018. The Sub Committee was also assisted by the views stated by Neil Asten, who acted as the Independent Person.

3. In the course of the hearing which took place on 21 May 2018, Mr. Harrower raised various preliminary matters with the Sub Committee. These matters fell into three parts; Mr. Harrower addressed the Sub Committee on them, and the Sub Committee gave decisions on each, in turn. This document sets out the written reasons for the decision on the merits of the complaint against Ms. Pearson. This document does not seek to repeat the decisions given during the hearing, on the various preliminary matters.

(1) The facts

4. There was no material dispute of fact in the evidence before the Sub Committee. Ms. Pearson accepts that she spoke and voted at the Committee meeting on 29 January 2018 on the delegation recommendation. Further there is no dispute that on her election as a Councilman, Ms. Pearson declared her lease of 21 Hatfield House as a disclosable pecuniary interest. Hatfield House is adjacent to the Site. The issue for us has been how those matters fall to be assessed against the requirements of paragraph 13 of the Code.

(2) The Code

5. Paragraph 13 of the Code is in the following terms.

> *"Unless dispensation has been granted, you may not participate in any discussion of, or vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State."*

It is common ground that before speaking and voting on the delegation decision at the Committee meeting on 29 January 2018, Ms. Pearson had not obtained any dispensation to do so.

6. The regulations referred to in paragraph 13 of the Code are the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 ("the 2012 Regulations"). Those regulations were made under powers contained in the Localism Act 2011 ("the 2011 Act"). Regulation 2 states that the pecuniary interests specified Chapter 7 of Part 1 of the 2011 Act *"… are the interests specified in the second column of the Schedule to these Regulations"*. In the Schedule against the subject heading *"land"*, the following is identified as a pecuniary interest: *"Any beneficial interest in land which is within the area of the relevant authority"*.

(3) The case for Ms. Pearson

7. This letter will not seek to set out all the points made by Mr. Harrower in the course of the hearing. However, Mr. Harrower's submissions focussed on two related points. The first was that the "matter" at the Committee meeting (i.e. the delegation recommendation) was not properly to be regarded as the planning application relating to the Site, but rather, was no more than a decision on which of the Corporation or the London Borough of Islington would be responsible for the substantive determination of the planning application. He drew our attention to the specific wording of the recommendations that were before the Committee on 29 January 2018. The second point was that the Committee's decision on the delegation recommendation could not have affected the value of Ms. Pearson's leasehold interest in 21 Hatfield House. This, he said, underlined the fact that the "matter" considered by the Committee on 29 February 2018 was not one in which Ms. Pearson had any pecuniary interest.

(4) Legal advice to the Sub-Committee

8. The Sub Committee received legal advice from Jonathan Swift QC who was the legal adviser to the Sub Committee for the purposes of the hearing of this complaint. He provided advice on three issues. The first was the meaning of the pecuniary interest relating to *"land"*, provided for in the 2012 Regulations. He informed us that the relevant pecuniary interest was as stated in the second column of the Schedule to the 2012 Regulations – i.e., it was the beneficial interest in land. It was irrelevant to the determination of the complaint, whether the act complained of could, or did, have any impact on the value of that pecuniary interest.

9. The second issue on which he provided advice was the meaning of the words in paragraph 13 of the Code *"… you may not participate in any discussion of, or vote on …any matter in which you have a pecuniary interest …"* (emphasis added). His advice was as follows.

(1) Paragraph 13 of the Code was clearly intended to give effect to section 31(1)(b) of the 2011 Act, which refers to whether a *"… member … of a relevant authority … has a disclosable pecuniary interest in any matter to be considered, or being considered at [a meeting of the authority or of any committee] …"*, and paragraph 13 should be understood accordingly.

(2) There were two relevant questions for the Sub-Committee: (a) what was "the matter" being considered at the meeting; and (b) did Ms. Pearson have a disclosable pecuniary interest in that matter?

(3) The phrase "*the matter being considered at the meeting*" is not further defined in the 2011 Act. The phrase should therefore be applied on the basis of the ordinary meaning of the words, in the context in which they fall to be applied.

(4) The approach to identifying the "matter" being considered at the meeting should be realistic, and should focus on substance rather than form. Whether it is appropriate to break down any single issue (such as a planning application) into distinct parts (each being a different "matter") depends on sensible judgement, taking account of all the circumstances of the situation in hand.

(5) In the present case, the question on the application of paragraph 13 of the Code is whether, when identifying the "matter" before the Committee on 29 January 2018, it is appropriate to draw a distinction between a decision on the substantive merits of the planning application, and a decision to determine whether the Corporation was to be responsible determining the substantive merits of the part of the application relating to land within the area for which the Corporation is responsible.

10. The third issue on which Mr. Swift provided advice was in respect to specific submissions made by Mr. Harrower on the meaning of paragraph 13 of the Code by reference to provisions within section 31 of the 2011 Act. These were (a) that by reference to what is said at section 31(1)(c) of the 2011 Act, a breach of paragraph 13 of the Code could only occur if the Councilman knew that she had a disclosable pecuniary interest in the matter being considered at the meeting (referred to by Mr. Harrower as a *mens rea* requirement); and (b) that by reference to section 34(1) of the 2011 Act, that no breach of paragraph 13 of the Code could occur if the Councilman had reasonable excuse for participating in the relevant discussion or vote.

11. Mr. Swift advised that neither of these points was a good point, so far as concerns the meaning of paragraph 13 of the Code. Neither provision forms part of paragraph 13 of the Code as drafted. The "no reasonable excuse" provision appears in section 34(1) as part of the formulation of a criminal offence; the *mens rea* requirement at section 31(1)(c) is also a matter that is explicable given that section 31(1) is the premise for the prohibition at section 31(4) which is in turn one of the bases for criminal liability under section 34 of the 2011 Act. Thus, whilst the matters relied on by Mr. Harrower, may be material to the criminal offence created by sections 31 and 34 of the 2011 Act, are not matters which ought (let alone need) to be read-in to paragraph 13 of the Code.

C. Decision

12. The Sub Committee accepted the legal advice provided by Mr. Swift, and reached its decision taking that advice and the advice of Mr Goudie QC and Mr Sharpe QC into account.

13. As the Sub Committee saw it, and given the absence of any relevant dispute of fact (see above at paragraph 5), the key issue is to identify what was the "matter" that was discussed and voted

on at the Committee meeting on 29 January 2018. Although the Sub Committee carefully considered the submissions made by Mr. Harrower it decided, unanimously, that they are incorrect. As a matter of substance, the "matter" discussed at, and voted on, was the planning application for the Site. The decision before the Committee was whether the Corporation ought to determine that application so far as it concerned land in the Corporation's area, or whether that decision should be taken by the London Borough of Islington. That decision was capable of being a final decision and the effective disposal of the planning application so far as concerned the Corporation. That being so, the Sub Committee did not consider that it is appropriate to distinguish between the planning application as a whole and the decision on the role that the Corporation should play in the determination of that application.

15. In the course of his submissions, Mr. Harrower suggested that the matter before the Committee on 29 January 2018 was no different in substance to a decision by (say) the Planning and Transportation Committee that a particular recommendation should be considered by it on one date rather than another, or at the morning session of a meeting rather than an afternoon session of the same meeting. Such procedural decisions (contends Mr. Harrower) could not be matters relevant to any pecuniary interest in the substantive matter before the committee, and the present situation is materially the same. The Sub Committee disagreed. The substance of such situations and the situation now before it is entirely different. As has been explained above, the decision for the Committee on 29 January 2018 was not a "mere" procedural matter but went to whether the Corporation would continue to consider the planning application for the Site and the delegation of representations on behalf of the Corporation, to the Borough of Islington, to the Head of Planning.

16. Alternatively, the submissions by Mr Harrower included that it was material to the determination of the Planning Application, which authority(ies) considered the application. The Sub Committee agreed with those submissions, but that led them to the conclusion that the 'matter' before the Committee for disposal was indeed material to the planning application, and therefore part of the 'matter' under consideration before it.

17. For all these reasons the Sub Committee concluded that Ms. Pearson did, when she spoke and voted on the delegation recommendations, act contrary to the requirements of paragraph 13 of the Code. The Sub Committee reached this conclusion with regret. As at January 2018 Ms. Pearson had been a Councilman for less than a year, but had attended initial induction training soon after election in March 2017 and a further training session on the Code of Conduct and Protocol on Member / Officer relations on 22 January 2018, a week prior to the Planning and Transportation Committee meeting. The Sub Committee listened carefully to what she told it at the hearing, and the Sub Committee is entirely satisfied that Ms. Pearson acted as she did without any thought for personal advantage, but only because she believed it was in the interests of her constituents that she speak and vote at the meeting. It also accepted that because the delegation recommendation was considered by the Committee as an urgent matter, Ms. Pearson had very limited (but sufficient) time (between late on Friday afternoon and 10am the following Monday morning, which was the day of the Committee meeting) to consider the best approach to take. However, and perhaps particularly as a recently elected Councilman, Ms. Pearson should have sought guidance either from the Monitoring Officer or the Clerk to the Committee. Had she done so, the course of this allegation might have been entirely different. It is highly regrettable that she failed to do this.

D. Next steps

17. The Sub Committee now needs to decide what steps should be taken in consequence of its decision that Ms. Pearson acted in breach of paragraph 13 of the Code. As explained at the end of the hearing, it invites Ms. Pearson to make any representations she may wish to, in writing, within 7 days from the day on which she receives these written reasons.

The Sub-Committee will then consider the matter, and will for this purpose too, take account of the views of Mr. Asten, the Independent Person.

Yours sincerely,

Martin Newton
Committee and Member Services Officer

Town Clerk and Chief Executive
John Barradell

Ms Susan Pearson CC
Members' Room
Guildhall
EC2P 2EJ

Telephone 020 7332 3154
Fax 020 7796 2621
Email martin.newton
@cityoflondon.gov.uk

BY POST AND EMAIL

Date 26 June 2018
Our ref:
Your ref:

Dear Ms Pearson,

Decision of Hearing Sub (Standards) Committee – Ms Susan Pearson

As you are aware, the Hearing Sub (Standards) Committee ("the Sub Committee") met again on 21 June 2018 to consider what further steps should be taken following from its conclusion that you acted in breach of paragraph 13 of the Member Code of Conduct (see my previous letter to you dated 29 May 2018). Since you were not present, the Sub Committee considered whether to adjourn to a future date. However, having noted your emails of 18 and 20 June 2018 and your clear desire for the meeting to go ahead notwithstanding your present medical circumstances, the Sub Committee decided to proceed in your absence.

The Sub Committee had regard to (a) its decision, as set out in the 29 May 2018 letter; (b) paragraphs 40 – 44 of the Complaints Procedure; and (c) carefully considered the representations made by you and by Mr. Harrower on your behalf, since the 29 May 2018 decision.

The Sub Committee's decision is that a sanction should be imposed on you in the form of a censure. That censure will be marked by this letter being published on the City Corporation's website and by it being reported formally to the Planning and Transportation Committee.

In reaching this decision the Sub Committee paid particular attention to the matters set out in your email to me dated 20 June 2018 (at 16.46). The Sub Committee concluded that it is clear from that email that were circumstances similar to those at the meeting on 29 January 208 to arise again, you would act in the same way again. That being so, the Sub Committee did not feel that this was a situation falling within paragraph 40(ii) of the Complaints Procedure (i.e., failure to comply with the Code of Conduct, but no need to take further action).

Notwithstanding that as at 29 January 2018, you were a relatively recently elected councilman, the Sub Committee decided that you should be censured, for the following reasons:

1. At the time of the 29 January 2018 meeting of the Planning and Transportation Committee, it is clear that you were aware that you might need a dispensation in respect of the item of business relating to the Richard Cloudesley School site. The Sub Committee noted that in April 2017 you had requested a dispensation from the Standards Committee to speak and vote on matters *"to do with the Golden*

Lane Estate", but that that request had been refused by that Committee on the ground that the request was too wide, and not supported by sufficient evidence. The Sub Committee also noted that prior to 29 January 2018 you had received training on the requirements of the Code of Conduct, on two occasions.

2. Before the 29 January 2018 meeting you sought the advice of another councilman (Mr. Harrower) as to whether you could speak and vote on the Richard Cloudesley site item, consistent with the requirements of paragraph 13 of the Code of Conduct. The Sub Committee accepted that this was one sensible step for a new member to take. However, it was not sufficient. Although Mr. Harrower had been a councilman for some three years, and by profession had been a solicitor, he could not reasonably be considered to be an expert on matters concerning the Code of Conduct, including paragraph 13 of the Code. You should have sought advice either (a) from Mr. Cogher, the Monitoring Officer, who is the Corporation's principal legal adviser on all matters relating to its governance and ethical standards regime; or (b) from Ms. Cluett, an Assistant City Solicitor who was in attendance at the Planning and Transportation Committee meeting, as that committee's specialist legal adviser. Mr. Cogher and Ms. Cluett are highly experienced on matters relating to local government including the responsibilities of elected council members. Regardless of what other advice you took, you should have consulted one or other of them.

3. Even though the item of business relating to the Richard Cloudesley School site was taken by the Planning and Transportation Committee as a matter of urgent business, the Sub Committee considered that there was still sufficient time to raise the matter either with Mr. Cogher over the weekend (for example, by email), or Ms. Cluett at the meeting. You did not take either course.

4. The Sub Committee considered that your failure to seek such advice was a significant error of judgement. Compliance with the Code of Conduct is critical for maintenance of public confidence in elected councilmen, and in the Corporation itself. Adherence to the Code of Conduct and to the ethical standards provisions of the Localism Act 2011 is a matter of public interest that outweighs the public interest you have referred to – namely that of representing the interests of the residents of your Ward. It is the responsibility of all councilmen to take sensible and reasonable steps to ensure that they act in accordance with the Code. Ultimately, each councilman bears personal responsibility for compliance with the Code of Conduct. However, the reasonable steps that are necessary include seeking advice from council officers such as the Monitoring Officer, and members of the City Solicitor's department.

5. Your most recent response to the Sub Committee (your email dated 20 June 2018) contained no indication that, having had the opportunity to reflect on the events leading to the Planning and Transportation Committee meeting on 29 January 2018 and on the decision of the Sub Committee, you realised that you ought to have acted differently, or that you would act differently were any similar situation to arise in the future.

The Sub Committee hopes that you will reflect on these matters, and that in future you will recognise the importance of seeking advice from the Monitoring Officer or another properly qualified officer, in any situation where there are grounds for doubt as to what steps should or should not be taken to meet the requirements of the Code of Conduct. If you consider that you would be assisted by further training on these requirements (either through courses or through individual discussion), the Comptroller & City Solicitor would be happy to make arrangements for this.

Yours sincerely,

Martin Newton
Committee and Member Services Officer

HOW COMPLAINTS SUBMITTED TO THE CITY OF LONDON CORPORATION'S STANDARDS COMMITTEE WILL BE DEALT WITH

Approved: October 2015

INTRODUCTION

1. The Localism Act 2011 requires the City of London Corporation ("the Corporation") to have in place arrangements under which written allegations of a breach of the member code of conduct can be investigated and decisions on those allegations taken. These arrangements apply to both members and co-opted members (referred to in this document collectively as "members") and this handbook sets out to explain the arrangements in more detail.

STANDARDS COMMITTEE

2. The Corporation's Standards Committee is responsible for these functions. The membership of the Standards Committee is made up of elected Aldermen and Common Councilmen of the Corporation, together with non-voting co-opted members appointed under the Local Government Act 1972.

INDEPENDENT PERSONS

3. The Corporation must also appoint at least one Independent Person under the Localism Act 2011 whose views:

   (i) must be sought, and taken into account, by the Corporation before it makes its decision on an allegation that it has decided to investigate;
   (ii) may be sought by the Corporation in relation to an allegation in other circumstances;
   (iii) may be sought by a member against whom an allegation has been made.

4. Independent Persons must not have been a member, co-opted member or officer of the Corporation in the last five years, nor be a relative or close friend of a member, co-opted member or officer.

COMPLAINTS

MAKING A COMPLAINT

5. The Corporation's complaints process is publicised on the complaints and corporate governance pages of our website and explains where code of conduct complaints should be sent to. This is to ensure that members of the public are aware of the responsibility for handling code of conduct complaints and what the process entails.

6. A copy of the complaint form is appended to this handbook and can be accessed via the Corporation's website. Alternatively, a complaints form can be requested from Lorraine Brook, Principal Committee & Member Services Manager, Town Clerk's Office (telephone 020 7332 1409). Formal complaints must be submitted in writing although this includes fax and electronic submissions.

7. The form covers the following matters:-

   (i) Complainant's name, address and contact details;
   (ii) Complainant's status i.e. fellow member, member of the public or officer;
   (iii) Who the complaint is about;
   (iv) Details of the alleged misconduct including, where possible, the paragraphs of the code of conduct that have been breached, dates, witness details and other supporting information;
   (v) A warning that the complainant's identity will normally be disclosed to the subject member. (N.b. in exceptional circumstances, and at the discretion of the Standards Committee, this information may be withheld).

8. Once a complaint is received at the Corporation, and the complaint specifies or appears to specify that it is in relation to the code of conduct, then it will be passed to the Assessment Sub-Committee for consideration. If at this stage (or a later stage) it appears that a criminal offence may have been committed then the relevant allegation will be referred to the police.

INFORMAL RESOLUTION OF COMPLAINTS

9. A complaint may not necessarily be made in writing, for example it may be a concern raised with the Monitoring Officer orally. In such cases, the Monitoring Officer should ask the complainant whether they want to formally put the matter in writing to the Standards Committee. If the complainant does not, the Monitoring Officer should consider the options for informal resolution to satisfy the complainant.

10. This could involve a meeting with the Chief Commoner or Chairman of the Privileges Committee of Aldermen ("the Privileges Chairman"). The role of the Chief Commoner has traditionally included a concern for the welfare and conduct of Common Councilmen and the Privileges Chairman has performed a similar function in relation to Aldermen. Their intervention has in the past been a very effective mechanism for resolving problems between members.

11. There is nothing to stop aggrieved individuals continuing to approach the Chief Commoner or the Privileges Chairman for assistance with the reconciliation of disputes, even where the matter relates to a breach of the code of conduct. This would require the consensus of all parties, as the matter could be referred to the Standards Committee at any time. If a matter in which the Chief Commoner or the Privileges Chairman is involved is subsequently referred to the Standards Committee, he or she should cease to take any action in relation to the matter. A member who is aggrieved with any sanction imposed by the Chief Commoner or the Privileges Chairman may refer the matter to the Standards Committee for formal consideration.

ACKOWLEDGING RECEIPT OF A COMPLAINT

12. The Monitoring Officer has the discretion to take the administrative step of acknowledging receipt of a complaint and telling the subject member that a complaint has been made about them.

13. The notification can say that a complaint has been made, and state the name of the complainant (unless the complainant has requested confidentiality and the Standards Committee has not yet considered whether to grant it) and the relevant paragraphs of the code that may have been breached. A copy of the complaint will normally be provided (unless to do so would breach confidentiality where this has been requested) and the subject member invited to comment on it should they so wish.

14. There is a possibility that by informing the subject member of the complaint, they may interfere with evidence or intimidate witnesses. Whilst this is a remote possibility, the Monitoring Officer has the discretion, after consultation with the Chairman of the Standards Committee, to defer notification in such exceptional circumstances to enable a proper investigation to take place.

<u>STANDARDS SUB-COMMITTEES</u>

ASSESSMENT, HEARING AND APPEAL SUB-COMMITTEES

15. In order to carry out its functions efficiently and effectively, and to avoid any conflicts of interest, the Standards Committee has established three separate Sub-Committees for the different stages of the complaints process, being Assessment, Hearing and Appeal Sub-Committees.

MEMBERSHIP

16. Each of these Sub-Committees will normally consist of four members of the Standards Committee, including three elected members of the Corporation and one non-voting co-opted member, with membership to be determined on a case by case basis. The same members will normally sit on the Assessment Sub-Committee and the Hearing Sub-Committee in respect of a particular allegation, but different members will sit on the Appeal Sub-Committee, if this is required. Each of these Sub-Committees will take into account the views of an Independent Person.

ACCESS TO MEETINGS AND PUBLICATION OF DECISIONS

17. Meetings of these Sub-Committees are subject to the same provisions regarding public access to information as any other Committee.

18. After a Sub-Committee has reached a decision, it will produce a written summary to include:-

    (i) The main points of the matter considered;
    (ii) The decision reached; and
    (iii) The reasons for that decision.

19. The written summary will be sent to the relevant parties. A written summary (excluding exempt information heard in non-public session) will be made available for the public to inspect at the Corporation's offices for six years but not until the subject member has been sent the summary.

INITIAL ASSESSMENT OF ALLEGATIONS

PRE-ASSESSMENT REPORTS AND ENQUIRIES

20. The Assessment Sub-Committee may decide that it wants the Monitoring Officer, or other officer, to prepare a short summary of the complaint for it to consider. This could, for example, set out the following details:-

    (i) Whether the complaint is within jurisdiction;
    (ii) The paragraphs of the code the complaint might relate to, or the paragraphs the complainant has identified;
    (iii) A summary of key aspects of the complaint if it is lengthy or complex;

(iv) Any further information that the officer has obtained to assist the Assessment Sub-Committee with its decision – this may include:-

a. Obtaining a copy of a declaration of acceptance of office form;

b. Minutes of meetings;

c. A copy of a member's entry in the Register of Interests;

d. Information from Companies House or the Land Registry;

e. Other easily obtainable documents.

21. Officers may contact complainants for clarification of their complaint if they are unable to understand the document submitted. Any comments received from the subject member regarding the complaint will also be provided to the Assessment Sub-Committee.

22. Caution should be exercised in order to ensure that pre-assessment enquiries are not carried out in such a way as to amount to an investigation e.g. they should not extend to interviewing the complainant or a potential witness.

ASSESSMENT SUB-COMMITTEE TERMS OF REFERENCE

23. The Assessment Sub-Committee is established to receive and assess allegations that a member of the Corporation has failed, or may have failed, to comply with the code of conduct.

24. Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee will make an initial assessment of the allegation and will then do one of the following:-

(i) refer the allegation to the Monitoring Officer, with an instruction that he arrange a formal investigation of the allegation; or

(ii) direct the Monitoring Officer to arrange training, conciliation or other appropriate alternative steps; or

(iii) decide that no action should be taken in respect of the allegation.

ASSESSMENT OF COMPLAINTS

25. The Assessment Sub-Committee should firstly satisfy itself that the complaint meets the following tests:-

    (i) It is a complaint against one or more named members of the Corporation;
    (ii) The named member was in office at the time of the alleged conduct and the code of conduct was in force at the time;
    (iii) The complaint, if proven, would be a breach of the code of conduct under which the member was operating at the time of the alleged misconduct.

26. If the complaint fails one or more of these tests, it cannot be investigated as a breach of the code and the complainant must be informed that no further action will be taken in respect of the complaint.

DEVELOPING ASSESSMENT CRITERIA

27. The Standards Committee may develop criteria against which it assesses new complaints and decides what action, if any, to take. These criteria should ensure fairness for both the complainant and the subject member.

28. Assessing all new complaints by established criteria will also protect the Committee members from accusations of bias. In drawing up assessment criteria, the Standards Committee will bear in mind the importance of ensuring complainants are confident that complaints are taken seriously and dealt with appropriately, whilst appreciating that a decision to investigate a complaint or to take other action will cost both public money and the officers' and members' time – an important consideration where the matter is relatively minor.

29. The following questions constitute the current assessment criteria:-

    (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?

INITIAL ASSESSMENT DECISIONS

30. The Assessment Sub-Committee will normally complete its initial assessment of an allegation within an average of 30 working days to reach a decision on what should happen with the complaint.

31. The summary at this stage may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation.

32. The Monitoring Officer will write to the relevant parties to advise who will be responsible for conducting the investigation, if applicable.

33. The Assessment Sub-Committee may decide that other action (rather than an investigation) would be appropriate and it may ask the Monitoring Officer to arrange this.

34. The suitability of "other action" is dependent on the nature of the complaint. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way of resolving less serious matters. Examples of alternatives to investigation are:-

    (i) Arranging for the subject member to attend a training course;
    (ii) Arranging for the subject member and complainant to engage in a process of conciliation;
    (iii) Instituting changes to a procedure of the Corporation if this has given rise to the complaint.

35. The Assessment Sub-Committee should always seek the advice of the Monitoring Officer before it decides on this course of action. It may be useful for the Assessment Sub-Committee to seek written confirmation from all involved parties that they will co-operate with the process of other action proposed. In this case, a letter should be written to parties outlining what is being proposed, why it is being proposed, why they should co-operate and what the Assessment Sub-Committee is hoping to achieve.

36. The Assessment Sub-Committee can decide that no action is required in respect of a complaint. This could be if they do not consider the complaint to be serious enough, or if a long time has elapsed since the alleged conduct took place, or if there is clearly no case to answer. The decision reached by the Assessment Sub-Committee and the reasons for it should adhere to any assessment criteria that the Standards Committee has previously agreed.

INVESTIGATIONS AND HEARINGS

INVESTIGATION

37. 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.

38. There are many factors that can affect the time it takes to complete an investigation. However most investigations will be carried out, and a report on the investigation completed, within six months of the original complaint being assessed. In his report, the investigator will conclude whether or not there has been a failure to observe the code of conduct. Any hearing will normally be held within three months of receipt of the report.

HEARING SUB-COMMITTEE TERMS OF REFERENCE

39. To hear and determine any allegation that a member has failed, or may have failed, to comply with the code of conduct for members;

40. Following the hearing, to make one of the following findings:-

    (i) that the subject member has not failed to comply with the code of conduct;

    (ii) that the subject member has failed to comply with the code of conduct but that no action needs to be taken in respect of the matters considered at the hearing;

    (iii) that the subject member has failed to comply with the code of conduct and that a sanction should be imposed.

41. If the Sub-Committee makes a finding under paragraph 40 (iii), it may impose any one of or any combination of sanctions that are available, as set out below.

HEARING SUB-COMMITTEE DECISIONS

42. If the Hearing Sub-Committee finds that a subject member has failed to follow the code of conduct and that they should be sanctioned, it may impose any one or a combination of the following:-

(i) censure of that member;

(ii) withdrawal of Corporation hospitality for an appropriate period;

(iii) removal of that member from a particular committee or committees.

43. The option of removal from a particular committee or committees includes sub-committees. The Hearing Sub-Committee will make a recommendation to the relevant appointing body in each case.

44. The Hearing Sub-Committee has no power to impose any alternative sanctions, although the willingness of a member to co-operate in the matters listed below may have a bearing on any sanction that is imposed:-

(i) that the member submits a written apology in a form specified by the Hearing Sub-Committee;

(ii) that the member undertakes such training as the Hearing Sub-Committee specifies;

(iii) that the member participates in such conciliation as the Hearing Sub-Committee specifies.

APPEALS

APPEAL PROCESS

45. If a member is aggrieved by a decision of the Hearing Sub-Committee to impose one or more sanctions against him, either because he does not accept that he has breached the code or conduct, or because he considers that the sanction or sanctions imposed are disproportionate, he is entitled to appeal to the Appeal Sub-Committee.

46. Any such request must be sent in writing to the clerk to the Appeal Sub-Committee and received by him within 20 working days from the date that the subject member is informed of the decision of the Hearing Sub-Committee. The Appeal Sub-Committee will normally complete its review of the decision within an average of 30 working days following receipt of the request.

APPEAL SUB-COMMITTEE TERMS OF REFERENCE

47. To determine any appeal from a member in relation to a finding of the Hearing Sub-Committee that they have breached the code of conduct and/or in relation to the sanction imposed;

48. Having due regard to the decision of the Hearing Sub-Committee, to substitute any alternative decision for that decision that the Appeal Sub-Committee considers is appropriate, being a decision that the Hearing Sub-Committee had the power to make.

COMPLAINT FORM

YOUR DETAILS

1. Please provide us with your name and contact details:

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:-

- The Member that you are complaining about;
- The Monitoring Officer of the City of London Corporation.

We will normally tell them your name and give them full details of your complaint. If you have serious concerns about your name and details of your complaint being released, please complete section 5 of this form.

2. Please tell us which complainant type best describes you:

☐ Member of the public

☐ An elected or co-opted Member of the City of London Corporation

☐ An employee of the City of London Corporation

☐ Other (please specify……..)

MAKING YOUR COMPLAINT

3. Please provide us with the name of the member(s) you believe have breached the Code of Conduct:

Title	First name	Last name

4. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member, you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub Committee when it decides whether to take any action on your complaint. For example:-

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates, it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.
- If possible, please be specific about which paragraphs of the Code of Conduct you believe have been breached.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

ONLY COMPLETE THIS NEXT SECTION IF YOU ARE REQUESTING THAT YOUR IDENTITY IS KEPT CONFIDENTIAL

5. In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe that they have the right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless:

- You have reasonable grounds for believing that you will be at risk of physical or other harm if your identity is disclosed;
- You are an officer who works closely with the subject Member and you are afraid of the consequences to your employment or of losing your job if your identity is disclosed;
- You suffer from a serious health condition and there are medical risks associated with your identity being disclosed.

Please note that requests for confidentiality or requests for suppression of complaint details will not be automatically granted. The Assessment sub-Committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with the details of why you believe we should withhold your name and/or details of your complaint. Continue on a separate sheet if there is not enough space on this form:

6. ADDITIONAL HELP

Complaints must be submitted in writing (this includes fax and electronic submissions). However, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

7. CONTACT DETAILS

If you have any queries regarding the completion of this form, or to submit your completed form by fax or email, please use the following contact details:

Michael Cogher (Comptroller & City Solicitor)
Tel: 020 7332 3699
Fax: 020 7332 1992
Email: michael.cogher@cityoflondon.gov.uk

Lorraine Brook (Principal Committee & Member Services Manager)
Tel: 020 7332 1409
Fax: 020 7796 2621
Email: lorraine.brook@cityoflondon.gov.uk

Paper forms should be sent to either of the above recipients at the following address:

PO Box 270
Guildhall
London
EC2P 2EJ

Committee: Planning and Transportation Committee Court of Common Council	**Date:** 29 January 2018 Urgency
Subject: Richard Cloudesley School Site - Delegation of decision on Planning Application ref: 17/00770/FULL	**Public**
Report of: Chief Planning Officer and Development Director	**For Decision**
Report Author: Annie Hampson, Chief Planning Officer and Development Director	

Summary

1. A planning application for the redevelopment of the Richard Cloudesley school site for education and social housing purposes was submitted by the City Corporation in July. A small part of the site lies within the administrative boundary of the City of London Corporation, and the majority of the site lies within the administrative boundary of the London Borough of Islington. As such it is a "cross-boundary application" and the applicant is required to submit the identical application to both Local Planning Authorities ("LPA's").

2. In accordance with national guidance requiring a co-ordinated approach between LPA's, in the interests of efficiency of the planning process, and, particularly in the light of the small extent of the site falling within the City's administrative boundary, this report recommends that the Planning and Transportation Committee's function of deciding the application be delegated to the London Borough of Islington (subject to Islington agreeing).

3. This report also advises that the City has been invited to send its comments on the planning application to the London Borough of Islington. It is proposed that this be done under the delegated authority of the Chief Planning Officer and Development Director in consultation with the Chairman and Deputy Chairman of the Planning and Transportation Committee.

Recommendations

4. It is recommended that Planning and Transportation Committee:-

- Request Court of Common Council to delegate the Planning and Transportation Committee's function of deciding planning application ref: 17/00770/FULL (and any amendments) to the London Borough of Islington under section 101(1)(b) of the Local Government Act 1972, subject to LB Islington's agreement (and authorise any necessary agreement under section 101 of the Local Government Act 1972 to give effect to the delegation.)
- The Chief Planning Officer and Development Director be authorised to send comments on planning application ref: 17/00770/FULL to the London Borough of Islington, subject to prior consultation on the comments with the

Chairman and Deputy Chairman of the Planning and Transportation Committee.

Main Report

Reason for Urgency: Should delegation to Islington be agreed consultees should be advised in good time before the application is determined. This is programmed for early March. A decision at the next Committee (20 February) would be too late for consultees to be advised and for Islington to process the delegated application.

Background

1. A planning application (ref: 17/007700/FULL) ("the application") for the redevelopment of the Richard Cloudesley school site for education and social housing purposes was submitted by the City Corporation in July. A very small part of the site lies within the administrative boundary of the City of London Corporation ("the City"). The majority of the site lies within the administrative boundary of the London Borough of Islington ("Islington"). The plan annexed shows the site, the footprint of the proposed development, and the borough boundary.
2. The full development description is as follows:

. *"Demolition of the former Richard Cloudesley School, City of London Community Education Centre, garages and substation; erection of a 3 storey building with rooftop play area (Class D1) (2300.5sq.m GEA) and a single storey school sports hall (Class D1) (431sq.m GEA) to provide a two-form entry primary school; erection of a 14 storey building to provide 66 social rented units (Class C3) (6135sq.m GEA), landscaping and associated works"*

3. As the application crosses the boundary between two LPA's it is a "cross boundary application" and in accordance with requirements two identical separate applications were submitted to each authority, one to the City and one to Islington. (As the majority of the site falls within Islington's boundary the planning application fee is paid to Islington and none is paid to the City).
4. It would be lawful for each LPA to determine the identical planning application itself and issue two separate decisions on the application. However, while both LPA's can liaise, the separate decision-making processes can lead to two different decisions, including two permissions each imposing different conditions and requiring separate S106 Agreements. This is not recommended as it does not promote a co-ordinated approach to development management. Paragraph 178 of the National Planning Policy Framework advises that "*public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to strategic priorities….The Government expects joint working in areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities*". Although this relates to plan-making, the principle applies to other cross-borough issues. Planned reforms and changes to the NPPF expected in 2018 aim to improve cooperation across council boundaries on planning issues in order to enhance efficiency and consistency.

In addition, the part of the site which lies within the City is exceptionally small and consists of a small sliver of a proposed one storey school building.

Proposed Delegation

5. Under Section 101(1) of the Local Government Act 1972 a local authority may arrange for the discharge of any of their functions by a committee, a subcommittee, an officer of the authority or by another local authority. The Court of Common Council has delegated decisions such as the decision on the application to the Planning and Transportation Committee. It is open to the Court of Common Council to delegate the determination of the application to Islington. For the reasons set out in paragraph 4 above, this is recommended. This would be subject to Islington agreeing to accept the delegation. At the time of writing no view on this has yet been reached by Islington.
6. In terms of safeguards and continued public participation in the decision-making process, all representations received by the City have already been provided to Islington and any further communications will be similarly forwarded to them. The delegation would be communicated to interested parties to ensure none would be deprived of the opportunity to make representations to the decision-maker. Under Islington's governance arrangements any decision to grant permission would be taken at an open committee with opportunity for representations.
7. To give effect to any delegation, a Section 101 Agreement would be required. Islington have indicated that if they were to accept the delegation they would require the agreement to contain an Indemnity from the City in Islington's favour.

Comments on the Application (including any amendments)

8. The Scheme of Delegation to Chief Officers delegates to relevant officers the function "*To make representations in respect of planning and related applications submitted to other Boroughs, where the City of London's views have been sought and which do not raise wider City issues*". The City's views on the application have been sought by Islington. The Chief Planner and Development Director proposes to prepare a letter of representation setting out the view of the City (as LPA) on its relevant planning policies and its assessment of the application tested against those policies, having regard to representations it has received of which there are currently some 169. It is proposed that the Chairman and Deputy Chairman of Planning and Transportation Committee would be consulted on the City's representations.

Conclusion

9. Subject to Islington's agreement it is recommended that the decision on the application for the Richard Cloudesley site be delegated to Islington. It is proposed that to assist Islington's decision-making the City's comments on the application be prepared and sent by the Chief Planner and Development Director in consultation with the Chairman and Deputy Chairman.

Appendix A - Plan

Annie Hampson
Chief Planner and Development Director
T: 020 7332 1700
E: annie.hampson@cityoflondon.gov.uk

CITY OF LONDON CORPORATION
("The Corporation")

DISCLOSABLE PECUNIARY INTEREST
("DPI")

OPINION

INTRODUCTION

1. I am instructed to advise the Corporation. My advice is sought in relation to an allegation that a Member of the Corporation ("the Member") both participated in a debate and voted in respect of a decision ("the Delegation Decision") whether or not to recommend to the Court of Common Council the delegation to a neighbouring authority of a planning decision ("the Planning Decision").

2. The question is whether the Member had with respect to the Delegation Decision a DPI in a flat adjacent to the development site ("the Site") the subject matter of the Planning Decision, in breach of the requirements of the:-

(1) Localism Act 2011 ("LA 2011"); and

(2) The Corporation's Members' Code of Conduct ("the Code").

THE FACTS

3. The Member is a:-

(1) Common Councilman; and

(2) Member of the Corporation's Planning and Transportation Committee ("the PTC").

4. She has registered a DPI in 21 Hatfield House. That is a block of flats. That is adjacent to the Site.

5. That is the Richard Cloudesley School Site. The Site is the subject matter of a planning application by the Corporation ("the Planning Application").

6. This is to provide:-

(1) A new School; and

(2) "Affordable housing".

7. Only a small part of the Site ("the City land") is located in the Corporation's area. The majority of the Site is within the London Borough of Islington ("Islington").

8. Hatfield House is situated on the Golden Lane Estate. The Member has previously applied for a dispensation to speak and vote on matters relating to that Estate. However, that application was rejected, by the Corporation's Standards Committee ("the SC").

9. The Corporation's Officers concluded that the most efficient and effective method of managing the process would be for the Corporation to delegate the determination of the application in relation to the City land to Islington. A report was presented to the PTC on 29 January 2018 recommending that the PTC recommend to the Court of Common Council the delegation of the Planning Decision in respect of the City land to Islington.

10. The matter was debated by the PTC. The recommendation was defeated by 11 votes to 9.

11. The Member:-

(1) Spoke against the Officer recommendation; and

(2) It seems voted against it.

12. Following the PTC Meeting, another Member, present at the Meeting, raised with my Instructing Solicitor, who is also the Corporation's Monitoring Officer ("the MO") serious reservations about the Member's conduct, in relation to her obligations:-

(1) Under Section 31 of LA 2011; and

(2) Paragraph 13 of the Code.

13. However, no formal complaint has been made.

CONTEXT

14. The Corporation's established general process for handling member misconduct allegations is to require:-

(1) The submission of a written complaint; and

(2) Then, a filtering exercise carried out by the SC's Assessment Sub-Committee ("the Sub-Committee").

15. Nonetheless, in circumstances where there are reasonable grounds to believe a breach of the Code has occurred, of which the Corporation is aware from its own knowledge and records, such as participation in a decision despite a DPI, my Instructing Solicitor has taken the view that the SC of itself, or through officer delegation under the urgency procedure, is entitled to convene a meeting of the Sub-Committee, to determine whether there should be an investigation in the absence of a complaint.

16. This is to avoid criticism and reputational damage which could arise from the Corporation being seen to ignore potential breaches of the Code and the statutory requirements in relation to DPIs within its knowledge. Furthermore, it avoids the situation where powerful or influential members can avoid being held to account simply because no individual is prepared to be seen to challenge them. In Hussain v Sandwell MBC (2017) EWHC 1641 (Admin) the complaint against a senior member was made by the Council's Chief Executive.

17. Following consultation with the Chairman and Deputy Chairman of the SC, the Town Clerk authorised, on 9 February 2018, the convening of the Sub-Committee and that my Instructing Solicitor should refer the matter to the

Commissioner of the City of London Police and inform the Member of the allegations against her and the action being taken.

LEGAL FRAMEWORK

18. The key elements of the statutory scheme under LA 2011 are as follows:-

(1) Local authorities are obliged to promote and maintain high standards of conduct by members of the authority (Section 27);

(2) Local authorities must secure that their Code is consistent with the Nolan principles (Section 28);

(3) The MO of each authority must establish and maintain a Register of Interests of members of the authority (Section 29);

(4) A member of a relevant authority must, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority, notify the authority's MO of any DPIs which the person has at the time when the notification is given (Section 30(1)).

(5) A "pecuniary interest" is a DPI in relation to a person if it is of a description specified in regulations made by the Secretary of State ("the SoS") and either it is an interest of the member, or that of his/her spouse or civil partner, or person with whom she/he is living *as if* a spouse or civil partner (where she/he is aware that other person has the interest) (Section 30(3));

(6) The authority's MO is required to enter the notified interests in the authority ("the Register") (Section 30(4));

(7) A member must disclose a DPI at Council meetings where the interest is not entered in the Register: Section 31(2);

(8) A member must notify the MO of a DPI before the end of 28 days beginning with the date of disclosure at a Council meeting, if the interest is not entered in the Register and is not the subject of a pending notification: Section 31(3);

(9) A member must not take part in the discussion or vote at a Council meeting on matters in which he/she has a DPI: Section 31(4);

(10) A member must notify the MO of a DPI before the end of 28 days beginning with the date he/she becomes aware that he/she has

such an interest in a matter to be dealt with, or being dealt with, by him/her acting alone in the course of discharging a public function: Section 31(7);

(11) A member must not knowingly or recklessly provide false or misleading information in any of the disclosures or notifications under Sections 30(1), 31(2), 31(3) or 31(7);

(12) Where a member who is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority, has a DPI in any matter to be considered or being considered at the meeting, and is aware of this:

(a) she/he must disclose the interest to the meeting (if the interest is not registered in the authority's register);

(b) she/he may not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting (subject to the dispensation provisions at Section 33) (Section 31(1), (2) and (4));

(13) In addition, Standing Orders of a relevant authority may provide for the exclusion of a member of the authority from a meeting while any discussion or vote takes place in which the member may not participate (Section 31(10)); and

(14) A person commits an offence if, without reasonable excuse the person (a) fails to comply with an obligation imposed on the person by Section 30(1) or 31(2) …, (b) participates in any discussion or vote in contravention of Section 31(4) (Section 34(1)).

19. *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* (2012/1464) ("the DPI Regulations") describe the pecuniary interests for the purposes of Section 30(3) of LA 2011. The description is of a "subject" (e.g. land); and then sets out a "prescribed description" (e.g. "Any beneficial interest in land which is within the area of the relevant authority").

20. An authority may, of course, pursuant to Section 111(1) of the Local Government Act 1972, do whatever is calculated to facilitate, or is conducive or incidental to, the discharge of its duties and powers under LA 2011.

21. LA 2011 does not prescribe the process by which allegations are to be investigated, nor the process for making decisions on allegations, save for a requirement that "Arrangements" put in place for making decisions on allegations must include provision for the appointment of at least one "independent person".

22. Moreover Section 28(6)(a) and (b) of LA 2011 imposes a two-part duty on an authority to have in place "arrangements under which allegations can be investigated" as well as "arrangements under which decisions on allegations can be made". Section 28(6)(a) concerns investigatory arrangements and Section 28(6)(b) concerns the subsequent decision making arrangements. The Corporation duly has such Arrangements.

THE DPI

23. The Member had a key DPI in the Delegation Decision with respect to which she participated. This is because:-

(1) She undoubtedly has a DPI in the decision to determine the Planning Application in relation to the land adjacent to the block of flats in which she lives;

(2) The "matter" in which she has this DPI is the Planning Application for the Site;

(3) Any PTC decision which materially affects how the Planning Application is dealt with is within Section 31 of LA 2011;

(4) That includes the Delegation Decision;

(5) Therefore the DPI should have been registered not only but also disclosed at the PTC Meeting; and

(6) Absent a dispensation, pursuant to Section 33 of LA 2011, she should not have participated.

24. By participating, she was in breach of:-

(1) Section 31 of LA 2011; and

(2) The Code, paragraph 13 of which states that, absent a dispensation, a member may not participate in any discussion of, or vote on, or discharge any function relating to any matter in which the member has a DPI.

25. The delegation of the Planning Decision to Islington has a material effect on by whom and how the Planning Application is dealt with. It is not a mere demarcation matter.

26. Nor can participation be justified by urgency. There is no basis for that.

THE MEMBER'S REACTION

27. The Member has written to the MO by letters dated 14 and 20 February 2018. She argues that:-

(1) She had no DPI in the Delegation Decision: that is wrong, because she did have a DPI in the Delegation Decision;

(2) She was justified by the possibility that she might have a dispensation for later decisions: that is immaterial, because she did not have a dispensation for the Delegation Decision;

(3) The matter was a "merely inter-authority jurisdictional matter": that also is wrong, because it was more than that.

ADVICE

28. I agree with the MO's letters to the Members dated 12 and 16 February 2018.

29. In my opinion:-

(1) There is a prima facie breach of Section 31 of LA 2011 and paragraph 13 of the Code;

(2) This should be further investigated, in the public interest, in accordance with the Corporation's statutory Arrangements and LA 2011;

(3) The ultimate determination will be for the SC (or a Sub-Committee of the SC);

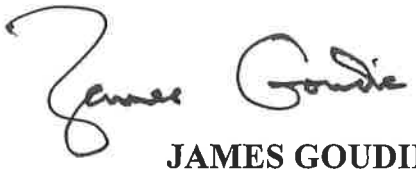
(4) If a breach is established, an offence is likely to have been committed under Section 34 of LA 2011;

(5) No lawful excuse appears to exist;

(6) No breach of the rules of fairness/natural justice has occurred in relation to the process thus far;

(7) Even if there had been, that does not mean that the investigation should not go forward: see Hussain above, especially at paragraphs 254-262 inclusive;

(8) There is no basis for believing that there will be any unfairness on the part of the decision-maker, the SC, if and when matters proceed to that stage.



11 King's Bench Walk
Temple EC4Y 7EQ

goudie@11kbw.com

JAMES GOUDIE QC
26 February 2018

CITY OF LONDON CORPORATION
("The Corporation")

DISCLOSABLE PECUNIARY INTEREST
("DPI")

OPINION

JG
26/02/15

Michael Cogher
Comptroller & City Solicitor
City of London Corporation

This page is intentionally left blank

Committee(s):	Date(s):
Assessment Sub (Standards) Committee	13 March 2018
Subject: Standards Committee Referral – Ms Susan Pearson	**Non-Public**
Report of: Comptroller & City Solicitor	**For Decision**

Summary

This report presents to the Sub-Committee for assessment a Standards Committee referral in respect of Ms Susan Pearson.

Recommendations:

1. That the Assessment Sub-Committee consider the report and determine what action, if any, to take in relation to the complaint.

2. That the Monitoring Officer produces a written summary of the Sub-committee's consideration of the referral and its decision.

Main Report

History of the Allegation

1. Ms Susan Pearson is a member of the Planning and Transportation Committee. She has registered a disclosable pecuniary interest as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 in 21 Hatfield House, a block of flats adjacent to the Richard Cloudesley School site ("the Site"). The Site is the subject of a planning application by the Corporation to redevelop it to provide a new school and affordable housing. The majority of the Site is within the London Borough of Islington with a small parcel located in the City. It should be noted that Ms Pearson applied for a dispensation to speak and vote on matters relating to "housing & matters to do with Golden Lane Estate" where Hatfield House is situated in April 2017. This application was rejected by the Standards Committee on 19th May 2017 and has not been renewed.

2. The planning application is a complex one, involving time pressure, some local opposition (largely from City residents nearby), and two planning authorities, one of which, Islington, will be holding local elections in May 2018. Given these complexities and the small parcel under the Corporation's jurisdiction, officers concluded that the most efficient and effective method of managing the process would be for the Corporation to delegate the determination of the application in relation to the City land to Islington. Accordingly, a report was presented to the Planning and Transportation Committee on the 29th January 2018, as an urgent item for various reasons involving timing and co-ordination with Islington, recommending that the Committee recommend to the Court of Common Council the delegation of the planning decision in respect of the City parcel to Islington.

3. The matter was debated by the Committee, and the recommendation defeated by 11 votes to 9 with no abstentions. Ms Pearson apparently spoke against the recommendation and voted. Although it was not recorded which way it is assumed she voted against. The vote is recorded in the draft minutes.

4. Following the meeting a member present at the meeting telephoned the Monitoring Officer, to express serious reservations about Ms Pearson's conduct in relation to her statutory obligations under s.31 of the Localism Act 2011 and paragraph 13 of the Code of Conduct. However, for various reasons the member was not prepared to make a formal complaint.

5. As the Sub-committee is aware, the Corporation's established procedure for handling allegations of misconduct by members requires the submission of a written complaint and a filtering exercise carried out by the Assessment Sub-committee which has the power to authorise investigations. No investigation can be carried out in respect of an allegation against a member without the sanction of the Assessment Sub-committee.

6. Notwithstanding this position, in circumstances where there are reasonable grounds to believe a breach of the Code of Conduct has occurred, of which the Corporation is aware from its own knowledge and records, such as participation in a decision despite a disclosable pecuniary interest, the Standards Committee and the Monitoring Officer have taken the view that the Standards Committee, of itself or through officer delegation under the urgency procedure is entitled to convene a meeting of the Assessment Sub-committee to determine whether there should be an investigation in the absence of a complaint. This is to avoid criticism and reputational damage which could arise from the Corporation being seen to ignore potential breaches of the Code and the statutory requirements in relation to disclosable pecuniary interests within its knowledge. Furthermore, it avoids the situation where powerful or influential members can avoid being held to account simply because no individual is prepared to be seen to challenge them. This appears to the Monitoring Officer to be a real issue where turning of an institutional "blind eye" is no longer acceptable and a more desirable approach than a senior officer or member being obliged to take on the role of complainant to achieve the same result.

7. Accordingly, following consultation with the Chairman and Deputy Chairman of the Standards Committee, the Town Clerk authorised, on 9th February, the convening of an Assessment Sub-committee and that the Monitoring Officer should refer the matter to the Commissioner of the City of London Police and inform Ms Pearson of the allegations against her and the action being taken.

8. This was duly done by the Monitoring Officer's letters of 12th February, which elicited Ms Pearson's response of 14th February and the further exchanges of 16th and 20th February to which the Sub-committee is referred. The Sub-committee will observe that Ms Pearson and her adviser not only consider that she has acted properly and that any suggestion she is in breach of s.31 and the Code is misconceived, but they strongly object to the Corporation's handling of the matter and their points are put in robust terms.

Documents

9. An indexed and paginated bundle of documents appears in the Appendix containing the following documents:

   (a) Report to the Planning & Transportation Committee on 29th January 2018 concerning the Richard Cloudesley School Site
   (b) Draft Minutes of the Planning & Transportation Committee on 29th January 2018
   (c) Site Plan
   (d) Register of Members' Interests Form – Ms Susan Pearson
   (e) Dispensation request dated 18th April 2017 & Minute of Dispensations Sub-committee dated 19th May 2017.
   (f) Urgency Decision – Standards Committee dated 9th February 2018
   (g) DCLG Guidance (Openness and transparency on personal interests) September 2013
   (h) Exchange of Correspondence (letters dated 12th and 14th, 16th and 20th, 27th February and 1st March 2018)
   (i) Opinion of James Goudie Q.C. dated 26th February 2018

Relevant Legislation and Provisions of the Code

10. S.31(1) of the Localism Act 2011 provides that if a member or co-opted member of a relevant authority (i.e. the Corporation qua local authority):

   "(a) is present at a meeting of the authority or of any committee…of the authority,
   (b) has a disclosable pecuniary interest in any matter to be considered or being considered at the meeting; and
   (c) is aware that the condition in paragraph (b) is met".

   then the restrictions set out in s.31(4) apply, namely –

   "The member or co-opted member may not –
   (a) Participate, or participate further, in any discussion of the matter at the meeting, or
   (b) Participate in any vote, or further vote, taken on the matter at the meeting".

   These restrictions are subject to the provisions in relation to dispensations.

   Paragraph 13 of the Code reflects s.31 and provides:-

   "Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State".

Issues

11. The key issue of course is whether Ms Pearson has breached her obligations under s.31 of the Localism Act 2011 and Paragraph 13 the Corporation's Code of Conduct. It appears to be agreed that Ms Pearson has a disclosable pecuniary interest in the decision to determine the planning application in relation to the land adjacent to the block of flats in which she lives. The Monitoring Officer's interpretation is that the "matter" in which she has a pecuniary interest is the planning application for the site and that therefore any committee decision which materially affects how that application is dealt with is covered by the s.31 restrictions. An information item for noting, simply outlining the decision was upcoming at a future meeting would not, on this basis trigger the s.31 restrictions. However, a recommendation to the Court of Common Council that it delegates the planning decision to Islington – which Ms Pearson characterises as merely an inter-authority jurisdictional matter – does have a material effect on how the application will be dealt with, not least because it directly affects the influence Corporation members themselves will have on the ultimate decision. Opponents of the scheme are largely the nearby City residents. Ms Pearson explicitly states that it is her intention to apply for a dispensation to speak on the application on behalf of her constituents at a subsequent Committee meeting. Whilst Ms Pearson points out that the Committee had no power to delegate the determination of the planning application to Islington itself, it is inconceivable that the Court of Common Council would delegate the matter to Islington without the recommendation of its Planning Committee. The fact that there is no pecuniary impact arising from this is, in the Monitoring Officer's opinion, immaterial. This interpretation accords with the DCLG Guidance which states:

    "If you are present at a meeting of your council or authority…or of any committee…of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not: participate in any discussion…" etc.

Reasonable Excuse

12. If Ms Pearson is caught by the restriction in s.31 then in the Monitoring Officer's opinion the fact that the item in question was taken under the urgency procedure under s.100B of the Local Government Act 1972 is immaterial and does not amount to a reasonable excuse for failure to comply with s.31 obligations. Whilst there is a right to apply for a dispensation under s.33 of the Act there is no right to be granted one and the authority has a wide discretion, bearing in mind that s.33(2)(c) and (e) are the only grounds upon which an application could be founded (i.e. the dispensation is in the interests of persons living in the area or that it is otherwise appropriate to grant a dispensation). If Ms Pearson is correct then urgent decisions may be frustrated by the need to enable any member with a disclosable pecuniary interest to apply for a dispensation. It seems reasonable to ask members to anticipate disclosable pecuniary interests arising – particularly in Ms Pearson's case where she is a local resident sitting on the Planning Committee, and wishing to represent her constituents. Reference has already been made to the dispensation application that Ms Pearson submitted in April 2017, that was refused.

Leading Counsel's Opinion

13. Given the terms of Ms Pearson's response the Monitoring Officer has sought leading counsel's opinion on the interpretation of s.31 so that the Sub-committee has the benefit of an independent opinion. Leading counsel was asked to advise in writing:-

    (a) Whether a breach of s.31 and Paragraph 13 of the Code had occurred;
    (b) if so, whether an offence under s.34 is likely to have been committed or whether a reasonable excuse exists;
    (c) whether any breach of the rules of fairness/natural justice have occurred in relation to the process thus far; and
    (d) generally.

    The Sub-committee has not been provided with the Instructions to Counsel, the substance of which forms the backbone of this report, in the interests of keeping the papers more manageable. However, a copy of the Instructions is available on request.

14. A copy of the opinion has been provided to Ms Pearson and her comments on it are set out in her letter of 1st March 2018. Suffice it to say that she remains adamant that she is not in breach and that the approach taken is misconceived and inappropriate.

Position of the City of London Police

15. The Monitoring Officer wrote to the Commissioner outlining the facts on 12th February 2018 and as a result met with a Detective Sergeant of the City of London Police, who notwithstanding Ms Pearson's submissions in her letter of 14th February was of the view that there were reasonable grounds to believe an offence had been committed. He advised that the Police are however content to allow the Corporation's procedures to run their course before assessing whether they should take any action.

Considerations

16. The Sub-committee should consider whether the allegations would, if proven amount to a breach of the Code of Conduct. The complaint should also be assessed against the current Corporation Assessment Criteria which includes consideration of the following matters:-

- Does the Sub-committee have enough information to satisfy itself that the allegation should be investigated?

- Is the allegation too trivial to warrant further action?

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

In doing so, the Sub-committee should also consider all the documents provided and in particular Ms Pearson's submissions and the opinion of leading counsel.

Conclusion & Action Required

17. The Sub-Committee is invited to consider the report and must determine whether:-

(a) to refer any of the allegations to the Monitoring Officer for investigation; or
(b) decide that no action should be taken; or
(c) decide that other action is appropriate and instruct the Monitoring Officer accordingly.

In doing so it should take into account the views of the independent person.

Contact:
Michael Cogher
Comptroller and City Solicitor
Monitoring Officer

ASSESSMENT SUB (STANDARDS) COMMITTEE

Tuesday, 13 March 2018

Minutes of the meeting of the Assessment Sub (Standards) Committee held at Committee Room 1, 2nd Floor, West Wing, Guildhall on Tuesday 13 March 2018 at 3.00 pm

Present

Members:
Mark Greenburgh(Co-opted Member)
Deputy Jamie Ingham Clark
Deputy Edward Lord

In attendance:
Neil Asten (Independent Person)

Officers:

Michael Cogher	-	Comptroller and City Solicitor
Edward Wood	-	Comptroller and City Solicitor's Department
Martin Newton	-	Town Clerk's Department

1. **ELECTION OF A CHAIRMAN**
After Deputy Edward Lord proposed that Deputy Jamie Ingham Clark should 'take the chair' for this meeting, it was

RESOLVED – That Deputy Jamie Ingham Clark be elected Chairman for the duration of this meeting of the Sub Committee.

2. **QUESTIONS ON MATTERS RELATING TO THE WORK OF THE ASSESSMENTS SUB (STANDARDS) COMMITTEE**
The Sub Committee noted the complaints procedure, Code of Conduct and guidance on it.

3. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**
There was no other urgent business.

4. **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 item on the grounds that it may involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act.

5. **ALLEGED BREACH OF THE MEMBERS' CODE OF CONDUCT**
The Sub Committee considered a report and associated papers of the Comptroller and City Solicitor on an alleged breach of the Members' Code of Conduct.

The meeting closed at 3.50 pm

Chairman

Contact Officer: Martin Newton
tel. no.: 020 7332 3154
martin.newton@cityoflondon.gov.uk

CITY OF LONDON CORPORATION

RE: DISCLOSABLE PECUNIARY INTEREST

MS. SUSAN PEARSON

OPINION

1. I am instructed to advise Ms. Pearson.

2. By communication dated 15 March 2018 the Monitoring Officer ("*MO*") of the City of London Corporation ("*the Corporation*") wrote to Ms. Pearson informing her that the Assessment Sub-committee of the Corporation's Standards Committee had resolved unanimously to commission an investigation. In relevant part this read:

> *"The allegation that at the Planning and Transportation Committee on 29 January 2018 you spoke and voted on Item 21, Richard Cloudesley School Site ("the Site"), despite having a disclosable pecuniary interest in the matter contrary to Paragraph 13 of the Code of Conduct.*
>
> *In reaching its decision the Sub-committee took into account the views of the Independent Person, Neil Asten, who supported the decision.*
>
> *The Sub-committee were of the view, having considered all your submissions and the advice of leading counsel, that the matter in which you had an interest was the planning application for the Site and that any decision which has a material effect on that application is covered by the restrictions contained in section 31 of the Localism Act 2011 and paragraph 13 of the Code of Conduct. The Sub-committee considered that the decision whether or not to recommend the delegation of the decision to the Court of Common Council had a material effect on by whom and how the Planning Application is dealt with.*
>
> *The Sub-committee emphasised that its decision relates to the Code of Conduct only.*

> *A formal investigation will now take place followed by a hearing of the Hearing Sub-committee which will be arranged in due course, and which will determine the matter."*

3. I have had the benefit of reading the Opinion of Mr. James Goudie Q.C. For the reasons more fully set out below, I believe that Ms. Pearson had no disclosable pecuniary interest so no question of conduct contrary to Paragraph 13 of the Code of Conduct and sections 31 and 34 arises. I respectfully take issue with the conclusions reached by Mr. James Goudie Q.C. and on which the Assessment Sub-committee relied.

4. Paragraph 13 of the Code of Conduct ("*paragraph 13*") states:

> *"Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State."*

5. I believe it to be common ground that Paragraph 13 reflects Section 31 of the Localism Act 2011 ("*the 2011 Act*"). The regulations in question are The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (No. 1464) ("*the Regulations*").

6. The report of the Chief Planning Officer and Development Director which fell for consideration at the meeting of the Planning and Transportation Committee held on 29 January 2018 concerned a planning application for the redevelopment of the Richard Cloudesley School Site for education and social housing purposes submitted by the Corporation in July 2017. This stated that a small part of the site lies within the administrative boundary of the City of London Corporation and the majority of the site lies within the administrative boundary of the London Borough of Islington. It was thus a "*cross-boundary application*" and the applicant would be required to submit an

identical application to both Local Planning Authorities. The Chief Planning Officer's recommendation to the committee contained in the report was that it should request Court of Common Council to delegate the Planning and Transportation Committee's function of deciding the planning application to the London Borough of Islington subject to Islington's agreement and the execution of any necessary agreement to give effect to the delegation.

7. This Opinion is not concerned with the merits of this recommendation. It is sufficient to note that the recommendation was defeated by 11 votes to 9. Ms. Pearson spoke against the recommendation and voted with the majority. This led to a letter to Ms. Pearson from the MO, dated 12 February 2018, stating that her participation and voting on 29 January 2018 may have been a breach of the Members' Code of Conduct and she may also have committed an offence under Section 34 of the Localism Act 2011 ("*the 2011 Act*"). It stated that a breach of the Code of Conduct can only be investigated if authorised by the Assessment Sub-committee of the Standards Committee which, as stated above, has since taken place. The letter concluded with what amounted to a caution, given the prospect that a criminal offence may have been committed.

8. This Opinion is also not concerned with whether the MO acted appropriately, or whether he had a discretion not to proceed. If relevant, these are matters which can be taken up later.

9. From the correspondence between the parties I can discern no difference in the description of the facts between the parties. Ms. Pearson has a "*disclosable pecuniary interest*" for the purposes of Chapter 7 of Part 1 of the 2011 Act and the Regulations by virtue of having a "*beneficial interest in land which is within the*

area of the relevant authority". The "*land*" concerned is a flat which she owns at 21 Hatfield House, Golden Lane Estate. My understanding is that the Golden Lane Estate adjoins the Richard Cloudesley School Site. It is also common ground that, to the extent that any future decision in relation to the grant of planning permission is made by the Planning and Transportation Committee, Ms. Pearson would have a disclosable pecuniary interest for the purposes of the 2011 Act and would require a dispensation to speak under Section 33 of the 2011 Act. In fact, a dispensation to speak but not vote was notified to her on 15 March 2018. I am instructed that this dispensation was granted by reference to section 33(2)(c), that is, her speaking was in the interests of persons living in the authority's area.

10. Importantly, the MO's communications of 15 March 2018 informing her of the investigation made no finding or allegation that Ms Pearson had any pecuniary interest in the outcome of the decision in question, namely, the delegation or otherwise of the planning application. Indeed, the MO in both his instructions to Mr James Goudie Q.C. and his report at paragraph 11 to the Assessment Sub-committee refers expressly to "*...the fact that there is no pecuniary impact arising*" from this delegation. That delegation at agenda item 21 was the sole "*matter to be considered, or being considered, at the meeting...*" (quoting section 31(1)(b)) of the 2011 Act.) This is in contrast to the eventual consideration of the planning application itself. Ms Pearson of course acknowledges a disclosable pecuniary interest in that matter.

11. Therefore, any finding that paragraph 13 and section 31 of the 2011 Act had been infringed must depend upon a legal interpretation of "*disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting*"" as embracing speaking and voting in a situation where there is (a) no actual or potential pecuniary interest arising from the decision actually made at that

meeting in respect of the matter under consideration and (b) the matter under consideration at the meeting, in which she spoke and voted, was something other than the resolution of the planning application.

12. In my opinion, this is a hopeless interpretation. Quite apart from the violence it offers to the language of the 2011 Act and its irrelevance to the mischief the 2011 Act is intended to address, as the MO's report makes clear in describing the powers open to the Corporation if the allegations are upheld, the consequences to Ms Pearson are very serious indeed and may lead to criminal prosecution, a possibility confirmed by the MO in administering a caution to her. These consequences strongly suggest that the 2011 Act and paragraph 13 should be interpreted more strictly and with care.

13. Turning to the Corporation's case as represented by the reasoning in the communication of 15 March 2018, there is a fundamental confusion. It cannot be denied that the decision as to which authority should determine a planning matter is an important decision regarding the handling of any application. But so are many decisions, for example, if the decision had to be delayed, or postponed to another day. The question to be answered is whether Ms Pearson's participation in such decisions gave rise to a disclosable pecuniary interest. Chapter 7 of the 2011 Act has as its purpose the promotion and maintenance of high standards of conduct by members and a prohibition of any member securing personal gain from any decision in which the member participated. Ms Pearson's participation and vote on which authority was best fitted to assess the application, on a matter which the Corporation has subsequently granted her rights to speak on the substantive issue, does not offend that purpose.

14. The Corporation's reasoning proceeds as follows. Ms Pearson's interest was in the planning application for the site and that *any* decision which had a material effect on that application is covered by restrictions contained in section 31 of the 2011 Act and paragraph 13. The delegation recommendation was a decision which had *"...a material effect on by whom and how the Planning Application is dealt with."* This is literally true but, in my view, it is wholly insufficient to found the existence of a disclosable pecuniary interest. To repeat, the Corporation accepts that there was no pecuniary interest arising from the delegation, which was the "*matter*" under consideration "*at the meeting*". No further reasoning is offered. I turn now to the Opinion of Mr James Goudie Q.C.

15. First, "*Disclosable pecuniary interests*" are described in the Schedule to the Regulations. Ms Pearson's interest is plainly under "*Land*", namely, her flat. Any "*matter*" which affected the value or benefit of this flat would fall within the scope of a disclosable pecuniary interest. The definition of "*land*" in the regulations emphasises the requirement for occupation or income, that is, "*land*" absent a pecuniary element, in cash or kind, is excluded from the Schedule.

16. Mr Goudie Q.C. sets out his reasoning at paragraph 23. In this he starts at paragraph 23(1) by stating that Ms Pearson has a disclosable pecuniary interest in the "*decision to determine the Planning Application*". It is accepted that she has a disclosable pecuniary interest in the *outcome* which, but for dispensation, would preclude her participation in making that decision. If, however Mr Goudie Q.C. means that she had a disclosable pecuniary interest in *how* the application should be determined, especially which body was to determine the application, this is an assumption rather than a statement of law and would appear to be contrary to his instructions. It is

not in dispute that Ms Pearson had no disclosable pecuniary interest in which body makes the planning decision.

17. At (2) he proceeds to define the "*matter*" as the planning application for the site. Again, this is an assumption or assertion. In fact, the only "*matter*" under consideration "*at the meeting*" (to track the statutory language) was delegation of the planning application not the planning application itself. For this argument to prevail, "*matter*" must be defined to extend to include every aspect of the planning application irrespective of the lack of any discrete pecuniary advantage arising from any decision and irrespective of whether or not the substance of the planning application was under consideration at the meeting in question.

18. In my respectful submission, that is too broad and artificial a construction. It would embrace inconsequential decisions for as long as they related, however indirectly, to the planning application. Perhaps in anticipation, at (3), Mr Goudie Q.C. refers to a *"decision which materially affects how the planning application is dealt with..."*. (My emphasis). It is not clear whence the materiality threshold derives; nor is it clear whether the disclosable pecuniary interest arises if the decision is "*material*" to the process or to the ultimate result. The addition of the materiality condition is revealing because it indicates recognition that the chosen interpretation has absurd consequences which "*materiality*" seeks to address. In my view, the interpretation is not rescued from error by reading something into the 2011 Act which is not there.

19. In summary, the Corporation's argument rests upon the following basis: that as Ms Pearson owns an adjacent flat, she has a disclosable pecuniary interest in "*Land*" and is therefore disabled from participating in *any* matter at *any*

meeting relating to the process leading to the planning decision of adjacent property notwithstanding the irrelevance of such decision or decisions to the registered disclosable pecuniary interest and the absence of any pecuniary advantage arising from such decision or decisions. This is modified by an extra-statutory materiality threshold, of unknown provenance, in that the decisions must materially affect the manner in which the application is dealt with, as opposed to the decision itself, again in the complete absence of any pecuniary effect on Ms Pearson or anyone else.

20. As stated above, this interpretation runs flat contrary to the language of section 31 which points to any "*matters*" specifically under consideration at a specific meeting. It is illegitimate to project forward to the planning decision and hold that all process decisions leading to the final decision are matters falling within section 31 in the total absence of any pecuniary effect whatever. This goes well beyond the avowed intention of Chapter 7 of the 2011 Act. In the absence of any pecuniary interest and given the severe consequences to which Ms Pearson is exposed, this is disproportionate and further leans against such an expansive interpretation.

21. There are two final points on which I have not been asked to advise but will nevertheless comment upon. First, section 31(1)(c) provides that the prohibition on participation will only apply if the member is aware of possessing a disclosable pecuniary interest. This suggests an element of intention or perhaps recklessness in proceeding to participate aware of such knowledge. The burden is on the Corporation to show awareness. As the existence or otherwise of a disclosable pecuniary interest in the factual situation which obtains here is a matter on which different views are held, in good faith, I am unclear that the Corporation has discharged its burden of demonstrating Ms Pearson's awareness. Her repeated case is that she denies

she has a disclosable pecuniary interest. The point is not dealt with in the MO's report to the Assessment Sub-committee or in Mr Goudie Q.C.'s Opinion (presumably because he was not asked to advise upon it) but it is of some importance as all the conditions of section 31 have to be satisfied and section 31(1)(c) has not been considered at all. Failing this, the process collapses. I do not see this as simply a matter of "*ignorance of the law*" non excusat.

22. Secondly, the report to the Planning and Transportation Committee refers to "*Reasons for Urgency*". I am instructed that the delegation item was added to the agenda after 4pm on the Friday before the Monday 10 am meeting. I am further instructed that in the Committee discussion it was stated that the planning application had been made five months before and that the possibility of a delegation to Islington had existed since then. It seems that the question of delegation could have been brought to the Committee at any time in the interim period. The Corporation's legal adviser is reported to have replied that it was unclear what Islington's attitude to the proposed delegation would be and whether they would accept the delegation. It seems that Islington had only clarified its position on 25 January 2018 that it would be "*prepared to consider*" the delegation, but had not committed to do so. Consideration of the planning application by Islington would take place on 1 March 2018. In other words, the position was much the same as it had been for the previous five months. This brings into question the wisdom of treating this as an urgent matter and adding it, as 21st item on the agenda, with just a weekend's notice, in the knowledge that it was likely to be contentious, as indeed it proved to be.

23. The significance of this short notice is that, assuming that Ms Pearson did indeed possess a disclosable pecuniary interest and was aware of this, but

nevertheless had something useful to contribute on behalf of the citizens of her ward (as the Corporation subsequently affirmed by its grant of dispensation in relation to the planning discussion) the Corporation's actions in classifying the matter as "*urgent*" when it does not seem to have been urgent had the effect of disabling her from seeking any dispensation. In this connection, I am puzzled by the MO's report to the Assessment Sub-committee which describes reasons for the delegation which formed no part of the Chief Planning Officer's recommendation and which were not disclosed to members in the report at agenda item 21 or, I am instructed, orally in the meeting. One of the undisclosed reasons was that there "*... was some local opposition (largely from City residents nearby)*" to the planning application which, it seems, was a justification for delegating the matter to Islington. At this stage, I can merely register some surprise at the Corporation's conduct.

Thomas Sharpe Q.C. THES

One Essex Court

Temple

London EC4Y 9AR

24 March 2018

Wood, Edward

From: Wood, Edward
Sent: 19 April 2018 12:02
To: John Austin
Subject: RE: Questions for Michael Cogher

Hi John

Paragraph 6 of the Code is deliberately widely drafted as a catch-all provision for any other relevant interest that is not a disclosable pecuniary interest. As you say it refers to "...any other pecuniary or non-pecuniary interest which you consider should be included on your Members' Declaration form if you are to fulfil your duty to act in conformity with the Seven Principles of Public Life."

Paragraph 7 then sets out a non-exhaustive list of non-pecuniary interests, and paragraph 8 deals with gifts and hospitality, but there is not a separate list of 'other pecuniary interests' – a Member would have to consider the Nolan Principles.

The reference to 'any other interest' in paragraph 14(a) of the Code is normally cited in relation to the non-pecuniary interests listed in paragraph 7 of the Code, but would also include any other interest covered by paragraph 6 of the Code.

As you know, in James Goudie's view Ms Pearson had a disclosable pecuniary interest in the matter and in that case paragraph 13 of the Code would be engaged.

I hope this helps. Please let me know if you have any further questions. I look forward to seeing the draft report. Thanks.

Edward

From: John Austin [redacted]
Sent: 19 April 2018 09:47
To: Wood, Edward <Edward.Wood@cityoflondon.gov.uk>
Subject: Re: Questions for Michael Cogher

Hi Edward

Thank you for your e mail dated 16 April and for the attachments.

I note your comments regarding my remit and the investigation plan. I do not think however that I am exceeding my remit. In order for me to undertake a proper and fair investigation, I need to understand the context and reasons for the complaint, the process followed by the Corporation in dealing with the matter plus answer in my own mind questions/issues raised by Ms Pearson in both her written submissions and at interview.

For example, the Corporation's report to the Assessment Sub-Committee (paragraph 6) states that the MO and the Standards Committee have taken the view that the Committee, of itself or through officer delegation under the urgency procedure, is entitled to convene a meeting of the Assessment Sub-Committee to determine whether there should be an investigation in the absence of a complaint. I am not questioning this as a policy. However, I don't think it's unreasonable for me as the investigator to ask for the decision (such as a committee minute) or the delegated authority agreeing this approach, particularly as Ms Pearson in her

written submissions to the Corporation has challenged the process robustly. This is in my view legitimate evidence for me to consider.

I have started to draft my report and have been re-reading your code of conduct and associated guidance. Paragraphs 3 - 5 of the Code cover DPIs and sensitive interests. Paragraph 6 refers to 'other pecuniary' interests but I cannot find a definition or explanation as to what this covers. Paragraph 14 also refers to 'other interests' and states:

"*Your participation in any item of business:*

a) in which you have any other interest; or
b) that affects a donor from whom you have received any gift or hospitality;

that is registered, or ought to be registered as set out above, will need to be considered by you on a case by case basis. You will only be expected to exclude yourself from speaking or voting in exceptional circumstances, for example where there is a real danger of bias."

Do you have a separate category of interests - 'other pecuniary interests' - as referred to in paragraphs 6 and 14 of your code? If so, how are these defined please? Plus under what circumstances would paragraph 14 apply, particularly the words "You will only be expected to exclude yourself from speaking or voting in exceptional circumstances, for example where there is a real danger of bias".

Thanks again and look forward to hearing from you.

Best wishes

John

[redacted]

-----Original Message-----
From: Wood, Edward <Edward.Wood@cityoflondon.gov.uk>
To: John Austin [redacted]
Sent: Mon, 16 Apr 2018 16:36
Subject: RE: Questions for Michael Cogher

Hi John

Subject to your further thoughts, final report and any additional material submitted by Ms Pearson, Michael is still intending at this stage to act as legal advisor to the Hearing Sub-Committee. I have therefore attempted to answer your questions below. If you have any follow up questions for me, or if you feel that you really must speak to Michael, then please let me know.

As previously discussed, I do feel that some of your questions (in the nicest possible way) are beyond your remit, as set out in the Investigation Plan, which is to establish whether there has been a breach of the Code of Conduct rather than to look at all of the procedural aspects of this matter. I also feel that some of your questions have been superseded by events, given that the Assessment Sub-Committee has subsequently decided to investigate the matter, however this was initially referred to them. I do appreciate though that you are wearing your ex-Monitoring Officer's hat and trying to pre-empt and address any issues that may be raised at the hearing.

Wood, Edward

From: Wood, Edward
Sent: 16 April 2018 16:36
To: 'John Austin'
Subject: RE: Questions for Michael Cogher

Hi John

Subject to your further thoughts, final report and any additional material submitted by Ms Pearson, Michael is still intending at this stage to act as legal advisor to the Hearing Sub-Committee. I have therefore attempted to answer your questions below. If you have any follow up questions for me, or if you feel that you really must speak to Michael, then please let me know.

As previously discussed, I do feel that some of your questions (in the nicest possible way) are beyond your remit, as set out in the Investigation Plan, which is to establish whether there has been a breach of the Code of Conduct rather than to look at all of the procedural aspects of this matter. I also feel that some of your questions have been superseded by events, given that the Assessment Sub-Committee has subsequently decided to investigate the matter, however this was initially referred to them. I do appreciate though that you are wearing your ex-Monitoring Officer's hat and trying to pre-empt and address any issues that may be raised at the hearing.

1. The planning application in question was a contentious matter for the Corporation. As you know, the Corporation was both the applicant and one of the two Local Planning Authorities that needed to determine the matter. The application was strongly opposed by local residents and therefore the elected representatives for the ward. Local residents on the Golden Lane and Barbican Estates have a lot of influence within their wards and a fair amount of influence on the Court of Common Council. [redacted] They knew that the Corporation had evidence of a potential breach of the Code of Conduct without needing their testimony, and they would also have been aware of the procedure adopted in the Greg Lawrence matter (see point 3 below). All of this may have contributed to the Member's reluctance to make a complaint. In any event, they did not want to.

2. The criteria for an anonymous complaint are set out in the current complaint form, and can be found on page 15 of the committee papers for the Assessment Sub-Committee, which were sent to you previously. The Member concerned did not satisfy any of these criteria. In any event, they did not want to make a complaint. Notwithstanding this, the Monitoring Officer didn't feel that he could just sit on this information, as set out in the report to the Assessment Sub-Committee.

3. There was a similar situation that arose shortly before the Pearson matter, when allegations were received from several sources that another Member, Greg Lawrence, had voted at the Markets Committee when he only had a dispensation to speak. Again, in that case, the decision was a contentious one for the Corporation, which related to the potential relocation of the three wholesale markets. This is strongly opposed by the meat traders at Smithfield Market, who have a lot of influence within their ward and a fair amount of influence on the Court of Common Council. Again, the various Members who contacted the Monitoring Officer knew that the Corporation had evidence of a potential breach of the Code of Conduct without needing their testimony. None of them wanted to make a formal complaint, but the Monitoring Officer didn't think that he could just do nothing. He therefore took the matter to the Standards Committee for a view on 26 January 2018. Unfortunately on that occasion the Standards Committee was inquorate – it was well attended by elected members (seven were present) but the quorum of the Standards Committee requires at least one co-opted Member to be present. However the matter was discussed, and the views were captured in the attached minutes (item 16 in the non-public section). The decision to refer the matter to the Assessment Sub-Committee was therefore subsequently taken by the Town Clerk on 30 January 2018, in consultation with the Chairman and Deputy Chairman of the Standards Committee, under the urgency procedure. For the sake of completeness, I

am also attaching the subsequent report and minutes from the Assessment Sub-Committee for that matter, although the assessment meeting actually took place after the Pearson one.

Standards Committee 2601... | 26 01 18 DRAFT NON-PUBLIC M... | Alleged Breach of Code of Cond... | 302368BA7C4A1... | Assessment Sub Standards Com...

4. The advice from James Goudie Q.C. is independent because he is external to the Corporation, with no obligation to come to any particular view. The instructions specifically asked for an independent view and, although some opinions were inevitably expressed, in order to explain the Corporation's handling of the matter up to that point, the questions posed to leading counsel were deliberately neutral and did not ask him to come to a particular conclusion. Ms Pearson previously requested the instructions, and was sent these, so I am attaching them now for information – although they basically form the basis of the report to the Assessment Sub-Committee. As you will see, leading counsel was provided with copies of all of Ms Pearson's correspondence. Her letters are lengthy, and contain a large number of points – leading counsel was asked to consider the fundamental merits of the matter rather than to go through all of Ms Pearson's submissions point by point. As we have discussed, my own view is that there is very little relevant caselaw under the current regime, and so what we were seeking from James Goudie Q.C., who is one of the pre-eminent and most experienced local government lawyers, was his view about the interpretation of the relevant statutory and local code provisions, which may need to be tested by the courts in the future. However it is difficult to respond fully and fairly without having sight of the contrasting opinion that Ms Pearson has reportedly received, and seeing the supporting analysis and reasoning contained therein. Ultimately you, and the Hearing Sub-Committee, will have to take a view on the relative persuasiveness of the two documents.

INSTRUCTIONS TO COUNSEL R...

Based on the above, especially the comments under point 3 above, we do not consider that Michael ought properly to be viewed as a 'witness' in this matter. Although he did forward the information that he had received to the Town Clerk for a decision on referral to the Assessment Sub-Committee, he did not make any formal 'decision' himself. In forwarding the information he was relying on a previous precedent, that had been approved by elected Members in similar circumstances, and was not setting a new policy. However we are happy to keep this issue under review.

I hope that this answers your questions. Happy to discuss further if necessary. Thanks.

Edward

From: John Austin [redacted]
Sent: 13 April 2018 14:29
To: Wood, Edward <Edward.Wood@cityoflondon.gov.uk>
Subject: Questions for Michael Cogher

Morning Edward

By way of any update for you, I have received comments from Ms Pearson and her legal representative on the draft notes of my interview with her on Monday. I will be reviewing these over the weekend.

Please see below questions for Michael. Ideally, I would like to be able to put these to him over the telephone please as I may have follow-up questions depending on the answers.

Best wishes

John

1. Why was the member who initially contacted you with the complaint not willing to pursue the matter further?

2. Was the option of allowing him/her to remain anonymous considered?

3. In your report to the Assessment Sub-Committee (paragraph 6) you state ".....the Standards Committee and the Monitoring Officer have taken the view that the Standards Committee, of itself or through officer delegation under the urgency procedure is entitled to convene a meeting of the Assessment Sub-committee to determine whether there should be an investigation in the absence of a complaint". Could you provide me with any report and minute of the Committee agreeing this policy or some other form of agreement to this as the Corporation's policy?

4. Ms Pearson in her letter to you dated 1 March has criticised Mr Goudie's advice as follows:

"It does not appear to be "independent" because it focuses upon supporting the position you have taken, without any analysis or reasoning to support its conclusions. For it to have value as "legal advice", it needs to respond to the analysis and reasoning set out in my letters of 14 and 20 February. It does not do so."

What is your response to this please?

This page is intentionally left blank

Appendix 1

City of London

Investigation Report

Complaint against Ms S Pearson

May 2018

Investigating Officer: John Austin

1. Introduction

1.1 I was commissioned by Michael Cogher, Monitoring Officer at the City of London Corporation (following a decision by the Corporation's Assessment Sub (Standards) Committee) to investigate allegations against Common Councilman Ms Susan Pearson.

1.2 Ms Pearson is a member of the Planning and Transportation Committee. She registered a disclosable pecuniary interest as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 in 21 Hatfield House, a block of flats adjacent to the Richard Cloudesley School site ("the site"). The site is the subject of a planning application by the Corporation to redevelop it to provide a new school and affordable housing. The majority of the site is within the London Borough of Islington with a small parcel located in the City.

1.3 The allegations relate to Ms Pearson's participation and vote at a meeting of the Corporation's Planning & Transportation Committee on 29 January 2018 in relation to a recommendation to delegate the Committee's function of deciding a planning application in relation to the site to the London Borough of Islington. The recommendation was lost by 11 votes to 9 with no abstentions. Ms Pearson spoke and voted against the recommendation.

1.4 Following the above meeting, a member who had been present telephoned the Monitoring Officer to express serious reservations about Ms Pearson's conduct in relation to her statutory obligations under s.31 of the Localism Act 2011 and paragraph 13 of the Code of Conduct. However, for various reasons the member was not prepared to make a formal complaint. The Corporation has an established procedure for handling allegations of misconduct by members which requires the submission of a written complaint and a filtering exercise carried out by the Assessment Sub-Committee which has the power to authorise investigations. No investigation can be carried out in respect of an allegation against a member without the sanction of the Assessment Sub-Committee.

1.5 However in circumstances where there are reasonable grounds to believe a breach of the Code of Conduct has occurred, of which the Corporation is aware from its own knowledge and records, such as participation in a decision despite a disclosable pecuniary interest, the Standards Committee and the Monitoring Officer have taken the view that the Standards Committee, of itself or through officer delegation under the urgency procedure is entitled to convene a meeting of the Assessment Sub-Committee to determine whether there should be an investigation in the absence of a complaint. This is to avoid criticism and reputational damage that could arise from the Corporation being seen to ignore potential breaches of the Code and the statutory requirements in relation to disclosable pecuniary interests within its

knowledge. Furthermore, it avoids the situation where powerful or influential members can avoid being held to account simply because no individual is prepared to be seen to challenge them. This appears to the Monitoring Officer to be a real issue where turning of an institutional "blind eye" is no longer acceptable and a more desirable approach than a senior officer or member being obliged to take on the role of complainant to achieve the same result.

1.6 Accordingly, following consultation with the Chairman and Deputy Chairman of the Standards Committee, the Town Clerk authorised, on 9th February, the convening of an Assessment Sub-Committee and asked the Monitoring Officer to refer the matter to the Commissioner of the City of London Police (as non disclosure of a disclosable pecuniary interest or participation in a matter where the member has declared such an interest is a criminal offence). Ms Pearson was informed of the allegations against her and the action being taken.

1.7 The Sub-Committee fully considered and discussed the Comptroller's report, along with all related submissions and the advice of leading counsel. It noted that, in view of the Member's objections to the process, the Comptroller intended to appoint an external investigator to conduct any future investigation should this course of action be approved. At the conclusion of its deliberations, the Sub Committee was of the unanimous opinion that the matter in which Ms Pearson had an interest was the planning application for the former Richard Cloudesley site and that any decision which had a material effect on that application was covered by the restrictions contained in paragraph 13 of the Code of Conduct. That paragraph reads as follows:

'Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State.'

1.8 The Sub-Committee was also of the view that the decision whether or not to recommend the delegation of the determination to the Court of Common Council had a material effect on by whom and how the planning application was dealt with. The allegations were therefore referred for investigation. Members emphasised that their decision related to the Code of Conduct only.

1.9 The Sub-Committee also noted that, in respect of any future investigation of a possible breach of section 31 of the Localism Act, the City of London Police had confirmed their intention to await the outcome of the Corporation's investigation before assessing whether they should take any action.

1.10 The Corporation's Independent Person was consulted and agreed with the Sub Committee's view set out above.

2. Summary of Findings

2.1 In applying the public interest test, I have come to the view that the possibility of bias exists and that Ms Pearson should not have participated in the discussion or voted on the recommendation to delegate the determination of the planning application. She has therefore in my view breached the Corporation's Code of Conduct. The legal situation with regard to the definition of a disclosable pecuniary interest in this case is significantly divided. Whether Ms Pearson has breached paragraph 13 of the Code in relation to 'disclosable pecuniary interests' or paragraph 14 in relation to 'other pecuniary interests' is inconclusive for the reasons stated in paragraphs 6.12 and 6.13 of this report. However, in either case the outcome would be broadly the same, notwithstanding the higher potential consequences of a breach of paragraph 13 (which is potentially a criminal offence). There was in my view a clear risk of bias and Ms Pearson should therefore have recused herself from participating either under paragraph 13 or 14 of the Code.

2.2 The Hearing Sub-Committee is therefore invited to consider whether it feels Ms Pearson has breached paragraph 13 of the Code relating to participating and voting at the meeting in question or paragraph 14 of the Code relating to 'any other interest' .

2.3 Whatever decision is reached, I do not think that Ms Pearson acted recklessly or deliberately flouted the rules. She took legal advice before making her decision and felt she was taking the correct course of action. I think this was an error of judgement on her part and this was borne out of her wish to represent her residents rather than for personal or pecuniary gain. She failed however to consider all the issues, including the important test of public perception

3. Terms of Reference

3.1 I was asked by the Corporation's Monitoring Officer to investigate allegations against Ms Susan Pearson that she spoke and voted on item 21 (the Richard Cloudesley School site) at the Corporation's Planning & Transportation Committee on 29th January 2018 despite having a disclosable pecuniary interest in the matter contrary to paragraph 13 of the Code of Conduct. As set out in the Monitoring Officer's letter to Ms Pearson of 15 March 2018, the decision of the Assessment Sub-Committee (paragraph 1.8 above), and therefore my investigation, relates to the Corporation's Code of Conduct only.

3.2 My investigation included reviewing the following documents:

(a) The Corporation's Code of Conduct for members and associated guidance document
(b) The Corporation's Complaints Procedure
(c) The Localism Act 2011

(d) The agenda and supporting papers to the Standards (Assessment) Sub-Committee on 13th March 2018 – this included the instructions to opinion of James Goudie QC
(e) The instructions to and opinion from Thomas Sharpe QC obtained by Ms Pearson.
(f) Department for Communities and Local Government (DCLG) guidance – 'Openness and Transparency on Personal Interests – a guide for councillors' – published in September 2013.

4. **Evidence Gathering**

4.1 I interviewed Ms Pearson, together with Mr Graeme Harrower her legal advisor, at the Corporation's offices on 9th April.

4.2 I also had e mail correspondence with Edward Wood, Solicitor at the Corporation, acting on behalf of Michael Cogher, the Monitoring Officer. I did not interview Mr Cogher personally as he did not wish to cause a conflict with his role as advisor to the Standards (Hearing) Sub-Committee.

4.3 Ms Pearson and her representative were given the opportunity to comment on the draft notes of our interview. Their comments were accepted in full and included in the final record of that discussion.

4.4 The Corporation, Ms Pearson and her advisor were sent copies of my draft report for comments. I incorporated these comments where I deemed appropriate.

5. **Evidence Gathered**

Evidence from the Corporation

5.1 The evidence from the Corporation is largely contained within the bundle of papers submitted to the Assessment Sub-Committee on 13 March 2018. The thrust of this evidence is as follows:

(a) Upon election, Ms Pearson registered a disclosable pecuniary interest as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 in 21 Hatfield House, a block of flats adjacent to the Richard Cloudesley School site ("the Site"). The Site is the subject of a planning application by the Corporation to provide a new school and affordable housing. The majority of the Site is within the London Borough of Islington with a small parcel located in the City. Ms Pearson applied for a dispensation to speak and vote on matters relating to "housing & matters to do with Golden Lane Estate" where Hatfield House is situated in April 2017. This application was rejected by the Standards Committee on 19th May 2017 and had not been renewed at the time of the Planning & Transportation Committee meeting in January 2018.

(b) The planning application is a complex one, involving time pressure, some local opposition (largely from City residents nearby), and two planning authorities, one of which, Islington, will be holding local elections in May 2018. Given these complexities and the small parcel under the Corporation's jurisdiction, officers concluded that the most efficient and effective method of managing the process would be for the Corporation to delegate the determination of the application in relation to the City land to Islington. Accordingly, a report was presented to the Planning and Transportation Committee on the 29th January 2018, as an urgent item for various reasons involving timing and co-ordination with Islington, recommending that the Committee in turn recommend to the Court of Common Council the delegation of the planning decision in respect of the City parcel to Islington.

(c) The matter was debated by the Committee, and the recommendation defeated by 11 votes to 9 with no abstentions. Ms Pearson was alleged to have spoken and voted against the recommendation. Although it was not recorded which way, it was assumed she voted against. The vote is recorded in the draft minutes (subsequently confirmed by Ms Pearson – see paragraph 5.7).

(d) Following the meeting, a member who was present telephoned the Monitoring Officer to express serious reservations about Ms Pearson's conduct in relation to her statutory obligations under s.31 of the Localism Act 2011 and paragraph 13 of the Code of Conduct. However, for various reasons the member was not prepared to make a formal complaint.

(e) In the absence of a written complaint, the Corporation invoked its procedure to convene a meeting of the Assessment Sub-committee to determine whether there should be an investigation (see paragraphs 1.5 and 1.6 above) and advised Ms Pearson accordingly.

(f) The Assessment Sub-Committee felt that Ms Pearson had potentially breached her obligations under s.31 of the Localism Act 2011 and Paragraph 13 the Corporation's Code of Conduct. The Monitoring Officer's interpretation is that the "matter" in which she had a disclosable pecuniary interest is the planning application for the site and that therefore any committee decision that materially affects how that application is dealt with is covered by the s.31 restrictions. An information item for noting, simply outlining the decision was upcoming at a future meeting would not, in his view, trigger the s.31 restrictions. However, a recommendation to the Court of Common Council to delegate the planning decision to Islington – which Ms Pearson

characterises as merely an inter-authority jurisdictional matter – did, in the Monitoring Officer's submission to the Sub-Committee have a material effect on how the application is dealt with, not least because it directly affects the influence Corporation members themselves have on the ultimate decision. Opponents of the scheme are largely the nearby City residents. Ms Pearson had indicated her intention to apply for a dispensation to speak on the application on behalf of her constituents at a subsequent Committee meeting. Whilst Ms Pearson points out that the Committee had no power to delegate the determination of the planning application to Islington itself, it is inconceivable in the Monitoring Officer's view that the Court of Common Council would delegate the matter to Islington without the recommendation of its Planning Committee. The fact that there is no pecuniary impact arising from this is, in the Monitoring Officer's opinion, immaterial. This interpretation in his view accords with the DCLG Guidance which states:

"If you are present at a meeting of your council or authority…or of any committee…of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not: participate in any discussion…" etc.

(g) The Sub-Committee agreed unanimously with the Monitoring Officer's report and referred the matter for investigation. In doing so, it accepted that if Ms Pearson is caught by the restriction in s.31 then the fact that the item in question was taken under the urgency procedure under s.100B of the Local Government Act 1972 is immaterial and does not amount to a reasonable excuse for failure to comply with s.31 obligations. Whilst there is a right to apply for a dispensation under s.33 of the Act, there is no right to be granted one and the authority has a wide discretion, bearing in mind that s.33(2)(c) and (e) are the only grounds upon which an application could be founded (i.e. the dispensation is in the interests of persons living in the area or that it is otherwise appropriate to grant a dispensation). If Ms Pearson is correct then urgent decisions may be frustrated by the need to enable any member with a disclosable pecuniary interest to apply for a dispensation. It seems reasonable to ask members to anticipate disclosable pecuniary interests arising – particularly in Ms Pearson's case where she is a local resident sitting on the Planning Committee, and wishing to represent her constituents. Reference has already been made to the dispensation application that Ms Pearson submitted in April 2017, that was refused (paragraph 5.1(a) above).

(h) The Monitoring Officer sought leading Counsel's opinion on the interpretation of s.31 as follows.

(a) Whether a breach of s.31 and Paragraph 13 of the Code had occurred;
(b) if so, whether an offence under s.34 is likely to have been committed or whether a reasonable excuse exists;
(c) whether any breach of the rules of fairness/natural justice have occurred in relation to the process thus far; and
(d) generally.

(i) James Goudie QC advised as follows:

(i) There is a prima facie breach of Section 31 of the Localism Act 2011 and paragraph 13 of the Corporation's Code

(ii) This should be further investigated in the public interest, in accordance with the Corporation's statutory arrangements and the Localism Act 2011.

(iii) The ultimate decision will be for the Standards Committee (or Sub-Committee of the Standards Committee)

(iv) If a breach is established, an offence is likely to have been committed under Section 34 of the Localism Act 2011

(v) No lawful excuse appears to exist

(vi) No breach of the rules of fairness/natural justice has occurred in relation to the process thus far

(vii) Even if there had been, that does not mean that the investigation should not go forward: see Hussain, especially at paragraphs 254-262 inclusive

(viii) There is no basis for believing that there will be any unfairness on the part of the decision maker, the Standards Committee, if and when the matters proceed to that stage.

Evidence from Ms Pearson

5.2 At the beginning of the interview, it was agreed that, although the focus of the questions would be to Ms Pearson, Mr Harrower could support her when required.

5.3 Ms Pearson confirmed that she had received training in the Corporation's Code of Conduct plus the Planning Committee processes and procedures. She was elected in March 2017 and received training on the Code as part of her induction. Training as a Planning Committee member followed in approximately April 2017. She had been a member

of the Planning Committee since April 2017.

5.4 Ms Pearson confirmed that she had given prior thought to whether she had a disclosable pecuniary interest in the matter of delegation to the London Borough of Islington. She said she received notice of the agenda item early on the Friday evening prior to the meeting itself at 10.00am the following Monday morning. She knew that local residents would be very concerned at the proposals. She considered the possibility of a disclosable pecuniary interest but felt that she didn't have one because the committee was not determining the planning application. She felt it was important for residents to have a voice. She could speak for them with first hand knowledge of the issues as she lived adjacent to the development site. She sought the advice of Mr Harrower beforehand. He is a very experienced solicitor (also a Planning Committee member). After consideration, he also took the view that there was no disclosable pecuniary interest to declare. Both felt that the issue of delegation to Islington was a preliminary step in the planning process with no pecuniary outcome. They explained that whilst the largest part of the site is in Islington, the greatest impact will be on City residents. She therefore felt it necessary to represent them. That's what her residents would have expected. Her fellow ward councillor wasn't able to attend the meeting so she had to speak on behalf of her constituents. It did not seem important to her personally at that stage where the application was being determined. From their point of view, Ms Pearson had no pecuniary interest nor would she derive any pecuniary outcome.

5.5 The other ward councillor had written to the committee chairman asking for his views to be read out to the meeting. He felt that the application should be considered by both the City and Islington. He complained about the matter being taken at such short notice and referred to the greater impact on City residents.

5.6 In answer to a question at interview, Ms Pearson said that there wasn't time between the notification of the urgent agenda item on the Friday evening and the meeting on the Monday morning (in effect the next working day allowing for the weekend) to seek the advice of the Monitoring Officer.

5.7 She confirmed that she had spoken and voted against the recommendation to delegate the determination of the application to Islington at the Planning & Transportation Committee on 29 January 2018.

5.8 During the interview, Ms Pearson was asked how she would respond to the argument that public perception could lead people to think that a decision as to who decided a planning application was relevant to the determination itself and therefore she had an interest to declare. Mr Harrower felt that as there was no pecuniary outcome in her favour, she could not be perceived (by the average man or woman with

knowledge of the facts) to be acting in her own interests. He added that following the logic of the Monitoring Officer (and the Assessment Sub-Committee) what if the Committee had decided to extend the duration of the meeting to consider this item and it was put to a vote? Would Ms Pearson then have a pecuniary interest in that procedural decision? Mr Sharpe covers this in paragraph 18 of his advice (see also paragraph 5.13 of this report).

5.9 We discussed at the interview the likelihood of somebody being able to predict how either of the authorities in question would determine the planning application and then vote accordingly on the delegation issue. It was agreed that this would be more difficult in the City's case than in Islington due to the independent nature of their members and their voting habits. Mr Harrower felt that this was actually illustrated by the facts of this case. At the meeting on 29 January, members voted 11 to 9 against the officers' recommendation that the determination of the planning application be delegated to Islington, but at the meeting on 26 March in which the planning application was decided, members (many of whom attended the meeting on 29th January) voted 20 to 3 in favour of the officers' recommendation that the application be approved.

5.10 It was confirmed that Ms Pearson had subsequently received a dispensation to speak but not vote at the Planning Committee in March. This was not she argued as a reaction to the allegations. She had intended seeking the dispensation regardless. She fully accepted that it was not appropriate for her to vote on the determination of the application, which was why she had not sought a dispensation to do so.

5.11 The Monitoring Officer's report to the Assessment Sub-Committee - paragraph 1 – last two sentences – refers to the previous dispensation request from Ms Pearson that was rejected. Whilst this is factually correct, Mr Harrower felt that it was not relevant to the allegations. It wasn't a factor in the discussion at the Planning Committee on 29 January but it could create in the mind of the reader an inference that because Ms Pearson was clearly aware of the dispensation procedure she had somehow acted recklessly on 29 January. Mr Harrower said that this inference could not logically be drawn. If it was drawn, it was also wrong. Regarding the last point, he cited the Planning Committee on 23 May 2017, and the application relating to Bernard Morgan House. Ms Pearson had objections but deliberately did not attend the meeting because she felt she may have had a disclosable pecuniary interest. She also felt it inappropriate to apply for a dispensation. This rebuts in his view any inference that she was being reckless on 29 January.

5.12 Mr Harrower explained to me why they thought it necessary to instruct Mr Thomas Sharpe QC for an opinion. He referred to the decision of the Assessment Sub-Committee and the letter from the Monitoring Officer on 15th March advising of the Sub-Committee's decision. In Mr

Harrower's view, that decision had strayed into the remit of the Hearing Sub-Committee. Given that the Monitoring Officer had obtained Mr Goudie's advice, it was felt that Ms Pearson needed her own Counsel's opinion to provide a balance to the Hearing Sub-Committee.

5.13 Mr Sharpe's primary point in his advice is that Ms Pearson had no pecuniary interest in the delegation decision because there was no pecuniary advantage to her. The planning decision in his view is being conflated with the delegation decision in the context of both the Localism Act and the Code of Conduct. Section 31 of the Act relates to a matter at the meeting not a future meeting. If you extrapolate the Monitoring Officer's view – you possibly get to the scenario mentioned above in paragraph 5.8 above re-extending the duration of the meeting.

5.14 Mr Harrower also quoted Section 31(1) (c) of the Localism Act – that a member must also be aware that they have a disclosable pecuniary interest. Ms Pearson did think about it. She decided that she didn't have an interest. I replied that there could be a difference between not being aware (not realising you have an interest) and considering the question (and then deciding you don't have the interest). Mr Harrower noted the difference, and considered that it supported Ms Pearson's case. For a member not to be "aware" of having a DPI because the member did not know, or did not think about, the relevant law would be effectively to claim ignorance of the law as an excuse. Mr Sharpe points out in paragraph 21 of his opinion that ignorance of the law is no excuse, so this would not be a correct interpretation of "aware". As he points out [in the same paragraph], section 31(1)(c) suggests an element of intention or perhaps recklessness in proceeding to participate in a meeting with the knowledge of having a disclosable pecuniary interest. The fact that Ms Pearson thought about whether she had such an interest, took legal advice on it and concluded that she hadn't, rebuts any element of intention or recklessness, and indeed of being "aware" of having such an interest at all, because one cannot be "aware" of the existence of something that one does not believe to exist.

5.15 Mr Harrower referred to Section 34 (1) of the Localism Act, which provides that no breach of section 31 has occurred if there is a "reasonable excuse". He said that if two leading QCs couldn't agree whether Ms Pearson had a pecuniary interest, is it reasonable to expect a lay person to know? Ms Pearson became aware of the matter on the Friday evening for a meeting at 10am on the following Monday. Had she had time to seek the advice of Mr Sharpe he would (based on his subsequent written advice) have advised that she had no pecuniary interest to declare. Mr Harrower had similarly advised her. Mr Goudie has a different view. This showed how unclear the matter is. Ms Pearson had clearly considered the issues and felt, after taking legal advice, that she didn't have a pecuniary interest.

5.16 It was also pointed out that that Ms Pearson is not a senior member of

the authority. Therefore one of the reasons given by the Monitoring Officer for referring the matter to the Assessment Sub-Committee (….it avoids the situation where powerful or influential members can avoid being held to account simply because no individual is prepared to be seen to challenge them....) does not stand up to scrutiny. Mr Harrower asked why did the Monitoring Officer put himself in this position when the initial complainant wouldn't take it further?

5.17 Mr Sharpe read James Goudie's advice and (respectfully) took issue with his conclusions. Mr Sharpe does not think that Ms Pearson had a disclosable pecuniary interest. In his advice, Mr Sharpe draws a distinction between the matter to be considered at the meeting on 29th January (the delegation) and the planning application itself. He points to the Monitoring Officer's own comments in paragraph 11 of the report to the Assessment Sub-Committee - "The fact that there is no pecuniary impact arising…" – to support his view that Ms Pearson had no interest to declare. He adds that the Corporation's argument rests upon the following basis: that as Ms Pearson owns an adjacent flat, she has a disclosable pecuniary interest in *'Land'* and is therefore disabled from participating in *any* matter at *any* meeting relating to the process leading to the planning decision of an adjacent property notwithstanding the irrelevance of such decisions to the registered disclosable pecuniary interest and the absence of any pecuniary advantage arising from such decisions. It is in his view wrong to project forward to the planning decision and hold that all process decisions leading to that decision are matters falling within section 31 of the Localism Act in the total absence of any pecuniary effect. In the absence of any pecuniary interest and given the severe consequences to which Ms Pearson is exposed, this is disproportionate in his view and further leans against such an expansive interpretation.

5.18 In support of Mr Harrower's evidence in paragraph 5.15 above, Mr Sharpe adds that section 31(1)(c) of the Localism Act provides that the prohibition on participation will only apply if the member is aware of possessing a disclosable pecuniary interest. This he says suggests an element of intention or perhaps recklessness in proceeding to participate even though the member is aware of their interest. The burden is on the Corporation to show awareness and he argues that this has not been proven. Both parties disagree on whether an interest existed. It is important that all the conditions of section 31 are satisfied and in his view section 31(1)(c) has not been considered at all.

5.19 He questions the reasons for the matter being taken as an urgent item and argues that the urgency had the effect of disabling Ms Pearson from seeking any dispensation. He goes on to express puzzlement that the Monitoring Officer's report to the Assessment Sub-Committee describes reasons for the delegation of the determination of the planning application to Islington which were not disclosed by officers to the members of the Planning and Transportation Committee before or at the meeting on 29 January. One of those undisclosed reasons was

that there "was some local opposition (largely) from City residents nearby)" to the planning application which, it seems, was a justification for delegating the matter to Islington. He registers some surprise at the Corporation's conduct.

6. **Evaluation of Evidence**

6.1 I have evaluated the evidence against the requirements set out in the Corporation's Code of Conduct and associated guidance.

6.2 Within this Code, paragraph 3 requires members to register disclosable pecuniary interests within 28 days of taking office. Ms Pearson complied with this requirement and her interest in relation to 21 Hatfield House, Golden Lane Estate, EC1Y 0ST was published on 19 April 2017.

6.3 (a) Paragraph 6 of the Code refers to 'any other pecuniary interest'. I am advised by the Corporation that this paragraph is deliberately widely drafted as a catch-all provision for any other relevant interest that is not a disclosable pecuniary interest. It relates to "any other pecuniary or non-pecuniary interest which you consider should be included on your Members' Declaration form if you are to fulfil your duty to act in conformity with the Seven Principles of Public Life."

(b) Paragraph 7 then sets out a non-exhaustive list of non-pecuniary interests, but there is not a separate list of 'other pecuniary interests' – a Member would have to consider the Seven Principles of Public Life referred to above.

(c) The reference to 'any other interest' in paragraph 14(a) of the Code is normally cited in relation to the non-pecuniary interests listed in paragraph 7 of the Code, but would also include any other interest covered by paragraph 6 of the Code. Paragraph 14(a) includes the following:

"Your participation in any item of business: a) in which you have any other interest…that is registered or ought to be registered as set out above, will need to be considered by you on a case by case basis. You will only be expected to exclude yourself from speaking or voting in exceptional circumstances, for example where there is a real danger of bias."

(d) Paragraph 15 then advises members to seek the advice of the Town Clerk or the Monitoring Officer if in doubt.

6.4 The Code includes the Seven Principles of Public Life. These are set out in paragraph 1 of that document with more sub-principles in paragraph 2. The seven principles include 'Selflessness (acting solely in the public interest and not acting

to gain financial or other material benefits); and Accountability (holders of public office are accountable for their decisions to the public).

6.5 The Corporation's Guidance to Members on the Code of Conduct states (paragraph 2) that "..members should consider how their actions might be perceived by the public. In interpreting this Guidance and the Code, Members should at all times have regard to the Seven Principles of Public Life. Further advice on the requirements of the Code can be obtained from the Corporation's Monitoring Officer (the Comptroller & City Solicitor) or the Committee and Member Services Team."

6.6 On 18 April 2017, Ms Pearson applied for a dispensation to speak and vote on "housing and matters to do with Golden Lane Estate". This was rejected by the Standards Committee on 19th May 2017 for being too wide reaching. I am advised that this application was not renewed at the time. I am mindful of Mr Harrower's comments in paragraph 5.11 above as to any possible inference in the mind of the reader although I don't think this was being inferred by the Monitoring Officer. I mention the previous application here to show that Ms Pearson was clearly aware of the procedure for applying for dispensations and could have re-submitted a more focussed application at that stage. Ms Pearson feels that she could not have re-submitted such an application at that stage as there was nothing specific to focus on.

6.7 Ms Pearson attended training on both the Code of Conduct and Planning Committee issues so was aware of her obligations generally and more specifically in relation to planning matters.

6.8 There is no dispute between the Corporation and Ms Pearson that a disclosable pecuniary interest exists in relation to 21 Hatfield House. Ms Pearson also agrees that she spoke and voted against the recommendation to delegate the decision on the planning application relating to the adjacent site to Islington Council at the Planning and Transportation Committee on 29 January 2018.

6.9 The case as reported to the Assessment Sub-Committee is based on the fact that Ms Pearson had a disclosable pecuniary interest in the decision to determine the planning application in relation to the land adjacent to her residential property. Therefore any committee decision that materially affected how that application was dealt with is covered by Section 31 of the Localism Act and paragraph 13 of the Corporation's Code of Conduct – not least because it directly affected the influence Corporation members themselves had over the ultimate decision. Opponents of the scheme were in the Corporation's

view, largely the City residents.

6.10 Ms Pearson disagrees with this interpretation. She argues that the delegation is an inter-authority jurisdictional matter and is not material to the determination of the application.

6.11 The Monitoring Officer quotes Department for Communities and Local Government (DCLG) guidance – 'Openness and Transparency on Personal Interests – a guide for councillors' – published in September 2013. This states:

"If you are present at a meeting of your council or authority…or of any committee…of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not: participate in any discussion of the business of the meeting……"

The words underlined are the Monitoring Officer's emphasis and in his view accords with the interpretation in paragraph 6.9 above.

6.12 I think the situation is less clear. There is no statutory guidance or case law to define the extent of a disclosable pecuniary interest. It is open to interpretation. This is illustrated by the fact that two very eminent QCs instructed by both parties totally disagree. In addition, the DCLG, in the above guidance quoted by the Monitoring Officer, includes a footnote which says *"The Guide should not be taken as providing any definitive interpretation of the statutory requirements; those wishing to address such issues should seek their own legal advice*."

6.13 There is in my view a difference between something that specifically relates to a matter and that which affects it in a more general way. If we look again at the above extract from the DCLG guidance (paragraph 6.11 above) we see that it refers to "..relating to any business that is or will be considered at the meeting.." (underlining is my emphasis). The words "at the meeting" (taken literally) is significant in this particular case. The matter to be considered at the meeting (Planning & Transportation Committee on 29 January) was the delegation of the decision to determine the application - not the determination itself. Therefore I can see merit in the argument put forward by Mr Sharpe in paragraph 5.17 that this was something that affected the outcome of the planning application but did not specifically relate to it. It could be argued that although Ms Pearson had a disclosable pecuniary interest in the outcome of the application it did not necessarily mean that this automatically transferred to the delegation issue. In other words, they are linked but separate issues.

6.14 I agree to an extent with the Monitoring Officer's comments in his report to the Assessment Sub-Committee (paragraph 12) when he says that "..it seems reasonable to ask members to anticipate disclosable pecuniary interests arising – particularly in Ms Pearson's case where she is a local resident sitting on the Planning Committee and wishing to represent her constituents". I also agree with his view that urgent decisions cannot be frustrated by the need to enable any member with a disclosable pecuniary interest to apply for a dispensation or as a reason for failing to comply with the section 31 obligation. However, Ms Pearson said that she received notice of the urgent item early Friday evening for a meeting at 10am the following Monday. The fact that the weekend immediately fell between notification of the urgent item and the meeting in my view inhibited her ability to seek proper advice from within the Corporation and to apply for a dispensation if she had wished to do so.

6.15 That said Ms Pearson clearly considered whether she had an interest in the matter once she knew of the urgent item as she sought legal advice from a fellow common councilman, Mr Harrower, who is also an experienced solicitor. She acted on that advice and came to the view that no interest existed. She could (as an alternative or in addition) have e mailed the Monitoring Officer over the weekend to ask for urgent advice prior to the meeting on the Monday. To my knowledge she did not do so. Ms Pearson argues that such contact with the Monitoring Officer was unnecessary in the circumstances. She was already able to take legal advice from Mr Harrower who – unlike the Monitoring Officer in her view – was aware of the urgent item. She accordingly did so. There was no point in duplicating this process with the Monitoring Officer, even if he would have responded over the weekend on a matter with which in her mind he was unfamiliar. The Monitoring Officer's position gives his view no special status: it is worth no more than that of another solicitor of equal experience (as Mr Harrower was). The Monitoring Officer was also not in a position to grant a dispensation which is the sole preserve of the Standards Committee. I disagree strongly with Ms Pearson's view. The Monitoring Officer has a statutory role in advising members on the Corporation's Code of Conduct and related matters and is in the best position to do so. Both the Code of Conduct (paragraph 15) and the associated guidance (paragraph 2) advise members to contact the Monitoring Officer for advice.

6.16 Mr Sharpe's advice (see paragraph 5.18) above refers to section 31(1)(c) of the Localism Act which prohibits participation if the member is aware of that interest. As stated above, Ms Pearson considered a possible interest and took advice before deciding that no interest existed. I can see the logic of the argument that she could not be aware of something she didn't know existed.

Mr Sharpe points out that sec 31(1)(c) suggests an element of intention, perhaps recklessness, in participating in a meeting in the knowledge of having a disclosable pecuniary interest. As Ms Pearson gave the matter prior consideration and took legal advice, I do not consider her reckless in this regard.

6.17 As stated in paragraphs 6.4 and 6.5 above, the Corporation's Code includes a requirement on members to have regard to the Seven Principles of Public Life. The principle of Selflessness says that "holders of public office should act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, a friend or close associate." The principle of Accountability states that " Holders of public office are accountable for their decisions to the public and should co-operate fully with whatever scrutiny is appropriate to their office." Paragraph 2 of the guidance to the Code states that members should consider how their actions might be perceived by the general public. When questioned about public perception, Ms Pearson replied that she felt it was her duty to speak on behalf of her residents. They would have expected her to represent them. There was in her view no pecuniary advantage to her so how could she be perceived to be acting in her own interests?

6.18 With regard to her response in 6.17 above and her wish to represent her residents, I think there were other options open to Ms Pearson. Her presence at the meeting was not essential for these views to be represented. Her other ward councillor could not attend the meeting but my understanding is that he wrote to the chairman saying that the City should hear the application as well as Islington and asking for his views to be read out at the meeting. I also understand that he complained about the use of the urgency procedure. Perhaps what Ms Pearson wanted to say was already being said by her ward colleague? She could have checked and ensured the views of her residents were included in her absence. She could alternatively have asked another member on the Committee to represent her residents' views.

6.19 Ms Pearson argues that:

(a) the notion that the chairman reading the other ward councilman's written comments would have carried the same weight as a ward councilman speaking in person is plainly erroneous. Also an absent member cannot respond to a counter-argument made by another member.

(b) the notion that it was practicable for Ms Pearson to lobby other members of the Planning and Transportation

Committee to speak on her behalf on a matter which did not affect their own wards and which was presented by the officers as a merely inter-authority jurisdictional matter, rather than a substantive one and particularly for her to do so over the course of a single weekend, is also plainly erroneous.

(c) She was in a unique position to champion the interests of her constituents. She also achieved accountability by speaking openly in debate in committee, which would not have been achieved by privately briefing others to speak.

6.20 Whilst I accept that ideally the member should be present in person if possible, I do not agree that my suggestions in paragraph 6.18 are erroneous. In my experience, they are accepted practices in local authorities in circumstances where the member concerned cannot or should not attend the meeting in question.

6.21 When considering whether she should participate in the meeting on 29 January, I feel that Ms Pearson overlooked the public perception test in relation to the fact that she lived so close to the development site. In my opinion, the 'average' man or woman knowing that:

- Ms Pearson had registered a previous interest in relation to her residential property
- A planning application had been submitted for a nearby adjacent site
- Ms Pearson had a decision making role in how that application would be dealt with

would feel that her judgement could be influenced and that there was a real possibility of bias. I have seen nothing to make me think Ms Pearson considered this before deciding she had no pecuniary interest.

6.22 Ms Pearson argues that there should be a fourth test applied to the above - that her participation in the meeting was of a kind that could have had no pecuniary outcome for her or anybody else. When that point is added, she feels that the issue of public perception of 'bias' is eliminated.

6.23 My response to the point in 6.22 is that pecuniary outcome does not have to be immediate for the perception of bias to exist. The fact that a member has an interest in land adjacent to a proposed development site could have a negative or positive pecuniary impact at a later stage - for example when that development is completed.

6.24 Ms Pearson could also have considered the possibility of declaring an 'other pecuniary' interest as described in paragraph 6.3 above. From the evidence received, I do not think she considered that as an option or sought advice.

6.25 At interview, I discussed with Ms Pearson the likelihood of being able to predict the outcome of the determination depending on which authority was the decision maker. Mr Harrower argued that the non-political nature of Corporation members meant that such votes were difficult to predict. I understand that view and it is true to an extent. However I am swayed by Monitoring Officer's view (paragraph 5.1 (f)) that the decision regarding delegation directly affected the influence Corporation members had on the ultimate decision – with a large part of the opposition to the proposals coming from City residents.

6.26 As mentioned above, this is a complex case where QC legal opinion is divided, there is no case law/legal authority and government guidance is advisory. The two matters of delegation and determination are clearly linked. But I do not think that a disclosable pecuniary interest automatically follows in relation to the delegation issue just because Ms Pearson had registered her previous interest in her property and would therefore be barred from participating in the determination, without a dispensation. The Government guidance specifies business to be dealt with at the meeting, not a meeting in the future, or the past. Therefore there is a valid argument in my view to say that the delegation matter and any future determination are linked but separate and have to be considered on their own merits in terms of member interests. I have therefore applied this to my thinking and findings.

6.27 Given the above, I place significant emphasis on the public perception test set out in paragraph 6.21 above in relation to the delegation issue. In applying that test, I have come to the view that the possibility of bias exists and that Ms Pearson should not have participated in the discussion or voted. She has therefore in my view breached the Corporation's Code of Conduct. As stated previously, the legal situation with regard to the definition of a disclosable pecuniary interest in this case is significantly divided. Whether Ms Pearson has breached paragraph 13 of the Code of Conduct in relation to 'disclosable pecuniary interests' or paragraph 14 in relation to 'other pecuniary interests' is inconclusive for the reasons stated in paragraphs 6.12 and 6.13 of this report. However, in either case the outcome would be broadly the same, notwithstanding the higher potential consequences of a breach of paragraph 13 (which is potentially a criminal offence). There was in my view a clear risk of bias and Ms Pearson should therefore have recused herself from participating either under paragraph 13 or 14 of the Code.

6.28 The Hearing Sub-Committee is therefore invited to consider whether it feels Ms Pearson has breached paragraph 13 of the Code relating to participating and voting at the meeting in question or paragraph 14 of the Code relating to another 'pecuniary interest'

6.29 Whatever decision is reached, I do not think that Ms Pearson acted recklessly or deliberately flouted the rules. She took legal advice before making her decision and felt she was taking the correct course of action. I think this was an error of judgement and was borne out of her wish to represent her residents rather than for personal or pecuniary gain. She failed however to consider all the issues, including the important test of public perception

---

NOT FOR PUBLICATION

By virtue of paragraphs 1 and 2 of Part I of Schedule 12A of the Local Government Act 1972.

6. **STANDARDS COMMITTEE REFERRAL**

The Sub Committee then proceeded to discuss preliminary issues and Mr Harrower, on behalf of Ms Pearson, drew attention to his previous emails and statement that the allegation that paragraph 13 of the Code of Conduct had been breached should be withdrawn; that the conclusion in the Investigating Officer's report that paragraphs 2 and 14 had been breached should not be considered at the hearing as no previous allegation of such a breach had been made; and that procedural irregularities had taken place in the referring of the allegation to the Assessments Sub Committee.

Mr Harrower went on to expand on comments made in his email of 15 May, with regard to the allegation being considered in the absence of a formal complaint being received. He also drew attention to the 'grave consequences' for Ms Pearson should the Corporation consider her in breach of paragraph 13 of the Code and should the City of London Police then proceed to prosecute Ms Pearson under section 31 of the Localism Act 2011. Mr Harrower considered that, on the basis of the Investigating Officer's conclusions in his report, the allegation that paragraph 13 had been breached should be withdrawn. He drew attention to case law on the standard of proof ([2008] UKHL 33) that he considered should be applied.

The Chairman invited questions from the Sub Committee and, in response to a point raised, Mr Harrower said that in these circumstances, with serious potential implications for Ms Pearson, an enhanced burden of proof would be required and members should pay critical attention to the evidence and apply heightened examination with regard to the implications arising. He went on to underline his view that any new allegation, such as paragraphs 2 and 14 of the Code having been breached, should form no part of the Sub Committee's consideration as this would be against 'natural justice' when Ms Pearson had been unable to respond to the new allegations.

Discussion continued during which further views were expressed, including that of a Member who said that the papers before the Sub Committee included officer reports, the Investigating Officer's findings and the contents of legal opinions on the issue, all of which should be taken account of as part of the consideration of the case. It was noted that an independent investigation such as undertaken by Mr Austin may often produce a 'new perspective' during gathering of evidence that should be considered.

In concluding discussion on this issue, the Chairman reminded those present that the Monitoring Officer would not have been in a position to withdraw the allegation regarding paragraph 13, in view of the formal referral of that allegation to the Hearing Sub Committee by the Assessment Sub Committee.

The Chairman adjourned the meeting at 10.37am in order for the Sub Committee to hear legal advice on the earlier points made.

Having received advice, the Sub Committee reconvened at 10.56am.

Having been invited by the Chairman to address the Sub Committee, Mr Swift referred to the case law raised by Mr Harrower and said that the House of Lords had referred to an earlier decision from 1996 and that in his speech Lord Nicholls had said "….in assessing probabilities……..with more serious allegations it is less likely the event occurred". Mr Swift put forward the view that the principle of the meaning of the balance of probabilities related to 'did x or y happen', but that in this instance the facts around the allegation were largely agreed and therefore the principle suggested by Mr Harrower above would not apply. The Chairman thanked Mr Swift for this advice.

The Chairman then referred to the Investigating Officer's view in paragraph 6.27 of his report that with regard to the public perception test, the investigating officer was of the view the possibility of bias did indeed exist, and therefore that Ms Pearson should not have taken part in discussion at the Planning and Transportation meeting and voted, either under paragraphs 13 or 14 of the Code. The Chairman stated that the Sub Committee's view therefore was that the hearing should proceed, and the allegation that paragraph 13 had been breached would not be withdrawn, notwithstanding Mr Harrower's submitted comments.

The Sub Committee then considered Mr Harrower's contention that consideration should not be given to an allegation of a breach of paragraph 14 of the Code as this had formed no basis of the original allegation made against Ms Pearson. Mr Harrower expanded on his comments regarding this point and debate and questions then took place on this issue. Following the conclusion of discussion the Sub Committee again adjourned to consider legal advice at 11.22am.

The Sub Committee reconvened at 11.34am and the Chairman informed Ms Pearson and Mr Harrower that an allegation that Ms Pearson had breached paragraph 14 of the Code of Conduct would not be considered further. This view was endorsed by the Sub Committee.

Consideration of preliminary issues continued and Mr Harrower raised what he considered to be procedural irregularities, including that a Code breach allegation against Ms Pearson had proceeded without a formal complaint made; that Ms Pearson was not a powerful or influential member that others would otherwise not seek to challenge; that the Monitoring Officer presented Ms Pearson's legal arguments in the report to the Assessment Sub Committee

in a prejudicial manner and also instructed Counsel to advise on an issue (section 31 Localism Act breach) outside the Corporation's remit; and that all officer reasons for recommending delegating the planning application decision to London Borough of Islington were not disclosed at the Planning and Transportation Committee meeting, but were used as part of the Monitoring Officer's case against Ms Pearson.

The Sub Committee duly considered these issues and made points relating to Ms Pearson's ability to seek advice on disclosable pecuniary interests from officers immediate prior to, or at, the Planning and Transportation Committee meeting, that Ms Pearson was elected with a high number of votes and could be considered influential, that the initial referral of the allegation to the Assessment Sub Committee had been made by the Town Clerk under urgency provisions, and that the Assessment Sub Committee had then been of the view that there were reasonable grounds to believe that a Code breach had occurred and that an investigation should take place. The Chairman then stated that his view was that the Corporation's procedures had not been breached by the lack of a formal complaint being made against Ms Pearson. This view was endorsed by the Sub Committee.

Discussion continued on Mr Harrower's concerns regarding what he referred to as "intimidating" comments from James Goudie QC relating to section 31 of the Localism Act and "prejudicial" comments to the Assessments Sub Committee from the Monitoring Officer. Members noted that the issue of a potential breach of section 31 had been referred to in the Monitoring Officer's original letter of 12 February to Ms Pearson and the Chairman commented that if there had been perceived unfairness Ms Pearson had been able to put forward views on this. Also, that letter was designed to inform Ms Pearson of her rights and the procedure to be followed, and made no indication of the possible outcome.

Mr Harrower then made the point that, except for Caroline Addy, the Hearing Sub (Standards) Committee comprised of the same members as the Assessment Sub Committee. He further drew attention to officers' reasons for proposing delegation of the planning application to London Borough of Islington insofar as this delegation would mean no 'say' for Golden Lane residents and that this action was undemocratic. He reiterated earlier comments that it was inappropriate for the Monitoring Officer to 'build a case' against Ms Pearson.

A Member said that it could be argued that any delegation to London Borough of Islington would enable a greater opportunity for speaking at that council's planning committee and that it would not be true to suggest residents' views would be unable to be heard. Mt Harrower responded that the City's residents should have an opportunity to be 'heard in the City'. After hearing some further remarks from Jonathan Swift, the Chairman further adjourned the meeting at 12.17pm for the Sub Committee to obtain legal advice.

The Sub Committee reconvened at 12.48pm and the Chairman said that the Sub Committee was content that the late item considered by the Planning and Transportation Committee on 29 January had not been considered irregularly, and that this decision related to the information provided to the Assessment

Sub Committee on 13 March which concluded that the planning application was a complex case, such that it would be more appropriate for it to be considered by one rather than two local authorities, with only a small parcel of affected land within the City and the greater amount within the London Borough of Islington. The Chairman said that the report disclosed no form of impropriety or any plausible argument to that effect.

The Chairman also said that, even if disregarded, the Sub Committee could see no possible link between any improper issue relating to the business transacted at the 29 January Planning and Transportation Committee meeting and the decision to raise the allegation against Ms Pearson in that she acted in breach of the Code at that meeting. He went on to confirm that the Sub Committee considered that the contention made by Ms Pearson was a matter of substance and that it was further considered by Sub Committee members that there was no reason to discontinue the proceedings against her under paragraph 13 of the Code. The Chairman went on to say that, as the Monitoring Officer was no longer advising the Sub Committee on this matter, Mr Harrower's concerns on these points or whether the Monitoring officer was conflicted were no longer relevant.

Mr Harrower then raised the question of a conflict of interest relating to Mr Wood's involvement. A Member made the point that the Monitoring Officer's role sometimes meant 'intrinsic conflict' in some areas and that the role included the duty to provide advice on relevant matters. During further discussion, and in response to a question from a Member, Ms Pearson confirmed that she had attended initial induction training after election in 2017 and also Code of Conduct and Member / Officer Protocol training in January 2018. The Sub Committee also duly noted the confirmation that the Monitoring Officer role was statutory and also included responsibility for the register of interests. At this point, the Chairman suggested that the Sub Committee have a short break for lunch and the meeting was again adjourned at 1.03pm.

The Committee reconvened at 1.35pm and, following further discussion, the Chairman confirmed that the Sub Committee's view was that the Monitoring Officer was not required to be called as a witness.

Having finished its consideration of preliminaries presented by Mr Harrower, the Sub Committee then asked the investigating Officer to present his report.

Mr Austin introduced himself, giving details of his background, with 40 years of experience in democratic services and 10 years in a monitoring officer role, and then took Members through his submitted report, updating some areas as a result of comments and decisions made earlier in the meeting. During his commentary, Mr Austin referred to an email exchange with Mr Harrower in respect of his draft report sent to Ms Pearson, prior to its finalisation, during which Mr Harrower had requested that section 1 of the report be amended to remove information that Mr Harrower considered prejudicial to Ms Pearson. Mr Austin's view was that this section contained factual information that should be retained. In summary, the Sub Committee noted his comments that the Monitoring Officer is responsible for advising on Code and interest issues of the

kind faced by Ms Pearson, and that differences in views expressed by James Goudie QC and Thomas Sharpe QC, in relation to whether a disclosable pecuniary interest existed at the Planning and Transportation Committee, confirm that the situation was not 'black and white'. Mr Austin also said that he had taken account of Department for Communities and Local Government Guidance on the issue and the importance of public perception in this case. He concluded, with respect to the earlier discussions and comments put forward by the Sub Committee confirming that possibility of a paragraph 14 breach would not be further considered, that his view now was that a breach of paragraph 13 had occurred and that, although Ms Pearson had only sought to represent her constituents she had not considered that the public perception in this case could be that there may be a possibility of bias and advantage to her in the outcome of the matter.

Mr Harrower then spoke in support of Ms Pearson, in summary confirming his view that she did not have a disclosable pecuniary interest, or possible future pecuniary advantage, in the matter before the Planning and Transportation Committee in January as the delegation issue under consideration was an inter authority jurisdictional matter. He put forward the view that a 'materiality threshold' had been imposed by the Monitoring Officer in assessing whether a Code breach had occurred which he considered was in error, based on the comments of Thomas Sharpe QC. Mr Harrower also said that even if paragraph 13 of the Code had been breached, then with regard to section 31 of the Localism Act, Ms Pearson would have to be aware of the breach and the 'mens rea' test was not met and transposed if linked to paragraph 13.

The Chairman then invited questions and comments from the Sub Committee. A Member asked Mr Harrower about legal advice taken by Ms Pearson and it was again noted that Thomas Sharpe QC's view was that Ms Pearson did not have a disclosable pecuniary interest at the Planning and Transportation Committee meeting. A Member made the point that disclosable pecuniary interests are clearly defined in the relevant regulations. Discussion continued on the interpretation of 'any matter' in respect of the paragraph 13 Code wording and Mr Harrower confirmed that Ms Pearson had taken part in the item at the meeting to try and ensure that the application itself was determined by the City with local residents able to retain 'a say'.

At this point the Chairman invited the Independent Person to address the Sub Committee and it was noted that his view, considered from a 'public point of view' and with regard to his related experience in the role, was that in taking part in discussion and decision making at the Planning and Transportation Committee meeting, Ms Pearson had an interest in what happened at that meeting as that action linked through to and could affect the outcome of the planning application. The Independent Person confirmed that his view was that Ms Pearson could be considered potentially biased in the matter being debated and voted on.

At the invitation of the Chairman, Mr Harrower then raised the question of the relevance of the outcome of the Planning and Transportation Committee decision in the overall context of the alleged Code breach and the Independent

Person confirmed that his earlier comment related to the decision on where the planning application would be determined. Discussion continued on the number of members present at the Planning and Transportation meeting, and possible abstentions from the vote in question, and it was noted that the vote numbers may have reflected that some members recorded as 'in attendance' at the meeting had not been present in the room at the time of the vote.

The hearing continued and it was noted that Ms Pearson had been offered the opportunity to discuss the matter of that day's hearing with a separate Independent Person from the Standards Committee, so as to get a balanced view of her way to proceed. She confirmed that she had not taken advantage of this offer. A Member made the point that he was generally persuaded that Ms Pearson's actions were with her constituents in mind but that she should have sought appropriate officers' views before the start of the Planning and Transportation meeting.

Ms Pearson then addressed the hearing and confirmed again that she had attended induction training when first elected in 2017 and also Code of Conduct and Member / Officer Protocol training earlier in January 2018. She said that she was the only Golden Lane Estate resident on the Planning and Transportation Committee at the January meeting and stated that the estate had been a 'big issue' at the time of her election, with residents feeling neglected and without a voice. Ms Pearson explained that she had sought the advice of Mr Harrower, a lawyer, but accepted that she could have raised the matter with the Comptroller's representative at the Committee meeting. Ms Pearson said that the matter relating to the Richard Cloudesley site had been added to the Planning and Transportation agenda as a very late item just prior to the meeting and that she felt that she was able to speak and vote on the delegation issue, whilst accepting that she would have a disclosable pecuniary interest in any later planning application (should it come before the Committee) that would require a dispensation. The Sub Committee noted that despite these considerations, the code must be paramount in all considerations of member behaviour.

At this point (3.03pm), and the Sub Committee having already consulted him on his views, the Independent Person left the meeting having been thanked by the Chairman for his attendance.

In concluding his remarks, Mr Harrower asked that the Sub Committee consider–

- Whether it would be appropriate to conclude that paragraph 13 had been breached in the circumstances discussed;

- If paragraph 13 had been breached the logic of the 'mens rea' argument he had put forward;

- With regard to an alleged breach of the Localism Act, the matter of a reasonable excuse;

- The fact that in terms of public perception, there was no evidence of the public being concerned;

- Ms Pearson had no pecuniary advantage from her actions.

The Chairman then advised those present that, with the submissions at a close, the Sub Committee would adjourn to consider additional legal advice and to reach a decision.

The Sub Committee duly adjourned at 3.07pm and reconvened at 4.02pm.

Ms Pearson having left the committee room by that stage, the Chairman informed Mr Harrower, on her behalf, that the Sub Committee had taken legal advice, and had considered what had taken place, and was of the opinion that a breach of paragraph 13 of the Members' Code of Conduct had occurred. The Chairman said that the Sub Committee were disappointed that Ms Pearson had not sought the advice of the Monitoring Officer or other appropriate officers and that, had this been the case and officer advice had been followed, the breach of the Code might not have occurred. The Chairman stated that full written reasons for its decision would follow within 7 days and that a further 7-day period would then be allowed for Ms Pearson to make submissions on the Sub Committee's findings, following which the Sub Committee would convene again to consider whether any sanctions should be imposed in this instance, taking the advice of the Independent Person. In response to a question from Mr Harrower, the Chairman briefly confirmed the timescale for any appeal.

RESOLVED – That

(i) a breach of paragraph 13 of the Members' Code of Conduct had occurred insofar as Ms Pearson had spoken and voted on an item at the Planning and Transportation Committee on 29 January in which she had a disclosable pecuniary interest in the absence of a dispensation to do so;

(ii) full written reasons for the Sub Committee's decision would be sent to Ms Pearson within 7 days and that a further 7-day period would then be allowed for Ms Pearson to make submissions on the Sub Committee's findings; and

(iii) the Sub Committee would convene again following the receipt of any submissions from Ms Pearson to consider the sanctions it should impose in this instance, taking advice on this from the Independent Person.

The meeting ended at 4.04 pm

Chairman

Contact Officer: Martin Newton
martin.newton@cityoflondon.gov.uk

From: Sue Pearson <[redacted]>
Sent: Wednesday, June 20, 2018 4:45 pm
To: Newton, Martin
Cc: Ingham Clark, Jamie; Lord, Edward (Deputy); Addy, Caroline; Wood, Edward; Harrower, Graeme; Greenburgh, Mark; Asten, Neil
Subject: Re: Hearing Sub Committee

Dear Mr Newton,

It isn't clear why the Sub Committee has repeatedly pressed me to attend its next meeting in person just to answer this question, which could easily have been asked and answered by email on the day after the meeting on 11 June.

It also isn't clear why this question is being asked in the first place. It has nothing to do with a breach of paragraph 13 of the Code, unless the Sub Committee accepts the "mens rea" requirement put forward in paragraph 21 of the opinion of Mr Sharpe QC and referred to in paragraph 10 of the Sub Committee's decision, in which case there would have been no breach at all.

I also don't understand how it is that what I say now about what I would do in a hypothetical future situation can affect the decision which the Sub Committee is due to make about an actual situation in the past.

While believing the question to be irrelevant, I am nevertheless happy to answer it.

In any future situation, I would follow the Seven Principles of Public Life, as set out in paragraph 1 of the Code, just as I did at the meeting of the Planning and Transportation Committee on 29 January. The first principle - "Selflessness" - requires me to "act solely in the public interest". The Sub Committee accepted in its decision that I acted at the meeting on 29 January in the interests of my constituents. The same principle requires me not to "act to gain financial or material benefits" for myself or others. The Sub Committee accepted in its decision that I acted as I did at the meeting on 29 January "without any thought for personal advantage". I confirm that I would follow the Seven Principles in the same way in any future situation.

On the question of whether I had a "disclosable pecuniary interest" within paragraph 13 of the Code, a common sense interpretation of this paragraph is that one can only have a pecuniary interest in a matter which is capable of conferring a pecuniary advantage, otherwise what is the point of restricting a member from doing his or her job, which is to speak and vote in the interests of their constituents? My legal advisors, Mr Harrower and Mr Sharpe QC, have both advised me that this is also the correct legal interpretation of that paragraph. On any future point of legal interpretation I would of course seek appropriate legal advice before acting.

Kind regards,

Sue

Sue Pearson
0780 325 9657
Sent from my iPad

On 20 Jun 2018, at 11:40, Newton, Martin <Martin.Newton@cityoflondon.gov.uk> wrote:

Ms Pearson

Thank you for the email and apologies that I have not been in a position to reply sooner – reasonable time has had to be allowed for members to respond to my communication about questions before the meeting.

Having sought the views of members, I have been requested to ask for your views on what you would now do as a committee member, were you to be faced with a similar or identical situation to that which existed at the January meeting of the Planning and Transportation Committee?

As you suggested, everyone involved in the process has been copied into this email for completeness.

Kind regards

Martin Newton | Committee and Member Services Officer
Committee and Member Services Team | Town Clerk's Department
City of London | Guildhall | London EC2V 7HH
Telephone: 020 7332 3154
martin.newton@cityoflondon.gov.uk | www.cityoflondon.gov.uk

From: Sue Pearson <[redacted]>
Sent: 20 June 2018 09:02
To: Newton, Martin <Martin.Newton@cityoflondon.gov.uk>
Cc: Ingham Clark, Jamie <Jamie.InghamClark@cityoflondon.gov.uk>; Lord, Edward (Deputy) <Edward.Lord@cityoflondon.gov.uk>; Addy, Caroline <Caroline.Addy@cityoflondon.gov.uk>; Wood, Edward <Edward.Wood@cityoflondon.gov.uk>; Harrower, Graeme <Graeme.Harrower@cityoflondon.gov.uk>; Greenburgh, Mark <Mark.Greenburgh@cityoflondon.gov.uk>; Asten, Neil <Neil.Asten@cityoflondon.gov.uk>
Subject: Re: Hearing Sub Committee

Dear Mr Newton,

In my emails of last Friday (15 June) and last Monday (18 June) (both below), I asked the Members of the Sub Committee to contact me if they had any questions concerning (or in addition to) my detailed written representations, which I was told the Sub Committee had considered at its meeting on 11 June.

So far I have not received any questions. This is surprising, because I understood that the

Sub Committee had adjourned the meeting on 11 June only for the purpose of engaging with me.

I remain willing to engage with the Sub Committee, but as its next meeting is scheduled to be held at 9.30 am tomorrow (Thursday 21 June), time is running out.

I therefore repeat my request that if Members of the Sub Committee have any questions, they send them to me by email. I ask that they do so within the next few hours, so I can reply by the end of the day.

To save time, I suggest that any Member who has a question sends it by “replying to all” to this email, rather than routing it through the Clerk. I shall then respond by "replying to all” to the Member’s email, and so on. It should thus be possible to replicate a discussion in person in a way which is feasible in my current condition and without causing further delay.

Kind regards,

Sue

Sue Pearson
0780 325 9657
Sent from my iPad

On 18 Jun 2018, at 15:28, Sue Pearson <[redacted]> wrote:
Dear Mr Newton,

The procedure for the meeting of the Hearing Sub Committee on 11 June was that it would make its decision on sanctions taking account of the written representations received from me on 6 June. I was not invited to attend that meeting to make additional representations in person, but only to hear its decision after it had reached its conclusions. The Sub Committee had, in any case, known since 8 June that I would not be able to attend because of my medical condition.

I was disappointed to hear that the Sub Committee had postponed making a decision from 11 to (at the earliest) 21 June, as it prolongs this matter further. The reason given was that the Sub Committee wished to hear from me in person, although it had already received full representations from me on all available sanctions and all matters to be taken into account in imposing sanctions. It was therefore unclear as to what would be the purpose of the Sub Committee hearing from me in person. I asked for clarification of this point twice (in my emails of 12 and 15 June), but on each occasion I received a response to the effect that the Sub Committee wished to hear from me in person, and when would my medical condition permit me to attend its next meeting?

In my last email, I suggested that if the Sub Committee considered that any of the written representations received from me were unclear or incomplete, it should let me know. You confirm in your email below that the Sub Committee has already considered those

representations. You should therefore be able to let me know whether it has any questions on them, or on anything else. This would best be done by email, as my medical condition will not make it feasible for me to come to the Guildhall this week, and it is not clear when I shall next be able to attend. If you send me an email today or tomorrow, I should be able to reply before the Sub Committee's meeting scheduled for this Thursday (21 June).

You mention that the Sub Committee is keen to give me an opportunity "to address it directly in support of the representations made on your behalf, and to give you the opportunity to answer questions that Members may wish to ask you." I can say now that I support the representations made on my behalf, which were of course made with my full approval. Nothing would be achieved, except further delay, by my attending the next meeting in person only to repeat this statement. If the Members of the Sub Committee have any questions to ask me, they are welcome to put them to me by email, and I shall reply. This is the most practicable means of communication in my present circumstances, and would avoid further delay.

You say that "the Sub Committee considers it fair and reasonable to take this approach." I don't think that it's fair or reasonable to delay making a decision until I can attend a meeting in person when the Sub Committee already knows that I have nothing to add to the representations it has received from me, and it could ask and have answered by email any questions which its Members may have before its meeting on 21 June.

You go on to say that "The Sub Committee has no power to require you to attend. If, notwithstanding the Sub Committee's preference, you do not wish to make further representations yourself, or do not wish to answer questions that the Sub Committee has for you, could you let me know please. In that event, the Sub Committee will go ahead, based on the material presently available to it, to reach decisions on whether, and if so why sanction should be imposed."

I know that the Sub Committee has no power to require me to attend. I did, nevertheless, attend the whole of the hearing on 21 May before the Sub Committee retired to reach its decision on the allegation, even though the facts of the matter weren't in dispute, and the whole matter concerned a point of legal interpretation. I was therefore represented by my lawyer, Mr Harrower, who drew on expert advice on administrative law from Mr Sharpe QC.

I had the feeling last week that the Sub Committee was trying to compel me to attend its next meeting in person effectively as a condition for reaching its decision on sanctions, in spite of my obvious present difficulty in doing so in the near future. The wording quoted above - "If, notwithstanding the Sub Committee's preference….." - takes this a step further, and now sounds like a threat. I'll address the two parts of that sentence in turn.

"If, notwithstanding the Sub Committee's preference, you do not wish to make further representations yourself": as I have indicated, I have nothing to add to the representations already made, but if the Sub Committee considers any of them to be unclear or incomplete, it should let me know by email, and I will respond before 21 June.

“If, notwithstanding the Sub Committee’s preference, ….. you do not wish to answer questions that the Sub Committee has for you”: it is not true that I do not wish to answer any questions: as I have indicated, if the Sub Committee has any questions, it can put them by email, and I will respond before 21 June.

I shall therefore await receiving from you by email within the next couple of days any questions which the Sub Committee may have following its consideration of my representations at its meeting on 11 June, and I will reply. I don’t have much else to do while I convalesce. I believe that, in the circumstances, there is no justification for a decision to be delayed beyond the next meeting scheduled for 21 June. May I ask you please to let me know by email the Sub Committee’s decision following the end of that meeting (presumably around 10 am).

Kind regards,

Sue

Sent from my iPad

On 18 Jun 2018, at 10:30, Newton, Martin <Martin.Newton@cityoflondon.gov.uk> wrote:
Ms Pearson

Thank you for your email.

The Hearing Sub Committee has of course considered the written submissions made on your behalf. However, having done that, it remains keen both to give you the opportunity to address it directly in support of the representations made on your behalf, and to give you the opportunity to answer questions that Members may wish to ask you. The Sub Committee considers that it is fair to take this approach to enable it to decide whether any sanctions should be imposed, and if so what that sanction should be. That is why the Sub Committee decided it was reasonable to adjourn its proceedings and to reconvene at a time which might be more appropriate for you.

The Sub Committee's preference therefore, is for you to attend the meeting. Could you let me know if, taking account of your medical circumstances, you are able to attend the meeting this Thursday or, if you are not able to attend on Thursday, when you expect to be sufficiently recovered as to be able to attend a meeting?

The Sub Committee has no power to require you to attend. If, notwithstanding the Sub Committee’s preference, you do not wish to make further representations yourself, or do not wish to answer questions that the Sub Committee has for you, could you let me know please. In that event, the Sub Committee will go ahead, based on the material presently available to it, to reach decisions on whether, and if so why sanction should be imposed.

I hope that this clarifies the position. If it does not, and there are any points you would like me to address relating to it, please contact me.

Martin Newton | Committee and Member Services Officer

Committee and Member Services Team | Town Clerk's Department
City of London | Guildhall | London EC2V 7HH
Telephone: 020 7332 3154
martin.newton@cityoflondon.gov.uk | www.cityoflondon.gov.uk

From: Sue Pearson <[redacted]>
Sent: 15 June 2018 11:36
To: Newton, Martin <Martin.Newton@cityoflondon.gov.uk>
Cc: Pearson, Susan <Susan.Pearson@cityoflondon.gov.uk>; Ingham Clark, Jamie <Jamie.InghamClark@cityoflondon.gov.uk>; Lord, Edward (Deputy) <Edward.Lord@cityoflondon.gov.uk>; Addy, Caroline <Caroline.Addy@cityoflondon.gov.uk>; Wood, Edward <Edward.Wood@cityoflondon.gov.uk>; Harrower, Graeme <Graeme.Harrower@cityoflondon.gov.uk>; Greenburgh, Mark <Mark.Greenburgh@cityoflondon.gov.uk>; Asten, Neil <Neil.Asten@cityoflondon.gov.uk>
Subject: Re: Hearing sub-committee

Dear Mr Newton

I had an operation on Tuesday evening and am only now able to reply to your email.

I am still not clear from your email the purpose of the meeting with the Hearing Sub-Committee. If my representations, in Mr Harrower's email, June 6th, were unclear or incomplete please let me know in what respect.

Kind regards
Sue
Sent from my iPad

On 12 Jun 2018, at 16:54, Newton, Martin <Martin.Newton@cityoflondon.gov.uk> wrote:
Ms Pearson

Thank you for the email which I have now discussed with the Chairman - please accept my apologies if anything has been unclear.

It had been the hope of the Sub Committee to conclude yesterday and as part of its discussions, before adjourning the meeting, the Sub Committee formed the unanimous view that it would like the opportunity to briefly hear from you in order to assist it with its deliberations on whether, following its conclusion that you did act contrary to the Code, any sanction should be imposed, and if so what that sanction should be (taking account of the provisions of paragraphs 40 and 42 of the Code).

The members of the Sub Committee consider that this will assist them to deal with these outstanding matters and I would therefore be grateful if you could confirm, when you are in a position to do so, that you are able to attend the resumed Sub Committee meeting on Thursday 21 June.

Kind regards

Martin Newton | Committee and Member Services Officer
Committee and Member Services Team | Town Clerk's Department
City of London | Guildhall | London EC2V 7HH
Telephone: 020 7332 3154

martin.newton@cityoflondon.gov.uk | www.cityoflondon.gov.uk

From: Sue Pearson <[redacted]>
Sent: 12 June 2018 15:03
To: Newton, Martin <Martin.Newton@cityoflondon.gov.uk>
Cc: Ingham Clark, Jamie <Jamie.InghamClark@cityoflondon.gov.uk>; Lord, Edward (Deputy) <Edward.Lord@cityoflondon.gov.uk>; Addy, Caroline <Caroline.Addy@cityoflondon.gov.uk>; Wood, Edward <Edward.Wood@cityoflondon.gov.uk>; Harrower, Graeme <Graeme.Harrower@cityoflondon.gov.uk>
Subject: Hearing sub-committee

Dear Mr Newton,

I'm disappointed to hear of this adjournment and subsequent delay to the final decision, and am unclear of the reason, your email of 7th June clearly says:

I have been asked by the Chairman to invite you to be present to hear the Sub Committee's decision after its reaches its conclusions - this is expected to be around 4pm on that afternoon. If you could take a seat in the usual area near to the committee rooms I will let you know when the Sub Committee is in a position to see you.

It should have been possible to send me the result since I was unable to attend as your email clearly indicated that the Chairman was only asking me to be there to hear the decision.

My understanding of the process was:
- That you asked me for my representations, which Mr Harrower provided,
- The hearing sub committee then made their decision on 11 June
- I was asked to attend to hear the decision.

Could let me know the purpose of the meeting on the 21st and how it will differ from that arranged for the 11th as Mr Harrower's email contained my full representation on sanctions and I am not clear what else could be covered.
Kind regards
Sue
--

Sue Pearson

This page is intentionally left blank

NOT FOR PUBLICATION

By virtue of paragraphs 1 and 2 of Part I of Schedule 12A of the Local Government Act 1972.

6. **STANDARDS COMMITTEE REFERRAL**

The Sub Committee had before them the submitted comments of Mr Harrower, on behalf of Ms Pearson, in response to the Town Clerk's decision letter dated 29 May 2018.

The Chairman referred to Ms Pearson's recent accident and hospitalisation, which was noted with concern, and that she had been invited to attend the Sub Committee meeting but was unable to do so.

The Sub Committee then proceeded to discuss the hearing process and came to agreement that its decision should be made public following the expiry of the date for an appeal to be made. In the event that an appeal was received, publication would be postponed pending the outcome of the appeal.

Members briefly discussed what the most appropriate sanctions might be arising from the complaints procedure, given the circumstances of the case.

Jonathan Swift, QC advised the Sub Committee on the requirement for a fair hearing, and that the Sub Committee may wish to take Ms Pearson's further views into account in deciding what, if any, sanctions to impose. Members noted his comments. Members then discussed these points further and it was agreed that the Sub Committee would like to give Ms Pearson the opportunity to attend, to make oral representations if she wished to, and to have the chance to respond to any questions Members might wish to ask.

The Sub Committee therefore decided to adjourn at 4.15pm in order to allow Ms Pearson to attend a reconvened meeting that was provisionally set for Thursday 21 June 2018 at 9.30am.

The Sub Committee duly reconvened at 9.30am on Thursday 21 June 2018 with all previously listed attendees present.

Members noted that since its adjourned meeting, the Town Clerk (on behalf of the Sub Committee) had been in communication with Ms Pearson in respect of her possible attendance at a reconvened meeting and that resulting from that exchange in communications, and at the request of Ms Pearson, the Town

Clerk had submitted a question by email to Ms Pearson (on behalf of the Sub Committee) requesting her views on what she would now do as a committee member, were she to be faced with a similar or identical situation to that which existed at the January meeting of the Planning and Transportation Committee. Members noted Ms Pearson reply (set out below) and that she had not applied for any further adjournment in order to appear before the Sub Committee at a later date:-

"Dear Mr Newton,

It isn't clear why the Sub Committee has repeatedly pressed me to attend its next meeting in person just to answer this question, which could easily have been asked and answered by email on the day after the meeting on 11 June.

It also isn't clear why this question is being asked in the first place. It has nothing to do with a breach of paragraph 13 of the Code, unless the Sub Committee accepts the "mens rea" requirement put forward in paragraph 21 of the opinion of Mr Sharpe QC and referred to in paragraph 10 of the Sub Committee's decision, in which case there would have been no breach at all.

I also don't understand how it is that what I say now about what I would do in a hypothetical future situation can affect the decision which the Sub Committee is due to make about an actual situation in the past.

While believing the question to be irrelevant, I am nevertheless happy to answer it.

In any future situation, I would follow the Seven Principles of Public Life, as set out in paragraph 1 of the Code, just as I did at the meeting of the Planning and Transportation Committee on 29 January. The first principle - "Selflessness" - requires me to "act solely in the public interest". The Sub Committee accepted in its decision that I acted at the meeting on 29 January in the interests of my constituents. The same principle requires me not to "act to gain financial or material benefits" for myself or others. The Sub Committee accepted in its decision that I acted as I did at the meeting on 29 January "without any thought for personal advantage". I confirm that I would follow the Seven Principles in the same way in any future situation.

On the question of whether I had a "disclosable pecuniary interest" within paragraph 13 of the Code, a common sense interpretation of this paragraph is that one can only have a pecuniary interest in a matter which is capable of conferring a pecuniary advantage, otherwise what is the point of restricting a member from doing his or her job, which is to speak and vote in the interests of their constituents? My legal advisors, Mr Harrower and Mr Sharpe QC, have both advised me that this is also the correct legal interpretation of that paragraph. On any future point of legal

interpretation I would of course seek appropriate legal advice before acting."

Mr Swift confirmed that more than reasonable steps had now been taken by the Sub Committee to enable Ms Pearson the chance to attend the Sub Committee meeting, and stated that there was no reason for the Sub Committee to not proceed to decide whether to impose a sanction, and if so to decide what the sanction should be.

Members discussed whether or not to impose a sanction. Members agreed that they were disappointed with the emailed response received (set out above) as it appeared to demonstrate a lack of acceptance of the primacy of the Code of Conduct and observation of it, and contained no assurance that Ms Pearson would act differently were she to be faced with the same, or a similar, future situation. Members were concerned that it appeared Ms Pearson did not feel that the correct avenue for advice on these issues would be from the Monitoring Officer or appropriate other Corporation staff qualified to advise her. It was also noted that, as part of the process, an offer to speak with one of the other Independent Persons on the Standards Committee was not taken up by Ms Pearson.

The Sub Committee agreed that 40 (iii) 'that the subject member has failed to comply with the code of conduct and that a sanction should be imposed' was the relevant finding in this instance.

After further consideration of paragraph 42 of the procedure, the Sub Committee further agreed that 42 (i) 'censure of that member' was the appropriate sanction in this case.

Discussion continued as to the form and content of the censure. It was agreed that the censure should be set out in the Sub Committee's decision letter, and that the letter should include reference to the following matters.

- the matters considered by the Sub-Committee;

- notwithstanding that Ms Pearson was a relatively new member with a passion to represent her constituents, the operative 'public interest' is that a Member must follow the approved Code of Conduct (which has primacy) and be seen to obey it;

- that she had previously attended Code of Conduct training sessions;

- that she had previously requested a dispensation in respect of her disclosable pecuniary interests that had been refused and therefore every effort should have been taken to seek advice from the Monitoring Officer, the correct officer for this purpose, or the legal adviser present at the Planning and Transportation meeting before the commencement of business;

- that disclosable interest advice before that meeting had instead been sought from a fellow councilman who, although a lawyer, did not have expertise in matters concerning the obligations of elected members equivalent to the expertise of (for example) the Monitoring Officer;

- that it appeared Ms Pearson was still of the view that a Code breach had not taken place and that the Sub Committee's decision is that this view is in error (and why);

- that (subject to any appeal and the decision from it) the Sub Committee's decision letters be published and part of the public agenda pack for a future Planning and Transportation meeting;

- that should Ms Pearson wish to undertake any further Code of Conduct training then this would be provided.

The Sub Committee also made reference to a recent case considered by the Assessment Sub Committee where a Member, having voted without a dispensation at a committee meeting, accepted that he had done so having misunderstood the dispensation in place and then formally apologised for his actions, thereby negating the requirement of any future investigation.

The Independent Person concurred with the Committee's observations and conclusions.

RESOLVED – That the Hearing Sub Committee agree that

(a) Ms Pearson having failed to comply with the code of conduct, a sanction should be imposed under paragraph 40 (iii) of the complaints procedure;

(b) Censure of that Member under paragraph 42 (i) of the above procedure was the appropriate sanction in this case;

(c) Ms Pearson be informed of (a) and (b) above immediately following the Sub Committee meeting, and reminded of the deadline for submission of an appeal, and that a formal decision letter confirming this be sent to Ms Pearson within 5 working days and to also include the matters referred to in the minutes above.

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

There was no urgent non-public business.

The meeting ended at 4.15 pm

Chairman

Contact Officer: Martin Newton
martin.newton@cityoflondon.gov.uk

This page is intentionally left blank

Martin

The Comptroller & City Solicitor's Department is not intending to send a representative to the meeting. As you know, Peter Oldham QC will be in attendance to provide legal advice to the Sub-Committee. Thanks.

Edward Wood
Chief Solicitor
Public and Corporate Law
For Comptroller & City Solicitor

Tel: 020 7332 1834
Fax: 020 7332 1992
edward.wood@cityoflondon.gov.uk

From: Wood, Edward
Sent: Monday, August 20, 2018 10:57:18 AM
To: Brook, Lorraine
Cc: Newton, Martin
Subject: RE: SP Grounds for appeal - Appeal Sub (Standards) Committee

Dear Lorraine

Thank you for letting me have sight of the written grounds of appeal. We do not think it is appropriate for this Department to make any representations in relation to this matter. I would be grateful if you could confirm this to the Appeal Sub-Committee and Ms Pearson/Mr Harrower. The Appeal Sub-Committee should refer to the material provided to the Hearing Sub-Committee and to the two decision letters issued by that body. Thanks.

Edward Wood
Chief Solicitor
Public and Corporate Law
For Comptroller & City Solicitor
Tel: 020 7332 1834
Fax: 020 7332 1992
edward.wood@cityoflondon.gov.uk

From: Brook, Lorraine
Sent: 16 August 2018 16:01
To: Wood, Edward <Edward.Wood@cityoflondon.gov.uk>
Cc: Newton, Martin <Martin.Newton@cityoflondon.gov.uk>
Subject: SP Grounds for appeal - Appeal Sub (Standards) Committee
Importance: High

Dear Edward,

Please find attached the written grounds for appeal and written representations which were submitted by Graeme Harrower on behalf of Susan Pearson earlier this afternoon in accordance with paragraph 1 of the procedure for this appeal. The 12 documents are referred to in the appeal case submitted by Mr Harrower.

In accordance with paragraph 2 of the procedure, the Corporation can now make written representations in response to the appeal and those written representations should be submitted to me no later than 4pm on 30th August 2018, as per my earlier email. You had previously indicated that the Corporation did not intend to make any written representations but I am aware that the Chairman of the Sub-Committee is keen for the Appeal Sub-Committee members to receive a response so they can give the matter, in respect of all parties, full consideration.

I look forward to hearing from you in due course.

Kind regards,
Lorraine