

NORTH TYNESIDE COUNCIL STANDARDS SUB-COMMITTEE**FULL DECISION NOTICE**

Name of Authority:	North Tyneside Council
Member(s) subject of allegation:	Councillor James Matthew Allan
Complainant(s):	Mrs Norma Redfearn, Elected Mayor
Case Reference Number(s):	NT01/17-18
Committee Members:	Councillors M Rankin, K Lee, E Hodson
Investigating Officer:	Ms Olwen Dutton, Anthony Collins Solicitors LLP
Monitoring Officer:	Louise Watson
Democratic Services Officer:	Joanne Holmes
Time and Date of Hearing:	10:00am Friday 7 September 2018

Summary of Allegation

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 13th 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.

Relevant Paragraph(s) of the Code of Conduct for Elected Members

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.

Preliminary Issues

Councillor Allan was accompanied by Mr John Harrison.

A preliminary issue was raised by Councillor Allan in relation to the ability of the Independent Person to maintain their independence and objectivity following their participation as a consultee in the early stages of the complaint. It was confirmed that while, at the assessment stage, the Independent Person had expressed the view that an investigation should proceed, they had only limited information at that point and they maintained an open mind in relation to the course of the investigation. The Chair determined that the Independent Person was not hostile to Councillor Allan and should continue to participate in the process.

Consideration was given as to whether a resolution to exclude the press and the public was required. There were no requests from either the Subject Member or the Investigating Officer to undertake the hearing in private session and therefore it was determined that the hearing would continue in public and consequently the Sub-Committee papers would be available.

The Chair stated to the meeting that he was conscious that the complaints process in relation to this matter had commenced in July 2017 and had taken quite some time to reach the Standards Sub-Committee for determination. The investigation commenced in 2017 and the report and its findings had been available to the

Complainant and the Subject Member since the early part of 2018. There had therefore been a substantial amount of time available to identify and narrow the issues in the case via the Pre Hearing Process which the Chair had been actively engaged in. The Chair stated that he was tasked with the responsibility of ensuring that there was a fair and efficient hearing and delay in reaching a decision on the complaint was minimised. The Chair emphasised that the report and its findings were focussed upon Councillor Allan's participation in the Planning Committee in 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. The Chair indicated that should he consider at any point that the Sub-Committee required further information in order to determine the matter fairly, he would consider whether the information could properly be obtained on the day of the hearing or whether an adjournment was necessary.

Findings of Fact

References in brackets below to paragraph numbers refer to paragraphs in the investigator's report considered by the Sub-Committee.

The Sub-Committee, following careful consideration of the papers and the submissions made today, finds the following:

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. (para 65)

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2. There was a close association between Councillor Allan and Mr Robin Cairns (para 54)
3. There is no issue about any financial incentive in respect of either Mr Cairns who acted as a voluntary and unpaid Trustee (para 55), the Club itself (para 55) or Councillor Allan (para 67).
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 (para 56 & 57).

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 (para 57).

6. Councillor Allan attended the Planning Committee, spoke about the application and, it is believed, voted (para 57).
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 (para 57).
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. (para 58)
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." (para 58)
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 (para 59 and 66).

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. (para 60 and 62).
12. The change in respect of SARJ fell a little outside of the 28 day requirements but nonetheless was registered late (para 61).

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 (para 62).

Findings as to whether there has been a failure to follow the Code of Conduct

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.

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 (para 22) but which was considered appropriate and transparent to append to the report (para 21). 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 (para 69).

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.

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.

Sanctions

The Sub-Committee considered the sanctions available to them and heard from the Investigating Officer, the Independent Person and the Subject Member prior to making their determination.

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 recorded within this 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.

The Sub-Committee unanimously determined that:

- A formal censure from the Sub-Committee shall be issued as an expression of severe disapproval.
- Councillor Allan should apologise to Council via a letter which will be circulated to the Elected Mayor and all councillors at the next appropriate Council meeting.
- Councillor Allan should undertake training in relation to the Code of Conduct with a particular focus on addressing paragraphs 5, 13, 17 and 18 of the Code.

In reaching its decision the Sub-Committee took into account the views of the Independent Person.