

**PRIVATE & CONFIDENTIAL**

**REPORT TO THE CHIEF EXECUTIVE, ASSISTANT CHIEF  
EXECUTIVE, MONITORING OFFICER AND CHIEF FINANCIAL  
OFFICER OF SANDWELL METROPOLITAN BOROUGH  
COUNCIL**

**APRIL 2016**

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# 1 INTRODUCTION

- 1.1 Sandwell MBC ("Sandwell") is a Metropolitan Borough Council in the West Midlands. It has, and for the duration of events covered by this report, had, an overwhelming Labour Party majority control. By way of example, the current composition of the Council's 72 members is 69 Official Labour Party; 2 Independent Labour; 1 UKIP. Indeed, since becoming a unitary authority, Sandwell has always had a Labour majority. Despite being an area of deprivation, the Council has maintained a stable financial base and service delivery ethos. It is definitely member-led with strong and decisive leadership demonstrated by the late Leader, Cllr Darren Cooper and his cabinet.
- 1.2 However, a feature worthy of note in the introduction is that both the workforce and the membership of the Council are very stable; many officers have worked in Sandwell or for one of the neighbouring boroughs for all of their professional careers, and many members have served the authority for more than 20 years. The two elected members in scope for this investigation, Cllr Mahboob Hussain and Cllr Ian Jones, have each served the Council for 20 years or more. They have each been in the cabinet for at least 10 years. Cllr Jones' professional career was also spent in local government, at another West Midlands authority. Both are very experienced members. Cllr Hussain was a non-statutory Deputy Leader of the Council at all material times, and Cllr Jones was a Cabinet member.
- 1.3 Without placing too much weight on this feature, recent history demonstrates that, where there is a strong and stable majority coupled with a stable workforce, two risks to corporate governance may be more prevalent. Firstly, both members and officers take 'inherent' knowledge for granted without explicit declarations being made. Secondly, the lack of contestability can tend towards officers becoming overly compliant with the will of elected members. This is not a party political point as such matters have affected Conservative-led Westminster, Lincolnshire and the Isle of Wight; as well as Labour-run Doncaster, North East Derbyshire and Liverpool, although the circumstances under investigation in this report are not of the same magnitude as some of the events in these other councils.
- 1.4 This report is the culmination of many months of work. Whilst Mark Greenburgh is the named author of this report and stands behind its conclusions and recommendations, the report would not have been possible but for the hard work of [REDACTED] and the Internal Audit team at Sandwell; Vivienne Reeve, a Senior Associate with Gowling WLG, and Sarah Pervaiz, a paralegal in the team; and the senior officers of Sandwell who have generously given their time in providing important information and access to witnesses.
- 1.5 We are also grateful to the witnesses, the elected members Mahboob Hussain and Ian Jones, who came forward for interview and largely cooperated with our investigation. Each has engaged, at their own expense, lawyers to assist them. The lengthy and detailed responses to the drafts provided by those members have been particularly

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helpful. Officers of the Council and, in the case of Mr Willetts by the time of his second interview, a former officer, took time and trouble to assist us.

- 1.6 A point of particular note and frustration and regret is that Azeem Hafeez, an employee of the Council in its Employment Support Team, and purchaser of two of the properties subject to this review, was not produced for interview, or compelled to answer questions. Mr Hafeez is the son of Cllr Hussain, one of the elected members subject to this investigation. Cllr Hussain was until recently a non-statutory Deputy Leader of the Council. At the outset of this investigation Mr Hafeez had been suspended on other disciplinary allegations, but those matters were resolved many months ago. Since then he has been signed off work by his GP. Despite this it should have been possible to have arranged for a meeting, or for him to have been instructed to respond to our written questions himself or through an adviser. The failure to obtain evidence from Mr Hafeez has undoubtedly hampered and delayed the Investigation and is an on-going concern.
- 1.7 Given the scope of this investigation the correct test of evidence is that applicable in civil proceedings, the balance of probabilities. This is substantially lower than the criminal burden of proof, which must be beyond reasonable doubt, and may result in different outcomes to the same evidential considerations. Our task is to respond to the Terms of Reference provided by the Council and set out both a narrative of what happened, and our conclusions as to what extent, if any, individuals fell into error. Our terms of reference are attached on page 4/5.
- 1.8 We have cooperated with the West Midlands Police during this investigation, as they have pursued their own distinct, though over-lapping enquiries. We are grateful to the senior officer team and especially to Detective Inspector [REDACTED] for the collaborative way he has approached the timing and sharing of information. Inevitably the need to work sensitively with the police investigation has meant that there have been delays beyond our control. We have been conscious at every turn to do nothing to prejudice due process or to interfere with the police evidence and that has created a number of inevitable, though frustrating delays. We received demands on a number of occasions that this investigation should not pre-judge the police process. Whilst we are satisfied on legal grounds that it was safe to proceed, we were informed on 15<sup>th</sup> April 2016 that their investigation was concluded and it is in the light of this decision we are now able to forward our final report to you.
- 1.9 It will be a matter for the statutory officers of the Council (its Head of Paid Service, Monitoring Officer and Chief Financial Officer) having regard to their respective statutory obligations to make any factual report to the Council and place these findings and invite its response. This report is concerned only with our Terms of Reference and the relevant standards and conduct concerned.
- 1.10 The author is a partner in the international law firm, Gowling WLG (UK) LLP, formerly known as Wragge Lawrence Graham & Co LLP. He is a solicitor advocate and specialises in local government employment and corporate governance work. He leads the Public Sector Group which encompasses local and central government, social housing, social care and regeneration teams. His biographical details are attached at

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(pages 1-3), but as it has become a matter of some comment, we make clear that the author was a member of Buckinghamshire County Council between 1993 and 2001 and its Conservative Leader between 1997 and 2001. He served on the NDPB, the Beacon Councils Scheme from 2004 to 2010 concluding his tenure as vice chair; and he now sits on the City of London Corporation Standards Committee as an Independent co-opted member. All of this background was known to the instructing team from Sandwell, indeed it is published on the website for our firm.

- 1.11 The Councillors' responses to the 'Maxwell' letters indicated a concern on their part that either an elected political service or indeed this firm's unsuccessful tender (a significant time previously) for work from the Council, might in some way have swayed our judgement in the conduct of the investigation or the findings we have reached.
- 1.12 Whilst conscious of the need for transparency and the need for justice being seen to be done, all of the relevant facts were known to both the officer team and indeed the interviewees at the time of their meeting with the author to give evidence. Those issues were not raised then, nor at any subsequent point before the provisional views were shared in the "Maxwell" letters.
- 1.13 We considered at the outset, as we must, whether there was any actual or perceived conflict of interest with the Council or any of the principal witnesses, or any confidential information that would preclude the writer or the firm from acting independently. We were, and have remained at all times, satisfied that we are independent and have approached the issues professionally, impartially and fairly, assessing each issue on its merits alone.

## 2 EXECUTIVE SUMMARY

### 2.1 COUNCILLOR MAHBOOB HUSSAIN

#### PUBLIC TOILETS

- 2.1.1 The evidence suggests that Cllr Hussain was involved in the detail of the proposed sale of these toilets to a degree which crossed the line between political oversight and day-to-day management of the Property Service function.
- 2.1.2 The proposed purchaser was [REDACTED] A3 ("CPL"). Whilst CPL has had various incorporated bodies, it was not incorporated on 18 July 2011 when the initial letter was received by the Council and thus in law was at that time run by its partners which included [REDACTED] A3. It is accepted that Cllr Hussain knew [REDACTED] A3 socially. [REDACTED] A3 on any reasonable assessment, is well known to Cllr Hussain.
- 2.1.3 [REDACTED] A3 has declined to be interviewed by us or answer written questions, but the evidence suggests that the most plausible explanation as to why [REDACTED] A3 who had not previously been in contact with the Council or Cllr Jones, decided to write to Cllr Jones, to enquire if there were any redundant toilet blocks that he could let or buy, is because someone had suggested that to him. On balance, it seems likely that suggestion came from Cllr Hussain, either directly or through an undisclosed agent.
- 2.1.4 In any event, a letter from CPL (pages 187-188) arrived in Cllr Jones' office at the Council House and after internal checking Cllr Hussain [and Cllr Jones] were consulted by Dave Willetts over whether to offer CPL any properties, if so, which properties to offer and the conditions of the proposed sale. The evidence suggests that [REDACTED] A3 Cllr Hussain knew that CPL was the bidder, and is likely to have seen [REDACTED] A3's name on the letter and on the email correspondence with the Council. Under the Council's Code of Conduct there was no requirement for Cllr Hussain to register any pecuniary interest with the Monitoring Officer or on the Statutory Register of any relationship to [REDACTED] A3. Their relationship is too distant to be caught by the statutory provisions. [REDACTED] A3 But Cllr Hussain failed to declare any knowledge of, or relationship with, [REDACTED] A3 at the point that he was consulted by Mr Willetts in relation to the proposed purchase by CPL [REDACTED] A3 of the former public toilets. This appears to be a breach of the Member Code and the duty of honesty and selflessness under the code. It was also a breach of Part VI Paragraph 12 (3) [procuring an advantage for somebody] (Page 11).

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2.1.5 Cllr Hussain's degree of interference in this sale and level of control over Dave Willetts regarding the details of the sale, in our view, amounted to an overstepping of his role as a Councillor, even as a senior cabinet member, and as such was a breach of the protocol for member/officer relations.

2.1.6 The agreement to sell the toilets for a price lower than that identified by the District Valuation Service (DVS) appears to be a serious breach of the Code and the Council's internal Financial Regulations. Cllr Hussain knew of the DVS valuation (pages 240-244) but, jointly with Cllr Jones and Mr Willetts, agreed to ignore it, without any contrary evidence as to a correct alternative price. We accept the evidence that Mr Willetts held the professional responsibility to advise the Council on value, but neither Cllr Hussain nor Cllr Jones were naïve to the rules. The evidence commissioned from Savills suggests that the DVS valuation was correct and, as a result, the Council has suffered a financial loss. This appears to also result in a breach of the Member Code of Conduct – Part VI Paragraph 12 (3) [securing an advantage] (page 11). It is worth confirming that a breach of 12 (3) occurs whether the advantage is secured or not, and whether or not the member secured any advantage to himself or his directly related family (within the statutory definition). There is no evidence that Cllr Hussain obtained any advantage himself, or that he would have acted any differently whether CPL included ██████████ as a partner/shareholder or not. We have considered the culpability of Cllr Hussain as against that of Cllr Jones in relation to this issue. Cllr Hussain appears to have taken a lead role in asking Mr Willetts to suggest an alternative valuation to that set by the DVS; in this regard the nexus between Cllr Hussain and ██████████ is more relevant; whereas Cllr Jones appears to have remained silent and relied on Mr Willetts' oral advice. For that reason we consider Cllr Hussain's conduct did amount to a breach of the Code.

#### **LODGE STREET/STONE STREET**

2.1.7 We have found no evidence of Cllr Hussain's involvement in the purchase of this plot of land by his son, Azeem Hafeez. Equally we found very little evidence of Mr Hafeez declaring, as required, his employment by the Council or relationship to Cllr Hussain when bidding for the land.

#### **CORONER'S OFFICE AND 215 HIGH STREET**

2.1.8 There is evidence to suggest Cllr Hussain's involvement in the sale of these plots to his son, Azeem Hafeez. Mr Hafeez submitted a bid to the Property Services Team for the premises the day before the property was advertised by the Council. Whilst both the premises had been vacant and advertised separately some months previously, Mr Hafeez had shown no interest at that stage. Importantly, Cllr Hussain had in the recent past been party to the decision whether to offer the two properties jointly. Mr Hafeez's bid, coming as it did the day before the re-advertisement was at best a curious coincidence. It is possible that Mr Hafeez discovered the up-coming sale from other sources, but on balance it seems likely to be the result of confidential information being shared

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with him by his father. Whether this was deliberate or unwitting (as submitted by Cllr Hussain) makes little difference. In our view, on the balance of probabilities, Mr Hafeez found out about the sale of the premises and the indicative price identified to the Property and Asset Disposal Committee, from his father, Cllr Hussain. This suggests a breach of the duty of selflessness and honesty and of part VI, paragraph 12 (3) [use of position to secure an advantage] and 12 (4) [improper disclosure of confidential information] by Cllr Hussain.

### **HOUSING ALLOCATIONS**

- 2.1.9 We found no evidence of any involvement by Cllr Hussain in the allocation of council housing by Sandwell Homes to his daughter [REDACTED] A4
- 2.1.10 The evidence suggests that Cllr Hussain lost sight of the line between political oversight and day-to-day management of the Housing Allocation functions by officers – even when the function was being discharged by Sandwell Homes as an ALMO. This improper contact was considered oppressive by those in receiving it and they complained to their line managers. Little was done to support them and the behaviour continued. Cllr Hussain used his position as a senior cabinet member of the Council to intimidate junior officers. This appears to be a failure to act in accordance with the Member/Officer protocol and the obligations of 'Leadership' within the Code.

### **EMPLOYMENT ISSUES**

- 2.1.11 We have found no evidence of Cllr Hussain interfering in the appointment or discipline of members of his family by the Council. Nevertheless, we repeat our comments in the introduction regarding the failure by the Council to secure the assistance of its employee, Mr Hafeez, with this investigation, or to take any disciplinary action against him in relation to the apparent breaches of his duties. Appropriate declarations were repeatedly ignored by Cllr Hussain (and by Mr Hafeez).

### **PARKING TICKETS**

- 2.1.12 The evidence suggests that Cllr Hussain interfered in due process of parking tickets issued to his wife and his son. He did so by contacting directly the officer concerned and asking, in effect, for them to be cancelled. This appears to be a breach of the Code of Conduct – selflessness and honesty; and of Part VI 12 (3) [using his office to secure a pecuniary advantage for another](pages 6-19).

### **RELEASE OF RESTRICTIVE COVENANTS**

- 2.1.13 We found no evidence of Cllr Hussain being involved in the release of restrictive covenants by Property Services. On the contrary, Dave Willetts took full responsibility for the Policy adopted by the Council even though the issue of



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whether to have a charging policy could properly have been within the discretion of members to decide.

### **15 DAY SALE SCHEME**

2.1.14 The evidence suggests that Cllr Hussain again lost sight of the roles and responsibilities by requiring officers to provide him with the detail of every proposed sale and the price being charged. It appears that he scrutinised and challenged those details effectively approving or disapproving each transaction. There is no evidence of that influence being used for an improper personal or pecuniary purpose, but the evidence of the conduct itself appears to be a material breach of the Code of Conduct and the Member/Officer protocol.

### **URBAN LIVING – PURCHASE OF LAND ON CLIFFORD ROAD**

2.1.15 Azeem Hafeez is the owner of a plot of land on Clifford Road in Oldbury. Cllr Hussain knew that and used his influence to persuade the Council to propose the purchase of that plot of land for social housing. Cllr Hussain should not have involved himself at all in the proposal. The relationship between Mr Hafeez and Cllr Hussain was not declared to the officers. Despite their actual knowledge of the relationship with Cllr Hussain and indeed Mr Hafeez's employment by the Council the officers made no mention of these material facts in the report to Urban Living. In relation to Cllr Hussain, this was a material breach of the Code of Conduct obligations of selflessness, objectivity and honesty and of Part VI paragraph 12 (3) [attempting to secure an advantage] (pages 6-19). The transaction ultimately did not proceed.

### **RICKSHAW RESTAURANT**

2.1.16 The evidence gathered regarding the Rickshaw Restaurant and the association between Cllr Hussain and the ultimate purchaser/developer of the site is a cause for significant concern. The evidence suggests that Cllr Hussain sold the Rickshaw Restaurant in Dudley to his son Azeem Hafeez for £85,000 in 2004. The restaurant closed after a fire and Mr Hafeez sold the derelict premises to a developer as part of a site for redevelopment. The premises of the Rickshaw Restaurant were sold by Mr Hafeez for £470,000 in 2012. Cllr Hussain is a partner in the taxi firm, Five Star Taxis. The office used by Five Star Taxis is adjacent to the former Rickshaw Restaurant on the same development site. We do not know whether the developer made any similar approach to Five Star Taxis or whether Cllr Hussain knew of any such negotiations. But it seems highly likely that such an approach was made and that Cllr Hussain would have known that. How else would Cllr Hussain have known the developer?

2.1.17 In any event Cllr Hussain introduced the developer to Sandwell Council as a potential property development partner for sites within the borough. When he did so, he does not appear to have declared any interest or association with that developer to the Council.

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2.1.18 In consideration of a substantial option fee, the Council proceeded to grant the same developer an Option for a significant development within Sandwell. We have not investigated that option.

2.1.19 The failure by Cllr Hussain to have declared his association (based on Cllr Hussain's proprietary interest in Five Star Taxis or his relationship to Azeem Hafeez, or both) with the developer suggests that Cllr Hussain was in breach of the Code of Conduct and in particular the obligations of selflessness, objectivity, honesty, Paragraph 9 – conflicts of interest and 12 (3) [attempting to secure an advantage]. This may also have been a breach of the Bribery Act compliance statement set out in the Member Code, for the same reasons.

## 2.2 COUNCILLOR IAN JONES

### SALE OF THE PUBLIC TOILETS

2.2.1 Our general conclusion in relation to Cllr Jones is that he was largely a passive bystander to these events. It appears that Cllr Jones attended meetings and briefings, often jointly with Cllr Hussain, but the driving force behind the property services function of the Council was, at all material times in this investigation, Cllr Hussain and not the Head of Property Services, Mr Willetts, other cabinet members or Cllr Ian Jones. Cllr Jones, for a substantial part of the period covered by the events under investigation, held the Cabinet Portfolio that included property services, though this was interrupted by a temporary change in portfolio allocations by the late Leader.

2.2.2 The evidence suggests that Cllr Jones was aware of the sale to CPL but was unaware of any association between Cllr Hussain and [REDACTED] A3. The evidence suggests that Cllr Jones was consulted, alongside Cllr Hussain on the initial terms and conditions of sale, and crucially on the sale price. On balance, it seems that Cllr Jones agreed that the DVS valuation should be obtained and agreed with Cllr Hussain and Mr Willetts that the sale should proceed at a value well below that identified by DVS and without there being any evidence that their valuation was actually wrong, or obtaining an alternative valuation. However, as set out above, the evidence suggests that it was Mr Willetts who was invited to suggest a sale price (at the invitation of Cllr Hussain). Cllr Jones has no recollection of involvement but the documents and witness evidence of Mr Willetts suggests that he is mistaken and that he was consulted and did agree to set aside the external valuation. Yet Cllr Jones was both a senior councillor and an experienced local government official who, if he had considered the issue, would have known that they should not depart from the professional valuation without alternative documentary evidence. However, in our judgement, he was entitled to rely on Mr Willetts' verbal advice and in the ignorance of any association with [REDACTED] we do not consider Cllr Jones has breached the code as a result. A3

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2.2.3 We are not aware of any pecuniary or other interest that Cllr Jones had to disclose.

2.2.4 In relation to the Asset Management and Land Disposal Committee and oversight of the Property Services function, Cllr Jones should not have allowed Cllr Hussain to dominate the Property Services function to the degree that he evidently did. Cllr Jones should have been more robust in his expectations of Mr Willetts and challenges to his performance. But reliance on officer advice is unlikely to amount to a breach of the Member Code of Conduct.

2.2.5 In relation to the balance of the property matters referred to above, we have found little evidence of Cllr Jones' active involvement in any of the transactions mentioned, the Restrictive Covenant issue, or the 15 day sale scheme. As the relevant cabinet member, appropriate active involvement would have been expected.

### 2.3 DECLARATIONS OF INTEREST

2.3.1 In general, compliance with the obligation to make written declarations of interest appears to be satisfactory, though the Monitoring Officer and her team have to work hard to chase members to complete and keep the statutory registers up to date.

2.3.2 The evidence suggests that Cllr Hussain failed to declare his pecuniary interest as a proprietor of Five Star Taxis when the Council was entering into a contract with that company. This was investigated by the Chief Executive who concluded that it was an oversight on the part of Cllr Hussain, who had made some declaration of his interest in Five Star Taxis in the register. This oversight has subsequently been amended. We think in hindsight that was a rather generous view to have taken. Cllr Hussain was an experienced member who had received many reminders and advice from the Monitoring Officer to be more rigorous in his declarations, indeed even in relation to Five Star Taxis. Cllr Hussain did not evidence to us a strong grasp either of the requirements to make declarations; or of the importance of doing so. It is not a mere formality. Declarations are there to preserve confidence in public administration and to ensure that decisions are taken by those with unimpeachable motives.

### 2.4 AZEEM HAFEEZ

2.4.1 It seems that Mr Hafeez appears to have done nothing to declare his interest as either an employee of the Council or being Cllr Hussain's son, when bidding for the purchase of any of the properties owned by the Council, or when completing on the transactions. It should be noted that he did not succeed in all of his bids, but in relation to each and every one this failure was a breach of section 117 of Local Government Act 1972, and of the Officer Code of Conduct (the obligations of 3.1 – Selflessness; 3.3 Objectivity; 3.4 Honesty; 4.1 the Public Interest; 5.3 misuse of confidential information for personal gain; 13.1 failure to declare

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personal interests). Where there was mention of Mr Hafeez's relationship reported to the Development Control committee, the details of the declaration, namely to whom he is related and that he is an employee, do not appear to have been made clear. These failures are serious conduct issues and the latest knowledge of officers allowing it to continue unchecked is concerning. One cannot help but wonder if the fact of Mr Hafeez's relationship with Cllr Hussain had some part to play in this surprisingly "Nelsonian" practice.

## **2.5 DAVE WILLETTS**

- 2.5.1 The evidence suggests that Mr Willetts allowed himself to be bullied and coerced by Cllr Hussain over a long period of time; he did report his concerns to his line manager, Nick Bubalo. But when the poor behaviours resurfaced, he did not pursue the matter with Mr Bubalo, the Chief Executive or the Monitoring Officer.
- 2.5.2 The most gross and obvious dereliction of duty by Mr Willetts was in relation to the valuation and sale of the former Public Toilets. Mr Willetts was a professional surveyor and a very experienced local government officer. He knew that there was a statutory obligation to achieve best value in the disposal of an asset. Mr Willetts chose to instruct the DVS for the valuation (at the invitation of the members). The DVS report was clear and well evidenced. The evidence is that Mr Willetts shared the DVS report (pages 240-244) with Cllrs Hussain and Jones and sought their guidance in relation to the sale. There does not appear to be any legitimate reason why Mr Willetts sought the advice of elected members on a valuation, but he did. The evidence suggests that Mr Willetts himself did not have confidence in the DVS valuation. But there is no evidence that he took any step to challenge the valuation or to provide an alternative written valuation himself.
- 2.5.3 The evidence suggests that once in receipt of the DVS report the members sought Mr Willetts' professional view as to the correct price and instructed him to sell at the lower figure he suggested. Mr Willetts may have genuinely believed the DVS valuation to be excessive, but he also knew that he had no basis for ignoring the valuation unless he substituted a valuation of his own, or instructed a third valuer to make an assessment. As a result of this failure the Council appears to have suffered a financial loss. In agreeing to ignore the valuation he obtained from the DVS he left the Council open to challenge and in likely breach of its statutory duties. He also led the members into error in that he should never have agreed to the sale on those terms in the absence of a proper written valuation.
- 2.5.4 In relation to the sale of Lodge Street, the evidence appears to be that the price obtained by the Council was substantially lower than that which ought to have been achieved. The report from Savills (pages 311-328) indicates that the Council suffered a substantial loss as a result. Mr Willetts was unable to explain in interview why it was that a proper valuation (whether internal or external) was

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not carried out for the site, or how the Council was complying with its duty of Best Value in the absence of such a valuation.

2.5.5 In relation to the Urban Living Report, Mr Willetts knew that the plot of land in Clifford Road was owned by Azeem Hafeez, that Mr Hafeez was an employee of the Council and the son of Cllr Hussain, a senior cabinet member. Mr Willetts could and should have made those facts plain on the face of the report to Urban Living. He failed to do so or to report the matter to his Director (Mr Bubalo), the Monitoring Officer, Chief Financial Officer or the Chief Executive. Ultimately the transaction did not proceed, but Mr Willetts does appear to have fallen into error in relation to the Officer Code of Conduct (pages 42-50) in that his omission would have resulted in an impropriety if the transaction had completed.

## 2.6 NICK BUBALO

2.6.1 Mr Bubalo admitted in interview that he is wary of Cllr Hussain. He knew of Mr Willetts' issues with Cllr Hussain and that Mr Willetts felt Cllr Hussain was trying to micro-manage the Property Services Team. Mr Bubalo did act on the written concern from Mr Willetts regarding inappropriate pressure from Cllr Hussain by interceding in the meeting requests from Cllr Hussain. Instead Cllr Hussain would ask his PA to call over to Mr Willetts on an ad hoc basis. And so, in this way, the bullying continued. Once Mr Bubalo started to attend these "diarised" meetings Cllr Hussain found them less effective and so stopped making the appointments in advance. Mr Bubalo never sought to check back with Mr Willetts and failed therefore to take adequate measures to stop the misbehaviour of Cllr Hussain. Mr Bubalo could have written to Cllr Hussain, involved the Monitoring Officer or the Chief Executive or the Leader.

2.6.2 In relation to Mr Hafeez's purchase of Lodge Street, planning permission for Lodge Street was granted to Mr Hafeez by Mr Bubalo (or more properly by an officer subordinate to him doing so on his behalf), under delegated powers. Whilst we accept it would very probably have made no difference to the decision, for reasons of transparency the decision to grant permission should have been taken by members, with full disclosure of the relationships, in a public meeting.

## 2.7 ADRIAN SCARROTT

2.7.1 Mr Scarrott is and was at the material times a senior manager in the Housing function. He received a complaint (page 1179) from a Housing Allocations Team Leader, AS, that she was being bullied and harassed by Cllr Hussain in relation to the discharge of her duties. Mr Scarrott and his then director AS failed to address these concerns adequately or at all and the behaviours continued. He became aware AS was being called to meetings in Cllr Hussain's office at the Council House, to go through the allocation lists. Mr Scarrott did nothing to stop the meetings, or attend with AS. This left a vulnerable employee horribly exposed to undue pressure

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and, more corrosively, perpetuated the culture within the Department of ignoring governance.

2.7.2 As a separate issue, Mr Scarrott appointed <sup>As 6</sup> [REDACTED] as line manager to [REDACTED] (they are husband and wife). Mr Scarrott knew that they were husband and wife and did not raise this with the Chief Executive, Monitoring Officer or Chief Financial Officer despite the obvious risk to Corporate Governance. At the time, this appointment was not contrary to the Council's HR policies but the policies have now been amended.

## 2.8 PARDIP SHARMA

2.8.1 The system in Legal Services failed to ensure that certificates of value were obtained before allowing exchange of contracts, or completion of property transactions. The control over the giving and receiving of professional undertakings was ineffective; and the lack of due diligence led to the Director of Governance inadvertently sealing documents without the necessary checks and compliance being in place. Legal Services made no checks on the identity of the purchasers or when the purchase monies came through. This placed the Council at risk of money laundering.

2.8.2 As Legal Services Manager, Mrs Sharma was responsible for the systems and processes adopted by the Council's legal department. We found no evidence that relevant declarations of interest were noted on the files.

## 2.9 NEERAJ SHARMA

2.9.1 As Director of Governance and Monitoring Officer, Mrs Neeraj Sharma failed to secure adequate reporting of concerns from directors or service managers to her in her role as Monitoring Officer; as a result she was unable to take actions in relation to matters of which she was unaware. Nor did she check the issues such as certificates of value in relation to the disposal of properties, trusting that colleagues would not have agreed a sale or exchanged contracts without such evidence, but not checking herself.

2.9.2 We found no evidence that there was proper supervision and delegation protocols or records kept of undertakings given and received in property transactions or that performance with such undertakings was monitored.

### 3 BACKGROUND

- 3.1 The Council became aware of a number of allegations relating to its property and other functions, and allegations of impropriety by members and officers. It referred those matters to its Internal Audit team. However, as the internal audit continued it became evident that there were a number of breaches in confidentiality and, as more information began to appear in public, Senior Officers decided to insulate the Internal Audit team from any perceived or actual pressures and to involve an external investigator. From the outset of our investigation it has been evident that the late Leader of the Council, Cllr Cooper, considered the subject of this investigation a serious issue. At the joint instruction of the late Leader and the Chief Executive, we were commissioned to conduct this investigation. Both also wanted the Council to capture any relevant learning. The Council entered into a concordat with the police to share certain information and this firm was invited to a meeting with the police and senior officers to discuss taking over the investigation from the internal team and advising in relation to the pursuit of separate but overlapping investigations.
- 3.2 Our Terms of Reference (pages 4-5) were settled on 1 April 2015 to establish our initial scope. Two amendments were made to those over the life of the investigation, to add new issues that had emerged. The desire to resolve all the allegations, even when they emerged later in the day, has been evident. Even where this has caused delays, our instructions have been to seek the relevant evidence.
- 3.3 We have already set out that we have adopted in the consideration of these matters the civil standard of proof; that is to say the balance of probabilities. We accept that over a period of years memories fade or become unreliable. Where there have been conflicts of evidence our general preference has been to consider the weight of evidence, where more than one witness has given the same or similar accounts; and/or where contemporaneous notes, emails or other corroboration exists. We reject the assertion made in the response of Cllrs Jones and Hussain that there has been any conspiracy against them on the part of certain unnamed officers. We found no evidence to support such an allegation.
- 3.4 The duty to promote high standards of conduct and integrity is a statutory duty on the Council under the Localism Act 2011. The relevant Codes of Conduct and revisions are attached at (pages 6-50). Section 28(1) of the Localism Act 2011 requires The Code of Conduct to have, as its foundation, the seven principles of conduct in public life. The Sandwell Member Code of Conduct goes on to quote from the principles as established by the Committee on Standards in Public Life, more fully. The obligations in the Code, to make declarations, and to maintain a Register are of course minima; the Council can (and has) embellished this to set its own standards. If a Member [or Officer] feels conflicted or considers that in order to discharge their obligation of selflessness, honesty, or accountability, they ought to make further declarations, they are of course at liberty to do so. Indeed, such further declarations, over and above the statutory minimum may be necessary to remain compliant with the spirit and letter of the Code.

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- 3.5** In relation to Members of the Council, the Terms of Reference require us to report on the extent to which, if at all, we consider there is evidence of a failure to comply with the relevant code of conduct in force from time to time. This requires us to apply the Code of Conduct to the evidence we have identified and set out in this report. One of the challenges the Monitoring Officer and Internal Audit team have faced is that in general too great a focus has rested on the precise formulation of different categories of disclosable interests or relationships, and insufficient attention has been paid to the generality and the 'objective by-stander' test enshrined in the Reports of the Committee on Standards in Public Life, in particular, the principles of selflessness, objectivity and honesty. We set out details of these below.
- 3.6** In respect of Officers the relevant obligations are set out in the Officers' Code of Conduct in the Constitution, the Local Government Act 1972 and Sandwell Disciplinary Code. Again, helpfully the Sandwell Code of Conduct for Officers incorporates the seven principles of conduct in public life.
- 3.7** We set out below a summary of the findings we have made in respect of each issue. As we have proceeded with the Investigation, our instructing clients have asked for interim views on matters, such as revisions to the Code of Conduct, and we have been happy to share those views, and applaud those officers concerned for viewing this as an iterative process. In relation to Cllr Jones, our initial view, shared with the Chief Executive, was that Cllr Jones had not breached the Member Code in relation to the sale of the toilets, or failed to declare a relevant interest. We hold to that preliminary view, but it has been a narrow judgement call based on the evidence of Mr Willetts, who as the Council's lead property adviser, has the professional responsibility for valuations and adhering to the statutory duty to obtain best value.



## 4 REPORT

### 4.1 SALE OF PUBLIC CONVENIENCES IN THE BOROUGH

#### ASSESSMENT OF DOCUMENTARY EVIDENCE

- 4.1.1 On 8 June 2011 (page 168-170) the Cabinet agreed to delegate authority for non-operational land to the Director of Regeneration and Economy, Nick Bubalo. CPL and its directors, especially [REDACTED], were invited to participate in our investigation. They did not respond to those requests.
- 4.1.2 A letter was received by the office of Councillor Ian Jones, then the Cabinet member for Property, from "Central Property Line" (CPL). The letter was not date stamped, but was dated 18 July 2011 (page 171). It was addressed "Dear Sir". There is no envelope available, but the fact that the letter arrived in Cllr Jones' office suggests strongly that the envelope was addressed to him, as if it had simply been addressed to 'The Council', it would very probably have been directed to Property Services rather than to a cabinet member's office. There appears to be a second copy of the same letter dated 27<sup>th</sup> July. It is not clear why there are two copies or whether they arrived at the same time to the same office.
- 4.1.3 The letter states that CPL "recognised" that a number of disused public toilets existed in the borough and CPL wanted to use them for commercial purposes. The source of that knowledge is not clear and there was no register for public access, nor had there been any advertisements. In the absence of any alternative explanation, it seems likely that CPL were aware of the issue because someone had told them.
- 4.1.4 A manuscript note on the letter dated 27 July 2011 states "Councillor Jones had asked if we could look at the suggestion below" signed [REDACTED] AS [REDACTED] secretary at the relevant time. The manuscript notes on the second copy (page 173) of the letter show that this was seen by officers, Mr Willetts and by A7 [REDACTED].
- 4.1.5 On 15 August 2011 (page 174) A9 [REDACTED], Trainee Surveyor, Property Services wrote to CPL confirming that Property Services were looking at the state of each site and would contact him when they had further information. On the same date he wrote a briefing note (page 175) to Mr Willetts headed "Public Conveniences in Sandwell". It explains the status of the 12 redundant public conveniences in the Borough noting that Albert Street, Oldbury, Jervoise Lane, West Bromwich and others are suitable for disposal. It also noted an auction was due to be held on 22 September 2011, and was suggested that the plots could have been added to that public auction.

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- 4.1.6 Emails between 17 October and 7 November 2011 (pages 179-182) suggest that a meeting took place with [REDACTED] <sup>A3</sup> and [REDACTED] <sup>A10</sup> of CPL and the Council officers on 9 November 2011.
- 4.1.7 The manuscript notes on emails sent on 16 December 2011 and 12 January 2012 (pages 189-194) indicate that Mr Willetts and [REDACTED] <sup>S</sup> [REDACTED] consulted Members about the interest shown by CPL. There are five documents referring to the involvement of Councillor Hussain by name (pages 173, 191, 195, 200 and 251) and a further five documents on the file refer to the "Councillors/Members" being consulted between July 2011 and May 2012 (pages 175, 185, 206, 227 and 250). There are nine documents (pages 171, 173, 177, 184, 187, 189, 191, 198 and 200) referring to Councillor Jones' involvement by name, as well as the five non-specific references to 'members' - we find on the balance of probabilities that these references include both Cllrs Hussain and Jones.
- 4.1.8 On 30 January 2012 (page 195-197) a letter was sent from [REDACTED] <sup>A9</sup> to CPL referring to previous correspondence and their interest in buying the public conveniences listed. The letter set out the <sup>A9</sup> proposed terms and conditions of sale. A hand written note, which [REDACTED] <sup>A9</sup> accepts is his, atop this letter states "DW discussed contents of letter with Councillor Hussain Agreed ok to be sent".
- 4.1.9 On 2 March 2012 (pages 200-201) a second letter went from [REDACTED] <sup>A9</sup> to CPL with revised terms and conditions which stated "Further to my letter dated 30 January 2012 and discussions with Councillor Ian Jones and Councillor Mahboob Hussain, I outline the revised terms and conditions that the Council is prepared to proceed". This lists the purchase prices and lists seven key terms.
- 4.1.10 The emails in March 2012 (pages 202-206) between [REDACTED] <sup>A11</sup>, Mr Willetts, <sup>A9</sup> [REDACTED] and [REDACTED] <sup>A3</sup> of CPL document discussions regarding price. Mr Willetts told [REDACTED] <sup>A11</sup> by email 2 March 2012 (page 202) that there was a high degree of subjectivity but his "gut-feel" as to value was in the tune of £15,000 (per toilet). On 9 March 2012 [REDACTED] <sup>A3</sup> made a revised offer of £50,000 for all four toilets and this was accepted by [REDACTED] <sup>A9</sup> the same day. [REDACTED] <sup>A9</sup>'s note on the top of this email made further reference to consultation with the Members. We conclude that those members were Cllrs Jones and Hussain.
- 4.1.11 Between 13 and 19 March 2012 (pages 217-218) there are emails and documents regarding a change of identity of the purchaser's name and their solicitor's name. This did not result in any questions being asked by Property Services or Legal Services as to why there was a change.
- 4.1.12 In mid-April there is a flurry of emails (pages 221-224) regarding the Bearwood toilets. Councillor Eling became aware that they were included in the proposed sale to CPL and this was in his view problematic as they were not surplus stock.

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The Chief Executive, Jan Britton, asked Nick Bubalo to investigate and he confirmed to the Executive Team that he had investigated and had pulled the Bearwood plot from the sale. [redacted] confirmed this to CPL (page 224) and stated that the Council would proceed with the sale of the remaining three toilets for £35,000. On 18 April 2012 CPL confirmed that they would go ahead with the purchase.

- 4.1.13 On 24 April 2012 Mr Willetts emailed [redacted] <sup>A9</sup> confirming that the Members wanted an open market valuation of the toilets by a non-commercial independent service provider. We conclude that the 'Members' referred to were Cllrs Jones and Hussain, and that the instruction to Dave Willetts arose from a further briefing with them on the revised sale. [redacted] noted this in a handwritten note on that email "DW advised Members requested an independent valuation of public conveniences".
- 4.1.14 On 23 May 2012 the District Valuation Service (DVS) completed its report (pages 240-248). This stated that the appropriate value for the three toilets being sold was £45,000 (Wednesbury), £50,000 (Jervoise Lane) and £35,000 (Oldbury). The total value was therefore £130,000. On the same day [redacted] <sup>A9</sup> s attendance note (page 249) of his call with [redacted] <sup>A12</sup> (Legal Services) stated "Told to hang fire and not proceed. Have received independent valuations in excess of what is agreed with prospective buyer. Await further instructions".
- 4.1.15 On 24 May 2012 [redacted] <sup>A9</sup> emailed [redacted] <sup>A12</sup> (page 250) "Please do not exchange contracts, further to independent valuation carried out at the request of Members they are now considering options". Then a second email a few hours later, stating "received further instructions from David via Councillor's Hussain and Jones (page 251). The transaction you are dealing with can proceed as normal". [redacted] <sup>A12</sup> confirmed he would proceed on that basis.
- 4.1.16 On 7 June 2012 (page 254) the buyer's lawyers confirmed that the purchaser's identity was [redacted] <sup>A3</sup>, not CPL. The sale of the three toilets completed on 13 August 2012 for £35,000 in total.
- 4.1.17 In early May 2013 (pages 298-300) there are emails regarding incomplete planning applications from [redacted] <sup>A9</sup>. [redacted] <sup>A9</sup> noted on this email chain "DW requested not to proceed further "non-starter"".
- 4.1.18 On 2 April 2014 the toilets located at the Shambles, Wednesbury were sold by [redacted] <sup>A3</sup> to [redacted] <sup>A13</sup> and [redacted] <sup>A14</sup> for £40,000.
- 4.1.19 Savills has provided an independent expert opinion on the value of the land at the time of the sale, 23 May 2012 as being £130,000. This report is at pages 311-382.

## WITNESS EVIDENCE

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## MR WILLETTTS

- 4.1.20 Mr Willetts told us in interview that the 18 July 2011 letter (page 171) from CPL came to him from [REDACTED]. We accept that. A3
- 4.1.21 We also accept that Mr Willetts knew nothing of any relationship existing between Cllr Hussain and the bidder, [REDACTED]. A3
- 4.1.22 The usual method of disposing of parcels of land and redundant buildings would include a public auction. As noted by [REDACTED], these toilets could have been placed in the auction in September 2011. Mr Willetts' evidence was that he did not place these in the auction, but agreed to sell to CPL by direct allocation under Cllrs Hussain and Jones' instruction. Cllrs Jones and Hussain deny any such instruction being given, but the direct evidence of Mr Willetts, and the corroboration of the email from [REDACTED] on the file, that the property be placed in the September 2011 auction, suggests that Mr Willetts' evidence should be preferred on this point.
- 4.1.23 Mr Willetts' evidence is that Cllr Hussain sat with him and went through the 30 January 2012 (pages 195-197) draft letter to CPL (setting out the terms and conditions) line by line and signed it off. Cllr Hussain denies this, but the documentary evidence appears consistent with Mr Willetts' account which we prefer on this point. There is no evidence that Cllr Jones was involved in that specific meeting.
- 4.1.24 Mr Willetts' evidence is that after the sale terms had been agreed, Cllr Hussain instructed him to obtain an external valuation. This was unusual but he complied with the request. Cllr Hussain has no recollection of such an instruction, but nevertheless the valuation instruction to the District Valuer went ahead. We see no credible reason as to why Mr Willetts would have done so in the absence of a member instruction and the file notes corroborate the oral evidence, so we accept that Cllr Hussain did request the valuation.
- 4.1.25 When the valuation was received, Mr Willetts shared its terms with Cllrs Jones and Hussain to seek their advice on sale price. Mr Willetts admitted to us that he was surprised by the valuation, as he thought it was far too high, and not realistic. His 'gut feeling' value for the toilets was £10,000-£15,000 per block; but it was not based on any empirical evidence as there was no market for redundant toilets. It was by his admission a 'finger in the air' job.
- 4.1.26 His evidence is that Cllr Hussain's view was that the deal was done, he did not want to hold up the process and told Mr Willetts to "bury the report". Cllrs Jones and Hussain deny any knowledge of the sale price or of such an instruction.
- 4.1.27 Mr Willetts initially told Internal Audit that there was pressure on him to sell to CPL for 'that price', but he later told us that Cllrs Hussain and Jones did not

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decide the sale price, it was his 'finger in the air'. Mr Willetts' evidence is unreliable on this point.

- 4.1.28 In our view, when the valuation was received from DVS, Mr Willetts did consult both Cllrs Jones and Hussain as to its contents. Cllr Hussain challenged the valuation which did seem quite high, and at a meeting with both Cllrs Hussain and Jones present, Mr Willetts did offer his 'finger in the air' estimate of value of the sites. On balance, we feel that Mr Willetts sought advice on the sale price and the Councillors confirmed to Mr Willetts that if the sites were worth '£10,000 to £15,000' each, then that is what he should sell them for.
- 4.1.29 In reliance on this approval from members, Mr Willetts instructed Legal Services to proceed at the price of £35,000 for all three sites (page 251).
- 4.1.30 Mr Willetts' evidence was that he regretted not challenging the DVS report on a formal basis and said they should have halted the process and started with a proper option appraisal. He stated there was no deliberate decision to sell the toilets at an undervalue. We accept his evidence on this.
- 4.1.31 Mr Willetts' evidence is that the Members (specifically Cllr Hussain) overstepped their legitimate role frequently enough for it to be a course of conduct, permitted by shift in ethos after the 2010 restructure, that the Council was 'open for business' and that the Members were 'the boss'. Mr Willetts did not raise his general concern about this, as he felt it was a pervasive issue which everyone knew about. He accepted that he should have raised his concerns with Nick Bubalo and the Monitoring Officer, but did not do so.

#### **COUNCILLOR HUSSAIN**

- 4.1.32 Cllr Hussain's evidence is that Mr Willetts came to see him in his capacity as the Oldbury Councillor and told him someone was interested in buying toilets and that they were surplus to requirements. He accepts that Mr Willetts showed him the land plans. Cllr Hussain recalls noting that the properties had been empty for ages and Mr Willetts said he would need clearance from Cllr Eling because the individual was interested in toilets in Bearwood, too. He says he did not hear from Mr Willetts again until the issue was raised through social media in 2014.
- 4.1.33 We do not accept that this was the sum total of Cllr Hussain's involvement and for the reasons given above accept, in very large part, the evidence tendered by Mr Willetts as to his contact with Councillors and their involvement.
- 4.1.34 Cllr Hussain says that he was not told who was interested in buying the toilets or for what price. The evidence from Cllr Hussain that Mr Willetts showed him the plans suggests that Mr Willetts consulted him with the benefit of the file, the letter from CPL, and the report from [REDACTED]. We think it is very likely that Cllr Hussain will have seen those papers and realised that [REDACTED] was the bidder on behalf of CPL. If not before, then when Mr Willetts went through his

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letter dated January 2012 'line-by-line' with Cllr Hussain, he will have known then the identity of the purchaser (pages 195-197). Cllr Hussain denies all of this, but the weight of evidence, both verbal and documentary is firmly against him on this. For these reasons we do not accept Cllr Hussain's evidence on this issue.

4.1.35 It is clear that Cllr Hussain at no point revealed or made a public declaration that he knew the bidder/purchaser of the properties.

4.1.36 In his evidence to us Cllr Hussain was initially emphatic that [REDACTED] (also known as [REDACTED]) of CPL was not his 'relative'. He later confirmed to us that [REDACTED] is known to him and is a visitor to his home at [REDACTED]

Hussain's sons. [REDACTED]

This relationship to the bidder was not made known to any of the officers or Cllr Jones at any time in the process.

#### COUNCILLOR JONES

4.1.37 Cllr Jones' evidence is that Mr Willetts told him in a corridor meeting that the Council had received an offer for the toilets and told him to get on with it. He accepted that the 18 July 2011 letter (page 171) from [REDACTED] came to his office.

4.1.38 The August 2011 Briefing Note (pages 175-176) was prepared for him for a normal briefing meeting, attended by senior officers and directors. After this meeting, Cllr Jones wanted to see the disposal and re-use of the toilets. Cllr Jones stated he had no recollection of [REDACTED]'s email to him on 16/12/11 (page 189) forwarding the information regarding available toilets for sale to [REDACTED] he thinks he was on holiday at the time.

4.1.39 When asked about the 28/2/12 email from [REDACTED] to [REDACTED] (page 198) which stated 'I've had a read your letter of 30<sup>th</sup> Jan 2012. I have got in contact with cabinet member Councillor Jones in regards your letter and I am waiting for a response.' Cllr Jones said [REDACTED] received a phone call about the 18/7/11 letter from CPL. Cllr Jones recalled saying he would speak to the officers to follow the matter up. He would then have asked his secretary to contact an officer about it.

4.1.40 In response to his Maxwell letter, Cllr Jones stated he did not recall seeing the second heads of terms letter to CPL dated 2 March 2012 (pages 200-201) despite the reference to discussions with him in that letter. The weight of the documentary evidence is against Cllr Jones on this point, and we do not accept his evidence that he did not see the letter, or know about it. Cllr Jones told us that Mr Willetts told him and Cllr Hussain about the Bearwood toilets being pulled from the sale by Cllr Eling in a corridor chat. He said he did not ask about

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the remaining toilets and the first time he was aware that there was an issue was on reading social media. However, he accepted that he did ask to be kept in the loop; he knew that the sale was progressing slowly and asked about it. This admission indicates that Cllr Jones' involvement was greater than he remembered or accepted in interview.

4.1.41 In interview, Cllr Jones did not recall any conversations about the value of the toilets or who they were being sold to. He denied asking for an independent valuation or giving the go ahead to sell afterwards. In response to his Maxwell letter however, his evidence changed. He stated that he recalls being 'accosted' by Mr Willetts following a meeting and the fact of the DVS report being discussed. Mr Willetts considered that the sale was value for money, but did not discuss price. He did not state when this conversation was but said that, following consultation with Mr Willetts, it was agreed that the sale would continue.

4.1.42 Whilst Cllr Jones' evidence was that he merely had oversight of the fact of the sale process, the documentary evidence and this admission indicates that he was consulted about the sale and knew about the District Valuer's report.

4.1.43 During the response to the Maxwell process, Cllr Jones has raised concerns that there has been:

(A) bad faith in the provision of documents from the Council to GWLG by 'persons with an axe to grind';

(B) [REDACTED]

(C) officers identified by the 'blog' have since become defensive and have manipulated their evidence.

4.1.44 For the sake of clarity and completeness, we address these allegations here. Neither the witnesses, nor anyone representing them, have identified which officers are perceived to have an 'axe to grind', why, or how they provided documents in bad faith, or how they might have otherwise manipulated evidence. We have requested evidence relating to the allegations under investigation, and where appropriate, have made enquiries to follow up. We have not relied on documents or witness evidence at face value but have considered them in the context of the investigation, challenged where necessary, and given careful consideration to our conclusions. [REDACTED]

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## CONCLUSION

### COUNCILLOR MAHBOOB HUSSAIN

#### PUBLIC TOILETS

- 4.1.45 The evidence suggests that Cllr Hussain was involved in the detail of the proposed sale of these toilets to a degree which crossed the line between political oversight and day-to-day management of the Property Service function.
- 4.1.46 The proposed purchaser was Central Property Line ("CPL"). Whilst CPL has had various incorporated bodies, it was not incorporated on 18 July 2011 when the initial letter was received by the Council and thus in law was at that time run by its partners which included [REDACTED]. It is accepted that Cllr Hussain knew [REDACTED] socially. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] on any reasonable assessment, is well known to Cllr Hussain.
- 4.1.47 [REDACTED] has declined to be interviewed by us or answer written questions, but the evidence suggests that the most plausible explanation as to why [REDACTED] who had not previously been in contact with the Council or Cllr Jones, decided to write to Cllr Jones, to enquire if there were any redundant toilet blocks that he could let or buy, is because someone had suggested that to him. On balance, it seems likely that suggestion came from Cllr Hussain, either directly or through an undisclosed agent.
- 4.1.48 In any event, a letter from CPL (pages 187-188) arrived in Cllr Jones' office at the Council House and after internal checking Cllr Hussain [and Cllr Jones] were consulted by Dave Willetts over whether to offer CPL any properties, if so, which properties to offer and the conditions of the proposed sale. The evidence suggests that Cllr Hussain knew that CPL was the bidder, and is likely to have seen [REDACTED]'s name on the letter and on the email correspondence with the Council. Under the Council's Code of Conduct there was no requirement for Cllr Hussain to register any pecuniary interest with the Monitoring Officer or on the Statutory Register of any relationship to [REDACTED]. Their relationship is too distant to be caught by the statutory provisions. But Cllr Hussain failed to declare any knowledge of, or relationship with, [REDACTED] at the point that he was consulted by Mr Willetts in relation to the proposed purchase by CPL [REDACTED] of the former public toilets. This appears to be a breach of the Member Code and the duty of honesty and selflessness under the code. It was also a breach of Part VI Paragraph 12 (3) [procuring an advantage for somebody] (Page 11).



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- 4.1.49 Cllr Hussain's degree of interference in this sale and level of control over Dave Willetts regarding the details of the sale, in our view, amounted to an overstepping of his role as a Councillor, even as a senior cabinet member, and as such was a breach of the protocol for member/officer relations.
- 4.1.50 The agreement to sell the toilets for a price lower than that identified by the District Valuation Service (DVS) appears to be a serious breach of the Code and the Council's internal Financial Regulations. Cllr Hussain knew of the DVS valuation (pages 240-244) but, jointly with Cllr Jones and Mr Willetts, agreed to ignore it, without any contrary evidence as to a correct alternative price. We accept the evidence that Mr Willetts held the professional responsibility to advise the Council on value, but neither Cllr Hussain nor Cllr Jones were naïve to the rules. The evidence commissioned from Savills suggests that the DVS valuation was correct and, as a result, the Council has suffered a financial loss. This appears to also result in a breach of the Member Code of Conduct – Part VI Paragraph 12 (3) [securing an advantage] (page 11). It is worth confirming that a breach of 12 (3) occurs whether the advantage is secured or not, and whether or not the member secured any advantage to himself or his directly related family (within the statutory definition). There is no evidence that Cllr Hussain obtained any advantage himself, or that he would have acted any differently whether CPL included ██████████ as a partner/shareholder or not. We have considered the culpability of Cllr Hussain as against that of Cllr Jones in relation to this issue. Cllr Hussain appears to have taken a lead role in asking Mr Willetts to suggest an alternative valuation to that set by the DVS; in this regard the nexus between Cllr Hussain and ██████████ is more relevant; whereas Cllr Jones appears to have remained silent and relied on Mr Willetts' oral advice. For that reason we consider Cllr Hussain's conduct did amount to a breach of the Code.
- 4.1.51 Our general conclusion in relation to Cllr Jones is that he was largely a passive bystander to these events. It appears that Cllr Jones attended meetings and briefings, often jointly with Cllr Hussain, but the driving force behind the property services function of the Council was, at all material times in this investigation, Cllr Hussain and not the Head of Property Services, Mr Willetts, other cabinet members or Cllr Ian Jones. Cllr Jones, for a substantial part of the period covered by the events under investigation, held the Cabinet Portfolio that included property services, though this was interrupted by a temporary change in portfolio allocations by the late Leader.
- 4.1.52 The evidence suggests that Cllr Jones was aware of the sale to CPL but was unaware of any association between Cllr Hussain and ██████████. The evidence suggests that Cllr Jones was consulted, alongside Cllr Hussain on the initial terms and conditions of sale, and crucially on the sale price. On balance, it seems that Cllr Jones agreed that the DVS valuation should be obtained and agreed with Cllr Hussain and Mr Willetts that the sale should proceed at a value well below that identified by DVS and without there being any evidence that their valuation was actually wrong, or obtaining an alternative valuation. However, as set out above, the evidence suggests that it was Mr Willetts who was invited to

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suggest a sale price (at the invitation of Cllr Hussain). Cllr Jones has no recollection of involvement but the documents and witness evidence of Mr Willets suggests that he is mistaken and that he was consulted and did agree to set aside the external valuation. Yet Cllr Jones was both a senior councillor and an experienced local government official who, if he had considered the issue, would have known that they should not depart from the professional valuation without alternative documentary evidence. However, in our judgement, he was entitled to rely on Mr Willets' verbal advice and in the ignorance of any association with [REDACTED] we do not consider Cllr Jones has breached the code as a result.

4.1.53 We are not aware of any pecuniary or other interest that Cllr Jones had to disclose.

4.1.54 In relation to the Asset Management and Land Disposal Committee and oversight of the Property Services function, Cllr Jones should not have allowed Cllr Hussain to dominate the Property Services function to the degree that he evidently did. Cllr Jones should have been more robust in his expectations of Mr Willets and challenges to his performance. But reliance on officer advice is unlikely to amount to a breach of the Member Code of Conduct.

4.1.55 In relation to the balance of the property matters referred to above, we have found little evidence of Cllr Jones' active involvement in any of the transactions mentioned, the Restrictive Covenant issue, or the 15 day sale scheme. As the relevant cabinet member, appropriate active involvement would have been expected.

## 4.2 SALE OF LODGE STREET TO AZEEM HAFEEZ

### ASSESSMENT OF DOCUMENTARY EVIDENCE

4.2.1 In November 2011 the Asset Management and Land Disposal Committee chaired by Cllr Hussain resolved that the Director of Legal & Governance Services be authorised to dispose of the land at Lodge St / Stone St, and that the Director of Regeneration and Economy consider marketing the land for bungalows / accommodation for the elderly (page 476).

4.2.2 In 2013 the site was promoted and marketed under the Development Ready Scheme (pages 486-505). On 8 April 2013 (page 507) various emails were sent within the Council to confirm the marketing details for the land at Lodge Street / Stone Street. It seems likely that Cllr Hussain knew of these details, though we cannot be certain. This process noted that the sealed offer deadline would be 17 May and gave a timescale for completion. On 9 April 2013 (pages 508-509) the Council placed an order in the Birmingham Post and the Express & Star to advertise the sale of the land at Lodge Street / Stone Street. On 18 and 25 April advertisements were taken out for the sale of the land in the Birmingham Post and on 23 April in the Express & Star (pages 520-524).

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- 4.2.3 On 10 April (pages 510-513) <sup>All</sup> [redacted] wrote a report to Legal Services ahead of the anticipated sale to an as yet unknown buyer. On 20 May 2013 (pages 528-529), a sealed offer form was received from Azeem Hafeez bidding £130,000 for the land. On 24 May 2013 (page 530) the Property Services Team wrote to Mr Hafeez informing him that his offer was unsuccessful, as they were seeking a higher sale price. The property was then remarketed as evidenced by the printout from the Council website on 11 July 2013 (page 531) and the printout from "Finditinsandwell.com" on 25 July 2013 (page 533).
- 4.2.4 On 16 July 2013 (page 532), Mr Hafeez emailed the Property Services Team to increase his offer from £130,000 to £140,000. On 6 August <sup>All</sup> [redacted] in Property Services replied to Mr Hafeez's second offer explaining that he considered the value to be more in the region of £190,000 (page 534). He explained that the Council had decided to write to all interested parties asking for offers to be made.
- 4.2.5 On 6 August <sup>All</sup> [redacted] submitted a valuation report to Dave Willetts showing that he valued the land at either £168,250 or £193,250 depending on the clean-up costs (pages 536-541). On 14 August, the Property Services Team wrote to Mr Hafeez confirming the earlier email that the Council were seeking offers in the region of £190,000 and if he wanted to submit a best and final offer he should do so by 28 August 2013 (pages 542-543).
- 4.2.6 On 29 August 2013 a sealed offer form was received from a <sup>All</sup> [redacted] for £120,000 (page 545). The two offers from Mr Hafeez and <sup>All</sup> [redacted] are recorded in the tenders schedule dated 29 August 2013. On 18 September 2013 <sup>All</sup> [redacted] prepared legal instructions to the Legal Services Team requesting the sale of Lodge Street to Mr Hafeez for £145,000 (pages 553-556). His email to his colleague, <sup>All</sup> [redacted] the same day recommended <sup>All</sup> [redacted] accept Mr Hafeez's offer (page 557). <sup>All</sup> [redacted] Mr Hafeez was informed that his offer had been accepted and <sup>All</sup> [redacted] was informed that his offer was unsuccessful on 18 September 2013 (pages 558-559).
- 4.2.7 On 4 December 2013, <sup>All</sup> [redacted] Legal Services confirmed to the Property Services Team that she had just exchanged contracts on the Lodge Street land sale (page 562). The Legal Services dealing with documents form dated 20 December 2013 are evidence of the transfer of land from the Council to Mr Hafeez. At no point did any of the bids from Mr Hafeez or the correspondence or instructions to legal make a notification of the interests Mr Hafeez has as an employee or of his relationship to Cllr Hussain, the Chairman of the Asset Management and Law Disposal Committees.
- 4.2.8 On 30 December 2013 a planning application was received on behalf of Mr Hafeez for the construction of 14 3 and 4 bedroom dwellings (pages 566-580). This form noted that he was the son of Councillor Hussain but not that he was a member of staff of the Council. This was referred to the Planning Committee for determination.

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- 4.2.9 On 2 January 2014, a completion statement and memorandum from Legal Services to the Property Services and other departments showed documents for completion of the sale of the land at Lodge Street / Stone Street to Mr Azeem Hafeez for £145,000 (pages 581-583).
- 4.2.10 On 26 March 2014 (pages 588-606), the Planning Committee considered the application. The Development Management and Regulatory Services Manager recommended the application be approved with conditions subject to receipt of satisfactory revised drawings (and other caveats). The Committee delegated authority to grant permission to the Director, Mr Bubalo, who was also Mr Hafeez's ultimate line manager, in consultation with the Chair and Vice Chair of Planning following satisfactory revised plans. On 29 July 2014 planning permission was granted for fourteen 3 and 4 bedroom dwellings by Mr Bubalo (pages 607-609)
- 4.2.11 On 8 August 2014, the land was sold by Mr Hafeez to Broadwell Developments Limited, a company controlled by Mr Hafeez, for £145,000 (pages 621-622).
- 4.2.12 The Savills report on the site based on the value in the first half of 2014 is that the sale price was low, considering the development prospectus and the site constraints (page 635).

#### WITNESS EVIDENCE

██████████ All

- 4.2.13 All ██████████ told us that auction is usually used for bespoke property which is hard to value, low value property and land that may have issues. Sealed bids are usually used for general and higher class land like an office or piece of development land.

- 4.2.14 All ██████████ valued the land at £260,000 in 2011/12 because the planners thought it could accommodate 16 flats, but this was a very rough assessment. He learnt from the planning brief that there were various restraints (it was under the M5, near a canal and sewer etc). In 2013 it was packaged under the Development Ready scheme and advertised on the SMBC website and was promoted at the Development Ready event at West Bromwich Albion football ground, where over 100 developers saw the brief. He asked some of them if they were interested but they all said no because of the restraints.

- 4.2.15 All ██████████ confirmed the documentary evidence above regarding the timing of bids received and from whom. Mr Hafeez did not tell ██████████ All that he was an SMBC employee or Cllr Hussain's son and he was not required to state it on the paperwork, but he would have expected Legal Services to pick up that Mr Hafeez was an employee.

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#### **DAVID WILLETTS**

- 4.2.16 Mr Willetts' evidence was that he knew that officers had to declare interests in contracts with the Council but was not aware of the detail of s117 LGA 1972. He knew Mr Hafeez was an employee of the Council and that he was Cllr Hussain's son and thinks his team did too.
- 4.2.17 Mr Willetts said there were "eyebrows raised" about how a junior officer could afford to bid and he queried his skills, time and ability to manage a property portfolio given his skill set at work. He stated that he would not expect Legal Services to do any due diligence checks on Mr Hafeez as a buyer (they were not done on any individual buyers). He believed that the lack of due diligence and money laundering checks are gaps in the governance process.

#### **NICK BUBALO**

- 4.2.18 Mr Bubalo was told Cllr Hussain's son was in his directorate when he took it over in 2011. Surprisingly, Mr Bubalo reported that he has never met or spoken to him. He had never checked whether Mr Hafeez had declared his employment with the Council when bidding for property, as he was not involved in the transactions. In any event, Mr Bubalo said there should have been a declaration by Legal Services that the Council was selling to an officer. It is not clear why Mr Bubalo thinks this.
- 4.2.19 There was no special procedure to apply because Mr Hafeez was an officer and son of Cllr Hussain, except for checking that the "normal process had applied". Mr Bubalo says that now (2015), all proposed land sales to officers are referred to Legal Services and Cabinet as a secondary check.
- 4.2.20 He reported that it is not standard practice for Property Services to issue a certificate of value on land sales, unless there has been an external valuation (if the value is over £250,000 for example). However, Mr Bubalo expects his valuers to say what they consider to be best value. If the valuation is considerably higher than the actual sale price, he would expect to pick up the file and see why there is a difference.
- 4.2.21 In written evidence, Mr Bubalo stated that planning applications are delegated to him (as Head of Planning) to determine under the Scheme of Delegations as agreed by the Constitution Working Group. This delegation requires certain applications to be reported to the Planning Committee, such as ones which may be considered to have a potential conflict of interest, if made from an employee of the Council, or related to a Member.
- 4.2.22 The Application from Mr Hafeez declared his father was Cllr Hussain, so it was sent to the Planning Committee (page 567). The report to the Planning Committee states that Mr Hafeez was the son of an elected Cllr, but he did not declare that he was an employee. Mr Bubalo did not consider this was a

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deliberate act, and that in any event, as the referral to the Committee had already been triggered, it made no difference. Mr Bubalo was satisfied that there was nothing untoward from Mr Hafeez or Cllr Hussain in how the planning consent was arrived at.

- 4.2.23 The Planning Committee (page 600) granted principle of approval relating to Mr Hafeez's application for planning permission, leaving the decision as to the specific permission to Mr Bubalo's delegation (in consultation with others), subject to an appropriate plan being agreed. Mr Bubalo relied on [REDACTED] A19 email to him in July 2015 that amended plans were received on 4 July 2014, and after consultation with the Chair and Vice Chair (of the Planning Committee), planning permission was granted on 7 July 2014. The decision notice listed revised drawings, but the original description of the development was not amended. Planning permission was therefore granted in line with the revised application.
- 4.2.24 In written evidence, Mr Bubalo stated that he has put in place a new "Instructions to Legal Form" which clearly asks for employee declarations. However, the forms supplied to evidence this show that the sealed offer form still does not ask whether the buyer is an employee (only if they are related to a Cllr or employee), nor does the lease delegation form, or application to lease form.

#### COUNCILLOR HUSSAIN

- 4.2.25 Cllr Hussain's evidence was that he recalled an agenda meeting before the AMLD meeting in November 2011 where the officers recommended the land be sold, but after that he had no further involvement. He did not know the value, or who it was sold to. He did not speak to any other officers about it. He said that he did not take Council papers home with him, but that if he had, there was no additional information on them, as the guide price was in the paper anyway. We have seen no evidence of a guide price being included in the various advertisements for the sale of this land.
- 4.2.26 Cllr Hussain stated that he became aware that his son, Mr Hafeez, was involved either just before contracts were exchanged or just after the sale. He cannot be certain which. Cllr Hussain volunteered that Mr Hafeez had funds to become a property developer because Cllr Hussain sold him the Rickshaw Restaurant in 2003, which Mr Hafeez sold in 2011/2012 for £375,000 [see notes on this below].
- 4.2.27 Cllr Hussain did not know [REDACTED] A16 the second bidder, but does know [REDACTED] A20 the Architect retained by [REDACTED] A16 and Mr Hafeez, because Cllr Hussain also retained [REDACTED] A20 to build his house in 2000. He stated that he has not spoken to [REDACTED] A20 for about 7-8 years but he believes that [REDACTED] A20 supported Mr Hafeez with his bid for Lodge St.

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#### **PARDIP SHARMA**

4.2.28 Ms Sharma's evidence was that Legal Services require evidence of authority to sell the property in the form of a resolution of a committee, or the appropriate delegation. The Instruction to Legal Form showed the AMLD Committee meeting minute number or refer to the delegation. When the documents are prepared for sealing (which is done by her), she expects them to be checked against the Instructions for authority to sell.

4.2.29 The duty to achieve best value always applies, regardless of the terms and conditions of sale. Her team rely on the property team to do appropriate valuations, as the legal team are not surveyors and they do not check the valuations. Ms Sharma said she expects to see evidence of the valuation done. There is no evidence of the valuation in the Instructions to Legal Form for this sale.

4.2.30 In accordance with the Lexcel manual, all undertakings should be given / approved by Principals / Legal Managers. Undertakings given by conveyancers cannot be given without authority of Principals / Legal Managers. There is no evidence that the undertaking given by [REDACTED] on exchange was authorised by a Principal / Manager nor is there any evidence of undertakings being properly recorded or enforced.

#### **AZEEM HAFEEZ**

4.2.31 We wrote to Mr Hafeez's solicitors, WH Law on 29 May, 4 June, 13 July and 10 September asking him to attend an interview with us. His solicitors responded stating that he was unwell and would not be attending any interview. Mr Hafeez has failed to attend three OH assessments to date and has not accepted our suggestion of answering written questions.

#### **CONCLUSIONS**

4.2.32 We have found no evidence of Cllr Hussain's involvement in the purchase of the site at Lodge Street/Stone Street by his son, Azeem Hafeez. We found very little evidence of Mr Hafeez declaring, as required, his employment by the Council or relationship to Cllr Hussain when bidding for the land or obtaining planning permission from Mr Bubalo.

#### **4.3 SALE OF CORONER'S OFFICE TO AZEEM HAFEEZ**

##### **ASSESSMENT OF DOCUMENTARY EVIDENCE**

4.3.1 On 3 December 2012 <sup>All</sup> [REDACTED] completed a valuation form for the Coroner's Court on Crocketts Lane (page 653). This was a brief and high level valuation based on market value and he estimated the current value to be around

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£80,000. He was asked to provide this valuation to the Asset Management and Land Disposal Committee, for their meeting on 19 December.

- 4.3.2 On 13 December 2012 the Express & Star featured an article entitled "Coroner's Service will relocate to a new home in Smethwick" which stated that the site would be sold as the Coroner's Office would be relocated. There was no mention of the sale price (pages 654-655). On 19 December 2012 the Asset Management and Land Disposal Committee chaired by Cllr Hussain showed that the Committee resolved that the Coroner's Office building was declared surplus to Council requirements and that the Director of Legal & Governance Services authorised the disposal of it for the best price and most suitable method of disposal on terms to be agreed by the Area Director – Regeneration and Economy (page 664).
- 4.3.3 In February 2013 a planning statement for office/residential and all communities redevelopment for the site was published under the Development Ready Programme (pages 675-696). Emails between [REDACTED] Mr Willetts and [REDACTED] of Property Services on 12 March 2013 show Mr Willetts stressing that it is imperative to get surplus properties off the Council books, particularly those which were visible and attract a lot of community attention (page 696). A 17
- 4.3.4 On 18 March 2013 [REDACTED] emailed Mr Hafeez referring to a conversation they had recently had sending him particulars of sale that had just gone on the market (pages 698-699). The first of those was two combined properties known as 215 High Street and the Coroner's Court for which they were seeking offers in the region of £190,000 for the combined sites. The next day, Mr Hafeez made an offer of £80,000 for the Coroner's office alone (page 700). On 19 and 26 March advertisements for the sale of the combined sites were taken out in the Express & Star and on 21 and 28 March advertisements for sale were taken out in the Birmingham Post as is evidenced by a handwritten note on the printout for the advert. A 11
- 4.3.5 [REDACTED] prepared an initial Instruction to Legal Form with the basic information (save for the purchaser and sale price) to get the ball rolling (713-714). On 26 March 2013 [REDACTED] prepared a file note stating that following the marketing of the combined sites, a formal offer had been made for £80,000 in respect of the Coroner's Office only (page 719). In consultation with his manager, Mr Willetts and the Area Director, Mr Bubalo, it was agreed that as the offer matched the asking price of the individual building the offer should be accepted given the general lack of interest in the Coroner's building. He emailed Ashfords (who were carrying out conveyancing work on behalf of the Council at the time) to draft the contract for the benefit of Mr Hafeez, purchased for £80,000. A 11
- 4.3.6 On 27 March 2013 [REDACTED] confirmed to Mr Hafeez that his offer of £80,000 had been accepted and that the Legal Services team were drafting the contract (page 721). On 29 April 2013 Ashfords sent the contract and transfer deeds, the sealing slip and committee minutes to the Council confirming the key elements A 11



of the sale and asking for the Director of Legal Services to sign the contract and sign the seal, the transfer deed and plans for completion (pages 724-731). On 10 May 2013 Ashfords sent the signed contract and transfer deed to Mr Hafeez's lawyers, QualitySolicitors Silks (page 733). On the same day he sent a memo to various members of the various offices including those in the Property Services Team confirming completion of the sale of the site to Mr Hafeez (page 734).

#### WITNESS EVIDENCE

[REDACTED] All

All

4.3.7 [REDACTED] confirmed the series of events as evidenced by the papers. He explained that the Coroner's Office and 215 High St were initially marketed together, because they were adjoining pieces of land which went to AMLD for consideration at the same time. The Property team could not see a strong reason to sell together, or to split. They were different types of building; 215 High St was listed and could not be demolished.

All

4.3.8 [REDACTED] was asked to draft a Valuation Form before the AMLD meeting (page 653); he had very little information to go on, but estimated the value to be around £80,000 based on the size and parking space, lack of market for that type of space and negative positioning and noise factor. He did not attend the meeting, but was aware that Cllr Hussain was present at it.

All

4.3.9 [REDACTED] said he would have preferred to sell via sealed bids because that was the usual practice for such land sales, but Mr Willetts instructed him to sell by private treaty. He told Mr Willetts that he was not happy with the method of sale because there was no market testing (and [REDACTED] agreed), but Mr Willetts said it was not illegal or in breach of s123. A22

All

4.3.10 [REDACTED] evidence was that Mr Hafeez called him around 18 March to ask if they had any property to sell, so he told him about the combined sites. Mr Hafeez made a cheeky offer of £75,000 for the Coroners' Office. He did not say that he worked for the Council but [REDACTED] became aware that Mr Hafeez was Cllr Hussain's son by the time he made his first offer, by phone.

All

4.3.11 [REDACTED] suggested that Cllr Hussain had told Mr Hafeez that the land was surplus to requirements. [REDACTED] said that he referred Mr Hafeez's offer to Mr Willetts for consideration but suggested they could get more. Mr Willetts agreed the offer should be rejected. Mr Hafeez made a second formal offer by email (from his personal Hotmail account on 19 March 2013) of £80,000 which was accepted after consultation (page 700).

All

4.3.12 While [REDACTED] did not suggest there was any evidence to suggest Cllr Hussain used his influence to enable his son to buy the land, [REDACTED] was unsure how the Council discharged its duty to sell for best value, because there was no proper market testing.

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### **COUNCILLOR HUSSAIN**

- 4.3.13 Cllr Hussain told us he recalled the land coming to the AMLD for consideration in the usual way in November 2012 and that the Committee agreed with the recommendation to declare surplus and dispose.
- 4.3.14 Cllr Hussain told us he did not know that Mr Hafeez had bid for the property until Mr Hafeez bought it. Cllr Hussain said he did not tell Mr Hafeez it was coming up for sale, and made the point that it was advertised on the open market. He said the only way Mr Hafeez would have known about it being marketed before it was advertised would be if Mr Hafeez had overheard Cllr Hussain talking to someone on the phone about it. [Mr Hafeez lived at the same address in [REDACTED] Road as Cllr Hussain.]
- 4.3.15 Cllr Hussain told us that his son had the funds to buy property because Cllr Hussain's wife had given him the 'Rickshaw Restaurant' in 2003 and Mr Hafeez had sold it in 2011/12 for £375,000. [Please see our separate section of the details uncovered.]
- 4.3.16 Cllr Hussain sent Neeraj Sharma an email on 21 August 2015 with a link to an article in the Express & Star dated 13 December 2012. He said that this was evidence that it was public knowledge that the site would be marketed for sale. Whilst this is correct, the advertisement did not state what the "offers in the region of" would be. [REDACTED] valuation submitted to the AMLD Committee in December 2012 was that it was worth £80,000 (page 653). That was the figure Mr Hafeez alighted on and was sold the land for.

### **AZEEM HAFEEZ**

- 4.3.17 We wrote to Mr Hafeez's solicitors, WH Law on 29 May, 4 June, 13 July, 10 September asking him to attend an interview with us. As we received no response we also contacted him directly. His solicitors responded stating that he was unwell and would not be attending any interview. Mr Hafeez has failed to attend three Occupational Health assessment appointments and has not accepted our offer to consider our questions in writing.

### **CONCLUSIONS**

- 4.3.18 There is evidence to suggest Cllr Hussain's involvement in the sale of these plots to his son, Azeem Hafeez. Mr Hafeez submitted a bid to the Property Services Team for the premises the day before the property was advertised by the Council. Whilst both the premises had been vacant and advertised separately some months previously, Mr Hafeez had shown no interest at that stage. Importantly, Cllr Hussain had in the recent past been party to the decision whether to offer the two properties jointly. Mr Hafeez's bid, coming as it did the day before the re-advertisement was at best a curious coincidence. It is possible

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that Mr Hafeez discovered the up-coming sale from other sources, but on balance it seems likely to be the result of confidential information being shared with him by his father. Whether this was deliberate or unwitting (as submitted by Cllr Hussain) makes little difference. In our view, on the balance of probabilities, Mr Hafeez found out about the sale of the premises and the indicative price identified to the Property and Asset Disposal Committee, from his father, Cllr Hussain. This suggests a breach of the duty of selflessness and honesty and of part VI, paragraph 12 (3) [use of position to secure an advantage] and 12 (4) [improper disclosure of confidential information] by Cllr Hussain.

#### 4.4 TO REVIEW DECLARATIONS OF INTEREST BY COUNCILLOR HUSSAIN

##### ASSESSMENT OF DOCUMENTARY EVIDENCE

4.4.1 The Statutory Register of Members' Interests forms completed between 2010-2014 show that Councillor Hussain has not declared as required that any of his relatives work for the Council. HR records reveal that he has two children who work for the Council who are:

(A) Azeem Hafeez: employed since 2003 as Support Worker, Employment Development Officer and most recently, Employment Broker. Mr Hafeez declared his relationship with Cllr Hussain in his applications.

A23

(B) [REDACTED] employed since 2014 as a Neighbourhood Assistant. A23 [REDACTED] declared his relationship with Cllr Hussain in his application.

A24

4.4.2 [REDACTED] another son, was employed between 2003-2004 as a Mental Health Support Worker. His employment terminated at the end of extended probationary period. He declared he was a relative of Cllr Hussain on his application.

4.4.3 The Notes of Guidance to the Register state that there is a continuing obligation on Elected, Co-opted and Appointed Members to keep the information provided up to date and to notify any changes within 28 days of a change of circumstances.

4.4.4 Neeraj Sharma, as Monitoring Officer, provided evidence that she (or her colleagues on her behalf) wrote to Cllr Hussain on the following dates regarding declarations of interest:

Notice of member's interest – Freemasons	6 July 1995
Letter sending Councillors copy of the Model	3 May 2007

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Code of Conduct and related guidance	
Letter requesting Councillors complete and return form to declare interests	9 May 2007
Letter chasing declaration of interests	25 May 2007
Letter to Cllr Hussain re completing recent declaration – incomplete	13 August 2007
Letter requesting notification of any changes to interests and reminder to keep register up to date	13 May 2008
Letter chasing Cllr Hussain to update his register	22 July 2008
Council record of Declaration of Interest made by Cllr Hussain at Council meeting	22 December 2009
Letter sending copy of Model Code of Conduct, guidance, form for completion etc	7 May 2010
Reminder to declare personal interests and to update register and notify NS of any changes	10 May 2010
Letter chasing declaration of interests form, not received	11 June 2010
Declaration of interests form	22 June 2010
Letter prompt to check register is up to date	6 May 2011
Declaration of interests form	23 June 2011
Letter prompt to check register is up to date	11 May 2012
Declaration of interests form	12 June 2012
Signed acceptance of Code of Conduct	20 June 2012
Sending copy of new Code of Conduct, acceptance form and new form for registering interests (Code enclosed)	6 July 2012
Declaration of interest form	5 March 2013

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Chasing for return of acceptance form and new declaration form to be completed (not done since requested in 2012)	20 March 2013
Email from NS to various – Invest more time in keeping Register of Member Interest up to date	3 January 2014
Letter prompting Cllr Hussain to declare interests in bodies to which he he was appointed	29 January 2014
Declaration of interests form	7 February 2014
Letter sending Code of Conduct, declaration form for completion for interests and hospitality	22 May 2014
Letter reminding Cllr Hussain to declare interests, highlighting land and property interests and other interests such as family members working for SMBC	8 August 2014
Declaration of interests form completed	11 September 2014
Email Cllr H to NS re declaring interest in Five Star Taxis  NS response	22 September 2014
Declaration of interests form completed	23 September 2014
Letter noting declaration to Cabinet that he was related to employee of SMBC but lack of declaration for Register. Asked Cllr Hussain to update Declaration Form.  <i>Handwritten note of TN: "Cllr Hussain advised that he was not related to an employee. Declaration at meeting referred to CAB."</i>	25 September 2014
Printout from Council website recording Cllr Hussain's declaration of interest at Cabinet and extract from central register re declaration of shareholding in Five Star Taxis	22 October 2014
Letter sending new Code of Conduct, current register of interests form and form to be	7 May 2015

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completed. Offering meeting to discuss A25	
Emails between NS, PS and [redacted] re Cllr H's meeting, confirming PS and [redacted] went through the new register of interest with him	5 June 2015
Letter NS to Cllr re meeting. NS's note on same stating she was in error	12 June 2015
Email from NS to various – Member training and requesting names of all members who have attended training on ethical governance code of conduct from 2009 onwards A26 [redacted] to NS – listing names of attendees for training	21 - 25 September 2015
TN advised SW that Cllr Hussain told her in September 2015 that he was not related to any employees of SMBC	25 September 2015
Email from NS to Vivienne Reeve and Mark Greenburgh – including: Member Training – Standards code of conduct presentation slides by NS	30 September 2015
Email from NS to Vivienne Reeve and Mark Greenburgh – Letters regarding members updating register of interest A25	30 September 2015
Email from [redacted] to NS, confirming he has spoken to Cllr Hussain that day to ask about him declaring being a Freemason in 1995. Cllr stated he is not a Freemason and never has been, the declaration was a mistake	13 October 2015

**WITNESS EVIDENCE**

**COUNCILLOR HUSSAIN**

4.4.5 Councillor Hussain's evidence was that members should declare if their relatives are employed by the Council. As above, he failed to do so, even when prompted by Mrs Sharma in 2014.

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4.4.6 Regarding the toilets, Cllr Hussain's evidence was that there was no reason for him to declare his knowing [REDACTED] of CPL, but if something came up, most likely he would say he knew him. However, his own evidence and that of the officers involved in the sale of the toilets was that he did not tell them that he knew [REDACTED] even when it is apparent that Cllr Hussain was aware of his identity.

#### **NEERAJ SHARMA**

4.4.7 The chronology shows that Cllr Hussain was chased repeatedly by the Monitoring Officer to declare his interests. Mrs Neeraj Sharma told us that Cllr Hussain was sent the Codes of Conduct and guidance when it was updated, and was prompted to declare all relevant interests as shown by the documentary evidence listed above. He was also chased when he failed to update the register as required.

4.4.8 Mrs Sharma's evidence was that Members receive training and guidance on what they should declare. This training included the fact that she has told them that their obligation to declare interests at meetings is wider than the duty to disclose interests on the Register. She has told them at training sessions that if the interaction was regular, frequent association with someone then regardless of whether they were technically a relative, she would expect a declaration at a meeting.

4.4.9 Mrs Sharma told us that the Council records show that of 13 training sessions between 2009-2015, Cllr Hussain attended two sessions, in 2013 and 2014. At those sessions he was trained on the scope of the Code of Conduct, disclosable pecuniary and other interests.

4.4.10 Mrs Sharma's evidence was that Cllr Hussain did not seek her advice on whether he should declare his relationship with [REDACTED] of CPL. He did not come to her to ask advice on what to declare, save for one query about his interest in Five Star Taxis. Mrs Sharma stated he asked her whether he should have declared his interest in Five Star Taxis, when they bid for contracts with the Council. He had included his interest on his Register of Members' interests, but no declaration was made by Five Star (or Cllr Hussain) when they tendered for the contract with the Council. She wrote to Cllr Hussain on 22 September 2014 to confirm:

*'A registered interest relating to a company is probably not enough to cover a contract that the company has with the Council. The double registration brings added transparency although I know that you have been open about the interest in the Company. It has become evident following the member training session last week and also the discussion at Standards Committee last Friday that some members do not have a consistent and good understanding of a few elements of the Code.'* (pages 849-850).

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4.4.11 She went on to say that she would arrange a meeting for her and [REDACTED] <sup>A25</sup> to talk him through the requirements. Mrs Sharma stated that Cllr Hussain did not take the opportunity to meet with her and [REDACTED] <sup>A25</sup>, until June 2015.

#### CONCLUSIONS

4.4.12 In general compliance with the obligation to make written declarations of interest appears to be satisfactory, though the Monitoring Officer and her team have to work hard to chase members to complete and keep the statutory registers up to date.

4.4.13 The evidence suggests that Cllr Hussain failed to declare his pecuniary interest as a proprietor of Five Star Taxis when the Council was entering into a contract with that company. This was investigated by the Chief Executive who concluded that it was an oversight on the part of Cllr Hussain, who had made some declaration of his interest in Five Star Taxis in the register. This oversight has subsequently been amended. We think in hindsight that was a rather generous view to have taken. Cllr Hussain was an experienced member who had received many reminders and advice from the Monitoring Officer to be more rigorous in his declarations, indeed even in relation to Five Star Taxis. Cllr Hussain did not evidence to us a strong grasp either of the requirements to make declarations; or of the importance of doing so. It is not a mere formality. Declarations are there to preserve confidence in public administration and to ensure that decisions are taken by those with unimpeachable motives.

#### 4.5 **TO REVIEW THE RELEVANT DECLARATIONS OF INTEREST IN RESPECT OF COUNCILLOR JONES**

4.5.1 There was no pecuniary interest of which we are aware for Cllr Jones to declare in relation to the sale of the toilets to [REDACTED] <sup>A3</sup>

#### 4.6 **TO REVIEW THE RELEVANT DECLARATIONS OF INTEREST IN RESPECT OF AZEEM HAFEEZ**

#### ASSESSMENT OF DOCUMENTARY EVIDENCE

4.6.1 The documentary evidence, supported by evidence from [REDACTED] <sup>A11</sup> is that Mr Hafeez did not declare that he was an employee of the Council at any point during the acquisition of Lodge St or the Coroner's Office. Whilst the report to the Planning Committee regarding his application to develop Lodge St states that he is the son of an elected councillor, it does not state which councillor, and there is no record that he declared that he was an employee (page 567).

4.6.2 <sup>A11</sup> [REDACTED] thought that Mr Hafeez told him by phone in March 2013 that he was Cllr Hussain's son. Whilst he was not required to state his interest in the acquisition paperwork, he was under a clear duty to do so under s31, the



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Sandwell Constitution, Part 5 and the Employee Declaration of Interest Policy (see Appendix 3). Examples of conflicts of interests given in the latter, are:

*"any contracts between the authority and any company / body you have an interest in, as above", or "any land or property in the authority's area in which you have a beneficial interest".* It also clearly states that it is the employee's responsibility to declare any interest in advance, or as it arises, and explains the process for doing so.

- 4.6.3 The documentary evidence shows that the Council sent employees, including Mr Hafeez, information, reminders and guidance about the need to register their interests every year between 2009 – 2013, and it was therefore a reasonable instruction, and expectation that Mr Hafeez was aware of the need to declare conflicts of interest and his status of a Council employee when contracting with the Council. He failed to do so (page 1055 onwards).

#### **WITNESS EVIDENCE**

##### **NEERAJ SHARMA**

- 4.6.4 Mrs Sharma's evidence, which we accept, is that there is clear guidance about the declarations officers should make, from the point they apply for jobs with the Council, through their employment. She told us that there are different levels of declaration required depending on an officer's seniority. Mr Hafeez was required to declare his employment status and/or relationship to Cllr Hussain if there was a potential conflict of interest.
- 4.6.5 The Induction checklist record for Mr Hafeez shows that he attended a one day induction event within the first month of his employment and that he was trained on SMBC policies, which would have included training on the Code of Conduct. This record was signed and accepted by Mr Hafeez on 28 January 2004 (pages 1039-1044).
- 4.6.6 Mr Hafeez's contract of employment made explicit reference to the obligation to declare interests in contracts with the Council:

*'Your particular attention is drawn to the following:*

##### *Interests in contracts*

*If an officer finds he or she has a financial interest in a contract or a proposed contract with the Council or with any of its Committees they must, under the provisions of the Local Government Act 1972, disclose this fact in writing to the Council as soon as possible'*

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4.6.7 Mrs Sharma stated that there is no central register of declarations made by officers at present, but she has asked for one to be created, and a more explicit reference to employee conflicts / declarations at induction, appraisal and in relation to the Director's Assurance Statement.

### CONCLUSION

4.6.8 It seems that Mr Hafeez appears to have done nothing to declare his interest as either an employee of the Council or being Cllr Hussain's son, when bidding for the purchase of any of the properties owned by the Council, or when completing on the transactions. It should be noted that he did not succeed in all of his bids, but in relation to each and every one this failure was a breach of section 117 of Local Government Act 1972, and of the Officer Code of Conduct (the obligations of 3.1 – Selflessness; 3.3 Objectivity; 3.4 Honesty; 4.1 the Public Interest; 5.3 misuse of confidential information for personal gain; 13.1 failure to declare personal interests). Where there was mention of Mr Hafeez's relationship reported to the Development Control committee, the details of the declaration, namely to whom he is related and that he is an employee, do not appear to have been made clear. These failures are serious conduct issues and the latest knowledge of officers allowing it to continue unchecked is concerning. One cannot help but wonder if the fact Mr Hafeez's relationship with Cllr Hussain had some part to play in this surprisingly "Nelsonian" practice.

### 4.7 **TO REVIEW HOUSING ALLOCATIONS MADE BY THE COUNCIL TO RELATIVES OF COUNCILLOR HUSSAIN**

#### ASSESSMENT OF DOCUMENTARY EVIDENCE

4.7.1 From October 2004 – December 2012, the Council's social housing maintenance and management service of its 29,000 housing stock was provided by an arm's length organisation, Sandwell Homes (set up by the Council). The staff previously employed by the Council in the housing allocation team were transferred to Sandwell Homes in 2004, and remained within Sandwell Homes until the service was brought back into the Council in January 2013.

4.7.2 The board comprised 18 members; 6 councillors, 6 tenant representatives and 6 independent members. The councillor members changed during the tenure of the contract. Cllr Hussain's profile on the Council website says that he was linked to Sandwell Homes from 2007-2013.

#### WITNESS EVIDENCE

████████████████████ A5

4.7.3 A5 ██████████ was Housing Allocations Team Leader and she reports to ██████████  
████████████████████ A6 ██████████ Housing Allocations Manager.

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- 4.7.4 <sup>A5</sup> [REDACTED] was used to dealing with cases where a conflict of interest existed. For example where council employees or their families made applications. <sup>A5</sup> [REDACTED] said that if a conflict of interest has been identified during the allocation process, the property will not be allocated until <sup>A6</sup> [REDACTED] or Mr Scarrott has signed it off.
- 4.7.5 <sup>A5</sup> [REDACTED] sent emails to her Manager complaining of the pressure she felt she was placed under by Cllr Hussain. The emails are at pages 1178 -1186. When asked about the 2007 emails she said that whilst lots of the Councillors used to go through the housing 'list' to try and influence legitimately on behalf of their constituents, it did cause a lot of stress in the team (pages 1178-1179). She said she did not recall Councillors asking or telling officers to allocate housing to specific people, and would have told them they could not if they had tried. This statement is at odds with the tone and content of the 2007 email which strongly suggests that Councillor Hussain did want housing allocated to certain people, and that it was not the first time he had done so.
- 4.7.6 <sup>A5</sup> [REDACTED] said she did recall raising the request from Cllr Hussain with Mr Scarrott, and that he did not inform her of what action he had taken or provide any additional support afterwards.
- 4.7.7 When asked about the 2010 emails (34 Marshall St) she said she was not unduly worried about Councillor Hussain wanting to see her alone, she just wanted to know why so she could prepare (pages 1180-1184). She said she keeps a file on her PC relating to Councillor enquiries. She confirmed by email to us that she could not find any notes on the issue from this time. Whilst we believe <sup>A5</sup> [REDACTED] to be an honest witness, the overwhelming impression she gave was of someone who was scared. Our assessment of <sup>A5</sup> [REDACTED] evidence is that she felt very pressured by Cllr Hussain's interventions and demands - being required to attend him in his office at the Council House to discuss allocations case work.
- <sup>A6</sup> [REDACTED]
- 4.7.8 <sup>A6</sup> [REDACTED] agreed that there was a potential weakness in the system where he signs off conflict forms which his wife has completed.
- 4.7.9 <sup>A6</sup> [REDACTED] is line manager to <sup>A5</sup> [REDACTED] he was reluctant to see that as a potential conflict. <sup>A5</sup> [REDACTED] was aware of councillors making requests but did not see this as a problem and they were dealt with by his subordinates rather than him personally.

#### ADRIAN SCARROTT

- 4.7.10 Mr Scarrott's evidence appointed <sup>A6</sup> [REDACTED] to do his current role and was aware of the personal relationship between them. Mr Scarrott saw no corporate

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governance issues in making such an appointment, nor any reason to report it to the Head of Paid Services or Monitoring Officer. He did neither.

4.7.11 Mr Scarrott told us that he sees councillors getting involved with allocations rarely, usually only in cases of high priority. His managers are very experienced and they know where the line is. If they struggle, they can escalate it to him, and the conflicts of interest are signed by him anyway. Even if they feel stressed, he was confident that there is a system in place to deal with it. Mr Scarrott had no recollection of [REDACTED] raising concerns with him about pressure from councillors. AS

4.7.12 When presented with the 2007 emails, Mr Scarrott had no specific recollection of either challenging Cllr Hussain or speaking to [REDACTED] believing that would have been done by [REDACTED] his manager. AS

### **COUNCILLOR HUSSAIN**

4.7.13 Cllr Hussain's evidence was that if cases came to him, he would pass them to AS [REDACTED]. He might have had 6 or 7 such cases a month and he would pass those to her. Where there was a bidding process neither he nor the housing team could just allocate houses without following the policy. He does not recall giving [REDACTED] a list of people to house. AS

4.7.14 When presented with the 2007 emails for comments, Cllr Hussain was surprised. He said he may have asked [REDACTED] what they could do for someone who had approached him but he would never tell an officer to allocate housing to a specific family. He has not looked at the housing lists for 5 or 6 years (2015). AS

4.7.15 When challenged on the 2010 emails Cllr Hussain said that there must have been some reason for him to want to see [REDACTED] on her own but he could not recall what it was (1180-1184). He felt that people should not be worried about him asking to see them; he had always been open and people can come and see him at any time. He is interested in what people 'at the bottom' have to say about things. AS

4.7.16 In relation to the specific allocation to his daughter, [REDACTED] Cllr Hussain made no attempt to help her with her application. A4

### **CONCLUSIONS**

4.7.17 We found no evidence of Cllr Hussain being involved in the release of restrictive covenants by Property Services. On the contrary, Dave Willetts took full responsibility for the Policy adopted by the Council even though the issue of whether to have a charging policy could properly have been within the discretion of members to decide.

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4.7.18 The evidence suggests that Cllr Hussain again lost sight of the roles and responsibilities by requiring officers to provide him with the detail of every proposed sale and the price being charged. It appears that he scrutinised and challenged those details effectively approving or disapproving each transaction. There is no evidence of that influence being used for an improper personal or pecuniary purpose, but the evidence of the conduct itself appears to be a material breach of the Code of Conduct and the Member/Officer protocol.

4.8 **TO REVIEW WHETHER COUNCILLOR HUSSAIN HAS ATTEMPTED TO HAVE PARKING TICKETS RECEIVED BY HIS FAMILY EXPUNGED**

**ASSESSMENT OF DOCUMENTARY EVIDENCE**

A27  
4.8.1 [REDACTED] Principal in the parking team, provided us with a flow chart showing the Penalty Charge Notice (PCN) process (page 1405), and a sample PCN and Notice to Owner (NtO) form. These are in the evidence file (page 1406-1413), but in summary the challenge process is as follows.

4.8.2 When a ticket is issued the driver has 14 days to pay at a 50% discount of the headline rate. Alternatively the driver can submit a challenge in writing to APCOA, the Council's contractor. If the challenge is accepted, the PCN will be cancelled. If after 28 days no payment or response has been received, the Council issues a Notice to Owner form to the registered keeper of the vehicle. The keeper of the vehicle has 28 days to pay, or make a formal challenge to APCOA, on the back of the form. If that challenge is accepted, the Council will cancel the PCN. If it is rejected, the keeper has 28 days to pay, or use the form enclosed to appeal to the Traffic Penalty Tribunal Service. If no response is sent to the TPTS, or no response is received to the NtO form within 28 days, a 50% surcharge is added and a Charge Certificate (CC) is issued to the Keeper. If the Keeper does not respond to the CC within 14 days, the Council can register a debt at the County Court. There are three clear opportunities to appeal.

4.8.3 The PCN itself is four pages long. The second page gives a detailed explanation of how to challenge the PCN, with postal address and a list of specified grounds for challenge. Similarly, the NtO sets out how to challenge the PCN. Both require challenges to be sent to APCOA, not the Parking Team, or other Council department.

4.8.4 The Council uses a process management system called Chipside which records the PCN details and a case history showing the actions carried out by the system and officers involved in progressing the PCNs.

A28  
Ticket SD51950134 issued to [REDACTED] (Cllr Hussain's wife).

4.8.5 The Notice Details form on Chipside shows that the above PCN was issued to vehicle BN13 DPU on 19 July 2013 because the vehicle had stopped on a restricted bus stop or stand (page 1420). It notes that no Blue Badge was seen.

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The standard penalty of £70 was issued. The case history shows that an NtO and CC were issued and no responses were received and logged on the system. The case was registered with the debt collectors (Newlyn) (pages 1424-1427) and the debt filed at court. Newlyn's record of the case shows that following a number of visits to [REDACTED] Road by Newlyn, on 26 March 2014, the Council requested the case be returned (it is not clear why or on whose instruction).

- 4.8.6 The entry on 6 May 2014 on Chipside states 'Informed by [REDACTED] to cancel case upon instructions received from [REDACTED] as directed by Cllr Hussain' (page 1422). This was clearly actioned, as the Notice Details form states 'Current Stage: Cancelled – Council Decision'.

*Ticket SD51595702 issued to Azeem Hafeez (Cllr Hussain's son) and Sandwell MBC employee*

- 4.8.7 On 8 July 2012, a PCN was issued to Mr Hafeez because his vehicle (BJ12 XVO) was stopped where prohibited (on a red route or clearway) (page 1433). The Notice Details shows that no Blue Badge, permit or note was seen.
- 4.8.8 The notice history shows that an NtO and CC were issued (the latter on 17 September 2012), then on 26 September 2012 [REDACTED] made this entry:

*"This event took place yesterday (25/09/2012) at around 0930hrs. I was unable to put this memo as I was heading to a meeting in Birmingham.*

*[REDACTED] came to my desk with details of two separate cases. In one hand he had been given supporting evidence which was requested. I took it for scanning on the case. He then gave me this case number and said "you know who it is". I said yes and the vehicle is parked on a red route. We have had no appeals.*

*He said that he had received a call from "you know who" last week and that it would be helpful "to met [REDACTED] in Highways as he has been supporting our reports if we can do something". I said "I was not prepared to compromise myself as it is acting illegally however if someone puts in writing the mitigating circumstances and specifically instructed me to cancel it then I would have to but this also meant I would adopt it as a policy and apply the same rules to all drivers parked on a red route".*

*I also brought it to his attention that I had been approached by [REDACTED] about a ticket issued to one of his Asian officers on a red route which I refused to cancel and by the way the officer works in the planning section where Councillor Hussain's son works. I also brought to his attention that there was a further ticket outstanding which is at the bailiff stage for the same address"*

- 4.8.9 On the same day (26<sup>th</sup>), she emailed [REDACTED] giving him a brief history of the case (page 1452). She noted that the NtO was sent and as no payment or

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response was received, a CC was issued. She said "I understand that you have received a call to investigate the matter further. This I have done but I am satisfied that the contravention occurred and the notice was issued correctly.....however, if one of the Chief Officers wishes this notice to be cancelled then I would require the instruction in writing as we would be deviating from the current policies".

4.8.10 On 16 October 2012, <sup>A29</sup> [REDACTED] emailed <sup>A27</sup> [REDACTED] (page 1451). His email shows his belief that the PCN was issued correctly, but that he had agreed for Mr Hafeez to pay the reduced amount. <sup>A27</sup> [REDACTED] made another entry which said 'please accept the discounted charge of £35.00 as in the scanned document instruction from Head of Highways until 30<sup>th</sup> October 2012.' (page 1441). £35 was received on 29 <sup>A29</sup> October. The discounted rate was accepted from Mr Hafeez, at <sup>A27</sup> [REDACTED] request even though the policy would indicate that the charge should have been increased from the initial £70 by 50% as a result of the CC being issued. This equates to a loss to the Council of £70.

#### WITNESS EVIDENCE

<sup>A27</sup> [REDACTED]

4.8.11 <sup>A27</sup> [REDACTED] Principal Officer in the Parking Team, oversees the whole parking operation, road safety and parking enforcement (including oversight / management of the contracts with the parking enforcement company and the bailiffs). She stated she has a lot of interaction with councillors, generally regarding parking issues they or their business contacts have. She has been asked to bend the rules and it is usual practice to be asked to do so; however, she sticks to the policy and tells councillors if she cannot agree to their requests. She told us that Cllr Hussain was part of the electoral Members' group who decided the budget for each service, and she had been told 'off the record' that if they do not keep the Councillor happy, the budget would not be approved.

4.8.12 <sup>A27</sup> [REDACTED] told us that Cllr Hussain had sent instructions (through her boss, <sup>A29</sup> [REDACTED]) that parking tickets should be cancelled. The fines issued to cars registered at his address are usually paid but her impression was that he does try to get the amount reduced.

#### COUNCILLOR HUSSAIN

4.8.13 Cllr Hussain said that he thought around 30/40 tickets had been issued to his address, because of his children, but they have all been paid. The evidence provided by <sup>A27</sup> [REDACTED] shows that whilst most have been paid in full, some were not.

4.8.14 Regarding the ticket issued to his wife (SD51950134) (page 1420). Cllr Hussain recalled speaking to <sup>A29</sup> [REDACTED] about it <sup>A29</sup> [REDACTED]

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[REDACTED] <sup>A29</sup>. He said we would have to ask [REDACTED] whether he had asked him to cancel it. When pressed, he said that he had asked [REDACTED] <sup>A29</sup> to look at it, but not to cancel it.

4.8.15 Cllr Hussain's evidence was that his son [REDACTED] <sup>A32</sup> had initially written to the Council about the ticket, as his wife was a Blue Badge holder. He said the bailiffs had visited when he and his wife were at home and he asked her about it, she said they had written letters. He confirmed that after speaking to [REDACTED] <sup>A29</sup> they were not asked for payment again by the Council or bailiffs.

4.8.16 There is no record on Chipside that any letter was received from [REDACTED] <sup>A32</sup> or anyone else, whether to APCOA or the Council directly, appealing the decision. [REDACTED] <sup>A27</sup> (officer in [REDACTED] <sup>A27</sup> team) said that there was no letter received from anyone in mitigation for this case. [REDACTED] <sup>A33</sup> said he was asked by [REDACTED] <sup>A27</sup> to cancel the ticket, she told him the instruction had come from Cllr Hussain. He considered the instruction odd, as there was no reason given to cancel it, and they do not usually cancel without good reason. [REDACTED] <sup>A33</sup> suggested that [REDACTED] <sup>A27</sup> had a meeting with Cllr Hussain and the message was that he was in charge of their budget (he was the Cabinet member for Highways at the time) so she might want to reconsider.

4.8.17 When we put to Cllr Hussain that he had bypassed the system by virtue of his position by going straight to [REDACTED] <sup>A29</sup> he said it was something everyone did. He accepted however, that this was a learning point and that he saw that he should not do it.

4.8.18 Regarding ticket SD5159607 to Mr Hafeez (page 1433): Cllr Hussain's evidence was that the system note is only evidence of [REDACTED] <sup>A29</sup> opinion. When asked 'did you ever lean on [REDACTED] <sup>A29</sup> to cancel tickets?' he said 'that's a matter for [REDACTED] <sup>A29</sup>'. He did not comment any further.

## CONCLUSIONS

4.8.19 The evidence suggests that Cllr Hussain interfered in due process of parking tickets issued to his wife and his son. He did so by contacting directly the officer concerned and asking, in effect, for them to be cancelled. This appears to be a breach of the Code of Conduct – selflessness and honesty; and of Part VI 12 (3) [using his office to secure a pecuniary advantage for another](pages 6-19).

## 4.9 THE EMPLOYMENT OF COUNCILLOR HUSSAIN'S EXTENDED FAMILY

### ASSESSMENT OF DOCUMENTARY EVIDENCE

4.9.1 We have reviewed the personnel files for [REDACTED] <sup>A24</sup> and [REDACTED] <sup>A28</sup> and have found no evidence of anything unusual suggesting that Cllr Hussain was involved in their recruitment or employment.



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4.9.2 We have made the point already that the Council's failure to produce Azeem Hafeez as a witness to this investigation or to take any disciplinary measures, either as a result of that failure or in relation to his gross and obvious failure to make declarations of interest as required, has hampered our investigation and left questions unresolved.

### **WITNESS EVIDENCE**

#### **COUNCILLOR HUSSAIN**

4.9.3 When we put questions relating to the employment of his relative by the Council to Cllr Hussain, he denied that he had any influence or role in making those appointments. He mentioned that he kept his declarations of interests up to date.

### **CONCLUSION**

4.9.4 We have found no evidence of Cllr Hussain interfering in the appointment or discipline of members of his family by the Council. Nevertheless, we repeat our comments in the introduction regarding the failure by the Council to secure the assistance of its employee, Mr Hafeez, with this investigation, or to take any disciplinary action against him in relation to the apparent breaches of his duties. Appropriate declarations were repeatedly ignored by Cllr Hussain (and by Mr Hafeez).

#### **4.10 THE RELEASE OF RESTRICTIVE COVENANTS RELATING TO LAND AT CLIFFORD ROAD, 33-35 CHURCH STREET AND TIVDALE ROAD**

4.10.1 We found no evidence of Cllr Hussain being involved in the release of restrictive covenants. On the contrary Mr Willetts took full responsibility for the position adopted by the Council even though the issue of whether to have a charging policy could properly have been within the discretion of members, rather than employees.

#### **4.11 COUNCILLOR HUSSAIN'S INVOLVEMENT IN THE 15 DAY SALE SCHEME**

##### **ASSESSMENT OF DOCUMENTARY EVIDENCE**

4.11.1 We understand that under the 15 day sale scheme, Property Services would receive a request from an interested party, consult with the planning team regarding development potential and the team who had responsibility for the land (housing, education etc). If that department approved of the disposal, Property Services acted under Nick Bubalo's delegated authority and they sent instructions to Legal for the sale to be completed.

4.11.2 <sup>A9</sup> [REDACTED] sent us a spreadsheet showing the land sales proposed and completed under the scheme. Of the 18 cases listed, Cllr Hussain was consulted on all of them (page 1775). There are four cases where Cllr Hussain's

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A 34 [redacted], emailed A9 [redacted] and said that Cllr Hussain wanted to scrutinize it before he made his decision. There is no record of that review but A9 [redacted] confirmed that 3 of the 4 cases had proceeded to completion, and that he would not have progressed them without approval from Cllr Hussain.

4.11.3 In one case, Land adjoining 72 Jays Avenue, Tipton, Cllr Hussain told [redacted] A9 [redacted] that he did not want the land to be sold as there were factors to be considered and he needed to speak with local members. Cllr Hussain later approved the sale, but it was halted in 2015 due to proposed rail developments.

4.11.4 Similarly, re Lynton Avenue, A9 [redacted] believes that Cllr Hussain gave the all clear but as the case progressed, it became clear that to divide the site up and sell to adjoining occupiers would be too problematic given the density of dwellings.

#### WITNESS EVIDENCE

[redacted] A9

A9 5 [redacted] evidence was that Cllr Hussain used to request lists of land being sold off borough-wide, not just relating to his ward. It began as a general consultation whereby Property Services told him about the property sold but, as time went on, Cllr Hussain wanted to know the value of the land being sold as well. Cllr Hussain was sent a plan (map) of the property, the sale price and to whom. A9 [redacted] stated that Cllr Hussain had had sign off on the sales as to whether they went ahead or not because Mr Willetts told [redacted] A9 not to instruct legal until Cllr Hussain had signed the sales off.

A9 [redacted] 4.11.6 [redacted] thought what was sold to whom was an unnecessary layer of control and thought Cllr Hussain wanted to know so that he could influence but he had only his expertise as evidence of this. A9 [redacted] said that Mr Willetts however took some bids directly to Cllr Hussain for decision.

[redacted] A4

A4 [redacted] 4.11.7 [redacted] told us that on 25 September 2013, A34 [redacted] emailed [redacted] A9 [redacted] asking for land values under the 15 day scheme to be sent to Cllr Hussain (page 1742A). When [redacted] A4 learned of this, he emailed [redacted] A34 [redacted] back and copied Mr Bubalo, Mr Willetts and [redacted] A9 explaining that the development team only give estimates of value and that there was no value to send Cllr Hussain at the early stage because they had not done that valuation yet. He made it clear that there was no value relevant to the member consultation. He offered to send Cllr Hussain an update once the valuations and terms had been agreed with the buyer but not before that.

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All

4.11.8 In November 2013 [redacted] emailed Ms Sharma again about the same issue, copying in the same group (page 1748A). [redacted] said that he agreed that Councillors should be consulted on their local areas as a general consultation point, but he made the point again that he did not think Cllr Hussain needed to see the values.

All

4.11.9 [redacted] told us that either between these two emails or shortly after the second, [redacted] called him to go and see Cllr Hussain. Cllr Hussain said he wanted [redacted] to clarify his point because he had just stopped short of complaining to Mr Bubalo about him. [redacted] asked why? He reported to us that Cllr Hussain said that as a member he is entitled to ask questions and [redacted] was being difficult. [redacted] said politely that he did not mean to be difficult but what he had put in the email was correct that they did not have valuations at an early stage and that it was not relevant to the member consultation what the value was, he told Cllr Hussain he did not think he needed to be involved in the value/sale price. Cllr Hussain said that was fine and shook his hand, saying he just wanted to clear the air. [redacted] took this to mean that Cllr Hussain knew that he could not push him so he would go somewhere else for the same information i.e. to Mr Willetts.

All

4.11.10 [redacted] told us he relayed this conversation to Mr Bubalo and he was supportive. He did not recall Mr Bubalo saying that he would speak to Cllr Hussain, he thinks that he just told Mr Bubalo he would let him know if it happened again.

All

4.11.11 In 2014 [redacted] later found out that Mr Willetts had told [redacted] to include estimates of value in the information going to Cllr Hussain. It was not strictly in his remit anymore but he thinks Mr Willetts did not tell him because [redacted] would have raised an issue about it.

All

All

#### DAVID WILLETTS

4.11.12 Mr Willetts told us that about 7 months into the scheme, Cllr Hussain added another level to the process, namely that he should be sent a schedule of proposed sales. Mr Willetts did not recall whether he raised this with Mr Bubalo or anyone else.

4.11.13 Mr Willetts did not think that Cllr Hussain changed his team's proposed disposal plans but it was a departure from an agreed process and showed inappropriate member influence.

#### NICK BUBALO

All

4.11.14 Mr Bubalo confirmed [redacted] evidence that he, Mr Bubalo, knew that Cllr Hussain had imposed a requirement for his approval to be sought and that he be told the land values. Mr Bubalo said he had agreed with [redacted] that Cllr

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Hussain was to have no involvement in officer matters. He told <sup>A11</sup> [redacted] to email Cllr Hussain stating he would not be providing him with values on two occasions. However, he said that he did not speak to Cllr Hussain about his involvement directly, nor did he raise the matter with Mr Willetts.

### CONCLUSIONS

4.11.15 The evidence suggests that Cllr Hussain again lost sight of his role and responsibilities by requiring officers to provide him with the detail of every proposed sale and the price being charged. It appears that he scrutinised and challenged those details effectively approving or disapproving each transaction. There is no evidence of that influence being used for an improper personal or pecuniary purpose, but the evidence of the conduct itself appears to be a material breach of the Code of Conduct and the Member/Officer protocol.

### 4.12 URBAN LIVING – PURCHASE OF LAND ON CLIFFORD ROAD

#### ASSESSMENT OF EVIDENCE

- 4.12.1 In 2007 Mr Hafeez acquired a plot of land at Clifford Road from Guala Closures UK Limited for £110,000 (page 1465-1472).
- 4.12.2 In 2009 there were discussions between <sup>A7</sup> [redacted] of the Council and <sup>A35</sup> [redacted] of Urban Living Birmingham & Sandwell Pathfinder regarding the acquisition of the land owned by Mr Hafeez at Clifford Road. The Family Housing Association were looking to buy the land with Urban Living funding, but withdrew, which meant the Council had the opportunity to acquire it.
- 4.12.3 The papers show that Mr Willetts drafted a report to the then Cabinet Member for Strategic Resources in Spring 2011 recommending that the Urban Living Delivery Board approve SMBC to acquire the Clifford Road site in West Bromwich with a view to future residential development (page 1515 onwards). The acquisition cost approximately £150,000. Whilst the plan attached does not clearly identify the same land as marked on the TP1 showing Mr Hafeez's land ownership, we understand this was the land being considered.
- 4.12.4 That sale did not proceed. The issue of concern here is the fact that Mr Willetts' report to Urban Living did not state that Mr Hafeez was a Council officer, or son of Cllr Hussain, who Mr Willetts says suggested the acquisition.
- 4.12.5 The 21 July 2011 letter from Mr Willetts to Mr Hafeez shows that the latter had approached Mr Willetts about the possibility of a land swap, but Mr Willetts rejected this proposal (pages 1538-1539).

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**WITNESS EVIDENCE**

**DAVID WILLETTS**

- 4.12.6 Mr Willetts told us that years ago, there was a proposal that the Council buy land for social housing, under the Urban Living Capital Programme. His evidence was that Cllr Hussain asked him to look at whether Urban Living funding could be used to buy the land at Clifford Road, which was owned by his son, Mr Hafeez. Mr Willetts queried with Cllr Hussain whether he should step out of the conversation because of the conflict. He thought that other officers were aware of the conflict of interest.
- 4.12.7 Mr Willetts wrote a report to the Urban Living Board proposing they buy the land as a gateway site. His report did not inform the Urban Living Board that the seller was an employee of the Council or the son of Cllr Hussain. He suggested it was discussed with [REDACTED] and [REDACTED], the then Chief Executive and that the Board knew (although it is not clear how). Mr Willetts' evidence was that he did not leave out the conflict of interest deliberately, but there was no protocol to include it. He accepted that he should have made it clear in his report, and stated that he felt there was a collective failure of governance.
- 4.12.8 Mr Willetts told us that Urban Living were circumspect about the proposal as their priorities had moved on. He believes that the sale did not proceed, as although an offer was made to Mr Hafeez, the parties could not agree on the sale price and terms.
- 4.12.9 Mr Willetts also told us that sometime later, the Council were having problems selling 253 High St. Mr Hafeez approached the Council about the possibility of a land swap between his land at Clifford Road and 253 High St (Mr Willetts believes Cllr Hussain told Mr Hafeez about the difficulties selling the land). Mr Willetts said he discussed this with Mr Hafeez and told him it would have to go to the AMLD Committee. As the letter to Mr Hafeez dated 22 July 2011 shows, his proposal was rejected (pages 1538-1539).

**JAN BRITTON**

- 4.12.10 On reading a draft of this report, Mr Britton asked that a relevant conversation be added to the record. He told us that Mr Willetts mentioned the proposed council purchase of this site to him, in passing, after the end of another meeting, at some point early in 2011. Mr Britton said that the Council should make sure there was a sound business case for proceeding with any purchase and that there was a good reason to buy the land. He told us he said this because Mr Willetts mentioned in the conversation the fact that the land was owned by Cllr Hussain's son and that Cllr Hussain was keen we should buy the land. Mr Britton subsequently mentioned this conversation to the Leader, the late Cllr Cooper, to ensure he was aware of the conflict of interest. He reported

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that Cllr Cooper agreed that the Council should only proceed with a purchase should there be sound business reasons for doing so. Mr Britton said his involvement in the process was limited to this.

#### **AZEEM HAFEEZ**

4.12.11 As above, Mr Hafeez has not made himself available to talk to us about this or any other issue.

#### **CLLR HUSSAIN**

4.12.12 Cllr Hussain denies that he instructed Mr Willetts to propose to Urban Living that they acquire the land owned by his son, Mr Hafeez. He stated that he thought Mr Hafeez was in discussions with Associated Housing, and did not know that the Council was involved. He stated that when the Council took over from Associated Housing, they offered a significantly lower price and the sale did not proceed.

#### **CONCLUSIONS**

4.12.13 Azeem Hafeez is the owner of a plot of land on Clifford Road in Oldbury. Cllr Hussain knew that and used his influence to persuade the Council to propose the purchase of that plot of land for social housing. Cllr Hussain should not have involved himself at all in the proposal. The relationship between Mr Hafeez and Cllr Hussain was not declared to the officers. Despite their actual knowledge of the relationship with Cllr Hussain and, indeed, Mr Hafeez's employment by the Council the officers made no mention of these material facts in the report to Urban Living. In relation to Cllr Hussain, this was a material breach of the Code of Conduct obligations of selflessness, objectivity and honesty and of Part VI paragraph 12 (3) [attempting to secure an advantage] (pages 6-19). The transaction ultimately did not proceed.

#### **4.13 RICKSHAW RESTAURANT**

##### **ASSESSMENT OF DOCUMENTARY EVIDENCE**

4.13.1 When discussing the acquisitions of land from the Council by his son, Mr Hafeez, Cllr Hussain told us that he believed Azeem Hafeez had funds to acquire land because Cllr Hussain and his wife had sold a property called the Rickshaw Restaurant to Mr Hafeez in 2003.

4.13.2 We reviewed the Land Registry records for this site which confirmed the following:

- (A) 1999 land acquired by Cllr Hussain and others (no price stated).

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- (B) 2004 land acquired by Mr Hafeez for £85,000.
- (C) 2012 land acquired by <sup>A 37</sup> [REDACTED] for £470,000.
- (D) 2014 land acquired by [Avenbury Dudley Limited] for £540,000. [Avenbury Dudley Limited] is a company controlled by [REDACTED] A 37

4.13.3 The evidence gathered regarding the Rickshaw Restaurant and the association between Cllr Hussain and the ultimate purchaser/developer has caused us some concern. The evidence suggests that Cllr Hussain sold the Rickshaw Restaurant in Dudley to his son Azeem Hafeez for £85,000 in 2004. The restaurant closed after a fire and Mr Hafeez sold the premises to a developer, <sup>A37</sup> [REDACTED] as part of a site for redevelopment. The premises of the Rickshaw Restaurant was sold by Mr Hafeez for £470,000 in 2012. The office used by Five Star Taxis (a business in which Cllr Hussain has a proprietary interest) is adjacent to the former Rickshaw Restaurant on the same redevelopment site.

4.13.4 It is very unlikely that <sup>A37</sup> [REDACTED] would approach Mr Hafeez without also approaching the adjacent owners. To release the value of the site, <sup>A37</sup> [REDACTED] would need to assemble the whole plot for re-development. On this basis Cllr Hussain, as a partner in Five Star Taxis, or at least a business partner of his, is also very likely to have received such an approach. Given that Mr Hafeez and Cllr Hussain live at the same address it seems very likely that they will have spoken about it. How else would Cllr Hussain be able to offer evidence of how Mr Hafeez could afford to bid for council properties? Be that as it may, Cllr Hussain later introduced <sup>A37</sup> [REDACTED] to Sandwell Council as a potential property development partner for sites within Sandwell. When he did so, he does not appear to have declared any interest or association with that developer or for that matter made any formal declaration at any point.

4.13.5 Following that introduction, and in consideration of a substantial option fee, the Council proceeded to grant the developer an Option for a significant development within Sandwell.

4.13.6 The failure by Cllr Hussain to have declared his association (based on his proprietary interest in Five Star Taxis and his relationship to Azeem Hafeez) with the developer suggests that Cllr Hussain was in breach of the Code of Conduct and in particular the obligations of selflessness, objectivity, honesty, Paragraph 9 – conflicts of interest and 12 (3) [attempting to secure an advantage]. It may also have been a breach of the Anti-Corruption and Bribery Statement on the same grounds (page1863).

#### WITNESS EVIDENCE

4.13.7 No witnesses gave evidence to us in relation to the Rickshaw Restaurant.

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**CONCLUSION**

- 4.13.8 The evidence gathered regarding the Rickshaw Restaurant and the association between Cllr Hussain and the ultimate purchaser/developer of the site is a cause for significant concern. The evidence suggests that Cllr Hussain sold the Rickshaw Restaurant in Dudley to his son Azeem Hafeez for £85,000 in 2004. The restaurant closed after a fire and Mr Hafeez sold the derelict premises to a developer as part of a site for redevelopment. The premises of the Rickshaw Restaurant were sold by Mr Hafeez for £470,000 in 2012. Cllr Hussain is a partner in the taxi firm, Five Star Taxis. The office used by Five Star Taxis is adjacent to the former Rickshaw Restaurant on the same development site. We do not know whether the developer made any similar approach to Five Star Taxis or whether Cllr Hussain knew of any such negotiations. But it seems highly likely that such an approach was made and that Cllr Hussain would have known that. How else would Cllr Hussain have known the developer?
- 4.13.9 In any event Cllr Hussain introduced the developer to Sandwell Council as a potential property development partner for sites within the borough. When he did so, he does not appear to have declared any interest or association with that developer to the Council.
- 4.13.10 In consideration of a substantial option fee, the Council proceeded to grant the same developer an Option for a significant development within Sandwell. We have not investigated that option.
- 4.13.11 The failure by Cllr Hussain to have declared his association (based on Cllr Hussain's proprietary interest in Five Star Taxis or his relationship to Azeem Hafeez, or both) with the developer suggests that Cllr Hussain was in breach of the Code of Conduct and in particular the obligations of selflessness, objectivity, honesty, Paragraph 9 – conflicts of interest and 12 (3) [attempting to secure an advantage]. This may also have been a breach of the Bribery Act compliance statement set out in the Member Code, for the same reasons.



Signed: .....

Mark Greenburgh  
Partner & Head of Public Sector  
Gowling WLG (UK) LLP

Dated: 27.04.2016





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