

HEARING SUB (STANDARDS) COMMITTEE

MONDAY, 21 MAY 2018

NOT FOR PUBLICATION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previous emails and statement that the allegation that paragraph 13 of the Code of Conduct had been breached should be withdrawn; that the conclusion in the Investigating Officer's report that paragraphs 2 and 14 had been breached should not be considered at the hearing as no previous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of the Investigating Officer's conclusions in his report, the allegation that paragraph 13 had been breached should be withdrawn.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. Mr 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

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