

**IN THE MATTER OF AN INVESTIGATION INTO STANDARDS OF
CONDUCT UNDER THE LOCALISM ACT 2011**

**BEFORE THE SANDWELL METROPOLITAN BOROUGH COUNCIL
ETHICAL STANDARDS SUB-COMMITTEE OF THE ETHICAL STANDARDS AND
MEMBER DEVELOPMENT COMMITTEE**

Reference: MC/03/0517

COUNCILLOR IAN JONES

DECISION NOTICE

Local Hearing: 24 January 2018

Ethical Standards

Sub-Committee Members:

Councillor Geoff Lewis (Chair)
Councillor Susan Crumpton
Councillor Ann Shackleton
Councillor Steve Trow

Independent Person: Mr Ray Tomkinson

Independent Legal

Advisor: Mr James Cornwell, Barrister

The Local Hearing

1. A local hearing was held on 24 January 2018 before the Ethical Standards Sub-Committee of the Council's Ethical Standards and Member Development Committee ("**the Sub-Committee**") to consider a complaint that Cllr Ian Jones had breached the Council's Members' Code of Conduct (2007) ("**the Code**"). The local hearing had previously been convened on 1 December 2017, but it was adjourned by the Sub-Committee on Cllr Jones' application.
2. The local hearing was held in public, save for periods of deliberation by the Sub-Committee in private session.

3. The Investigating Officer, Ms Maria Price, was represented by Mr Ronnie Dennis, Barrister. The subject Member, Cllr Jones, was represented by Mr Brian Rickers, full-time Regional Officer of Unite the Union, and together with Cllr Barbara Price.
4. A live video recording of the local hearing was made and can be accessed on the internet at:

https://sandwell.public-i.tv/core/portal/webcast_interactive/330637

For that reason, this Decision Notice does not seek to set out in full the evidence and submissions advanced at the local hearing.

A. Applications by Councillor Jones

5. At the start of the hearing, Cllr Jones applied, essentially, for: (1) an adjournment of the local hearing for 14 days; and (2) all, or some, of the Members of the Sub-Committee to recuse themselves on the grounds that they had conflicts of interest.
6. In support of his applications, Cllr Jones read from an 8-page written submission, which the Sub-Committee understood was prepared by his representative (copies of which were provided to the Sub-Committee – annexed to this Decision Notice as **Annex A**).
7. Mr Dennis responded on behalf of the Investigating Officer, opposing the applications.
8. In view of certain submissions made by Cllr Jones in relation to Cllrs Lewis, Shackleton and Trow, the Sub-Committee's Legal Advisor asked them each to put on the public record their understanding of the relevant factual position, which each of them did at the hearing (see further below). The Legal Advisor then asked Cllr Jones if he had any observations in response. Cllr Jones stated that he noted the replies from the panel and said that there were matters that required clarification, but that he would not make any further comment now.

9. Cllr Jones was then asked questions by the Independent Person in relation to his applications. During the course of this questioning, Cllr Jones and those assisting him left the hearing. As they were leaving the Sub-Committee's Legal Advisor warned Cllr Jones that the Sub-Committee could decide to reject his application to adjourn and proceed with the local hearing in his absence. Cllr Jones acknowledged that possibility.
10. Following a short adjournment, the Independent Person then provided the Sub-Committee with his views on the applications. The Legal Advisor then provided legal advice to the Sub-Committee on the applications. Summaries of the advice provided by the Independent Person and the Legal Advisor are annexed to this Decision Notice (as **Annexes B and C**).
11. The Sub-Committee then retired to deliberate on the applications in private, before returning to announce its decision in public.

Decision on Councillor Jones' applications

12. The Sub-Committee decided to refuse both the application to adjourn the hearing and the application for all, or some, of the Sub-Committee Members to recuse themselves on the basis of alleged conflicts of interest.

Reasons for the decision on Cllr Jones' applications

13. Cllr Jones put forward various arguments as to why the local hearing should be adjourned. Those arguments were, essentially, in two categories: (1) arguments that some, or all, of the Members of the Sub-Committee were affected by alleged conflicts of interest and should recuse themselves, with the consequence that the local hearing would need to be adjourned; and (2) other arguments as to why the local hearing should be adjourned.
14. The Sub-Committee addressed these arguments in turn.
15. In considering Cllr Jones' applications, the Sub-Committee took into account the written and oral representations of Cllr Jones, the oral submissions and case law

referred to by Mr Dennis,¹ the views of the Independent Person and the advice of its Legal Advisor. The Sub-Committee also took account of the material in the Hearing Bundle and the Correspondence Bundle. The Sub-Committee does not below refer specifically to every document, piece of evidence or submission that it considered.

(1) Arguments based on alleged conflicts of interest

16. The Sub-Committee noted that at its hearing on 1 December 2017 Cllr Jones stated that he had concerns about the Members of the Sub-Committee. When asked by the Sub-Committee's Legal Advisor on that occasion to set out what his concerns were, he declined to do so.

17. As a preliminary issue, the Sub-Committee did not accept Cllr Jones' submission that the Sub-Committee should not itself decide the question of whether there were conflicts of interests or whether it should recuse itself. The Sub-Committee accepted the advice of its Legal Advisor that it was for the Sub-Committee to decide whether it could proceed to hear the complaint.

18. The Sub-Committee accepted the advice of its Legal Advisor that it would need to ask itself whether any of its Members had actual bias against Cllr Jones or whether there was apparent bias, in the sense that all the circumstances would lead the fair-minded and informed observer to conclude there was a real possibility that the Sub-Committee was biased.

19. The Sub-Committee Members recognised that they were themselves bound by the Code (as currently in force) and were required to consider the complaint in an objective and impartial manner.

20. The Sub-Committee's findings on what it understood to be the principal arguments advanced by Cllr Jones under this heading are set out below.

¹ *R (Condon) v National Assembly for Wales* [2006] EWCA Civ 1573, [2007] 2 P & CR 4; *Gillies v Secretary of State for Work and Pensions* [2006] UKHL 2, [2006] 1 WLR 781; and *Hussain v Sandwell Metropolitan Borough Council* [2017] EWHC 1641 (Admin).

(a) The Ethical Standards and Member Development Committee were appointed by the Labour Group, who were unduly influenced by the Leader and Executive of the Council

21. Cllr Jones argued that the Ethical Standards and Member Development Committee members were appointed by the Labour Group on the Council and that what should be an independent appointment process was, Cllr Jones argued, thereby manipulated by the Leader and Executive of the Council resulting in the members of that Committee (including members of this Sub-Committee) having a conflict of interest.

22. The Sub-Committee considered that this argument was based on a misconception. The members of Council committees, including the members of the Ethical Standards and Member Development Committee, are appointed by the full Council. Nominations to full Council for membership of committees are proposed by recognised political Groups, including the Labour Group. Committee nominations to full Council are not proposed by the Council's Leader or Executive.

23. The Sub-Committee also noted that at the time when the membership of the Ethical Standards and Member Development Committee was decided by the full Council, all but one member of the Council were members of the Labour Group. If nomination by the Labour Group was a basis for alleged conflict of interest, that would apply to all but one member of the Council at the time.

24. The Sub-Committee unanimously considered that a fair-minded and informed observer would be aware of all the relevant circumstances, including the correct position in relation to appointment of members to the Ethical Standards and Member Development Committee, and would not consider that there was a real possibility of the Sub-Committee being biased on the basis alleged.

(b) The members of the Sub-Committee had sat on the hearing of the standards complaint in relation to Cllr Mahboob Hussain

25. Cllr Jones argued that the members of the Sub-Committee had also heard the standards complaint against Cllr Hussain and were therefore “*tainted*” as there had been reference to Cllr Jones in the evidence at that hearing.
26. The Sub-Committee recognised that Cllr Jones’ case was a different case from Cllr Hussain’s, relating to a different incident, and had to be dealt with as a separate case. The case against Cllr Jones would have to be decided only on the basis of the evidence and submissions made at this hearing. The Sub-Committee recognised that they themselves were under a duty to comply with the Code and to determine the complaint against Cllr Jones fairly, impartially and objectively, based on the evidence and submissions.
27. The Sub-Committee noted that in Cllr Hussain’s hearing it had not been invited to make, and had not made, any findings in relation to misconduct by Cllr Jones.
28. Cllr Jones had not referred to any particular parts of the evidence that had been considered at Cllr Hussain’s hearing to support his contention that the Sub-Committee were subject to a conflict of interest or predetermination.
29. It was also noted that there had been much public discussion of the events underpinning the conduct allegations relating to Cllr Hussain, including in the High Court judgment in Cllr Hussain’s judicial review claim against the Council. If there were difficulties arising from the mention of Cllr Jones in that context, such difficulties would be likely to affect all members of the Council.
30. Each member of the Sub-Committee was confident that they could put out of their minds anything relating to Cllr Jones that had been referred to at Cllr Hussain’s hearing and could decide Cllr Jones’ case on the evidence and submissions presented in the context of this case only.
31. The Sub-Committee considered that a fair-minded and informed observer who was aware of all the relevant circumstances would not conclude that there was a real possibility that the Sub-Committee was biased on these grounds.

(c) The members of the Sub-Committee were involved in collusion to bring the standards complaint against Cllr Jones

32. At one point it appeared from Cllr Jones' submissions that it was being suggested that the members of the Sub-Committee who were also members of the Cabinet (i.e. Cllrs Shackleton and Trow) were involved in a conspiracy or collusion to pursue standards allegations against Cllr Jones.

33. When the Sub-Committee's Legal Advisor asked Cllr Jones to clarify this, Cllr Jones suggested that this was a misunderstanding of his submission. However, the Sub-Committee considers that it was not entirely clear, even after further questioning, what Cllr Jones was or was not actually alleging in this respect.

34. So far as it is in issue, the Sub-Committee Members confirm that none of the Sub-Committee have been involved in any collusion or conspiracy to bring a standards complaint against Cllr Jones. Their only involvement with the standards complaint has been as members of the Sub-Committee formally considering the complaint at this hearing and the hearing on 1 December 2017.

35. In those circumstances, the Sub-Committee did not consider that there was any likelihood that a fair-minded and informed observer would conclude that there was a real possibility of bias.

(d) Councillors Lewis and Trow's positions as Labour Group officers

36. Cllr Jones argued that Cllr Lewis, as chair of the Council's Labour Group, and Cllr Trow as secretary of the Labour Group, had been involved in the referral and conduct of a disciplinary case against Cllr Jones within the Labour Group.

37. Cllr Trow explained at the hearing that under Labour Party arrangements the Labour Group Officers are precluded from having any role in confirming or referring a disciplinary matter. A disciplinary meeting can be convened solely by a decision of the Chief Whip and the sole item of business is to receive the Chief Whip's report and determine its recommendations by secret ballot. Cllr Lewis also confirmed at the hearing that the relevant meeting was overseen and supervised by officers of the Regional Labour Party. As noted above, Cllr Jones was afforded

the opportunity to provide observations in response to these comments, but he did not substantively do so.

38. The Sub-Committee considered that this ground for seeking recusal was based on a factual misunderstanding as to Cllr Lewis and Trow's role. The fair-minded and informed observer would be aware of the correct position and would not conclude that there was any real possibility of bias on this ground.

(e) Councillor Shackleton's school was closed by Cllr Jones

39. Cllr Jones submitted that Cllr Shackleton may harbour animosity towards him as he had been involved in a decision to close a school of which she was head teacher.

40. At the hearing Cllr Shackleton explained that she had been head teacher of a school that was closed in around 2002-2003. The closure was as a result of a Council policy of amalgamating schools. The policy had been recommended by Cllr Jones, but approved by the full Council. Cllr Shackleton had moved on to take a post at the university. She stated that since joining the Council she had been a member of the Cabinet with Cllr Jones and there had never been any animosity between them in their roles on the Council. Again, as noted above Cllr Jones made no substantive response to these observations.

41. The Sub-Committee did not consider that the circumstances would lead the fair-minded and informed observer to conclude that there was a real possibility of bias. Given that Cllr Jones and Cllr Shackleton had worked together for years without any animosity, it was not plausible to suggest that her alleged resentment would emerge now.

(f) The Sub-Committee members were at full council in November 2011

42. Cllr Jones suggested that the members of the Sub-Committee were subject to a conflict of interest because they had attended a meeting of the full Council in November 2011 at which minutes of the Asset Management and Land Disposal

("AMLD") Committee had been received, but they had not objected to that Committee's decision to sell the Florence Road plot of land.

43. The Sub-Committee considered that the informed observer would be aware that: the AMLD Committee had delegated responsibility in relation to this disposal; the full Council was not making a decision or being asked to endorse a decision, but merely receiving the minutes of that Committee; and even if the disposal had required the approval of the full Council, the disposal was by way of a sealed bid process (as opposed to by private treaty) and there was no suggestion that it was other than lawful.

44. The Sub-Committee did not consider that the fair-minded and informed observer would conclude that there was a real possibility of the Sub-Committee being biased on those grounds.

(g) The Sub-Committee members were involved in a pre-meeting on 23 January 2018 attended by the Council's Chief Executive

45. Cllr Jones drew attention to an email exchange the previous afternoon (23 January 2018) between his representative, Mr Rickers, and the Monitoring Officer, in which Mr Rickers referred to a pre-meeting of the Sub-Committee that morning at which Mr Rickers understood the Council's Chief Executive to have been present. Cllr Jones suggested that this indicated prejudicial collusion between officers and Sub-Committee members to the detriment of him now receiving a fair hearing.

46. The four members of the Sub-Committee had attended a pre-meeting with the Monitoring Officer and the Deputy Monitoring Officer. Those were the only officers present at the meeting; the Chief Executive was *not* present. The meeting had been solely: to inform members that Cllr Jones had confirmed his intention to present a request for a further adjournment; to explain the procedural requirements for considering that request; and to provide each member of the Sub-Committee with a copy of the full Correspondence Bundle, which included all the correspondence relating to the matters the Sub-Committee would now need to consider when determining the adjournment request the following morning.

47. The Sub-Committee considered that Mr Rickers had clearly either been misinformed, or had misinterpreted the information he had received regarding the attendance at, and purpose of, the pre-meeting. The Sub-Committee noted the Monitoring Officer's email reply to Mr Rickers on 23 January 2018 including his detailed responses to each of Mr Ricker's questions and considered them to be a fully accurate representation of the entirely legitimate purpose and content of the pre-meeting (see [**Correspondence Bundle, pp.31g-31j**]).

48. The Sub-Committee considered that a fair-minded and informed observer, who would be aware of correct position in relation to the persons in attendance and the contents of the pre-meeting, would not conclude that there was any real possibility of bias.

(h) Conclusion

49. The Sub-Committee did not consider that Cllr Jones has advanced grounds that either individually, or collectively, demonstrated real bias, apparent bias, conflicts of interest or predetermination on the part of any of the members of the Sub-Committee that would require their recusal.

(2) Other arguments for an adjournment

50. The Sub-Committee notes that when the local hearing was originally convened on 1 December 2017, Cllr Jones sought, and was granted by the Sub-Committee, an adjournment. At that point he stated that he needed a “*short*” adjournment of 3-4 weeks. In the event, the local hearing was reconvened nearly 8 weeks later. The Sub-Committee refers to the reasons that it gave for granting the adjournment on 1 December 2017 [**Hearing Bundle, pp.U-W**]. At that time the Sub-Committee was, on balance, just persuaded to grant an adjournment.

51. The Sub-Committee addresses below what it understood to be Cllr Jones’ further principal arguments for another adjournment.

52. *Cllr Jones’ desire to call further witnesses* – Cllr Jones argued that an adjournment was necessary because he wished to call a large number of

witnesses to be cross-examined as to the reasons why the conduct complaint had been pursued against him.

53. The Sub-Committee considered that Cllr Jones had had ample opportunity since the hearing on 1 December 2017 to identify and call any witnesses that he wishes. It was now over 10 weeks since the case was referred by the Monitoring Officer for a local hearing, and nearly 8 weeks since the hearing on 1 December 2017 was adjourned. The Sub-Committee noted that the “*Arrangements for dealing with standards allegations under the Localism Act 2011*” (“**the Arrangements**”) provided that a local hearing “*will normally take place within six weeks*” of a referral (paragraph 8.2).
54. The correspondence (in the Correspondence Bundle) between the Monitoring Officer and Cllr Jones’ new representative, Mr Rickers, showed that the Monitoring Officer had repeatedly requested the identification of such witnesses and the provision of witness statements from any such witnesses. The names of Cllr Jones’ proposed witnesses were not provided to the Monitoring Officer until 22 January 2018 and a witness statement was only provided in relation to one of them (Mr Julian Saunders) on 22 January 2018, but no other witness statements were provided (including from Cllr Jones himself). The Sub-Committee noted that various deadlines were set by the Monitoring Officer for provision of the names of witnesses and their witness statements, but these were not met by Cllr Jones.
55. Cllr Jones and his representative appeared to have been under the misconception (which the Monitoring Officer had clearly sought to correct on more than one occasion) that it was for the Monitoring Officer, rather than Cllr Jones, to arrange for the attendance of witnesses at the hearing on Cllr Jones’ behalf.
56. Further, the Sub-Committee was not persuaded that the witnesses that Cllr Jones had referred to as wishing to call were relevant to the narrow issues that the Sub-Committee had to determine. Those issues were, essentially: (1) what did Cllr Jones do or not do in February/March 2011; and (2) did that amount to a failure to comply with the Code of Conduct in force at the time. The Sub-Committee had

this concern at the 1 December 2017 local hearing and specifically ventilated, in its reasons for granting an adjournment then, its concern that Cllr Jones wished to call witnesses of no obvious relevance to the issues that needed to be decided by the Sub-Committee. When, at the present local hearing, the Independent Person sought clarification from Cllr Jones as to how witnesses who might give evidence as to the reasons why the conduct complaint was pursued in 2016/2017 were relevant to the Sub-Committee's consideration of events in February/March 2011, Cllr Jones declined to answer the question and left the hearing.

57. For similar reasons, the Sub-Committee was not persuaded that Cllr Jones' requests to be provided with a large number of further documents justified an adjournment. The documentation that had been requested had no obvious relevance to the issues for the Sub-Committee to decide.

58. The Sub-Committee did not consider, that, in the circumstances, these factors justified a further delay.

59. *Further documentation* – Cllr Jones also argued that an adjournment was necessary because he had been served with the Correspondence Bundle at, what he considered to be, short notice. As Cllr Jones recognised in the course of his submissions, around one third of that bundle consisted of correspondence between the Monitoring Officer and either his former solicitors (Jonas Roy Bloom) or Mr Rickers, his new representative. This material was necessary for the Sub-Committee to understand the context of Cllr Jones' own application to adjourn the hearing. Further, the Sub-Committee considered that this was material that Cllr Jones would, or should have, been aware of (in many cases for some time) as it was sent to, or by, his representatives and, presumably, he gave instructions on it to his representatives.

60. The remainder of the Correspondence Bundle consisted of the relevant Scheme of Delegation in force in 2011. The Sub-Committee agreed with Mr Dennis' submission that only a couple of pages of that are actually relevant.

61. The Sub-Committee did not consider that the manner in which this further material was provided necessitated an adjournment.

(3) Conclusion

62. For the reasons given, the Sub-Committee did not consider that there were conflicts of interest that would require any, or all, of its Members to recuse themselves. The Sub-Committee weighed up the reasons that Cllr Jones had advanced for the local hearing to be adjourned against the public interest in the timely resolution of standards complaints and the Council's interest in having an expeditious resolution of this complaint. Particularly given that a previous adjournment had been granted, the Sub-Committee unanimously considered that the balance of fairness was in favour of refusing the adjournment and proceeding with the local hearing.

B. Hearing of the standards complaint

63. Following its decision on Cllr Jones' applications the Sub-Committee proceeded with the substantive part of the local hearing, first addressing the issue of whether Cllr Jones had failed to comply with the Code.

64. Mr Dennis presented the case for the Investigating Officer. He spoke to an "opening summary" that he had provided to the Sub-Committee and Cllr Jones at the previous hearing on 1 December 2017 and further copies of which he provided to the Sub-Committee (annexed to this Decision Notice at **Annex D**).

65. Mr Dennis did not call any witnesses.

66. Neither Cllr Jones nor his representative were present during this part of the local hearing. As noted above, they had previously left the hearing.

67. The Independent Person, Members of the Sub-Committee (Cllrs Lewis, Shackleton and Trow), and the Sub-Committee's Legal Advisor asked Mr Dennis various questions on the Investigating Officer's case.

68. There was a brief adjournment for the Investigating Officer to locate and provide copies of some documents as a result of questions by the Independent Person and Cllr Trow, namely:

- Minutes of the Annual Meeting of the Council – 18th May 2010;
- Agenda Item 9 – Job descriptions of various Cabinet Members;
- Minutes of the meeting of the Council – 30th November 2010;
- Article 7 of the Council’s Constitution (revised March 2010);
- Appendix 8 to the Council’s Constitution – Members’ Allowance Scheme; and
- Sections 101 and 123 of the Local Government Act 1972.

69. The Independent Person then provided his views on the complaint to the Sub-Committee. The Legal Advisor provided his legal advice to the Sub-Committee. Summaries of the advice provided by both the Independent Person and the Legal Advisor are annexed to this Decision Notice (**Annexes E and C**).

70. The Sub-Committee then retired to deliberate in private on whether Cllr Jones had failed to comply with the Code.

71. The Sub-Committee then announced its decision in public session.

Decision on whether Cllr Jones failed to comply with the Code

72. The unanimous decision of the Sub-Committee was that Cllr Jones failed to comply with both paragraph 3(2)(d) and paragraph 5 of the Code.

Reasons for decision on failure to comply with the Code

73. In considering whether Cllr Jones failed to comply with the Code the Sub-Committee took account of the written and oral submissions of Mr Dennis, on behalf of the Investigating Officer, the views of the Independent Person and the

advice of its Legal Advisor. The Sub-Committee had also read the Hearing Bundle and the Correspondence Bundle and took account of that material. The Sub-Committee does not below specifically refer to every document, piece of evidence or submission that it considered.

74. As Cllr Jones was not present for the substantive part of the local hearing, the Sub-Committee was particularly keen to ensure that the evidence was carefully considered and the Investigating Officer's case tested.

75. The Sub-Committee also particularly had regard to the notes of the Investigating Officer's interview with Cllr Jones on 29 September 2017 [**Hearing Bundle, pp.331-333**] and his then solicitors' response dated 8 November 2017 to the draft report from the Investigating Officer [**Hearing Bundle, pp.334-335**], as these were the available documents in which Cllr Jones provided his substantive response to the allegations of breach of the Code.

76. The Sub-Committee noted that it was provided with a witness statement from a Mr Julian Saunders dated 21 January 2018. However, as Cllr Jones did not stay for the substantive part of the local hearing, he did not formally put this witness statement in evidence and did not call Mr Saunders as a witness at the local hearing. The Sub-Committee also noted that, in any event, even had the witness statement formally been put in evidence, it appeared to consist largely of Mr Saunders' personal opinions, was very largely directed to matters unrelated to events in February/March 2011 and to the extent that it did refer to events in February/March 2011 appeared to express Mr Saunders' opinion and was not based on his direct knowledge.

77. The alleged failure by Cllr Jones to comply with the Code took place in February/March 2011, so the relevant version of the Code was the 2007 version. The relevant provisions of that Code that Cllr Jones was alleged to have failed to comply with were:

- 1) Paragraph 3(2)(d) – “*You must not... do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority*”; and
- 2) Paragraph 5 – “*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*”.

(1) *Findings of fact*

78. The Sub-Committee did not understand there to be any significant factual dispute as to what happened in February/March 2011. To the extent that matters were in dispute the Sub-Committee decided such disputes on the balance of probabilities.

79. The documentary evidence revealed the following:

- 1) Cllr Jones was appointed as Cabinet Member for Jobs and Economy at the Council’s Annual Meeting on 18 May 2010. The responsibilities for the role were set out in a 6-page job description attached to the Minutes of the Annual Meeting. These included: “*To take responsibility within the Council for ... land and property management including acquisition and disposal in consultation with other Cabinet Members where necessary and where the disposal is at “less than best value” or has implications for the Council’s capital programme, in consultation with the Cabinet Member for Strategic Resources...*”.
- 2) Cllr Jones as a Cabinet Member would have received a Special Responsibility Allowance (under paragraph 3.2 of the Members’ Allowance Scheme in force at the time).
- 3) Cllr Jones had signed a declaration that he would abide by the Code on 2nd May 2008 [**Hearing Bundle, p.338**].

- 4) The disposal of land was a function of the Council under section 123(1) of the Local Government Act 1972.² The Council could delegate the discharge of its functions to an officer under section 101(1) of the Local Government Act 1972.

- 5) The Director of Strategic Resources had delegated responsibility, amongst other things, for: “**Disposal of Land and Property** - *To negotiate for and agree the terms for the disposal of land and property in accordance with such policy as may be determined by the Council*”; and “**Disposal of Land and Premises up to £100,000** – *In consultation with the appropriate Director, to negotiate and agree terms for the disposal of areas of land and premises up to a value of £100,000*”. This is confirmed by the relevant provisions of the Delegations to Officers 2011 (Appendix 4 to the Constitution) [**Correspondence Bundle, p.97**] and the Scheme of Delegation approved by full Council on 20 November 2010. The relevant resolution provided that the Council “... *approve the delegation of those functions that are non-executive functions and have not otherwise been delegated by the Leader of the Council*”.

- 6) On 4 February 2011, pursuant to the Director of Strategic Resources’ delegated authority, a Property Review Officer provided instructions for the sale of the freehold interest in a plot of land off Florence Road, Smethwick (“**the Plot**”) [**Hearing Bundle, pp.256-257**]. The Plot was to be sold at a public auction on 10 March 2011. The instruction was accompanied by a report signed by the Director of Strategic Resources [**Hearing Bundle, pp.258-261**].

- 7) The Plot was publicly advertised with a guide price of £34,000-£38,000 [**Hearing Bundle, p.264**].

² Section 123(1) and (2) state, as relevant, that: “(1) *Subject to the following provisions of this section, ... a principal council may dispose of land held by them in any manner they wish. (2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained*”.

- 8) On 24 February 2011 the Council's Senior Development Surveyor, ML, emailed Cllr Jones stating [**Hearing Bundle, p.264**]:

"As per our conversation earlier, please you [sic] confirm the Leader has requested the removal of Florence Road, Smethwick from the auction on 10 March.

I would be grateful if you could confirm the individual party involved to enable Property Services to progress this matter.

The guide price published was £34,000-£38,000 however the reserve was to be set at £45,000 on the basis of its suitability for the erection of 2 semi-detached houses.

As discussed I should point out that we have already had other enquiries on the site since the auction catalogue was published. Those parties have been informed that the site will go to the auction where they can submit bids, in this respect there may be questions as to why it was removed and sold by way of private treaty. In addition while I confirm the reserve price was to be £45,000 my hope was that the competitive nature of the auction would increase the receipt for the Council as has happened in the past.

I look forward to hearing from you.

..."

- 9) Cllr Jones respond to ML the same day stating simply: *"I will get the enquirers [sic] name and contact details and ask them to contact you directly so that you can discuss the sale details"*. On 25 February 2011 (i.e. the next day) Cllr Jones emailed ML stating: *"... the name of the interested party is [name and address] mobile number [number]"* [**Hearing Bundle, pp. 263, 265**].

- 10) On 1 March 2011 ML wrote to the proposed purchaser referred to in Cllr Jones' email, AA [**Hearing Bundle, p.266**]. The letter stated:

"Further to your conversation with and at the request of Councillor Darren Cooper, The Leader of the Council, I confirm that the Council are prepared to dispose of the above site subject to the following terms:

Consideration: £45,000 (Forty Five Thousand Pounds).

User: That the land be used in connection with residential use only.

... You will note that the consideration is higher than that of the quoted guide price. The guide price is designed to attract interest in the site at auction. The consideration is the reserve price and represents the lowest at which the Council is willing to sell. This price would have been set as the reserve had the site progressed to auction.

..."

11) On 5 March 2011 AA responded to ML confirming acceptance of the offer of £45,000 [**Hearing Bundle, p.267**].

12) For reasons that were not apparent from the evidence, the sale of the Plot to AA ultimately did not proceed.

13) Subsequently, a report to the Asset Management and Land Disposals (“**AMLD**”) Committee recommended that various plots of land (including the Plot) be sold on a sealed bid basis [**Hearing Bundle, pp.269-273**]. At its meeting on 27 October 2011 the AMLD Committee (of which Cllr Jones was a member) approved the disposal of these plots [**Hearing Bundle, pp.275-284, especially at pp.280-282**]. The Plot was subsequently sold in January 2012 under the sealed bid process to MS for £65,000 (the other two bids being for £52,500 and £41,000) [**Hearing Bundle, pp.286-288**].

80. The Sub-Committee was satisfied that Cllr Jones was acting in his capacity as a member of the authority and was therefore subject to the Code when he communicated with ML on around 24 to 25 February 2011.

81. The Sub-Committee was satisfied that as an experienced councillor who had signed a declaration that he would abide by the Code Cllr Jones was, or should have been, well aware of his obligations under the Code.

82. The Sub-Committee was also satisfied that, given his seniority and specifically his role as holder of the Jobs and Economy Cabinet portfolio, Cllr Jones would have been, or at least should have been, well aware of the Council’s statutory obligation to achieve “*best consideration*” when disposing of land.

83. The Sub-Committee was satisfied that the power to dispose of land under £100,000 in value was, at the material time, a function of the full Council (not the Executive) which had been delegated to the Director of Strategic Resources under the Scheme of Delegation. The Sub-Committee had seen no evidence that such a power was that of the Leader or of the Cabinet Member for Jobs &

Economy. Indeed, the Sub-Committee noted that Cllr Jones' former solicitors had sought to argue in his defence that he did *not* have such authority.

84. The Director of Strategic Resources had made a decision, pursuant to his delegated functions, to dispose of the Plot by way of auction. Sale by auction is a classic means by which a local authority can seek to discharge its obligation to achieve best consideration – it is a means of market testing the value of a property. In contrast, sale by private treaty is not a reliable means of achieving best consideration in the absence of any market testing.

85. It was said that the former Leader of the Council, the late Cllr Cooper, requested the removal of the Plot from the proposed auction. It appeared from ML's email that Cllr Jones conveyed this alleged request to ML, and that would accord with what Cllr Jones said in his interview with the Investigating Officer. However, the Sub-Committee noted that there was no direct or independent evidence that the late Cllr Cooper *did* make such a request. Cllr Cooper is obviously no longer able to answer as to his involvement or otherwise in the request to ML.

86. The Sub-Committee made no positive finding as to whether Cllr Cooper did or did not make the alleged request. It proceeded on the assumption (in Cllr Jones' favour) that he did make the request.

87. Whether or not the request ultimately came from Cllr Cooper, it was clear from ML's email (and the Sub-Committee did not understand Cllr Jones to dispute this) that Cllr Jones orally requested ML to remove the Plot from the auction. It also appeared that Cllr Jones had said that he would provide ML with the details of the proposed purchaser, which he then, indeed, did.

88. The Sub-Committee noted that Cllr Jones was warned by ML, in terms, that questions would be asked about why the Plot was withdrawn from auction and disposed of by private treaty and that ML expected the Plot to achieve a price *higher* than the reserve price if it were to be sold at auction. The Sub-Committee noted that when the Plot was eventually sold by sealed bid (another method of market testing to seek to achieve "*best consideration*") the Plot sold for £65,000 -

£20,000 more than the price agreed with AA for sale by private treaty. Whilst the Sub-Committee recognised that the value of the Plot may have increased between February 2011 and January 2012, this appeared to be consistent with ML's expectation that a higher price could be achieved if a competitive sale process was used.

89. The email chain showed that Cllr Jones did not respond to ML's warning, but instead simply said that he would obtain the name and address of the proposed purchaser, which he then did the next day. There was no evidence that Cllr Jones applied his mind at all to the question of how sale by private treaty could be reconciled with the Council's duty to achieve "*best consideration*".

90. The Sub-Committee specifically recognised that there was no complaint in relation to Cllr Jones' involvement in the AMLD Committee's *subsequent* decision to approve the disposal by way of sealed bid.

(2) Findings in relation to failure to comply with the Code

91. The Sub-Committee unanimously found that Cllr Jones failed to comply with paragraph 5 of the Code ("*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*"), in that:

- 1) By passing on Cllr Cooper's alleged request (or himself making the request) Cllr Jones subverted the correct procedure. Under the Council's constitutional arrangements neither Cllr Jones, nor the then Leader, had authority to countermand the Director of Strategic Resources' delegated decision to put the Plot out to auction.
- 2) Cllr Jones did not follow his own responsibilities in relation to best consideration.
- 3) Cllr Jones ignored the clear professional advice of an officer, namely ML.

- 4) The way in which Cllr Jones participated in the alteration of the means by which the Plot was to be disposed of also breached the Principles of Public Life in relation to openness and transparency (such breaches being relevant to the question of whether he failed to comply with the Code). He sought to facilitate a sale by private treaty, when sale by public auction had properly been decided upon and publicly advertised.
- 5) The Sub-Committee agreed with the representations on behalf of the Investigating Officer that Cllr Jones also failed to comply with the Principles of Public Life in relation to showing leadership and stewardship of the Council's resources. Even if Cllr Jones had been told by the then Leader to convey the request, he failed to show leadership by not questioning such a request. He facilitated a sale by private treaty having been specifically warned by an officer that this was likely to achieve a lower price than sale by auction.

92. By departing from proper procedure and facilitating a situation where the Council risked not complying with its obligation to achieve "*best consideration*", Cllr Jones also could reasonably be regarded as bringing the Council itself into disrepute.

93. The Sub-Committee also unanimously found that Cllr Jones failed to comply with paragraph 3(2)(d) of the Code ("*You must not... do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority*"), in that:

- 1) The officer, ML, had very clearly set out his concerns in relation to sale by private treaty, which were not addressed by Cllr Jones and were ignored by him.
- 2) The officer specifically asked Cllr Jones for confirmation of the instruction from Cllr Cooper, but Cllr Jones did not address that request. The officer had also given very clear advice, which Cllr Jones ignored. This put the officer in a very difficult position.

- 3) The Sub-Committee considered that this was clearly conduct that was likely to undermine the impartiality of a Council officer.

94. As stated above, the Sub-Committee carefully considered Cllr Jones' response to the substantive allegations as set in his interview with the Investigating Officer and as set out by his former solicitors. The Sub-Committee did not consider these representations to be persuasive. In particular:

- 1) Cllr Jones' former solicitors argued that he was merely acting as a conduit for the late Leader's request – The Sub-Committee considered this to be a wholly inadequate response. Cllr Jones was a Cabinet Member and an experienced councillor. He could, and should, have exercised independent judgment and not acted as a conduit, particularly when warned by an officer about the risks of sale by private treaty.
- 2) Cllr Jones' former solicitors argued that Cllr Jones had no authority to remove the Plot from auction – Again the Sub-Committee considered that this was an inadequate response. Cllr Jones acted in breach of the constitution which specified duties and delegated functions to officers. This was disregarded by Cllr Jones. This was not a point that served to defend Cllr Jones' actions.
- 3) Cllr Jones' former solicitors stated that he was relying on officers and the Leader to achieve "*best consideration*" – Again, the Sub-Committee considered this to be an inadequate response. Cllr Jones was told by an officer that an auction, rather than sale by private treaty, was likely to achieve "*best consideration*", but appeared to have taken no notice of this warning. Neither in his former solicitors' letter nor in his interview did Cllr Jones suggest that he took any steps to ascertain from Cllr Cooper what (if any) thought had been given to achieving "*best consideration*".
- 4) Cllr Jones' former solicitors argued that the sale to AA did not go through and so did not cause loss to the Council – The Sub-Committee did not consider that the fact that the sale by private treaty did not, in fact, proceed

and an actual loss did not materialise absolved Cllr Jones. The fact that the sale by private treaty did not go through was no thanks to Cllr Jones.

95. The Sub-Committee noted that Cllr Jones had intimated an intention to call witnesses to give evidence as to alleged political motivation for the standards complaint being pursued. Ultimately, no evidence was placed before the Sub-Committee in this respect. In any event, the Sub-Committee decided the case based on the evidence as to what did or did not happen *in February 2011*. The Sub-Committee based its decision on the contemporaneous documentary evidence and Cllr Jones' responses to the substantive allegations.

C. Hearing in relation to possible sanction

96. Following the announcement of its decision that Cllr Jones had failed to comply with the Code, the hearing then proceeded to address the issue of what action (if any) the Sub-Committee should take in the light of its finding that Cllr Jones had failed to comply with the Code.

97. Mr Dennis made representations to the Sub-Committee in relation to sanction on behalf of the Investigating Officer.

98. The Independent Person gave his views to the Sub-Committee on sanction. The Legal Advisor provided legal advice to the Sub-Committee in relation to sanction. Summaries of both the Independent Person's and Legal Advisor's advice on sanction are annexed to this Decision Notice (at **Annexes F and C**).

99. The Sub-Committee then retired to deliberate in private. The Sub-Committee then announced its decision on sanction in public session.

Decision on sanction

100. The Sub-Committee unanimously decided that:

- 1) It is appropriate to take action in relation to Cllr Jones' failure to comply with the Code.

- 2) The Sub-Committee's Decision Notice should be published on Cllr Jones' member profile on the Council's website for the remainder of his term in office (or, if later, until he complies with the sanction set out below).
- 3) The Sub-Committee recommends that Cllr Jones be suspended from membership of the Economy, Skills, Transport and Environment Scrutiny Board and not be appointed to any further Committee of the Council until he has carried out training to the satisfaction of the Monitoring Officer as set out below.
- 4) The training is to be bespoke training to ensure that Cllr Jones understands appropriate competencies, responsibilities and behaviours in carrying out his responsibilities as a member of Committees. Such training is to be at Cllr Jones' own expense.

Reasons for the decision on sanction

101. As Cllr Jones had decided to absent himself from the local hearing, having been warned by the Sub-Committee's Legal Advisor that the Sub-Committee might refuse his adjournment application and proceed with the local hearing, the Sub-Committee considered that it was appropriate to proceed to consider the issue of sanction in Cllr Jones' absence. The Sub-Committee members, the Independent Person, the Legal Advisor and the Investigating Officer and her Counsel were all present at the hearing and were able to deal with the issue of sanction. The Sub-Committee considered that it would not be appropriate to delay the conclusion of the matter further by adjourning consideration of sanction.

102. In deliberating on the appropriate sanction, the Sub-Committee took account of the representations from Mr Dennis, the views of the Independent Person and the advice of its Legal Advisor. As noted above, the Sub-Committee had also read the Hearing Bundle and the Correspondence Bundle and took account of that material. The Sub-Committee does not below specifically refer to every document, piece of evidence or submission that it considered.

103. The Sub-Committee considered that this was not a case in which no further action would be an appropriate response to the failure to comply with the Code. The Sub-Committee considered the failure to comply with the Code to be a reasonably serious one.
104. The Sub-Committee noted that Cllr Jones was no longer a member of the Cabinet and was only a member of one Council Committee, namely the Economy, Skills, Transport and Environment Scrutiny Board.
105. The Sub-Committee was concerned that there was no demonstration by Cllr Jones of any insight into the deficits in knowledge and understanding of his responsibilities that his conduct had demonstrated. The Sub-Committee considered that some form of training for Cllr Jones to address such deficits was essential, and that this training should have a particular focus on Cllr Jones' ongoing responsibilities. The training should be bespoke training and be completed to the satisfaction of the Monitoring Officer.
106. If there was a cost in providing such training, the Sub-Committee considered that it was appropriate, in the circumstances, that Cllr Jones himself, rather than the Council, bear that cost.
107. The Sub-Committee considered that until Cllr Jones had undergone training better to understand his responsibilities he should not have additional responsibilities (now through committees, rather than the Cabinet). The Sub-Committee recommended that Cllr Jones be suspended from his membership of the one Committee that he was currently a member of and not be appointed to any further Committees, pending the satisfactory completion of such training.
108. The Sub-Committee considered that, should Cllr Jones stand for re-election, the voters in his ward were entitled to be aware of the failure to comply with the Code that he has been found guilty of. The Sub-Committee's Decision Notice should, therefore, remain on his member profile on the Council's website for the remainder of his current term as a councillor. To encourage Cllr Jones to comply with the requirement for training, the Decision Notice should remain on his

member profile until he has complied with the training requirement (if that was later than the expiry of his current term of office).

109. The Sub-Committee did not consider that any of the other types of potential action identified at paragraphs 9.1 to 9.6 of the Arrangements were relevant or appropriate in the circumstances.