

NOT FOR PUBLICATION

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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
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