

**Standards Sub-Committee - Hearing**

**7 September 2018**

Present: Councillor M Rankin (Chair)  
Councillors E Hodson and K Lee

Also Present: Ms O Dutton, Anthony Collins Solicitors LLP,  
Investigating Officer  
Mr G Clark, Independent Person  
Cllr J Allan, Subject Member of the complaint  
Cllr J Harrison, Accompanying Person

**SSC01/09/18 Apologies**

No apologies for absence were reported.

**SSC02/09/18 Appointment of Substitute Members**

Councillor E Hodson, as a replacement for Cllr P Mason.

**SSC03/09/18 Declarations of Interest**

There were no declarations of interest reported.

In the interests of transparency, Cllr M Rankin highlighted that he had met Cllr Allan and Mr Robin Cairns in an employment capacity but he did not consider this to conflict with his role as Chair of the meeting. Cllr Allan indicated that he had no concerns in relation to this.

**SSC04/09/18 Chair's Announcement**

The Chair's opening remarks included the introductions of all parties present and the preliminary procedural matters.

Cllr Allan raised an issue about the attendance of the Independent Person at the hearing. He stated that he was unaware that the Independent Person would be attending and that he felt the independent person was not impartial and was hostile towards him, as he had previously commented on the case and had been in favour of referring the complaint for investigation.

The Independent Person stated that that he was attending the hearing with an open mind and that any comments made previously in relation to whether the complaint should go forward for investigation had been based on the limited information available at the time.

The Chair determined that the Independent Person should continue to participate in the process.

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The Chair emphasised that the report and its findings were focussed upon Councillor Allan's participation in the Planning Committee on 13 June 2017 and his Register of Interests, and those were the matters which the Sub-Committee would be asked to focus upon and as Chair, he would permit only submissions and lines of enquiry which would further the Sub-Committee's understanding of those issues.

### **SSC05/09/18 Exclusion Resolution**

The Standards Sub-Committee was required to consider any representations from the Investigating Officer and/or the Member as to why the Sub-Committee should exclude the press and public under the following terms:

"That under Section 100A(4) of the Local Government Act 1972 (as amended) and having applied a public interest test as defined in Part 2 of Schedule 12A of the Act, the press and public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A to the Act."

No representations were received.

**Resolved** that the Sub-Committee hearing proceed in public and the agenda papers be made available.

### **SSC06/09/2018 Code of Conduct for Members' and Co-opted Members – Complaint NT01.2017-18**

The Standards Sub-Committee received a report which presented the Investigating Officer's completed investigation report in relation to an alleged breach of the Members' Code of Conduct in relation to Complaint NT01/2017-18.

The Pre-Hearing Process Summary Report was attached at Appendix B to the report.

In determining the procedural arrangements at the hearing, the pre-hearing process considered:

#### **1. Summary of Allegations**

The complainant, Mrs N Redfearn, alleges that:

(1) while acting as a substitute member at a meeting of North Tyneside Council's Planning Committee on 13<sup>th</sup> June 2017 Councillor J Allan:

- a. Failed to declare that Mr Robin Cairns, a director of the applicant body (Wallsend Boys Club) and the named individual for correspondence in relation to the application was his business associate;

- b. Intervened during consideration of the application to suggest that the proposed limit for operating the floodlit outdoor football pitch of 9pm should be extended until 10pm, this suggestion then being agreed by the Committee

(2) Councillor Allan had not included in his register of interests his directorship in Largesse Holdings Ltd which commenced in March 2017. Largesse Holdings Ltd being a company set up by fellow director Mr Cairns in 2016.

## **2. Relevant Paragraph(s) of the Code of Conduct**

The relevant paragraphs of the Code are:

Paragraph 4: You must not conduct yourself in a manner which could reasonably be regarded as bringing the Authority, or your office as a member of the Authority into disrepute.

Paragraph 5: You must not use or attempt to use your position as a member improperly to confer or secure for yourself or any other person any advantage or disadvantage.

Paragraph 13: – Failure to give notice to the Monitoring Officer within 28 days of a change to a member's Register of Interests;

Paragraph 17: – Failure to disclose a non-registerable interest to the committee meeting;

Paragraph 18: – Failure to declare a non-registerable public interest to the meeting; participating in the meeting; voting on the matter and not leaving the room whilst the matter was being discussed.

## **3. Conduct of the Hearing**

The Investigating Officer had found in her report that breaches of the Code of Conduct had occurred in relation to the above Complaint.

The Sub-Committee examined the Investigating Officer's report together with the written representations received from Councillor Allan.

The Sub-Committee asked questions of the Investigating Officer in relation to her report.

The Sub-committee heard representations from the Member and asked questions of the Member.

In its deliberations in private, the Sub-Committee, having read the papers and heard from both the Investigating Officer and the Subject Member, carefully considered whether one or more breaches of the Code of Conduct had occurred. In reaching its decision the Sub-Committee took into account the views of the Independent Person.

## 5. Findings of Fact

The Sub-Committee made the following findings of fact:

### Application of the Code

1. The Code of Conduct applies to the matters of complaint in relation to both the Planning Committee and the Register of Interests as in both instances Councillor Allan was acting in his capacity as an elected member.

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2. There was a close association between Councillor Allan and Mr Robin Cairns.
3. There is no issue about any financial incentive in respect of either Mr Cairns who acted as a voluntary and unpaid Trustee, the Club itself or Councillor Allan.
4. The Code also provides “or the matter concerns a request for any permission, licence, consent of registration sought by yourself or any other persons referred to in Paragraph 16 (see above) or in any of your register of entries”.

The matter in front of the Planning Committee was an application for planning permission and therefore this provision is relevant.

5. The report showed that the application was by Wallsend Boys Club “FAO Mr Robin Cairns, Wallsend Boys Club” and it would therefore be apparent to Councillor Allan that the applicant was Mr Robin Cairns, albeit on behalf of Wallsend Boys Club.
6. Councillor Allan attended the Planning Committee, spoke about the application and, it is believed, voted.
7. The application was made, albeit for the Boys Club by an associate of Councillor Allan’s with whom he had a close business relationship and concerned a “request for permission” in relation to the Boys Club, made by Mr Cairns.
8. It is reasonable to think that Councillor Allan had a “close relationship” with Mr Cairns to the extent that “a reasonable member of the public might think that he would be prepared to favour or disadvantage that person when deciding that matter” as outlined in Paragraph 16 of the Code and accordingly Councillor Allan:
  - should have made a declaration of that fact to the meeting,
  - should not have participated in the discussion of the matter,
  - should not have participated in the vote; and
  - should have left the room while the matter was discussed.

9. Councillor Allan's letter to the Monitoring Officer acknowledges that "I should have declared a non-pecuniary interest and I accept the fault, which I sincerely apologise for."
10. As it is not in dispute that Councillor Allan did not make any such declaration and that he behaved in such a way he was in breach of paragraphs 17 and 18 of the Council's Code of Conduct.

### **Register of Interests**

11. Para 13 of the Code of Conduct requires members to register their registerable personal interests and to inform the Monitoring Officer of any change in their register within 28 days.
12. The change in respect of SARJ fell a little outside of the 28 day requirements but nonetheless was registered late.
13. The registration in respect of Largesse was several months overdue - it should have been declared at the point at which Councillor Allan became a director of the company.

### **6. Findings as to whether there had been a failure to follow the Code of Conduct**

The Sub-Committee noted that there was information within the papers which was ultimately not relied upon by the Investigating Officer in reaching her findings but which was considered appropriate and transparent to append to the report.

Similarly, the Sub-Committee placed no weight upon information that did not relate to:

- the complaint about the lack of a declaration of interest at the Planning Committee on 13 June 2017; and
- the complaint about Councillor Allan's Register of Interests.

The Investigating Officer's report found that there was evidence of breaches of paragraphs 4; 5; 13; 17 and 18 of the Code.

While the Sub-Committee was very concerned with its findings of fact (set out above) it did not consider that there was a breach of paragraph 4 of the Code i.e. it did not consider that the conduct could reasonably be regarded as bringing the Authority, or the Subject Member's office as a member of the Authority into disrepute. In reaching this determination the Sub-Committee took in to account that the planning matter related to a charitable organisation's 5 a-side pitch rather than a large commercial development and that there had been no complaints received from members of the public in relation to this matter.

However, the Sub-Committee considered that the Subject Member's conduct in relation to both the Planning Committee and his Register of Interests was unacceptable and amounted to breaches of the Code of Conduct.

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The Sub-Committee considered that while the Subject Member may have been motivated by the wish to assist the charity he used his position improperly to influence the meeting of the Planning Committee in circumstances where he should have declared an interest and should not have participated.

The Sub-Committee considered that the Subject Member was an influential individual. The Sub-Committee noted that the Subject Member had indicated to the Sub-Committee that in the future he would seek and follow officer advice in such circumstances and the Sub-Committee therefore has a firm expectation that this should occur.

### **No Breach**

The Sub-Committee by a majority decision found that Councillor Allan had not breached the following paragraph of the Code of Conduct for Elected Members:

Paragraph 4: You must not conduct yourself in a manner which could reasonably be regarded as bringing the Authority, or your office as a member of the Authority into disrepute.

### **Breaches**

The Sub-Committee unanimously found that Councillor Allan had breached the following paragraphs of the Code of Conduct for Elected Members:

Paragraph 5: You must not use or attempt to use your position as a member improperly to confer or secure for yourself or any other person any advantage or disadvantage;

Paragraph 13: Failure to give notice to the Monitoring Officer within 28 days of a change to a member's Register of Interests;

Paragraph 17: Failure to disclose a non-registerable interest to the committee meeting;

Paragraph 18: Failure to declare a non-registerable public interest to the meeting; participating in the meeting; voting on the matter and not leaving the room whilst the matter was being discussed.

## **7. Sanctions**

The Sub-Committee considered what sanction, if any, to set in relation to the breaches of the Code of Conduct identified above.

In reaching its decision the Sub-Committee considered all the relevant circumstances, together with the verbal comments made by the Investigating Officer and the Member at the meeting. The Sub-Committee also took account of the views of the Independent Person.

The Sub-Committee accepted and agreed with the views from the Investigating Officer and the Independent Person that while they had found breaches of the Code of Conduct they were not at the most serious end of the spectrum and there had not been any personal gain for Councillor Allan. However, it was considered that it was incumbent upon members to take care when participating in decision making and the Sub-Committee determined that it was appropriate to express their strong criticism of Councillor Allan's conduct in relation to the breaches via the issue of a formal censure. This is to be recorded within the decision notice.

It was noted that Councillor Allan had previously offered an apology for failing to declare an interest in relation to the Planning Committee. Councillor Allan indicated his agreement to making a written apology to Council. It was considered that Councillor Allan should make a written apology to Council covering all of the breaches found – this should be supplied to and agreed with the Monitoring Officer (or in her absence, one of her team) in advance of the next Council hearing to enable it to be circulated to the Elected Mayor and all councillors.

The Sub-Committee also considered that Councillor Allan should undertake a training session to assist him in clarifying issues in relation to declaring interests. Councillor Allan indicated his agreement to attending a training session.

**It was Resolved that:**

- (1) Councillor Allan be issued with a formal censure from the Sub-Committee as an expression of severe disapproval;
- (2) Councillor Allan be requested to apologise to Council via a letter which will be circulated to the Elected Mayor and all councillors at the next appropriate Council meeting; and
- (3) Councillor Allan be requested to undertake training in relation to the Code of Conduct with a particular focus on addressing paragraphs 5, 13, 17 and 18 of the Code.
- (4) the Monitoring Officer be instructed to publish the Formal Written Notice of the Sub-Committee's decision on the Authority's web site.

This was a unanimous decision of the Sub-Committee.