

HEARING SUB (STANDARDS) COMMITTEE

MONDAY, 11 JUNE 2018 AND THURSDAY, 21 JUNE 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NOT FOR PUBLICATION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 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

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