

Appeal Panel 2<sup>nd</sup> October 2020, Court Committee Room

Nigel Roberts & Nigel Lawrence

Background

This is an Appeal by Mr Michael Dean against a judgment of the Members Conduct Review Panel (*'The Review Panel'*) of 17<sup>th</sup> September 2020.

Mr Dean is a Member of the States of Alderney, and he is the Chairman of its planning committee, the *Building and Development Control Committee (BDCC)*.

Mr Dean was found by the Review Panel to have breached the Code. First of all, by failing to declare his pecuniary interest in a property known as *'Quatrieme'* whilst sitting as both member and Chair of the BDCC and participating in a planning decision on an adjoining property. He was found to have further breached the Code by failing to report himself for a review of his actions after being informed of the potential breach.

As sanction for both breaches, the Review Panel recommended that Mr Dean be suspended from Membership of the States of Alderney for 28 days.

This is the Member's Conduct Appeals Panel established under the Code of Conduct adopted by the States on 10<sup>th</sup> June 2020 pursuant to section 48A of the Government of Alderney Law, 2004, and which I will refer to as *'the Appeals Panel'* for short.

The integrity of those in public life is the bedrock on which confidence in Government exists, and there are a raft of standards expected to be upheld in public office, which commonly referred to as the Nolan principles.

Times change, but the expectation of high standards of conduct remains. Anyone sitting in a quasi-judicial position is obliged to inform themselves about their obligations including the risk of being perceived by the general public to have personal, fiduciary, financial or other interests in the outcome of a case and which might influence their decision.

Mr Dean's appeal is against the findings of the Review Panel that he breached the Code of Conduct. He also appeals against the sanction recommended by the Panel that he be suspended from the States of Alderney for 28 days.

This Appeal Panel is constituted under of the provisions Section 13.4 of the Code of Conduct. At the outset it must be made clear that this appeal is not by way of a re-hearing of the original proceedings before the Review Panel. It is not a de novo review.

For this Appeal to succeed wholly or in part, it must be shown that the Review Panel made an error which demonstrably impacted on the outcome and/or that the decision of the Review Panel was not reasonable or justified.

The Appeal Panel would like to record that we are most grateful to the Deputy Greffier for her learned assistance, and for the careful and thorough organisation of the material that this Appeals Panel has been required to consider.

In particularly, her overview of the grounds of appeal being advanced by the Appellant which she sent to him in

a letter dated 24<sup>th</sup> of September 2020 – and which was not objected to, or clarified, by him – has been most helpful.

Naturally, we have also read Mr Dean’s appeal submission itself in detail and with great care and taken it fully into account.

#### Appeal Decision.

GROUND 1: The Appellant claims that the Chairman, Ms McGregor has a conflict of interest because she has herself made planning applications. He also claims that she has a conflict of interest because she is Chair of an organization which has made representations on planning applications. We find these contentions to be remote and of no effect on the outcome.

GROUND 2: The Appellant’s second ground is that the President, William Tate has a conflict of interest because he receives copies of the complaint and has a close working relationship with the Chief Executive. We also find these contentions to be remote and of no effect on the outcome. (The role of the President is laid down, both in statute and in the Code.)

GROUND 3: The Appellant’s third ground is that no copy of the investigatory report was sent to him. Whilst it may appear, on its face, that this is correct, we understand that no investigator was used and therefore no investigatory report was compiled. However all documents relevant to the proceedings were disclosed. We conclude that this was neither an error, nor did it demonstrably impact on the outcome.

GROUND 4: The Appellant claims he did not confirm he has a pecuniary interest in ‘Quatrieme’. Whether he confirmed this subsequently or not, he declared “a material interest” in the property on the Register of Members’ Interests for 2019 and 2020.

GROUND 5: The Appellant denies having confirmed that Burhou View is adjacent to Quatrieme. Whether the Appellant chooses to confirm this or not, the Land Register is definitive.

GROUND 6: The Appellant feels that remedial action taken by the BDCC should have been taken into account. We disagree.

GROUND 7: The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Section 14.2 of the Code states: *“Where the Panel finds that a complaint has been substantiated but is of the view that the breach of conduct or abuse of privilege was of a minor nature it may dispose of the matter by cautioning the Member concerned.”*

#### Sanction

It is clear to this Appeals Panel that the breach of conduct was not of a minor nature.

The BDCC is a quasi-judicial body which takes decisions affecting the civil rights and obligations of others. Those making applications to the Committee have the legal right to a fair hearing before an impartial tribunal, and should a Chairman act, or be perceived to act, in their own cause, the system itself suffers reputational damage as well as the harm which any affected party may suffer.

As this is one of the first Appeals Panel in Alderney we have not had the benefit of previous panels’ consideration on the matter of sanctions.

Our starting point is that every case is different. The Review Panel clearly had the difficult task of balancing the underlying principles, taking into account the purpose of any sanction and the various interests of the Member, the States, the Complainant, as well as to the People of Alderney.

Whilst the public interest in maintaining trust in our democracy ranks higher than the interests of a single individual, sanctions, must nonetheless, be proportionate to the level of the breach.

The Review Panel did not include an explanation of the reasons for the sanction they chose in their Decision and we recommend that this be included in future Decisions.

The Appeal Panel is of the view that, if anything, the sanction imposed was light for the seriousness of the breaches.

That seriousness was aggravated by Mr Dean's subsequent refusal to self-refer, which itself became the second breach. Furthermore, the Member himself clearly remains unconvinced of the seriousness of the matter, as his statements in his grounds of appeal show.

The Review Panel appeared to take the view that the first breach was not intentional and we see no reason to doubt their conclusion. However Mr Dean's refusal to self-report on being apprised of the appearance of a reportable event is certainly an aggravating factor, and formed the second breach. This clearly was deliberate as shown in section 12 of his Statement.

The Appeals Panel has the power to change the sanction, including the power to increase the period of suspension, or substitute disqualification. We considered whether we ought to consider increasing the sanction or varying it so that both periods would run consecutively. However, after long consideration, we concluded that we would defer to the judgment of the Hearing Panel and would not seek to make a change to the sanction it recommended.