

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

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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

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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.

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.



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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?