Submission to Leaders' Panel, re complaint against Cllr Rayner by Andrew Dismore AM

1 Procedural matters

1.1 the date of the hearing

The Leaders' Panel hearing date has been set for a date (3rd September) when the Monitoring Officer (MO) already knew in advance that I was on holiday and not able to attend to present the complaint, which would be the normal procedure; and the MO has not rescheduled the date even though I am available for a number of dates before her deadline for the hearing. In any event, this meeting of the Panel does not need to determine the complaint as there is no deadline for this. The duty on the MO is to present a report to the Panel by the 3 month deadline; there is no equivalent duty on the Panel to decide on the complaint by then.

The rules do not even state that the meeting has to be convened to decide on the complaint within 3 months so this could await my return and a mutually convenient date for the Panel, myself and of course Cllr Rayner.

Whist the MO will not confirm if Cllr Rayner was consulted on the date before it was set or not, as the officer involved is 'on holiday', she has stated that this would be normal practice. This raises the question of whether there has been a level playing field, concerning the setting of the date. It looks like the 'defendant' will be there, but there will be no 'prosecution' and so this is an abuse of natural justice.

LBB's published "Process for complaints" states " procedures would have an emphasis on flexibility and informality (insofar as possible and consistent with the principles of natural justice) and dispute resolution". This requirement has been overlooked in the listing of the case. The MO states that I could send a representative in my absence, but with over 300 pages of evidence in this very complex and detailed case of such public importance it is not fair, just or practical for me to send someone else to do this, who is not a legal representative, which is not permitted by the panel (see below). This would not happen in the law courts and it should not happen here.

1.2 Membership of the Panel

"Membership of the Panel includes Cllr Cornelius as chair. He has not so far recused himself, even though he has already publically expressed support for Cllr Rayner in the local papers, in response to press reports of the allegations:

http://www.times-series.co.uk/news/11280338.Council_leader_defends_Barnet_Mayor_s_illegal_behaviour/

In these circumstances Cllr Cornelius cannot therefore be seen to be impartial as the chair (and indeed all members) must be when considering a complaint such as this.

There is also a de facto Conservative majority on the Panel. Conservative legislation removed the compulsory requirement for an independent chair, but the Council could have an independent chair if it so wanted, and that seems to me what should happen.

1.3 Nature of the hearing

The MO cannot confirm the hearing will be held in public, so justice such as it is, may not be seen to be done.

1.4 Background correspondence

I have not been informed what is to be included in the bundle before the Panel hearing. The Monitoring Officer avoided a straight reply to my question on 4 August 2014 requesting inclusion of our correspondence in the bundle. I also asked that my statement of 25 July 2014, which was a challenge to the original decision as to what was to be included in the investigation, should be included in the bundle. Again, no answer though the inference was negative.

So the MO will not confirm that she will copy to the members of the Panel my correspondence dealing with all the above procedural issues and including my detailed submissions as to why I consider her rulings to be wrong (see below). It is important for the Panel to see these emails, as it is for them to see my original complaints and supporting evidence

1.5 the factual statement is deficient

the reasons why this is the case are set out in detail below in section 3 of this document. in summary the statement reports contradictory matters as 'facts' but without concluding which of the mutually exclusive statements have been found to be 'facts'. There are some assertions by Cllr Rayner as to what may be facts, which have been taken at face value and not tested.

So far as Cllr Rayner's account set out in the statement is concerned, the statement, reports as 'fact' what are not facts but are actually arguments,

justifications , mitigations, and on occasion personal attacks against me- these are not facts.

1.6 My comments on the factual statement

At Paragraph 4 of the Report it says, *'Councillor Raynor provided me with a final summary of his position. This is included at the end of this Report.'*

In his email on 15 August 2014 Matthew Adams asked me for my written comments and said that he would ensure that they are put before the Panel. However, I am concerned that my comments will not be afforded the same status as the summary position set out by Councillor Rayner in the body of the Report as I have received no confirmation that they will be treated in the same manner .

1.7 The three day turnaround for the response to the draft Report

The three day turnaround for the response of this draft Report was inadequate . In the days of the Standards Board, the complainant and the member were always given a minimum of 14 days to respond to a draft Report. I have done my best to respond, but that is woefully inadequate to draft a fully considered reply to such a lengthy and important document. and even now, the following day, as I write this document late at night , I can see points that should have been raised and were not due to the pressure of time. Three days will not be considered to be a reasonable length of time by the courts should this matter be subject to judicial review.

1.8 Legal advice for the Leaders Panel

Who will provide legal advice for the Leaders Panel? There is a clear conflict of interest if the Monitoring Officer or the Investigator who is part of the Harrow & Barnet combined joint Legal Services team were to advise the Leaders Panel.

Cllr Rayner states on page 6 of the Investigation Report that the Monitoring Officer (who I understand is not legally qualified) advised Cllr Rayner on one of the legal questions that are fundamental to the complaint , namely what was (and was not) a disclosable pecuniary interest:

> *'And I am advised by the Monitoring Officer that receipt of rent funded in part or in full by housing benefit is not a disclosable pecuniary interest. Nor, are contracts entered into with subsidiaries of the Council such as Barnet homes. All Landlord Members could potentially be affected by the matters raised by the Complainant but I have not noticed any Declarations from them – they have interpreted reasonableness in the same way as me.'*

It is not clear when this advice was offered to Cllr Rayner , assuming it was. That is a question of fact the Panel itself will have to resolve, and in relation to which the MO will herself be a witness.

It seems likely that this advice was given after the event, as if the MO had been consulted before, then the safest advice to give would have been to apply for a dispensation, as happened recently with respect to a number of councillors at the last council meeting, including Cllr Rayner. the MO is also a witness as to whether or not she advised Cllr Rayner to apply for a dispensation , and if so whether in fact he did so; and if she did not so advise, why not, because Cllr Rayner's business interests have not changed at any material time or in any material way between the matters complained of and the recent application for, and grant by the MO of, the dispensation to him. These are questions that need to be explored with the MO as a witness, as these issues are not dealt with in the investigation report.

I also believe her advice, whenever it was offered (assuming it was), to have been an incorrect interpretation of the law on this point (and indeed her interpretation to be erroneous on a number of other points too, as I argue elsewhere in this document).

It would be against the interests of natural justice to the complainant to have the Monitoring Officer advise the Leaders Panel as she is party pris to a key decision the panel has to take- the interpretation of the law; and she is also a witness of fact who will need to be questioned by the Panel as to these key facts.

I cannot see how it would be possible to find any officer 'in house', who would be able to provide neutral legal advice to the Panel.

External independent counsel should be appointed to advise the Panel on the law and to question witnesses on the Panel's behalf..

1.9 absence of legal representation

Neither Cllr Rayner nor I are allowed legal representation at this hearing where reputations (his and mine) can be mercilessly attacked and even destroyed. it is a fundamental breach of natural justice in such circumstances for legal representation to be denied.

1.10 resolution of procedural matters

The only way these problems can be resolved is if, at the Leaders' Panel:

1. The hearing is adjourned to a date when both I and Cllr Rayner can attend;

2. Cllr Cornelius relinquishes the chair, stands down from the Panel, and an independent chair is appointed;

3. A Conservative member agrees in advance to abstain, so no one party has a majority, as used to be the case before the Conservatives changed the rules;

4. the Panel requires the MO to provide the full correspondence and submissions passing between myself and the MO;

5. the Panel resolves to hear the case in public, given the public importance of the issues involved ;

6. The factual statement must be remitted to the MO to be rewritten as to what are and are not findings of fact; and to exclude argument, which should form part of a submission to the Panel, such as this;

7. My comments on the factual statement and closing statement at the end of this document should be included in the investigation report and given equal status;

8. The three day turnaround for the response to the draft Report should be extended and the hearing adjourned to enable this to be done;

9. Independent legal counsel for the Leaders Panel should be briefed in advance of the hearing to avoid the conflict of interest to attend the hearing to advise the panel on the corded interpretation of the law;

10. Both parties to the complaint should be allowed legal representation at the hearing.

.Already there are sufficient grounds for judicial review in the way this matter has been handled by the MO, not limited to the points above. These should not be compounded by the Panel not responding positively to the proposals above as to how it conducts its business .

2 background

2.1 introduction

My concerns over the conduct of the investigation into my complaint began when the Monitoring Officer (MO) disallowed a large part of the complaint. She has disallowed those parts of my complaint not on the grounds of inadequate evidence to support them, but on what is a pedantic, very technical interpretation of the councillors' Code of Conduct. She has done so with minimal explanation, followed by an absolute refusal to even consider very detailed and closely argued representations as to why this interpretation was wrong and in my view was clearly against the spirit of the Nolan principles of conduct in public life, which set out requirements relating to openness and accountability of politicians.

2.2 scope

Barnet Council's Members' Code of Conduct s.2 (scope) states –

"*You must comply with this code whenever you are acting in your capacity as a member of the Council*".

The MO used this "capacity" test to decline to accept my complaints under part 3 relating to the conduct of Cllr Rayner's business affairs; part 5 improper use of his position as a councillor in his dealings with his tenants; and part 6, racial discrimination.

However, advice from the former Standards Board for England addressed this very difficult "capacity" issue. It has been argued at various times that simply because you are known as a councillor (e.g. if you "tweet" as Cllr X) you <u>are</u> therefore acting in your official capacity.

The well known Ken Livingstone case led to a much greater awareness that it is not always obvious when a councillor is acting as such in his private affairs and when he is not; and that what might otherwise be seen to be private matters are not, depending on the context, as Mr Livingstone found out to his cost.

Since the Localism Act 2011, the old case law, which resulted in a number of tests to be applied when considering the capacity question, is still relevant.

Cllr Rayner has himself demonstrated that he perceives no divide between his roles as a private landlord and as a councillor. The evidence I provided in support of my complaint shows that Cllr Rayner ensured that his tenants were aware that he is a councillor upon the commencement of their tenancy. Cllr Rayner's comments to the investigation also confirm that these two roles in his mind merge together.

As a councillor he arranged meetings for his tenants at Barnet Homes and spoke to council officers about his tenants' affairs (both of which form elements of the complaint under part 4 which were accepted for formal process). The MO's decisions under parts 3, 5 and 6 therefore have been made in isolation from the other parts of the complaint such as part 4; and are inconsistent with her rulings on part 4.

The MO's decision under part 4 is also in conflict with her decisions made under parts 3, 5, and 6. If further investigation was required to determine the extent of misuse of public office under part 4 , then it must also be required to determine such misuse with respect to the management of Cllr Rayner's business affairs when they are so intimately bound in to the Council's and Barnet Homes' operations. Cllr Rayner and S.H. Housing have made financial gains from Council funds since he became a councillor and surely effort must be made to establish the extent of the connection between his two roles, which, seem in his mind to have merged in an unhealthy and probably unlawful way.

2.3 non registration of interests: housing benefit

I now turn to the MO's ruling on part 1 of my complaint , non registration of interests concerning housing benefit. She stated:

> "*there is no requirement within the Code to register receipt of Housing Benefits – it is not a disclosable pecuniary interest*".

The MO needed to look more closely at Appendix 1, which sets out definitions of disclosable pecuniary interests (DPI). The "prescribed description" is

> *"any employment, office, trade, profession or vocation carried on for profit or gain which you or your spouse or civil partner undertakes"*

This is a deliberately broad definition, in line with the broad test set out in the Nolan principles, themselves incorporated into the Council's Code . In my view it is clear that if a person has several properties which he rents out as a self confessed 'social landlord', his profession or trade could reasonably be described as 'a social landlord' or 'landlord'. Cllr Rayner clearly does this work for profit or gain and therefore this fits neatly into the prescribed description of DPI set out at Appendix 1.

The amounts involved in relation to housing benefit are substantial , even if only directly paid benefit is taken into account. If indirect payment is included, the sums mount up to hundreds of thousands of pounds a year.

The MO's ruling demonstrates that she is not acting in the spirit of the Localism Act and the Nolan principles by making an overly very narrow ruling as to what is a DPI in this case of the councillor/ landlord.

2.4 non registration of interests: contractual relationship with Barnet Homes

In relation to the supplementary part 7 complaint, non registration of the contractual relationship with Barnet Homes, the MO has taken a very dangerous course, insofar as she has interpreted the Code too narrowly, perhaps also *against* the better interests of all Barnet councillors more generally in ruling that dealings with Barnet Homes are not covered by the Code..

The nature of Cllr Rayner's relationship with Barnet Homes , and why in law all the necessary elements of offer, acceptance, and consideration are there to show certain of his dealings with Barnet Homes are contractual is fully set out in my part 7 complaint.

Appendix 1 refers to "*any contract between you and the relevant Authority*". Barnet Homes is a wholly owned arm's length company (ALMO) and it is extremely unwise to exclude such interests from the strictures of the DPI rules . De facto, Barnet Homes is one and the same as far as the DPI rules are concerned .

Where an ALMO such as Barnet Homes has been established to manage housing services, ultimate legal responsibility remains with the relevant local authority. Indeed the ALMO manages housing services on behalf of (not in place of) the local authority, such that agreements entered into with an ALMO are in fact agreements with a relevant local authority via the ALMO as an intermediary agent.

Contracts with subsidiaries, under which the local authority retains strategic direction for the stock and services managed by that subsidiary creates such a close relationship between the Council and Barnet Homes, that for the purposes of the Code it cannot therefore be seen as a wholly separate entity.

The point can be further tested in this way: as the Council has residual liability for the activities of Barnet Homes, if Barnet Homes were to default on a contract, then the Council would be liable for the consequences of the default. If the Council were not the guarantor of last resort, then many of the huge contracts which Barnet Homes has made for major works or as a regeneration partner would not have been possible: the other contracting party would either not enter into the contract without the assurance of the Council's 'underwriting' guarantee, as the risk to them would be too high, or alternatively the contract price would a be much higher if more risk was to be imposed on the other contracting party.

Thus, if Barnet Homes defaulted on its various contracts with Cllr Rayner (for example because Barnet Homes became insolvent) then the Council would be liable to Cllr Rayner for damages for that breach of contract.

For these reasons, this inextricable relationship between Barnet Homes and the Council means that a contract between Barnet Homes and councillors should be and is a DPI.

It is against the spirit of the Nolan principles (and I would submit also against the letter of the new legislation if the point were to be tested in court) , for the Council to send out the message, through the MO's ruling, to all councillors that such matters are not disclosable pecuniary interests, need not be registered, and that sections 8 and 9 of Barnet's Code do not apply.

Indeed the evidence of the terms of Cllr Rayner's own later registration and conduct would suggest that he himself now considers such matters to be DPIs, by both the language of his late registration, the part of the registration form in which it is now recorded (the DPI section) , and his own declaration of interest at, and successful application for a dispensation for, the last full council meeting.

The fact that the MO considered it appropriate to grant such a dispensation to Cllr Rayner (and indeed to a number of other councillors) itself supports the argument that the MO has adopted an inconsistent approach: if these were not DPI matters, then why would such dispensations be sought from , and a fortiori granted, by the MO?

The impression left by the MO's ruling on this part of my complaint is that her approach is to assist councillors in general , and Cllr Rayner in this case in particular, to *avoid* the restrictions of the Code of Conduct. In my view that is not her role. She ought to be ensuring that councillors comply with the Nolan principles, which are the foundation stones of the Code of Conduct and for this reason their inclusion in every Code of Conduct became mandatory under the Localism Act.

The MO's negative ruling on this part of my complaint does not affect any decision that prosecuting authorities may take, if a complaint is presented to them on non declaration of similar issues in the future; and such a ruling gives councillors a false sense of security, especially at a time of greater contracting out of council services more generally. To ensure that all councillors are not in danger of falling foul of the new post Localism "criminal" rules, the advice should be - 'if in doubt, register'.

2.5 Cllr Rayner's conduct towards his tenants

Turning to part 5 of the complaint , the MO's ruling is inconsistent with her ruling on part 4. The factual matrix of the two parts are inextricably linked. Cllr Rayner's conduct towards his tenants is not confined to him making them aware that he is a councillor, which is itself wrong- that is meant to and indeed did intimidate some of his tenants in what is already an asymmetrical power relationship between landlord and tenant. In his dealings with council officers about them, this also affected his relationship with tenants in an improper way.

2.6 Disallowance of parts of my complaint: remedy

As the MO's rulings excluding parts of my complaint are potentially subject to judicial review, (as well as an Ombudsman reference) for which the Council, not the MO would bear responsibility and any legal costs incurred, the Panel should remit the MO's decision to exclude large parts of my complaint to her for reconsideration and investigation.

3 comments in response to the revised investigation report

3.1 introduction

I have already commented above at the inadequate time given to respond to this report.

This report is supposed to include a record of the facts as found in the investigation. This it does not.

The investigation report does not seem to have made clear 'findings of fact'. The analytical legal process that needs to be performed to find facts- what are and are not 'facts' as distinguished from arguments and submissions- does not seem to have been followed . Certainly, when I was sitting as a Tribunal Judge, a decision notice containing what purport to be 'facts' such as this would not have been allowed to stand, but would have been remitted by a senior judge to a different tribunal for rehearing.

Whilst some of the 'matters of record' facts are reported (for example the occasions on which Cllr Rayner failed to declare an interest and which are matters of record anyway) the investigation statement recites parts (but not all) of my complaint but then reports not findings of fact concerning the complaint, but mainly Cllr Rayner's submissions in response to the complaint. Parts of the statement also report contradictory matters but without concluding which of the mutually exclusive statements have been found to be 'facts'. There are some assertions by Cllr Rayner as to what may be facts, which appear to have been taken at face value and have not been tested.

In the main the statement, so far as Cllr Rayner's account is concerned , consists mostly of argument, justification, mitigation, and on occasion personal attacks against me, as well as his closing statement. whist I have submitted comments in rebuttal to Cllr Rayner's arguments in the investigation report , it is does not appear to me that I am to be offered the same opportunity as Cllr Rayner to respond to his points as he has to mine as part of the investigation report; nor that I am, as part of the report , to be allowed to make a closing statement in it. this is not a level playing field and is a further breach of natural justice.

3.2 remedy

The MO should be required to rewrite the investigation report to identify what are, and are not, facts: and to include my response to Cllr Rayner's submissions to the Panel, which should be set out in the same way as is this document. His submissions are not and should not be, recorded as fact. They are arguments.

Findings of fact should be made based on the evidence and recorded as such, whilst indentifying the evidence relied upon to come to those findings. Further amendments to the document also need to be made to remove the clear perceptions of bias, as set out below.

3.3 detailed comments page by page on the investigation report

On the basis that the Panel may nevertheless decide to proceed, further opening up additional grounds for judicial review and Ombudsman intervention, I comment on the investigation report by reference to paragraph and page numbers on the last version supplied to me, before I went on the vacation which prevents me attending the hearing.

Paragraphs 6 to 9: These set out an extremely complex and confusing legal history and pose a very strong argument in favour of having legal representation at the Panel hearing for both the complainant and Cllr Rayner .

Paragraph 14: This is a good example of how the Report is biased in the way that some of the "facts" are set out . The paragraph states that section s.31(2)

> "*only* requires the member to disclose the pecuniary interest at the meeting if it is not already on the register of members' interests".

This is is misleading because if the member *does* have a disclosable pecuniary interest because of the requirements of s.31 *they will be not be able* take part in the discussion of the matter at the meeting, or because of Barnet's rules, vote on it or even be there in the meeting.

Thus, as it is set out on page 2 of the lengthy and very convoluted Report, this simple but important misrepresentation may serve erroneously to persuade the Panel that the current rules are not in favour of disclosing pecuniary interests, apart from in particular circumstances. This is certainly *not* the case.

Paragraph 16: It is not necessary to describe the guidance as "non-statutory". Again, this negative reporting of the current Code of Conduct may serve subtly to mislead the Panel into an understanding of the Code of Conduct which is incorrect in its emphasis.

I would draw the Panel's attention to Statutory Instrument 2014 No. 2095 and the latest (September 2013) DCLG Guidance "Openness and Transparency on personal interests" which states in the introduction:

> *'It is essential that there is confidence that Councillors everywhere are putting the public interest first and are not benefiting their own financial affairs from being a Councillor.'*
>
> *"failure to comply with those rules (which originated in the Local Government Act 1972) was in circumstances a criminal offence, as his failure to comply in certain circumstances with the new rules."*

The Guidance refers to all Members' duty to act in conformity with the seven principles of public life (the Nolan principles) and states:

> *'You must also stop dealing with the matter as soon as you become aware of having disclosable pecuniary interests relating to the business'.*

The Guide says that even if a Council's standing orders do not instruct the member to leave the meeting when a matter is being discussed or a vote taking place, the member *must* leave the room if he/she considers that his/her continued presence *is incompatible with* the Council's Code of Conduct or the *seven principles of public life.* It says,

> *'It is also a criminal offence to knowingly or recklessly provide false or misleading information or to participate in the business of your authority where that business involves a disclosable pecuniary interest.'*

I must emphasise that the Panel needs to bear in mind all this guidance when reaching a decision and the fact that I consider that Councillor Rayner's ownership and renting out (and potential renting out) to both the public and private sector of his properties in Barnet, gives him a disclosable pecuniary interest in many of the issues that were discussed at the meetings which have been brought to the attention of the Investigator. The default position should have been – *if in doubt – stay out – think how public perception would view your presence at such meetings.*

Paragraphs 21 to 26: These paragraphs seem to be *deliberately* confusing and in the body of the Report there does not seem to be any attempt made to relate in a simple way the parts of the Codes which were in force at the time to the complaints made and the responses from Councillor Rayner.

Paragraph 24: Again, this paragraph is misleading. The Panel needs to look at what s.31(4) of the Localism Act 2011 actually states, to see that when there is a DPI a Member may not participate in the meeting vote, and so on. Paragraphs like

this are typical of an unfair bias which emerges at several points in this Report. The second sentence is inaccurate by omission of the reference to other sections of the Act.

Paragraph 29: This a clear example of how the London Borough of Barnet has got it wrong. This issue was the subject of some derision, when it was discussed in the House of Commons, when comments were made about the bad advice that Monitoring Officers had been given since this legislation was introduced in relation to the need to grant dispensations for council tenants.

Paragraphs 34 to 37: In setting out what Councillor Raynor has declared in his register entry , this confirms the precise reasons why I consider that Councillor Rayner should have declared a DPI in relation to all private rented sector discussions of any kind which come before Barnet Council Meetings. However, Councillor Rayner never declared any such interests.

page 6: Cllr Rayner states that his position as a landlord is akin to a car driver , when voting on the budget. This is a facetious argument. The test is whether the point affects the generality of the public rather than him as an individual. Whilst many, ,probably the majority, of people in Barnet are car owners, (the latest figures available from 2011 show that there are 12 cars per 10 households in England), only a small minority of the population and of councillors are landlords, like Cllr Rayner. Accordingly he should have either sought a dispensation or made a declaration in the Council Budget debates as these matters potentially affect him personally.

I also do not accept that it can be correct to say that contracts entered into with Barnet Homes or receipt of Housing Benefit as a landlord are not disclosable pecuniary interests.

The "prescribed description" of disclosable pecuniary interests is:

> *"any employment, office, trade, profession or vocation carried on for profit or gain which you or your spouse or civil partner undertakes"*

This is a deliberately broad definition. In my view it is clear that if a person has several properties which he rents out as a self confessed 'social landlord', his profession or trade could reasonably be described as 'a social landlord' or 'landlord'. Cllr Rayner clearly does this for profit or gain and therefore this fits neatly into the prescribed description of disclosable pecuniary interests set out at Appendix 1.

The amounts involved in relation to housing benefit are substantial , even if only directly paid benefit is taken into account. If indirect payment is included, the sums mount up to hundreds of thousands of pounds a year.

In relation to the non registration of the contractual relationship with Barnet Homes, Whilst Appendix 1 refers to "*any contract between you and the relevant Authority*" and Barnet Homes may arguably be a separate legal entity, Barnet Homes is a wholly owned arm's length company (ALMO) . De facto, Barnet Homes is one and the same as far as the DPI rules are concerned .

Where an ALMO such as Barnet Homes has been established to manage housing services, ultimate legal responsibility remains with the relevant local authority. Indeed the ALMO manages housing services on behalf of (not in place of) the local authority, such that agreements entered into with an ALMO are in fact agreements with a relevant local authority via the ALMO as an intermediary agent.

Contracts with subsidiaries, under which the local authority retains strategic direction for the stock and services managed by that subsidiary creates such a close relationship between the Council and Barnet Homes, I submit that for the purposes of the Code it cannot therefore be seen as a wholly separate entity.

The point can be further tested in this way: as the Council has residual liability for the activities of Barnet Homes, if Barnet Homes were to default on a contract, then the Council would be liable for the consequences of the default. If the Council were not the guarantor of last resort, then many of the huge contracts which Barnet Homes has made for major works or as a regeneration partner would not have been possible: the other contracting party would either not enter into the contract without that underwriting guarantee as the risk to them would be too high, or alternatively the contract price would a be much higher if more risk was to be imposed on the other contracting party.

Thus, if Barnet Homes defaulted on its various contracts with Cllr Rayner (for example because Barnet Homes became insolvent) then the Council would be liable to Cllr Rayner for damages for that breach of contract.

For these reasons, this inextricable relationship between Barnet Homes and the Council means that a contract between Barnet Homes and councillors should be and is a DPI.

Indeed the evidence of the terms Cllr Rayner's own later registration and conduct would suggest that he himself now considers such matters to be DPIs, by both the language of his late registration, the part of the registration form in which it is now recorded (the DPI section) , and his own declaration of interest at, and application for a dispensation for, the last full council meeting.

The fact that such a dispensation was granted to Cllr Rayner (and indeed to a number of other councillors) itself supports my argument that to find against this

point is to adopt an inconsistent approach: if these were not DPI matters, then why would such dispensations be sought from , and a fortiori granted?

page 8: Rent deposit scheme. The issue is not whether Cllr Rayner stood to gain immediately from the scheme: it was that he potentially could gain from it, as he admits he did, some time later. The scheme moreover is for the benefit of both landlord and tenant. It is variously described in Council documents as part of the 'landlord incentive scheme'. If the Council did not perceive it as a benefit to landlords it would not be so described. The benefit to landlords including Cllr Rayner is the certainty that the deposit can be provided without undue pressure on the tenant's resources, which might otherwise feed through into arrears.

The Code of Conduct in force at that date at paragraph 8(b) states,

> *'You have a personal interest in any business of your authority where either (a)..... or (b), a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position, or the wellbeing or financial position of a relevant person to a greater extent than the majority of other Council Tax payers, ratepayers or inhabitants of the Electoral Division or Ward as a case may be affected by the decision.*

It is clear that the matters discussed at this meeting which related to the rent deposits scheme and private sector leasing and private sector landlord cash incentives could and would affect Councillor Rayner's financial position and wellbeing more than most other people in the borough.

Cllr Rayner's page 8 response is particularly facile. Councillor Rayner does not seem to be taking this matter seriously insofar as he is utterly disregarding the possibility that all and any matters which affect the private rented sector in Barnet affect him personally due to his substantial business interests.

Page 9: The same comments as those referring to page 8 also apply.

in addition, Cllr Rayner states that he did not receive DHP via his tenants or direct to him. This is not correct. The letter to the tenant of [redacted] of 20/2/14 from the Council (not Barnet Homes) states that this was awarded to her for a period ending on 30/3/14. The letter to her from the Housing Benefits Officer of 4/3/14 states the benefit will be paid direct to the landlord .Cllr Rayner's letter of 18/3/14 para 3 requests payment of benefit direct to the landlord. He has therefore received DHP directly from the Council. Other tenants have also confirmed their benefit is paid direct to Cllr Rayner, as set out in the schedule in the evidence supplied to support the complaint.

Councillor Rayner's response on page 9 states:

> *'I consider the lines in accounts of budget to be so far removed from my role as a Landlord that I do not consider it reasonable to be required to make a Declaration.'*

In this sentence Councillor Rayner demonstrates his total disregard for the new spirit of openness transparency and accountability which is required by the Localism Act 2011. It also flies in the face of the requirements set out in the new "Openness of the Local Government Bodies Regulations 2014" which were promoted by the Minister for DCLG.

Page 10: Refers to a Code dated 2011 –is that an error?

Page 11: Perhaps Cllr Rayner had not scrutinised these budget lines with the attention they deserved at the time, or now. They both have the potential to benefit Cllr Rayner directly, as a private sector landlord.

page 12: Cllr Rayner is a private landlord. These budget and policy lines increase the Council's demand for private lettings. Cllr Rayner stood to gain from increased demand, either through taking tenants nominated by the council or its partners; or as a consequence of the increased demand , seeing the value of his own properties increase either by way of capital value or rental value, or both. It is the simple economic law of supply and demand.

Page 14: Cllr Rayner is being disingenuous. The documentary and witness evidence supplied with the complaint demonstrates the extent to which Cllr Rayner is reliant on his tenants obtaining housing benefit to pay him. The fact that Cllr Rayner was in contact with the Council about payments of housing benefit shows that he was not a disinterested party in how his tenants are funded and he saw the receipt of housing benefit as not just a problem for his tenants.

His judgment not to make a declaration was incorrect. The remedy at the time would either have been for him to apply for a dispensation, or to declare an interest and withdraw . He cannot ignore his disclosable interests in the cavalier way he did. Moreover, his reference to accepting housing benefit as rent on page 27 also contradicts these statements about rent not being housing benefit.

It seems to me that Councillor Rayner's comments *intentionally* missed the point about progressing the policy at Barnet Council in favour of the private sector It *cannot* be that Councillor Rayner misunderstands the complainant's position on this matter.

It is impossible to conclude that the Chair of a Scrutiny Committee Meeting can be seen as impartial and without prejudice if he is making his living from renting out private accommodation in the borough. The meeting is clearly scrutinizing a policy which advocates a more extensive use of the private sector by the Council to solve its housing problems.

In addition, it *cannot* be an answer to this criticism, to say that none of Councillor Rayner's tenants came from Council lists. What is important is the public perception of how these decisions are made. It must be that the public would view Councillor Rayner as *'likely to benefit from such a change or advancement in such a policy.'* By the same token it is not an answer to this criticism to say that none of his tenants received DHP, though in fact at least one did (the tenant of [redacted]). No effort has been made by the investigator to establish independently whether or not any other of Cllr Rayner's tenants were in receipt of DHP. It having been shown that he was wrong on at least one occasion, as the documentary evidence shows, he may well be wrong on others.

page 15: the same arguments apply.

Page 18: Cllr Moore's 'call in' reasons clearly are to look at housing allocations in the round. The policy called in specifically refers to the increased use of the private sector as a central part of allocations policy and the targets are very specifically about private rental issues. Cllr Rayner made the wrong decision, bearing in mind how central were his interests to the matters in hand. There is no transcript available, so it is only Cllr Rayner's subjective view that the discussion did not touch on issues where he had an interest. That is a self serving and circular argument. It would be very surprising indeed if private sector housing had not been discussed given how central it was to the policy. Moreover, as chair of the meeting, Cllr Rayner was in a position to steer the debate away from issues affecting his interests; whether or not he actually did so is not relevant to the declaration rules.

Again Councillor Rayner's response is bordering on the facile. It is simply *not true* to describe the overview and Scrutiny Committee Meetings as not decision making. This is a misleading statement by Councillor Rayner. Even so, the Code currently states:

'If you attend a meeting at which the business is considered'.

It does *not* say that it is a meeting at which a decision has to be made. The matter simply has to be considered.

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Page 19: Paras 1.6 and 2.2 of the BMOS report relate to the supply and demand of social renting, and the shortfall being filled by the private sector. Para 2.6 reports that 715 social housing tenants were placed in private sector properties . The impact of the proposed changes to the housing allocations system was to tell classes of potential tenants that they had no, or very little, chance of being housed in council or housing association owned properties. They would be reliant on the private sector and would need to find their own private sector accommodation without council assistance . Indeed Cllr Rayner in his schedule on page 31, relates that a number of his properties were let this way.

Other tenants would be placed by the council and housing associations in the private sector in accordance with the new allocations policy. In both these cases, demand for private sector rentals would increase, to the potential benefit of Cllr Rayner.

Yet again there is a display of fundamental ignorance by Councillor Rayner as to what is a disclosable pecuniary interest. The very existence of such an interest means, by definition, that Councillor Rayner should not even be in the room.

Again Cllr Rayner made the wrong judgement. The reference to Cllr McGuirk is an attempt to muddy the waters. As an existing tenant she would not be affected by an allocations policy that relates to new tenants- a completely different position to Cllr Rayner.

Page 20: At this time, the 2009 Code was in force. Councillor Rayner should have declared he had a personal interest because this matter *would* affect his financial position more than most others. For example, with advice given by the Council about resolving homelessness and the use of resources in the direction of the private sector , it cannot be said that this would *not* affect private landlords in the area. Who else was to benefit from this shift in policy? Councillor Rayner chaired the meetings at which these policies were discussed and promoted. In fact he went further, by requesting that it be exempt from calling in – this demonstrates how important this vested interest was to him.

Cllr Rayner's declaration was inadequate. Levels of benefit capping were also of direct relevance to him. As we have seen from the case of the tenant of [redacted] she was directly affected by the benefit cap, which put her in arrears; she was given a short term DHP to meet some of the shortfall. Cllr Rayner used her arrears as grounds for eviction.

The levels of benefit and the caps directly affected Cllr Rayner's income from his tenants. Cllr Rayner is very dependent on Housing Benefit to meet his tenants' rent payments.

Some of his tenants receive HB paid to them from which Cllr Rayner benefits when they pay him their rent. These include the tenants of:

[redacted]

Significantly and more seriously, in respect of several of his tenants the HB is paid direct by the Council to Cllr Rayner and/ or his company.

These include HB payments with respect to:

[redacted]

This is not a comprehensive list and there may be more: it represents a sample drawn from just 6 of the properties where it has been possible to establish the position from the tenant concerned.

Aggregating the rents Cllr Rayner charges for 6 of his properties where the tenants are on HB, the total of rents charged is £8840 pm. The total for these properties is equivalent exactly to LHA rates. According to Cllr Rayner's Register of Interests entry, he lets 19 properties to social tenants. Extrapolating these figures to Cllr Rayner's portfolio as a whole (and excluding 1 property where I believe the tenant may not be on HB) this suggests that his rental income from HB per annum is:

£8840 /6 x 18 = £26,520 x 12 = £318,240 pa

The minimum based on those rentals for which we know the rent and where we know the tenants are definitely on HB (even if <u>all</u> the other tenants are assumed not to be in receipt of HB at all which is extremely unlikely) is:

£8840 x 12 = £106,080

The tenants of [redacted] and [redacted] are long standing. The HB for [redacted] has been paid direct to Cllr Rayner and/or his company for 15 years. The total of the LHA for these 2 properties is £2860 and the total rent is £2844. Taking the (lower) rent figure as the base, this amounts to:

£2844 x 12 = £34,128 per annum

paid by way of HB direct to Cllr Rayner.

The HB from 3/3/14 to 25/3/14 of the evicted tenant of [redacted] was also paid direct to the landlord, i.e. Cllr Rayner, at the request of his company. This amounted (reduced due to loss of DHA and the benefit cap) to:

£146.16pw x 3 = £438.48

I put these figures to Cllr Rayner by email of 13/6/14 as well as a number of issues raised by the matters in my original complaint including his non registration and non declaration of interests, but so far he has not replied.

These are not trivial sums. It is disingenuous for Cllr Rayner to suggest that when he is so dependent directly and indirectly for his income on Housing Benefit , that he has no direct pecuniary interest in a debate about housing benefit levels. See also his answer on page 27, where he confirms that one of his tenants was affected adversely by the benefit cap. (Also see my further comments on that page.) See also Cllr Rayner's comments on page 29 and the letter to the tenant of 11/2/14, and the letter from S and H Housing Ltd of 18/3/14, which also show that Cllr Rayner saw rent and benefits as interchangeable.

Moreover, the evidence I submitted with my original complaint (and which has been overlooked by the MO and which represents more facts not taken into account in the investigation report) demonstrated the extent to which Cllr Rayner fixed the levels of his tenants' rents at above or in alignment with the LHA, which was the maximum level at which HB was payable for his properties, amounts which were generally in excess of market rents as demonstrated by Zoopla. If the HB rate was irrelevant to him. then why fix rents by reference to it? Cllr Rayner admitted to the local newspapers that he saw nothing wrong in exploiting the HB system to charge to the maximum level HB would allow.

> *He (Cllr Rayner) added: "With regards to charging above market rates, when letting to housing benefit funded tenants, our rents have been in line with the prevailing local housing allowance rates."*
>
> http://www.times-series.co.uk/news/11271349.Mayor_of_Barnet_accused_of_acting_illegally_towards_his_tenants/?ref=var_0

From my original complaint:

> *Zoopla market rents estimated for the six properties sampled ranged from £989 to £1186. Local Housing Allowance (on which max HB based and is averaged over NW London) is £1009 x 2 bed; £1300 x 3 bed; £1560 x 4 bed property.*

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Rents were charged not at market rent but closer to the LHA rate, and in 3 cases more than LHA, to the 6 tenants on HB with rents ranging from £1350 to £1846 pm.

Actual rent is only less than market rent on only one property, where it is believed the tenants are not on HB.

This appears to be exploitation of the HB rules to maximise income beyond what would be a fair rent in the private non-benefit sector.

Cllr Rayner adjusted the rents he charged (generally upwards) under the admittedly illegal terms allowing him absolute freedom to increase rents at his whim by reference to HB levels , which leases he now accepts were illegal and in relation to which he claims no longer to use them. he was therefore directly interested in the levels of HB.

page 23: It does not matter whether BMOSC is or is not a decision making body. Para 9.1 of the Code refers to any 'matter to be considered', not a matter to be decided upon. However, there was a decision: to expedite the proposal. The paper directly relates to the role of the private sector and as a private sector landlord, Cllr Rayner stood to benefit from its proposals, as in fact he did, from both the rent deposit and the incentive scheme.

Councillor Rayner states, *'If the matter moved into an area where I thought I might have an interest....'* This is perhaps Councillor's Rayner's most disingenuous remark and becomes even more so by its repetition. It is repeated in fact on **page 24** of the Report when he was chairing a meeting at which Barnet Homes is discussed, from which he was receiving cash incentives for taking on Council tenants.

page 24: in the original version of the factual statement there appeared to be a drafting issue, in that the paragraph commencing *'The cabinet member for housing...* through to the end of the page was in italics and was thus represented as if forming part of my complaint, when it was not.

The wording of my complaint ended at the previous paragraph:

...the evidence referred to above confirms'.

This has been corrected in the version before the Panel .

However, the remainder of the italicised paragraph was this:

"The Cabinet Member for Housing presented a report that outlined the process for renewing the management agreement with the Barnet Group for the management of the council's housing stock and provision of the housing service.

In appendix 3 of the report there is a one line reference to rent deposits and landlord incentives fee income budget o £230,000.

The report was noted and the committee requested that consideration was given to (a) meeting the needs of vulnerable groups; (b) the importance of filling vacancies on the Board of Barnet Group and (c) how ongoing scrutiny of housing matters fitted into the committee system.

Cllr Rayner is WAS HE IN RECEIPT OF INCENTIVES AT THIS TIME?

Cllr Rayner chaired the meeting. There were no declarations of members' interests"

This was presumably the MOs factual assessment, now removed from the current version. These paragraphs should still have been included in this current version, not in italics but as part of the factual matrix, as these were some of the few actual findings of fact and should not have been deleted. It is surprising that such important facts that are supportive of the complaint were removed.

The revised report now before the Panel should also have included the affirmative answer to " WAS HE IN RECEIPT OF INCENTIVES AT THIS TIME?" which the MO should have been able to corroborate from council records.

The available evidence shows that Cllr Rayner was; but that is the wrong question. The correct question is whether or not he could have benefitted from the incentive scheme prospectively, not whether in fact he did so, or was doing so at the time of the meeting.

also Page 24: it does not matter that BMOSC was not a decision making body. The code does not require this, for the reasons set out above.

Page 27: Appendix D is an email to Cllr Rayner from Ms Nkechi. On the face of it, it would appear to have been sent to Cllr Rayner as a councillor (see the title of the addressee); and to have been sent to him at his council email address. My belief is that Cllr Rayner used his council email address for transactions of this kind. My following FoI requests to establish this were refused, on the grounds that it would take more than 18 hours to find the answers:

- Please disclose all email correspondence on his council email address passing between Cllr Hugh Rayner and a) Barnet Council and b) Barnet Homes that mention the following properties: (list as on his register of interests entry)

- Please disclose all correspondence passing between Barnet Council and Hugh Rayner in his capacity as a landlord for each of the last 3 years

- Please disclose details of all payments made by the Council to Hugh Rayner in his capacity as a landlord including any Housing Benefit payments in each of the last 3 financial years.

The refusal of the FOI requests on this matter on the basis that they would take too much time to respond may demonstrate the scale of Councillor Rayner's involvement with Barnet Council in his role as a landlord and his use of council resources to promote his interests.

The first point above is especially critical evidence of the way that Cllr Rayner used his title and position and indeed council email facilities , in the course of his dealings with the council as a landlord.

The Panel should request this information themselves, or better still, Cllr Rayner should allow voluntary access of his council email to the investigation, to establish the truth , one way or the other. If he does not do so, then the facts speak for themselves.

This council email use is clearly inappropriate. He should have used an entirely separate email address for his business dealings with the council; and should have referred to himself as *Mr* Rayner, when dealing with officers on his private business. Cllr Rayner saw no distinction between his two roles, and the net effect is to give the impression that he improperly approaches officers in the way he conducts his businesses affairs as a councillor. The email also suggests that when he spoke to the officer he did so as a councillor, as otherwise she would have emailed him at his private email address , if he had supplied one to her as he should have done; or if the council housing department had this on file.

Also Page 27: Cllr Rayner's response. I assume by 'special measures' Cllr Rayner means arrears. There is no such thing as 'special measures' in housing law. The tenant's comments on Cllr Rayner's 'discussion ' about alternatives reproduced under his response paragraph suggest a very intimidatory approach to her. In fact Cllr Rayner did not accept the lower housing benefit as rent, but as a contribution towards it, as he still considered arrears were accruing, which in the end were used as grounds for eviction. Moreover, his reference to accepting housing benefit as rent also contradicts his earlier statements about rent not being housing benefit.

Cllr Rayner states when phoning Ms Nkechi he made clear he was not calling as a councillor. That is contradicted by the evidence of the email and points referred to above about it.

page 29: The evidence suggests that the grounds for seeking possession were indeed the rent arrears: see the letter to the tenant of 11/2/14, and the letter from S and H Housing Ltd of 18/3/14. I note Cllr Rayner has not produced a copy of the affidavit to the court setting out the grounds for seeking possession which would settle this point if he were correct. It is accepted Cllr Rayner did not pursue the arrears after the tenant was evicted.

also page 29: Cllr Rayner's general statement . This proves that he saw his roles as interchangeable. When in this position, Cllr Rayner should have been much more determined to put in place 'fire walls' in his dealings with officers. He states that he made clear when he was speaking as a landlord to officers and as a councillor to tenants, but this swapping of hats can only work if Cllr Rayner is absolutely clear in all possible ways with his interlocutor. For example, the use of his title when dealing with officers is inappropriate. His use of his council email address for personal business is inappropriate . He should have insisted on using only his business communication addresses and not used his title of Councillor when dealing with his business affairs, especially when approaching council officers. To do otherwise, as Cllr Rayner did, is to send mixed messages and is a misuse of public office.

page 30 The important point that Cllr Rayner overlooks is not whether in fact he later benefitted from decisions in which he participated without declaring an interest, but whether the perception could be given of this; and whether he could have the opportunity to do so, depending on the outcome of the decision which is undeniably the case.

Nor is there a test of 'reasonableness' in the terms that Cllr Rayner has invented ,as to whether he should declare his interests. The test is whether or not he has an interest, pure and simple. Cllr Rayner has an interest as his trade is that of landlord. If business that relates to landlords is being discussed he should declare an interest and withdraw. He has a duty under the Nolan principles to declare <u>any</u> interest. There is no remoteness test either.

The Code also suggests that if there is any doubt, then the Monitoring Officer should be consulted. Whilst Cllr Rayner states on page 6 of the Investigation Report that the Monitoring Officer advised him on one of the legal questions that are fundamental to the complaint , namely what was (and was not) a disclosable

pecuniary interest, is not clear when this advice was offered to Cllr Rayner, assuming it was.

It seems highly probable that this interpretation of the law (which I consider to be wrong anyway) was given after the event. If the MO had been consulted before, then the safest advice for her to give would have been to apply for a dispensation, as happened recently with respect to a number of councillors at the last council meeting, including Cllr Rayner, when so far as Cllr Rayner is concerned, there were no material changes to his interests.

Ex post facto consultation is not consultation, as the Code clearly requires consultation in advance. Cllr Rayner could have applied for a dispensation if the case was marginal, but he did not do that either.

Cllr Rayner again repeats his argument concerning benefit not being rent, but the evidence suggests he regards them as interchangeable, see above.

Cllr Rayner then goes on to take the opportunity which he says he is not (but clearly is) , by mounting his personal attack on me, which to my mind does not form part of the factual matrix of the complaint and should have been excluded, so I will not respond to it in kind. I do not consider the complaints I have made unfounded. The fact that the Monitoring Officer has accepted two of the five classes of complaints for investigation and having investigated them, then referred them to the Panel is evidence in itself that there is a case for Cllr Rayner to answer.

The Monitoring Officer did not accept for investigation other complaints which I consider fall to be breaches of the Code; nor would she entertain detailed submissions as to why her decision was wrong. She invited me to refer her decision to the Ombudsman, which of course I will do.

4 conclusions

As I have indicated above, LBB's published "Process for complaints" states:

> *"procedures would have an emphasis on flexibility and informality (insofar as possible and consistent with the principles of natural justice) and dispute resolution.*

The process so far has failed these tests. It has failed to apply the Nolan principles that are required of every councillor, given the way the complaint has been approached so far. It has not preceded in acordcne with natural justice and has shown clear elements of bias against the complainant and in favour of Cllr Rayner.

Because of the MO's ruling, unless the Leaders' Panel adopt the course of action I propose in this document, they will not be able to consider my complaint concerning Cllr Rayner's conduct as a landlord, nor his non registration of interests concerning his receipt of housing benefit, even though thousands of pounds of public money was involved, nor Cllr Rayner's contractual dealings with Barnet Homes.

Nevertheless, if my arguments concerning procedural matters are not accepted, the Leaders' Panel will consider the two most serious allegations, concerning Cllr Rayner's non-disclosure of interests at council and committee meetings; and improper use of his position as a councillor in dealings with council officers.

Cllr Rayner should have declared at all these meetings a direct pecuniary interest.

When the Council budget meetings and BMOSC was discussing policies which positively advocated an increase in the use of the private rented sector when discharging the council's social housing responsibilities, considered and agreed landlord incentives, and discussed housing benefit caps and their consequences, a non-pecuniary interest on the sole occasion such a declaration was made was insufficient, as Cllr Rayner stood to gain personally from the decisions taken as a self-confessed landlord who takes social housing tenants.

Whether or not Cllr Rayner actually benefitted (though as my compliant and this document demonstrates, he did in a number of ways) is immaterial. The question is, whether he could benefit from the opportunities now afforded as a result of the council's decisions.

Such decisions will for example have an impact on demand for such properties as Cllr Rayner owns thus affecting both capital values and rent levels.

As the Council administers both HB and Discretionary Housing Payments, due to his receipt directly and indirectly of HB Cllr Rayner should also have declared this as a disclosable pecuniary interest at all these meetings.

He was clearly reliant on housing benefit to enable his tenants to pay rent; and on other occasions received housing benefit as a direct payment to him from the

council. He is disingenuous in suggesting that HB levels were of no interest to him, when the evidence I have submitted demonstrates that the rent levels he fixed were aligned to the LHA level - the housing benefit rate.

He received landlord incentives from the council and Barnet Homes. he claims they were for the benefit of the tenant – but if so why were they called by the council and Barnet Homes 'landlord incentives', and how does the tenant benefit from a payment to the landlord to take a council nominated tenant? Cllr Rayner should have made a disclosable pecuniary interest declaration in relation to his ownership of property as a landlord as the business conducted at the meetings was of benefit to him both directly and indirectly.

The Code also expects councillors to take advice from the Monitoring Officer as to participation in matters where the Member may have an interest. It is hard to believe that Cllr Rayner did, so, as if he had the Monitoring Officer would surely have advised him of the risks of him not making a full disclosure and declaration of his disclosable pecuniary interests and continuing to preside at and participate in the meetings referred to above. Ex post facto damage limitation advice after the horse has bolted is no defence to this.

Cllr Rayner could have applied for a dispensation, but did not do this either, until the last council meeting.

Cllr Rayner has adopted an overly subjective view of the Code, when the Nolan principles and all the pronouncements from the Government over recent years, especially since the Localism Act emphasise the need to interpret the Code objectively: what would it look like to the person in the street if a declaration was not made?

In his dealings with officers and his tenants, Cllr Rayner did not draw clear lines to distinguish which role he was adopting at a particular time. This sent mixed messages to officers and tenants. Tenants felt intimidated by this powerful man who was not just their landlord but also a person of considerable local prominence, in what was a very asymmetric relationship. The fact that Cllr Rayner admits he saw nothing wrong in turning up at a tenant's home at 10pm at night with no appointment demonstrates this.

This confusion of roles vis a vis officers is shown by the email from Ms Nkechi addressed to Cllr Rayner at his council email address. It is absolutely clear that in dealings with council officers, members have to be scrupulous about separating out their personal interest from their roles as a councillor. Clear 'firewalls' should have been put in place by Cllr Rayner. It is not enough to tell an officer that today he is wearing one hat, rather than the other. He should never have used, nor permitted to be used , his council email for his personal business. He should not have used, or permitted to be used, his title of councillor when dealing with officers on his own personal business.

For these reasons, I believe the case against Cllr Rayner has been made out on both elements of the complaint before the Panel.

Cllr Rayner has acted, or failed to act, contrary to part 2 para 9.1 of the Code.

Cllr Rayner has acted contrary to paragraph 7 of the Code, in that he has taken decisions that are for his personal benefit.

Cllr Rayner has acted contrary to paragraph 8.2 of the Code, in that he apparently failed to take timely advice from the Monitoring Officer.

Cllr Rayner has not acted with selflessness, integrity, accountability, openness, honesty or shown leadership as required by the principles set out at paragraph 1(6) of the Member's Code of Conduct in failing properly to declare his direct pecuniary interests.

Cllr Rayner disclosed confidential information concerning his tenant contrary to paragraph 4 and used his position as a councillor to secure an advantage for himself contrary to paragraph 5 of the Code.

Cllr Rayner has failed to act with selflessness, integrity, objectivity, accountability, openness, honesty and to exercise leadership by behaving in ways that do not exemplify the high standards of conduct required by paragraph 1(6) of the Member's Code of Conduct in the conduct of his dealings with council officers.

In relation to the complaint of repeated failure to disclose a DPI, the panel should refer the matter to the police for further investigation, as other councillors have been referred in the past. Not do so would smack of party political double standards.

Against the sorry background set out in this document, it is inevitable that there have to be fears of a whitewash, shared by many local residents, who will eb observing the outcome of these proceedings with keen interest.

In whatever way this Panel meeting is conducted, and despite the erroneous exclusion of large parts of my complaint so far, this will not prevent the public forming their own view as to Mayor Cllr Rayner's 's conduct on these matters, bearing in mind his own admissions to the local press.

If the Leaders' Panel do not deal with this case appropriately, then I will have to explore other avenues to establish the truth for the people of Barnet and achieve an appropriate outcome.

Andrew Dismore AM

20/8/14