

**Report of an Investigation in Accordance with the Arrangements for
Dealing with Standards Allegations under the Localism Act 2011
In the case of Councillor Mahboob Hussain**

INVESTIGATION REPORT CONTENTS

Report Author: SMBC Legal Services

Report Date: July 2018

ITEM	DESCRIPTION
1	Summary of Allegations
2	Investigation Outcome
3	Arrangements for Dealing with Standards Allegations
4	Relevant Legislation and Protocols
5	Official Capacity/Scope of the Code
6	Relevant Case Law
7	Human Rights
8	Investigation Procedure
9	Analysis of Evidence and Allegations
10	Conclusions

**Report of an Investigation in Accordance with the Arrangements for
Dealing With Standards Allegations Under the Localism Act 2011
In the case of Councillor Mahboob Hussain**

Summary of Allegations

1. Following the Council's Audit Committee meeting on the 26th January 2017, audit allegations against Councillor Mahboob Hussain and Councillor Bawa were referred to the Monitoring Officer. Following initial enquiries by the Monitoring Officer a decision was made to instigate a formal investigation under the procedures required by the Localism Act 2011.

2. This report details the results of investigations carried out.

3. Although the subject of this complaint is no longer a Councillor, throughout this report I will refer to him as Councillor Hussain; he was an elected member at the time of the complaint and at the time that this investigation was commenced.

4. The allegations were detailed in the audit reports dated September 2016 and January 2017. The Audit Committee Report and minutes from the meeting of the 26th January 2017 also contain relevant information. I reviewed these documents in full.

5. There are two sets of allegations made against Councillor Hussain; allegation one is in relation to the compulsory purchase order pilot scheme and allegation two is in relation to housing allocations.

6. The first allegation is that:

- a. There are indicators that suggest potential collusion and fraudulent practice against the Council
- b. That the circumstances surrounding certain sales and the fact that both Councillors benefitted from a unique CPO pilot scheme gives rise to the following concerns:
 - i. Why an exclusive bid for self-build plots was only introduced in 1999 after the majority of residents affected by the CPO already relocated and was restricted to plots of land that both Councillors had already expressed an interest in 1998.
 - ii. That only Councillor Bawa and Hussain and their immediate family member's submitted bids for these plots in September 1999 and that the bids gave the impression of potential cover pricing and bid suppression.
 - iii. That for one plot, four bids were received; all from Councillor Hussain and members of his family without any declaration to the Council that this was the case.

- iv. That the two plots sold in March and April 2000 were done so at a value below the guide price, contrary to the agreement at the time the scheme was approved.
- v. A failure by Councillor Bawa to declare his role as a Councillor when a planning application was submitted on his behalf in October 2007.
- vi. Concerns over one of the sales were raised back in 2001 with the District Auditor.
- vii. That Councillor Bawa never actually took up residence in the property built under the scheme.

7. The second allegation is that

- a. the Council has found patterns of behaviour that, at this point in time, look like a conspiracy to defraud and/or misconduct in public office, as the outcomes of a number of decisions about housing allocations seem to all benefit members of Councillor Hussain's family.
 - i. This included the repeat pattern of use of a number of factors that allowed members of Councillor Hussain's family to be allocated Council properties
 - ii. Applications that were originally reviewed and assigned as a low band then subsequently raised to the top band

- iii. A number of direct offers on properties being made to family members
- iv. The lack of a clear audit trail in order to support the decisions that were made.

Investigation Outcome

8. In reference to the allegations made above, I have made the following findings:

9. *In relation to allegation one:*

a. *There are indicators that suggest potential collusion and fraudulent practice against the Council*

Outcome: There is insufficient evidence to prove collusion and fraudulent practice, I am satisfied that Councillor Hussain did act in a way that was inconsistent with the Nolan principles of selflessness, openness and honesty in that he failed to notify Property Services that he was making enquiries of members of staff in Property Services about potential residential development sites for his own personal interest and he was involved in progressing the ring fenced self-build scheme through to committee.

b. *That the circumstances surrounding certain sales and the fact that both Councillors benefitted from a unique CPO pilot scheme gives rise to the following concerns:*

i. Why an exclusive bid for self-build plots was only introduced in 1999 after the majority of residents affected by the CPO already relocated and was restricted to plots of land that both Councillors had already expressed an interest in 1998.

Outcome: The inference of this complaint was that Councillor Hussain and Councillor Bawa specifically supported or favoured the scheme for their own benefit or for the benefit of their family members. There is insufficient evidence to prove this.

ii. That only Councillor Bawa and Hussain and their immediate family member's submitted bids for these plots in September 1999 and that the bids gave the impression of potential cover pricing and bid suppression:

Outcome: There is insufficient evidence to prove any wrongdoing on Councillor Hussain's behalf.

iii. That for one plot, four bids were received, all from Councillor Hussain and members of his family without any declaration to the Council that this was the case:

Outcome: There is insufficient evidence to prove any wrongdoing on Councillor Hussain's behalf.

iv. That the two plots sold in March and April 2000 were done so at a value below the guide price, contrary to the agreement at the time the scheme was approved:

Outcome: There is insufficient evidence to prove any wrongdoing on Councillor Hussain's behalf. However, at the Finance and Resources (chairs) Sub-Committee on the 2nd March 2000 the price of plots 1 and 2 Bridge Street were reduced following a slight reduction in the area of each plot; Councillor Hussain had an interest in this matter but failed to declare his interest. This is therefore a breach of the Nolan Principles of Honesty and Openness.

- v. *A failure by Councillor Bawa to declare his role as a Councillor when a planning application was submitted on his behalf in October 2007:*

Outcome: This relates only to Councillor Bawa and is addressed in a separate report.

- vi. *Concerns over one of the sales were raised back in 2001 with the District Auditor:*

Outcome: There is insufficient evidence to prove any wrongdoing on Councillor Hussain's behalf.

- vii. *That Councillor Bawa never actually took up residence in the property built under the scheme:*

Outcome: This relates only to Councillor Bawa and is addressed in a separate report.

10. *The second allegation:*

a. *the Council has found patterns of behaviour that, at this point in time, look like a conspiracy to defraud and/or misconduct in public office, as the outcomes of a number of decisions about housing allocations seem to all benefit members of Councillor Hussain's family:*

Outcome: there is insufficient evidence to prove any conspiracy to defraud and or misconduct in public office by Councillor Hussain.

i. *This included the repeat pattern of use of a number of factors that allowed members of Councillor Hussain's family to be allocated Council properties:*

Outcome: a number of Councillor Hussain's family members were allocated Council properties; I have addressed each allocation in turn, later in this report, as all have different factors.

ii. *Applications that were originally reviewed and assigned as a low band then subsequently raised to the top band:*

Outcome: there is insufficient evidence to prove a breach of the code of conduct in relation to this point.

iii. *A number of direct offers on properties being made to family members:*

Outcome: I have found two separate incidents where the Members' Code of Conduct 2007 (paragraphs 1 (5) and 1(6) (a)) in relation to direct allocations to

Councillor Hussain's family members (124 Basons Lane and 229 Queens Road), have been breached.

iv. The lack of a clear audit trail in order to support the decisions that were made:

Outcome: There is insufficient evidence to prove any wrongdoing on this point in relation to Councillor Hussain. Throughout the period of the allocations covered by this investigation, policies and procedures were changed and have been improved.

11. As a result of this investigation, I have found that there have been breaches of the seven principles of public life; the Nolan Principles, specifically two breaches of the openness principle, two breaches of the honesty principle, one breach of the selflessness principle, and four breaches of the Members' Code of Conduct 2007.

12. Further information and details on each of the allegations is included below.

Investigation Procedure

13. The investigation brief was agreed with the Monitoring Officer, who with the exception of guidance on procedural matters has remained independent from the investigation.

14. The investigation process involved reviewing a number of documents including the original audit reports and evidence gathered throughout the audit investigation. I have also considered housing allocations policies from 2004, 2009 and 2013.
15. I also considered whether witness evidence was required; although there is some documentary evidence available, I considered relevant interviews obtained by Wragge Graham and Co from Kerry Jones, Senior Property Officer within Property Services, Senior Property Officer within Property Services in relation to the CPO matter; I also invited Kerry Jones, Senior Property Officer within Property Services and Azmat Mir, former Client Estate Manager, former Client Estate Manager within Property Services, to provide further witness evidence. I considered the interviews of Adrian Scarrott, former Director of Neighbourhoods, former Director of Neighbourhoods, and Michelle Fletcher, former Area Manager of the South Neighbourhoods Division, former Area Manager of the South Neighbourhoods Division, for the housing allocations matter that were undertaken by Wragge Graham and Co. In addition I obtained statements from Wendy Peniket, Housing Choice Neighbourhood Manager, Housing Choice Neighbourhood Manager, and Andrew Langford, Neighbourhood Services Manager, Neighbourhood Services Manager. Adrian Scarrott, former Director of Neighbourhoods was invited in for interview but did not respond to my request. Two other statements were

obtained; however, the witnesses subsequently decided that they no longer wished to provide evidence in relation to the investigation due to fear of adverse coverage in social media. They withdrew their consent to use their statements and personal details. Therefore, I will not be relying upon their unsigned statements.

16. This report will be issued directly to the Monitoring Officer.

Arrangements for dealing with Standards Allegations

17. Pursuant to the provisions of the Localism Act 2011, the Council has put in place “arrangements” under which allegations that a member or co-opted member of the authority has failed to comply with the authority’s Code of Conduct are dealt with.

18. The Monitoring Officer will decide whether a complaint merits formal investigation. It was determined in this case that the complaint did merit investigation, and as such, the Monitoring Officer appointed an Investigating Officer.

Relevant Legislation and Protocols

19. The Council have adopted a Members’ Code of Conduct. This has been regularly reviewed. The most recent Code was adopted October 2016.

20. These allegations span a number of years; therefore, I have considered the Code and/or standards regime that was in place at the time of the incident alleged.
21. I have considered the arrangements for dealing with standards allegations, the Council's Constitution, specifically Article 2 The Code of Conduct: Guide for Members May 2007, Protocol for Member / Officer Relations 2011 and 2013 and ACAS guidelines – Harassment and Bullying.
22. I have also considered the guidance from the Standards Board for England which has now been disbanded but is still relevant, given the timeframe of these allegations, specifically in relation to Personal and Prejudicial Interests.

Official Capacity/ Scope of the Code

23. Section 27(2) of the Localism Act 2011 requires the Council to adopt a Code of Conduct "*dealing with the conduct that is expected of members ... when they are acting in that capacity.*" The Council's Member Code of Conduct is expressed to set out the standards of conduct that are expected of members when they are acting in that capacity and applies to members in all aspects of their activities as members. It does not seek to regulate what members do in their purely private and personal lives.

Relevant Case Law

24. Whether a member is acting in an official capacity, was one of the central issues in *Livingstone v APE* [2006] EWHC 2533. Collins J held that the then Mayor of London was not acting in an official capacity when responding to being “door stepped” by a journalist when leaving the offices of the Greater London Authority. The case made clear that a distinction is to be drawn between the individual as a Councillor and the individual as an individual and that a Councillor is not a Councillor twenty four hours a day. The case provided helpful guidance on whether the Code applied when a Member does not appear to act as a Member but does misuse their office. Mr Justice Collins made the following comments:

“If the words ‘in performing his functions’ are applied literally, it may be said that such misuse, and other misconduct which is closely linked to his position as such may not be covered. It seems to me that the expression should be construed so as to apply to a member who is using his position in doing or saying whatever is said to amount to misconduct. It is obviously impossible for a member who was acting in his official capacity to argue that by acting improperly he was not performing his functions. Such a construction would emasculate the system set up by Parliament”.

25. The Livingstone judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from a decision of the local standards committee. In the Case Tribunal’s

view, the Livingstone judgment should be interpreted to mean that for a councillor to be acting in an official capacity:-

- (a) the councillor should be engaged in business directly related to the council or constituents; or
- (b) the link between the councillor's office and the conduct should have a degree of formality.

26. In *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC), the tribunal further stated the need for a link between the Councillor's office and the alleged conduct. The tribunal indicated that merely acting, claiming to act or giving the impression of acting as a Member was insufficient for the conduct to be covered by the code. There had to be sufficient material for the tribunal to properly conclude that the member was in fact acting as a representative of the Council.

27. *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) confirms that the correct test to be applied in Standards Cases is the civil standard of proof; on the balance of probabilities. In this case, the Councillor was found to have breached the Code of Conduct as he had referred to the Adult Social Care Directorate as a shambles and shambolic, he had improperly sought to interfere with the housing allocation decision making process, failed to show respect and consideration to officer and bullied officers. The Court considered the relationship between members and officers and found that there "*is a mutual bond of*

trust and confidence between elected members and their officers...local government in this country could not sensibly function without it.”

28. A case decided by the First Tier tribunal on an appeal from Bromsgrove Borough Council dealt with a failure to declare a personal interest at two Parish Council meetings where the business discussed was the proposed development of land in the village. The case is Councillor David Matthews of Alvechurch Parish Council v Bromsgrove District Council Standards Committee, LGS\2011\0565. The personal interest was a relationship that the Councillor had; first Cousin once removed.

29. The relevant Code of Conduct stated that a councillor had a personal interest when *“a decision in relation to [the business of the Council] might reasonably be regarded as affecting the wellbeing or financial position of a relevant person to a greater extent than the majority of ...other council tax payers, ratepayers or inhabitants”*. A relevant person was defined as including a member of the councillor’s family or a person with whom the councillor has a close connection.

30. In this case, the councillor was found not to have breached the code of conduct. The tribunal stated *“had there been a close association then, regardless of whether or not the co-owner was to*

be regarded as having a family connection with the appellant, there would have been a personal interest.” Further, it stated “it would be unrealistic and unreasonable for a member of your family to be interpreted for the purposes of the code as encompassing the broader reaches of the extended family and it would be wrong for a first cousin once removed as coming within the definition.” It went further to say that “if, despite, the distance of the family connection, there is nevertheless a close association then the second limb of paragraph 8 (2) (a) [close association] will come into play and require a declaration of interest.”

Human Rights

31. Throughout the investigation I have remained mindful of the article contained within the European Convention on Human Rights, in particular, the articles set out below.

32. Article 6 of the European Convention on Human Rights provides:-

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the

protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

33. Article 8 of the European Convention on Human Rights provides:-

(1) Everyone has the right to respect for his private and family life, his home and his correspondence;

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

34. Article 10 of the European Convention on Human Rights provides:-

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society, in the interests of the protection of the reputation or rights of others.

Allegation One

35. This relates to the compulsory purchase order pilot scheme; full details of the allegation are set out in paragraph 6 above

a. Relevant part of the Code of Conduct

Given that this matter dates back to the 1990's, the relevant code to apply is the National Code of Local Government Conduct and the Nolan Principles that were introduced to Local Authorities in 1997. The authority did not have its own code of conduct.

In relation to the National Code, paragraph 7 is relevant

“It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.”

The relevant Nolan principles for this matter are:

Selflessness – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Accountability – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness - holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

b. Investigation Methodology

I considered the Audit Report of the 26th January 2017, the file provided by audit accompanying that report which included many documents such as emails, memos, reports to committees, schedules of offers and agreements. I also interviewed Kerry Jones, Senior Property Officer within Property Services and Azmat Mir, former Client Estate Manager. I was unable to interview any other officers identified by the papers due to various issues, mainly being the time elapsed since the alleged misconduct which has

resulted in officers retiring and/or relocating outside of the UK.

Councillor Hussain was invited to attend an interview to discuss the allegation. He initially failed to respond to requests and then advised that he had solicitors instructed. I contacted the Solicitors on a number of occasions and was not provided with a response. Councillor Hussain has not co-operated with this investigation.

c. Agreed Facts

It is a fact that there was a Compulsory Purchase Order clearance for West Bromwich Street and Fountain Lane. Forty nine properties were affected, including properties owned by Councillor Bawa and Councillor Hussain. The decision to make this order was made on the 15th August 1996 by the Finance and Resources Strategy (Chairs) Sub-Committee.

Councillor Hussain was vice chair of that committee and he did declare an interest at the meeting. The minutes state that *“Councillor Hussain declared an interest in this item, took no part in the discussion and did not vote thereon.”* There is no detail of the nature of the interest.

A memo was sent from Director Malcolm Hinks to Head of Corporate Property on the 14th August 1998 to say that

following discussion after committee (it is not clear which committee) it had been decided to pursue residential development at Bridge Street.

On the 28th January 1999 a report was taken to the Finance and Resources Strategy Committee to allow residents who were displaced by the CPO to exclusively bid for self-build plots on Broadwell Road, McKean Road and Bridge Street. This was a pilot scheme; it had never been done before and it has not been done since. The committee resolved to recommend that the Chief Executive be authorised to dispose of the freehold interest in land at Broadwell Road/McKean Road and Bridge Street, Oldbury, to local residents displaced by the West Bromwich Street Compulsory Purchase Order on a pilot basis for the purpose of building a house for their own occupation and the disposal be at market value and otherwise on terms and conditions to be agreed by the Director of Resources and Borough Treasurer.

At the time of the committee decision, only twelve of the original forty nine residents were still in occupation. Councillor Bawa and Councillor Hussain were included in the twelve.

Four plots were available for purchase, by a sealed bidding process. Councillor Bawa successfully bid and purchased

Plot 1 Bridge Street; Councillor Hussain successfully bid and purchased Broadwell/McKean Road. The sealed bids process was overseen by Kerry Jones, Senior Property Officer within Property Services and Richard Ebanks from Committee Services. No elected member was involved in the opening of the sealed bids.

d. Disputed Facts

Councillor Hussain has not co-operated with this investigation.

On the 13th of July 1998 a memo was sent from Kerry Jones, Senior Property Officer within Property Services to Director of Environment and Development Services for the attention of Henry Whitehorne asking for an investigation to be undertaken on whether the sites were suitable for residential development *“in view of Councillor Hussain’s interest”*.

Kerry Jones, Senior Property Officer within Property Services then wrote to Councillor Hussain on the 10th August 1998 providing him with information on potential council owned sites that would be used for residential development. The letter was signed by Peter Manley, Head of Corporate Property.

A memo was sent from the Head of Corporate Property, in Kerry Jones' name, Senior Property Officer within Property Services on the 28th August 1998 (after the CPO but before the decision to sell plots to displaced residents) to the Director of Environment and Development Services, stating that Councillor Bawa had shown an interest in the land at Bridge Street.

In July 1999, after the scheme had been approved by the Finance and Resources Strategy Committee, Legal Services provided a list of those affected by the CPO who were still in occupation, to the property team. There were twelve properties with twenty residents. The residents included Councillor Hussain and Councillor Bawa. Within that memo sent by Legal Services in the name of William Whiting, Legal Assistant for the attention of Kerry Jones, Senior Property Officer within Property Services, it stated *"I understand that you require the names and addresses of those persons who are still in occupation of properties including the above mentioned Compulsory Purchase Order which has been requested by Councillor Hussain."* There is no evidence on the file to show whether or not that information was passed to Councillor Hussain.

The residents named in the memo from Legal Services were written to on the 23rd July 1999 offering them the chance to purchase land to build a dwelling for their own occupation.

According to the audit report, on the 27th August 1999 a further twelve households were contacted and given the opportunity to purchase land to build a dwelling for their own occupation; these were people who had also been displaced by the CPO but who had already moved address. I have not seen this letter within the evidence.

It is not clear why there was a delay in the two sets of residents being contacted. The 1999 Finance and Resources Strategy Committee report does not limit the scheme to those still in occupation, it is for all local residents displaced by the CPO. I do not have the names and addresses of those additional twelve households, they do not appear in the evidence gathered by audit and they are not in the files held by Property Services. Originally there were forty nine properties affected by the CPO; twenty four residents were contacted according to the evidence.

The information from legal services provided in the memo dated 8.7.99 stated that Cllr Hussain was resident at 126 West Bromwich Street with two others. Three of Councillor Hussain's brothers also placed bids for the plots; Asif Iqbal, resident of 124 West Bromwich Street according to the bids, he is not on the list provided by legal services, Istakhar Hussain, resident of 134 West Bromwich Street confirmed on the list provided by legal services, Mohammed Ramzan

resident of 124 West Bromwich Street according to the bids, he is not on the list provided by legal services.

I have been unable to establish, through the evidence, why these residents were not on the list provided by legal services on the 8.7.99.

The audit file suggests that all of the bidders for these plots of land were either Councillor Bawa, Councillor Hussain or their relatives. Nobody else displaced by the CPO placed any bids despite being invited to do so by way of letters from Property Services.

At the Finance and Resources (Chairs) Sub-Committee on the 2nd March 2000 the price of plots 1 and 2 Bridge Street were reduced following a slight reduction in the area of each plot. The report for that committee states that there was a problem with the precise area of land to be sold, the original plan used in the sales particulars had been drafted by hand, computerised plans were forwarded to the purchaser's solicitors with draft sale documentation and as a result of that information a query was raised by the purchaser's solicitors over the size of the plots. For plot 1, there was a difference of 20 sq m and for plot 2 a difference of 21 sq m. The report states *"whilst the area involved is marginal and does not affect the developability of the plots, members may wish to give consideration to the request on the basis that the*

purchasers have already incurred legal costs, and re-offering the plots on the open market will involve the Council in additional expenditure.”

The committee resolved to reduce the price of Plot 1 by £1000 and reduce the price of plot 2 by £1100.

Councillor Hussain was in attendance at the meeting and did not declare an interest in the item despite clearly having a financial interest in the decision.

e. Findings of Fact

During the time of the CPO and the pilot scheme, Councillor Hussain was a ward member for Oldbury; he also had the following positions of special responsibility:

1996 – 1997 Vice Chair – Finance and Resources
Strategy Committee

1997 – 1998 Vice Chair – Finance and Resources
Strategy Committee

1998 – 1999 Vice Chair – Finance and Resources
Strategy Committee

1999 – 2000 Vice Chair – Finance and Resources
Strategy Committee

2000 – 2001 Cabinet Member for Housing Strategy

In 1998, there is a memo dated 13th July 1998 sent from Kerry Jones Senior Property Officer within Property Services to Director of Environment and Development Services then a letter to Councillor Hussain dated 10th August 1998 which shows that he had enquired about the suitability of residential development in Oldbury and specifically about land at Bridge Street and Broadwell Road. This was before the pilot scheme was introduced.

The Finance and Resources Strategy Committee on the 28th January 1999 decided to dispose of self-build plots of land at Bridge Street and Broadwell/McKean Road to those affected by the CPO only. There was a pilot scheme in existence, which was created on 2nd October 1997 by the Finance and Resources Strategy Committee. The scheme was for six months and it was decided that provision would be made for self-build groups and individuals by offering suitable sites and plots. A list of sites was submitted to the committee and listed; they do not include Broadwell/McKean or Bridge Street. None of the sites identified were in Oldbury.

It was stated in the 1999 report to the Finance and Resources Strategy Committee that the CPO scheme was an extension of the scheme approved by the Finance and Resources Strategy Committee on the 2nd October 1997.

From 1996 - 2000 Councillor Hussain was Vice Chair of the Finance and Resources Strategy Committee. He also sat on a number of other important committees during that period of time, including regeneration committees. It is reasonable therefore to conclude that he would have been aware of processes and procedures in relation to regeneration of land. Councillor Hussain would have had knowledge of how the council's policies worked in relation to these types of matters. In fact, Councillor Hussain then became Cabinet Member for Housing Strategy in 2000.

Azmat Mir, former Client Estate Manager has stated that at the time of this allegation "*there was a wish within the council to support self-build plots*" and that "*at the time it was difficult for people to get on the housing ladder and it was seen as a cost effective way to help with this*". This is also evidenced through the committee reports that I have read, specifically the 28th January 1999 report to the Finance and Resources Strategy Committee and the 2nd October 1997 report to the Finance and Resources Strategy Committee.

It cannot therefore be concluded that the idea to sell land for self-build plots was something that was initiated *only* by Councillor Bawa and Councillor Hussain. There is also an assertion in the audit report that Councillor Hussain was acting on behalf of remaining residents with regards to their temporary re-housing. The only correspondence I have seen

is from 2000, after this scheme was approved by committee. Therefore, I am not satisfied that Councillor Hussain when making those enquiries with officers was acting on behalf of residents who would have been his constituents.

Although the scheme that was approved by the Finance and Resources Strategy Committee on the 28th January 1999, aimed to benefit a large group of people, namely those affected by the CPO, both witnesses spoken to during this investigation, Kerry Jones, Senior Property Officer from Property Services and Azmat Mir, former Client Estate Manager, have stated that it was unusual to ring fence such a scheme to a certain group of people, particularly when the scheme was introduced some time after the original CPO. They state that it would have made more financial sense to open the plots up to the open market. Azmat Mir, former Client Estate Manager stated that he would expect to see written representations on file from those affected by the CPO expressing an interest in purchasing land; this was not evident on the Property Services files.

It is clear from the evidence that Councillor Hussain did benefit from the pilot scheme as he was a resident of the area affected by the CPO and purchased a plot of land.

By the time the pilot scheme was introduced, a large number of affected residents had already been rehoused. Twenty

Four residences were contacted giving them the option to place bids for self-build plots of land; not all those affected by the CPO were contacted; Kerry Jones, Senior Property Officer within Property Services states that this may be because some of the people, who had already moved away, had not left a forwarding address. The age of this matter has hampered the gathering of evidence as many people who were involved at the time have left the authority and are not contactable and those who have been spoken to have faded memories.

The pilot scheme was a scheme that had not been done before and has not been done since, having spoken to witnesses; it is not something that officers would recommend again. It appears that in essence the scheme and the intention of the scheme to sell plots of land to those affected by the CPO for self – build was a good idea, but, ring fencing it to that certain group at a late stage (approximately 3 years after the CPO) affected the success of the scheme.

In the report to the Finance and Resources Strategy Committee on the 28th January 1999, it was presented to the committee that there was interest from the Local Community within Central Oldbury for sites to accommodate large self-build houses. Further, it stated that several residents in Phase II of the CPO had expressed an interest in remaining in the area purchasing plots. From the evidence that I have

seen, I cannot see any contact or correspondence from any other resident expressing an interest in self-build plots. The only record of any contact with the Council about potential plots of land for sale is from Councillor Bawa and Councillor Hussain. However, the references in the reports do suggest a wider expression of interest than just that of Councillor Bawa and Councillor Hussain.

In relation to Bridge Street Plot 1, the bidders were Councillor Hussain, Councillor Bawa and three brothers of Councillor Hussain.

In relation to Bridge Street Plot 2, the bidders were Councillor Hussain, the son of Councillor Bawa and two brothers of Councillor Hussain.

In relation to Bridge Street Plot 3, the bidders were Councillor Hussain and two brothers of Councillor Hussain.

In relation to Broadwell/McKean Road, the bidders were Councillor Hussain and two brothers of Councillor Hussain.

Kerry Jones, Senior Property Officer within Property Services opened the bids along with another officer from Committee Services, Richard Ebanks. There is no evidence that this procedure was flawed.

The audit report stated that there was evidence of cover pricing and bid suppression. When the witnesses, Kerry Jones, Senior Property Officer within Property Services and Azmat Mir, former Client Estate Manager were spoken to about the bids, they stated that there did not seem anything unusual about them. As those officers deal with these matters on a regular basis, it follows that they would be best placed to spot any inconsistencies or anomalies in normal procedure. Accordingly, there is insufficient evidence to find a breach of the code in relation to this process.

In consideration of the evidence, it is more likely than not that Councillor Hussain had in mind the purchase of land at Broadwell/McKean before the pilot scheme was introduced. He enquired about this with officers in Property Services and it does not appear that he stated that this was for his own personal interest. Azmat Mir, former Client Estate Manager stated that he would expect Councillors to “*clearly separate and declare their personal interests.*” There is no record of Councillor Hussain stating that this enquiry was for his own interest. Kerry Jones, Senior Property Officer within Property Services states that Councillor Hussain would regularly contact the team about which plots of land might be available to buy, as did other Councillors. She does recall him asking the team about Broadwell Road and McKean Road.

Councillor Hussain had knowledge of the policies and procedures due to the committees that he sat on.

Although it is suggested by the witnesses, Kerry Jones and Azmat Mir, that elected members would have been behind the suggestion and implementation of the pilot scheme, they cannot be specific. In applying the balance of probabilities standard of proof, the timeline and circumstantial evidence do strongly suggest that Councillor Hussain was involved; Councillor Hussain made enquiries about Broadwell Road and McKean Road in 1998, officers remembered this and documented it, the Finance and Resources Strategy Committee on the 28th January 1999 then decided to ring fence the sale of that land to those affected by the CPO and Councillor Hussain was ultimately the purchaser of the land at Broadwell Road and McKean Road. These are all facts that lead me to conclude that Councillor Hussain was involved in this process and had some influence over it.

Having assessed the evidence, I am satisfied that the brothers of Councillor Hussain who placed bids for plots of land were residents affected by the original CPO and therefore entitled to place bids.

At the Finance and Resources (Chairs) Sub Committee on the 2nd March 2000, the committee were requested to

consider a request from purchasers of plot 1 & 2 Bridge Street to reduce the purchase price offered following a slight reduction in the area of each plot. According to the minutes of the meeting, Councillor Hussain was the chair of that committee.

There were three options for the committee; one option was to *'invite the existing purchasers together with all previously unsuccessful offerors to submit a final offer to purchase the plots on the revised areas.'*

According to the Schedules of offers completed by Kerry Jones and Senior Property Officer within Property Services and Richard Ebanks from Committee Services when they opened the sealed bids, Councillor Hussain made an offer for both Plot 1 and Plot 2 Bridge Street. Therefore, Councillor Hussain did have a personal interest in the matter to be decided at the Finance and Resources (Chairs) Sub-Committee on the 2nd March 2000 as he stood to benefit by being allowed to submit more offers for the land that he had previously submitted unsuccessful bids for.

Councillor Hussain did not declare an interest in this item as he was required to do.

f. Acting in Official Capacity?

In consideration of all of the evidence, I find that Councillor Hussain was acting in his capacity as a Councillor when he contacted Property Services about land suitable for residential development and when he was present at the 2nd March 2000 Finance and Resources (Chairs) Sub-Committee and failed to declare his interest in the matter discussed.

g. Conclusions

On the balance of probabilities, I am satisfied that Councillor Hussain did act in a way that was inconsistent with the Nolan principles of selflessness, openness and honesty in that he failed to notify Property Services that he was making enquiries of Property Services about potential residential development sites for his own personal interest and he was involved in progressing the ring fenced self-build scheme through to committee.

Councillor Hussain also failed to declare his interest at the 2nd March 2000 Finance and Resources (Chairs) Sub-Committee and therefore was in breach of the Nolan Principles of honesty and openness.

Allegation Two

36. This is in relation to housing allocations; full details of the allegation are set out above in paragraph 7. A number of housing allocations were identified in the Audit report dated January 2017;

it is necessary to consider each housing allocation in turn. In February 2004 Sandwell Homes was set up to manage and improve council properties in Sandwell. The principal activity of the Company was the management and maintenance of Council owned homes in Sandwell. The Company was established as an Arm's Length Management Organisation (ALMO) in accordance with Government policy initiative for local authority housing management. It had a separate board of Directors, a separate Chief Executive and separate Executive Management Team. From the 1.1.13, the function of managing and maintaining Council owned homes came back into Sandwell Council and Sandwell Homes was subsequently dissolved. A number of these allocations were undertaken by Sandwell Homes.

37. At this point, I will address the evidence that I have gathered. I have considered the way in which the housing allocations system works; the Neighbourhood Service Manager for each area and their team will deal with housing functions including the signing up of new tenants and the maintenance of ongoing tenancies. They will also carry out priority assessments, assisting applicants to assess their priority level. That team will assess the applicant's priority based on the allocations policy, with five bandings of priority (1 being the highest). If a conflict of interest arises Andrew Langford, Neighbourhood Services Manager, informed me that, *“previously the matter would be referred to the area manager for the north of the borough Jim Brennan, who was responsible for managing all the local offices, but this is now dealt with through the*

Housing Choice Team". Once that work has been done, the information will then go to the Choice Based Lettings Team, of which Wendy Peniket, Housing Choice Neighbourhood Manager is the manager, and that team will make the allocation.

38. Wendy Peniket, Housing Choice Neighbourhood Manager has provided a statement; when a number of the allocations set out in this report were put to her she had no memory of them. This may not be unusual given the lapse of time since the allocations. Some of the documents shown to her have her name and handwriting on them; these notes did not cause her to recall the particular allocations. Wendy Peniket, Housing Choice Neighbourhood Manager, said that Michelle Fletcher, former Area Manager of the South Neighbourhoods Division had not disclosed to her any concerns over Councillor Hussain's conduct, and that she does "not recall having any concerns over the contact I received from Councillor Hussain."

39. Andrew Langford, Neighbourhood Services Manager has also provided a statement; he states that "at local centres we have regular contact with members and personally I have never been put in a position where I felt I was being pressured to deal inappropriately with matters. Generally, councillors will accept my advice." Michelle Fletcher, former Area Manager of the South Neighbourhoods Division was Andrew Langford's (Neighbourhood Services Manager) manager for a period of time; he states that no concerns were expressed to him by Michelle Fletcher former Area

Manager of the South Neighbourhoods Division, about conversations that she had had with Councillors and no concerns were expressed to him about inappropriate pressure being applied on Michelle Fletcher, former Area Manager of the South Neighbourhoods Division, by elected members.

40. I have considered the interview undertaken by Wragge, Graham and Co of Michelle Fletcher, former Area Manager of the South Neighbourhoods Division and Adrian Scarrott, former Director of Neighbourhoods.

41. Allegation 1A: 2 Judge Close 2012 - 2014

a. Relevant part of the Code of Conduct

The Code of Conduct for Members and Co-Opted Members
July 2012 Part 1 VI (3)

Do not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage

The Code of Conduct for Members and Co-Opted Members
July 2012 Part 1 VI (6)

Do not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

b. Investigation Methodology

For all of the housing allocation matters, I considered the audit report dated January 2017 and the documents provided by audit including emails and application forms. I interviewed Wendy Peniket, Housing Choice Neighbourhood Manager and also considered the transcripts of interview of Adrian Scarrott, former Director of Neighbourhoods and Michelle Fletcher, former Area Manager of the South Neighbourhoods Division which were undertaken as part of the 'Wragge Report.'

I have also considered the transcript of interview provided by Lennox Thompson, Customer Service Officer, to the Council's fraud team.

Adrian Scarrott, former Director of Neighbourhoods was invited to attend an interview as part of this investigation; but he failed to respond to my request. He no longer works for the authority.

I invited Councillor Hussain in for an interview by letters and emails dated 14th February 2018 and 5th March 2018; Councillor Hussain failed to respond to either letter/email.

I therefore requested written representations from Councillor Hussain; Councillor Hussain advised me that he had solicitors instructed and that I should contact them. I

contacted the Solicitors (Weightmans) on a couple of occasions and have not been afforded with a response.

Councillor Hussain has not co-operated with this investigation.

c. Agreed Facts

This application began in 2012 when Sandwell Homes had the responsibility for the housing function, but the direct offer form was completed in July 2013, when the housing function had returned to Sandwell Council.

NB, the applicant, is Councillor Hussain's daughter. She declared the relationship on her application form. She was living in a property owned by her and her partner when the application was made. She had four children. She applied for housing as she stated that she needed a bigger house due to the health of one of her children. She was awarded medical priority and was given a direct offer for this property.

A conflict of interest form has been completed by officers in respect of the applicant's relationship to Councillor Hussain.

d. Disputed Facts

There is a note on the file which states that "*Director's approval required (relative of Cllr)*" which is signed by

Michelle Fletcher, former Area Manager of the South Neighbourhoods Division.

In her interview with Wragge's, Michelle Fletcher, former Area Manager of the South Neighbourhoods Division says that she recalls that in this case there was a child that had medical needs which required extra room in the house. She recalls supporting medical evidence which evidenced the child's medical condition. She does not say that Councillor Hussain contacted her about the matter.

Lennox Thompson, Customer Service Officer in his interview with the counter fraud team stated that he would not have awarded medical priority as he had not seen any supporting evidence. However, the medical panel did grant medical priority; the decision of the medical panel post - dated Lennox Thompson's assessment.

e. Findings of Fact

I have seen no evidence that Councillor Hussain visited the property asking whether the previous tenant wanted to move to a smaller property. Lennox Thompson, Customer Service Officer, has said that Councillor Hussain asked him whether the keys of the property had been handed in; this was on the day of the occupant's funeral.

Andrew Langford, Neighbourhood Services Manager stated that *“there appears to be a reasonable request for medical priority but I would expect to see a reason why a direct offer is necessary, i.e. why they were unable to engage in the normal process.”*

There is no evidence to prove that Councillor Hussain pressured officers or interfered with this allocation.

f. Acting in Official Capacity?

Not applicable.

g. Conclusions

There is no breach of the Code of Conduct.

42. Allegation 1B: 47 Fountain Lane 2007

a. Relevant part of the Code of Conduct

The alleged contact from Councillor Hussain occurred prior to the Code of Conduct 2007 being introduced by Sandwell Metropolitan Borough Council in May of that year. Therefore, as The Nolan Principles were introduced to Local Authorities in 1997, these are the relevant standards to consider. The relevant Nolan principles for this matter are:

Selflessness – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Objectivity – in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices based on merit.

Accountability – Holders of public officer are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Honesty – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership – holders of public office should promote and support these principles by leadership and example.

b. Investigation Methodology

As above (para 41 (b)).

In addition, I have also considered the full housing allocations file.

c. Agreed Facts

This application began in 2003 when Sandwell Council would have been responsible for the housing function, but the direct offer was made in 2007, when the housing function had moved to Sandwell Homes.

According to the audit report of January 2017, GH is the brother of Councillor Hussain. SB is GH's wife. SB was awarded a tenancy in February 2007. It transpired that SB had no entitlement to a tenancy at the material time. The tenancy was then transferred to GF's name in December 2007.

On the front of the application for council accommodation dated 21.4.03, there is a hand written note saying '*Councillor Cooper enquiry*'.

d. Disputed Facts

There is a file note of the 29.3.07 made by Peter Shaw, Housing Officer Oldbury Neighbourhood Office, which states that a visit was made to 47 Fountain Lane. SB was outside of the property and said that Councillor Hussain had the keys. She was unable to get into the house. In his file note, Peter Shaw, Housing Officer Oldbury Neighbourhood Office, states that it appeared from looking through the window that SB had not moved into the property.

There is a letter on file dated 11.4.13, from Jane King, Approved Social Worker, to Michelle Fletcher former Area Manager of the South Neighbourhoods Division, which states that GF suffered from ill health.

There is a memo from Michelle Fletcher, former Area Manager of the South Neighbourhoods Division to Vince McCalla (Community Care) dated 10.6.03 asking for a named Doctor to consider medical evidence and give advice on medical priority as *“Mr Fareed is a close relative of one of my Ward Members, I feel it would be inappropriate for his case to be considered by Housing Officers/Manager from Oldbury Town”*.

An email of the 30.1.07 from Michelle Fletcher, former Area Manager of the South Neighbourhoods Division to Adrian Scarrott, former Director of Neighbourhoods asking for his help, states that ‘he’ is giving lists of who he wants property to be allocated to and ‘insists’ that an offer is made. Further she states that *“recurring problem is now having an effect on the allocations team they’re dreading every week’s list in case he phones up again.”* It does not give any details of any particular housing allocations.

In her interview with Wragge’s, Michelle Fletcher, former Area Manager of the South Neighbourhoods Division states that the email of the 30.1.07 referred to Councillor Hussain.

She was asked whether this was something that Councillor Hussain was doing frequently at the time, to which she replied “No.”

During Adrian Scarrott’s (former Director of Neighbourhoods) interview with Wragge’s, he did not say there were any issues with Councillor Hussain and his contact with staff.

e. Findings of Fact

It is clear from the emails on file that Councillor Hussain did contact the housing allocations team in relation to this matter.

From the evidence I have seen, there is insufficient evidence to prove that Councillor Hussain’s conduct and enquiries went beyond his normal casework enquiries. It is clearly not appropriate for a Councillor to be *‘giving lists of who he wants property to be allocated to’* to officers and this action has clearly had an effect on the team for them to be *‘dreading every weeks list in case he phones up again.’* The email is not specific to this allocation and I will address this email at a later stage in the report. As Andrew Langford, Neighbourhood Services Manager and Wendy Peniket, Housing Choice Neighbourhood Manager have given statements to the effect that they have not had any issues with contact from Councillor Hussain or other elected

members, on the balance of probabilities, there is insufficient evidence to prove a breach in this case.

f. Acting in Official Capacity?

It is clear in this instance that Councillor Hussain was acting in his official capacity. He used his cabinet secretary to contact officers about a housing allocation to a member of his family.

g. Conclusions

On the balance of probabilities, there is insufficient evidence to find that there was a breach of the Nolan Principles.

43. Allegation 1C: 124 Basons Lane

a. Relevant part of the Code of Conduct

Members' Code of Conduct May 2007 Part 1 (5)

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Members' Code of Conduct May 2007 Part 1 (6) (a)

You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

b. Investigation Methodology

As above (para 41 (b)).

In addition, I have also considered the full housing allocations file.

c. Agreed Facts

This allocation was made when Sandwell Homes had responsibility for the housing function.

According to the audit report of January 2017, AS is the niece of Councillor Hussain. She was given a direct offer for this property.

There is some background to this matter; AS was awarded homeless priority in 2006. In the email of the 30.1.07 from Michelle Fletcher former Area Manager of the South Neighbourhoods Division to Adrian Scarrott former Director of Neighbourhoods, providing an update to on cases, it is stated that AS was *offered* a place at Bearwood Court hotel but failed to take the place. *“Cllr has asked she is given priority over all other cases. Awarded homeless priority in May 2006. 8 bids previously made all Oldbury/Smethwick area...Was made direct offer of property in 36 Newhope Road, Smethwick, June 2006. Refused due to ex partner’s family living nearby and needed to be nearer to community for support.”*

There is then a housing application form dated 2009. Homeless priority is granted in November 2011.

d. Disputed Facts

On the 1.11.11, a cabinet secretary emailed Michelle Fletcher, former Area Manager of the South Neighbourhoods Division, on behalf of Councillor Hussain stating *“Cllr Hussain is asking if AS of 2 Poplar Road as [sic] been putting in bids for properties and what is her priority, could you please get back to him urgently with a response, thank you.”*

Michelle Fletcher former Area Manager of the South Neighbourhoods Division, then emailed other officers asking for the information requested. The information is then shared between cabinet secretaries by email on the 2.11.11. It stated that *“Mrs S registered for housing on 3rd September 2009. The household are registered in Band 6 with no priority. Mrs S has expressed interest in 15 available properties since April 2011 and her lowest shortlist position is 20th.”*

There is then an email of the 2.11.11 from Councillor Hussain’s cabinet secretary, on behalf of Councillor Hussain to Michelle Fletcher former Area Manager of the South Neighbourhoods Division, saying *“Cllr Hussain has asked me if you can do an [sic] homeless interview for this resident. She is related to Cllr Hussain..”*

On the 2.11.11 there is an email between officers which illustrates that AS was given a number of options to satisfy her urgent housing need, which were refused.

There is a handwritten note on file to say that *“Cllr H bought her into LFE. Can you have a look please?”* There is no date on this note.

Homeless priority was awarded on the 10.11.11.

There is an offer letter of the 3.7.12 for a property in Tividale, Oldbury. This is refused.

There is a case diary entry of 20.9.12 made by J Close which states *“conflict of interest completed and passed to W Peniket as app related to Cllr Hussain/ Instruction recd to make direct offer of 124 Basons Lane.”*

According to the Conflict of Interest Offer Authorisation Form dated 21.9.12, completed by officers, there was another family, unconnected to Councillor Hussain, with higher priority need for housing – a hospital discharge. *“Already on the direct offer list are the following applicants who would be considered for this property and who would be before Miss S.”*

AS had been offered previous properties which had been refused; it is reasonable to assume that officers continued to

allow her to bid and to ultimately provide a direct offer, due to personal circumstances.

e. Findings of Fact

I have not been able to establish considering the available evidence, whether the other family who were before AS on the list, were housed in a more suitable property. The Audit Report of January 2017 states that the other family were waiting for a larger property with adaptations and that 124 Basons Lane was undergoing refurbishment. The other family were not housed until December while AS was offered this property in October; this may well be because the property was not suitable to the other family due to the refurbishments and their situation. This cannot be established with any certainty.

It is clear that officers knew that Councillor Hussain was related to AS; the relationship was disclosed to officers in emails from Councillor Hussain's cabinet secretary on behalf of Councillor Hussain. As a result, officers caused a conflict of interest form to be completed and signed off by Adrian Scarrott former Director of Neighbourhoods, dated 21.9.12.

Councillor Hussain did make contact with officers, specifically Michelle Fletcher, former Area Manager of the South Neighbourhoods Division about this applicant as long ago as 2007. In the email of the 30.1.07, Michelle has

written '*Cllr has asked she is given priority over all other cases.*' There is additional evidence, as set out in paragraph 43 (c) and 43 (d) above, which illustrates further contact. This evidence show that Councillor Hussain has made contact, indirectly through his secretary. Each contact itself may not be a breach of the code, but taken together, over a period of time, it can be determined that repeated contact from a Councillor on one case, left Michelle Fletcher with a clear mind-set of what Councillor Hussain wanted to happen.

f. Acting in Official Capacity?

It is clear in this instance that Councillor Hussain was acting on his official capacity.

g. Conclusions

There is a breach of The Member's Code of Conduct May 2007 Part 1 (5) *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute* and a breach of The Members' Code of Conduct May 2007 Part 1 (6) (a) *You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.*

44. Allegation 1D: 109 West Bromwich Street

a. Relevant part of the Code of Conduct

The relevant Nolan principles for this matter are:

Selflessness – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

b. Investigation Methodology

As above (para 41 (b)).

In addition, I have also considered the full housing allocations file

c. Agreed Facts

This allocation was made when Sandwell Council had the responsibility for the housing function.

According to the audit report of January 2017, YA is the niece of Councillor Hussain. YA and SM originally resided with MA and MB, who were rehoused following a CPO. At the time, it was deemed that they would be overcrowded if they all moved into the property that was offered to them. The family wanted to stay together, evidenced through letters dated October 1998; therefore, they signed a disclaimer to say that they would not make a claim for overcrowding in the future.

On the 17.4.02, MB and MA wrote to the Council to say that they had given notice to YA and SM that they needed to make alternative arrangements for accommodation. Within the letter it states *“we are simply overcrowded.”*

YA and SM submitted an application for housing on the basis that they were no longer welcome at their current property and that they would be homeless.

They were awarded homeless priority, this is confirmed in a letter dated 23.4.02; this property, 109 West Bromwich Street, was held by Michelle Fletcher former Area Manager of the South Neighbourhoods Division as confirmed on Void Control Sheet entry date 8.4.02. It was offered to YA and SM.

d. Disputed Facts

The property had adaptations to it, the audit report dated January 2017 raised concerns over it being offered to someone without disabilities. The Inspection Checklist date 9.4.02 confirms that a disabled shower cubicle was in place.

e. Findings of Fact

From the evidence that I have seen, there is no direct offer form and no conflict of interest form.

There is mention in a letter, dated 12.2.99 to Ms A from Michelle Fletcher, former Area Manager of the South Neighbourhoods Division of “*Councillor Hussain’s kind interest*” and she forwards a copy of the letter to him for information. Although this phrase does suggest there has been contact from Councillor Hussain, it is too vague and ambiguous to draw any conclusions leading to a breach of the Nolan Principles.

There was a relationship between Councillor Hussain and the applicant. However, there is insufficient evidence to conclude that Councillor Hussain acted in a way in order to gain financial or other benefits for his family.

f. Acting in Official Capacity?

n/a

g. Conclusions

There is no breach of the Nolan Principles in this case.

45. Allegation 1E: 26 Douglas Avenue

a. Relevant part of the Code of Conduct

The Code of Conduct for Members and Co-Opted Members
July 2012 Part 1 VI (3)

Do not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage

The Code of Conduct for Members and Co-Opted Members
July 2012 Part 1 VI (6)

*Do not conduct yourself in a manner which could reasonably
be regarded as bringing your office or authority into disrepute*

b. Investigation Methodology

As above (para 41 (b)).

In addition, I have also considered the full housing
allocations file

c. Agreed Facts

This allocation was made when Sandwell Council had the
responsibility for the housing function.

According to the audit report dated January 2017, NS is
Councillor Hussain's sister in law. She was offered this
property, by direct offer, due to priority needs.

d. Disputed Facts

It does not appear that Councillor Hussain made his
relationship with the applicant known to officers; there is no
conflict of interest form on the file.

There is a note on the tenant details form dated 8.8.13 which
states '*Mr Hussain friend 63 McKean Road*'. According the

audit report, the phone number that is recorded is Councillor Hussain's work number.

There are emails between housing allocations team staff dated 6.8.13, 7.8.13, 8.8.13 about this property which illustrate that there was a shortlist for the property and that Michelle Fletcher, former Area Manager of the South Neighbourhoods Division had made the decision to offer the property to NS.

e. Findings of Fact

There is insufficient evidence on the file to show that Councillor Hussain made contact with officers about this allocation. There is mention of a friend by the name of 'Mr Hussain' but that is as far as it goes.

There is a link between the application and Councillor Hussain due to the phone number, but, there is no evidence that I have seen to suggest that Councillor Hussain used his position or influence for the benefit of his family member.

f. Acting in Official Capacity?

n/a

g. Conclusions

There is no breach of the Code of Conduct for Members and Co-Opted Members 2012.

46. Allegation 1F: 229 Queens Road

a. Relevant part of the Code of Conduct

The Members' Code of Conduct May 2007 Part 1 (5)

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

The Members' Code of Conduct May 2007 Part 1 (6) (a)

You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

b. Investigation Methodology

As above (para 41 (b)).

In addition, I have also considered the full housing allocations file

c. Agreed Facts

This allocation was made when Sandwell Homes had the responsibility for the housing function.

According to the audit report, SB was the applicant in this case. She was a homeless applicant. A direct offer was made to her.

She had previously been offered properties but had turned them down.

d. Disputed Facts

I have seen emails from May 2010, October 2010 and September 2010 between the Cabinet Secretary for Councillor Hussain sent on behalf of Councillor Hussain and housing officers in relation to this matter.

In May 2010, the cabinet secretary for Councillor Hussain on behalf of Councillor Hussain wrote an email to housing officer stating that *“Mrs B has approached Cllr Hussain from the above address [34 Marshall Street]. She has asked for assistance regarding her housing situation.”*

On the 3.9.10 SB was awarded band 2 priority.

SB was offered a property on the 22.9.10 which was refused.

On the 24.9.10, an email was sent from Councillor Hussain’s cabinet secretary on behalf of Councillor Hussain to Michelle Fletcher, former Area Manager of the South Neighbourhoods Division, which had the subject line of *“34 Marshall Street, Smethwick, B67 7NA –URGENT REQUEST”* which said *“Cllr Hussain has asked me to write to you about this resident again. Basically she has been offered a property in a block of flats in West Bromwich. Cllr Hussain has said if you could*

have a look at this personally as he feels that the quality of life for this resident will be affected a lot as she will no longer be near to her local shops, family and friends and support network. Cllr Hussain has requested if a property in Oldbury can be offered to this resident. Cllr Hussain has also asked if you can come over to meet him.”

As a result of this email, Michelle Fletcher, former Area Manager of the South Neighbourhoods Division, sent it to Adrian Scarrott, former Director for Neighbourhoods and Norman Fletcher on the 27.9.10 and says *“do you know why Cllr H wants to see me on my own? Have checked his case load and all in hand.”*

Adrian Scarrott, former Director for Neighbourhoods replied to say that *“He did say casework to me but didn’t sound unduly concerned about anything specifically. I don’t think there is anything to worry about.”*

Michelle Fletcher, former Area Manager of the South Neighbourhoods Division, then proceeds to ask her colleagues for an update on their cases via email in case they are discussed at the meeting. She states *“Unfortunately he wants to see me on 1-1 basis at present so I can’t take you with me to answer yourselves, hence my request.”*

Another property that was offered to SB was refused on the 20.10.10.

On the 21.10.10, Councillor Hussain's cabinet secretary emailed housing officers on behalf of Councillor Hussain, including Michelle Fletcher former Area Manager of the South Neighbourhoods Division, to say that SB visited the property in Tividale that was offered to her but turned it down as it was not in a suitable area. It goes on to say *"Can we see what we can do to move her to Oldbury or Smethwick as Cllr Hussain had insisted this with Michelle before he went away."*

Michelle Fletcher, former Area Manager of the South Neighbourhoods Division, replied on the same day to say *"I know about this case, when I spoke to Cllr Hussain I agreed to support direct offer for Mrs B. However in the meantime she and her husband had placed their own bid for property in Tividale so I presumed that this is what she wanted. Now I know that she has refused that accommodation I will arrange for direct offer form to be completed for offer of accommodation in Oldbury and Smethwick."*

On the direct offer form, it states *"Councillor Hussain spoke to Michelle Fletcher re case and she has approved one more offer of a 2 bed house in either Oldbury or Smethwick areas only."*

e. Findings of Fact

I find that Councillor Hussain did contact Michelle Fletcher, former Area Manager of the South Neighbourhoods Division in relation to this case through his cabinet secretary, and that he subsequently had a meeting with Michelle Fletcher, former Area Manager of the South Neighbourhoods Division.

There is no evidence on the audit file or from the statements that I have gathered to prove that there is a familial relationship between Councillor Hussain and the applicant. In essence, there is nothing wrong with a Councillor making enquiries on behalf of a constituent. However, getting involved to the detail of agreeing with Michelle Fletcher, former Area Manager of the South Neighbourhoods Division that a direct offer would be made appears to go too far. That decision needs to be made in accordance with policy and not on direction of a Councillor. The lengths that Councillor Hussain has gone to for this applicant are inconsistent with normal Councillor interaction with constituents and does suggest that the relationship is a personal relationship and therefore a potential conflict of interest.

From reading Michelle Fletcher's emails, set out above, of the 27.9.10, it does appear that she was concerned about the meeting with Councillor Hussain; she notified her Director, Adrian Scarrott of it. The contact was over a period

of a few months and taken in totality would lead to Michelle Fletcher being left in no doubt as to what action Councillor Hussain wanted her to take.

With that in mind, I do find that there is sufficient evidence in this case to show that Councillor Hussain did use or attempt to use his position as a member improperly to confer on or secure for another, an advantage.

f. Acting in Official Capacity?

It is clear in this instance that Councillor Hussain was acting on his official capacity. He used his cabinet secretary, to contact officers about a housing allocation.

g. Conclusions

On the balance of probabilities, I find that there is a breach of The Members' Code of Conduct May 2007 Part 1 (5) *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute* and a breach of The Members' Code of Conduct May 2007 Part 1 (6) (a) *You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.*

Overall Conclusions

47. The evidence has shown that Councillor Hussain has breached the 2007 Member Code of Conduct and the Nolan Principles, specifically openness, honesty and selflessness, over a number of years. As early as 1999, I have seen evidence of Councillor Hussain's interest in housing allocations (paragraph 44 (e)). This appears to have developed over time and in 2007 I have seen evidence that Councillor Hussain was giving lists of who he wants property to be allocated to, that officers in "*the allocations team they're dreading every week's list in case he phones up again*" and that Councillor Hussain was "insisting" that offers were made. (*Paragraph 42 (d)*). It appears that a culture developed over time where officers were left in no doubt that if Councillor Hussain made an 'enquiry'; he expected the result that he had requested. This action, together with the action he took in relation to the CPO, shows a pattern of behaviour on the part of Councillor Hussain where he has used his position and influence for his own benefit and has eroded the trust between members and officers and damaged that relationship.

48. This investigation, and its outcome, has been affected by the fact that two witnesses have withdrawn their statements, a significant factor in their decision was the fear of adverse coverage in social media and for one witness this was their sole reason. This is clearly an unacceptable situation as had those witnesses continued to provide evidence to this investigation, the outcome of some of the housing allocation allegations would have resulted in a

different finding, specifically, a breach of the relevant Code would have been found.

49. I understand from the Audit Report that the Council now has a new process; Land Sales and Building Protocol, which strengthens the steps that will be carried out in future land and building sales. The Council has also taken other steps to strengthen Governance arrangements and has a new senior management structure in place.