APPEAL CASE OF SUSAN PEARSON

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

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

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

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

Documents

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

Document 1: Breach Decision Letter

Document 2: Sanction Decision Letter

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

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

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

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

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

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

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

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

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

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

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. REASONS FOR THE DECISION ON BREACH

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

1.1.1 The correct interpretation of paragraph 13

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

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

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

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

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

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

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

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

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

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

1.1.2 Application of that advice by the Hearing Sub Committee

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

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

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

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

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

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

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

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

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

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

1.1.3 Opinion of James Goudie QC

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

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

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

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

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

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

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

1.2.1 Advice of Jonathan Swift QC

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

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

1.2.2 Alternative view

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr Swift QC advised that:

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

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

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

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

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

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

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

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

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

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

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

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

1.5. Obtaining guidance from the Monitoring Officer

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

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

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

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

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

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

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

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

Paragraph 15 of the Code provides that:

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

Paragraph 2 of the Guidance provides that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. PROCEDURAL IRREGULARITIES

The Breach Decision Letter stated that:

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

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

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

We submit that those decisions were wrong.

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

2.1 Description of procedural irregularities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Our comments are as follows:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Monitoring Officer did not respond.

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

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

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

The Minutes stated that:

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

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

2.2 Relevance of procedural irregularities: abuse of process

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

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

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

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

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

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

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

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

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

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

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

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

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

3. REASONS FOR THE DECISION ON SANCTION

3.1 Background

3.1.1 Sanctions available

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

i. there has been no breach of the Code;

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

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

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

i. a censure;

ii. withdrawal of corporate hospitality: and

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

3.1.2 Representations on behalf of Ms Pearson

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

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

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

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

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

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

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

3.2 Reasons given in the Sanction Decision Letter

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

3.2.1 Paragraph 1

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

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

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

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

Mr Austin concluded that:

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

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

3.2.2 Paragraph 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2.3 Paragraph 3

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

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

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

3.2.4 Paragraph 4

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

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

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

This paragraph also states that:

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

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

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

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

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

This discussion was not recorded in the Minutes.

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

3.2.5 Paragraph 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2.6 Concluding paragraph

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

The first statement is as follows:

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

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

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

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

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

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

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

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

If it is not, it is irrelevant.

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

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

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

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

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

In the light of these facts, we submit that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 August 2018