

**Time and Date**

10.00 am on Friday, 8 July, 2022

**Place**

Committee Room 3, Council House, Coventry

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**Public business**

1. **Apologies**
  2. **Declarations of Interest**
  3. **Hearing into Alleged Breach of the Code of Conduct** (Pages 3 - 74)  
Report of the Director of Law and Governance
  4. **Any other items of public business which the Chair decides to take as matters of urgency because of the special circumstances involved**
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Julie Newman, Director of Law and Governance, Council House, Coventry

Thursday, 30 June 2022

Note: The person to contact about the agenda and documents for this meeting is Suzanne Bennett Tel: 024 7697 2299 Email: [suzanne.bennett@coventry.gov.uk](mailto:suzanne.bennett@coventry.gov.uk)

Membership: Councillors P Hetherton, S Nazir, S Walsh (Chair), D Welsh

Independent Persons: S Atkinson, A Barton, R Wills, P Wiseman

Named Substitute Members: Councillor M Mutton and P Seaman

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**Suzanne Bennett**

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Ethics Committee

8 July 2022

**Name of Cabinet Member:**

N/A- Ethics Committee

**Director Approving Submission of the report:**

Director of Law and Governance

**Ward(s) affected:**

None

**Title:** Hearing into Alleged Breach of the Code of Conduct

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**Is this a key decision?**

No

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**Executive Summary:**

This report sets out brief details of complaints made separately by three people (“the Complainants”) over related matters. The complaints are against Councillor Abdul Salam Khan (the “Subject Member”) and relate to a boundary dispute.

The Complainants have made several allegations, including that the Subject Member breached the Council’s Code of Conduct for Elected and Co-opted Members by *seeking to exert influence over officers in the Council with a view to receiving preferential treatment*.

A Stage One review of all of the complaints concluded that an independent investigator should be appointed to investigate the complaints. Rosalind Foster, a Partner with Browne Jacobson LLP Solicitors was appointed to carry out the investigation and produced a report, dated 28 February 2022.

Ms Foster concluded that one complaint did not engage the Code of Conduct and therefore this was not considered in her investigation. Ms Foster put the remaining three complaints into three categories, which were numbered *Allegations One, Two and Three* in her report. She found that there was no evidence on the balance of probabilities to substantiate *Allegations One and Three*. However she found that there is evidence to confirm that *Allegation Two* is founded on the balance of probabilities.

In accordance with Paragraph 7.4 of the Council's Complaints Protocol, the Monitoring Officer has referred all of the complaints to a hearing of the Ethics Committee for the Committee to consider.

### **Recommendations:**

The Committee is requested to:

- (1) Hear the complaints against the Subject Member and determine whether he has breached the Code of Conduct in relation to any or all of the complaints;
- (2) If the Committee considers that there has been a breach or breaches of the Code of Conduct, determine what sanction or sanctions, if any, should be applied; and
- (3) Authorise the Monitoring Officer, in consultation with the Chair of Ethics Committee, to publish the Full Decision on the Council's website at the same time that copies are made available to the parties to the hearing.

### **List of Appendices included:**

**Appendix 1:** Code of Conduct for Elected and Co-opted Members of Coventry City Council

**Appendix 2:** Member / Officer Protocol

**Appendix 3:** Complaints Protocol

**Appendix 4:** Stage One Report

**Appendix 5a:** Redacted Report of the Investigating Officer (pseudonymised to assign each Complainant and Witness a Coded Letter)

**Appendix 5b:** Table (explaining the pseudonymised Coded Letters in the Report at Appendix 5a)

**Appendix 5c:** Email from the Subject Member to Council Personnel, dated 30 March 2021

**Appendix 6:** Hearing Procedure

**Background papers: None**

**Other useful documents: None**

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

**Report title: Hearing into Complaint under Code of Conduct**

## **1. Context (or background)**

1.1 A revised version of the Model Member Code of Conduct produced by the Local Government Association in December 2020, was adopted by the Council at the start of the Municipal Year in May 2021 and is referred to in this document as the Code of Conduct. A copy of the Code of Conduct can be found at **Appendix 1 to this Report**. The Member / Officer Protocol is attached at **Appendix 2 to this Report**. In addition, the Ethics Committee on 17 March 2017 approved a Complaints Protocol for use when dealing with Code of Conduct complaints. This was reviewed in September 2021 by the Ethics Committee who agreed that no revisions were required. A copy is attached at **Appendix 3 to this Report**.

1.2 In total four complaints have been made by three Complainants (the “Complainants”) against Councillor Abdul Salam Khan (the “Subject Member”) and relate to a boundary dispute.

1.3 The Complainants have made several allegations, including that the Subject Member breached the Council’s Code of Conduct for Elected and Co-opted Members by *seeking to exert influence over officers in the Council with a view to receiving preferential treatment*.

## **2. Stage One Decision**

2.1 In accordance with the Complainants Protocol, the Monitoring Officer carried out an initial review of the complaints and recommended that an independent, external officer should be appointed to investigate the complaints. Her recommendations were accepted by the Independent Person and the Chief Executive on 25 May 2021. A copy of the Stage One Report is attached at **Appendix 4 to this Report**.

## **3. Investigation into the Complaint**

3.1 The Monitoring Officer instructed Rosalind Foster, a Partner with Browne Jacobson LLP, to conduct an independent investigation into the complaint (“the Investigating

Officer”).

- 3.2 In conducting the investigation, the Investigating Officer considered information provided by the Complainants and other witnesses, including video and photographic evidence. A number of persons were interviewed. All interviews took place via Microsoft Teams save for two which were by telephone. All interviews were recorded and transcripts produced. Each person interviewed was informed that the investigation was confidential but that anything they said in interview could be put to other interviewees and could be referred to in the report.
- 3.3 The Investigating Officer also made a wide-ranging request for information from the Council’s Planning Enforcement department.
- 3.4 The Investigating Officer issued her report on 28 February 2022.
- 3.5 The Investigating Officer concluded that one complaint did not engage the Code of Conduct. She found that the remaining three complaints did engage the Code of Conduct and fell into three categories, which were numbered *Allegations One, Two* and *Three* in her report. She found that there was no evidence on the balance of probabilities to substantiate *Allegations One* and *Three*.
- 3.6 The Investigating Officer found that there is evidence to confirm that *Allegation Two* is founded on the balance of probabilities.

### **3.7 Summary of *Allegations One and Three*:**

- 3.7.1 *Allegation One*: When the Police were called to the properties regarding the boundary dispute on 3 April 2021, it is alleged that the Subject Member said that he knew the Superintendent/Sergeant, would not be arrested and no action would be taken; and
- 3.7.2 *Allegation Three*: The Subject Member allegedly used his position to seek to persuade the neighbours to sell him land, on the basis that the Subject Member could secure planning permission for them in the event that they agreed to his proposal, alternatively that he would ‘make life hell’ for them in relation to planning if they did not
- 3.7.3 In relation to both *Allegations One* and *Three* the Investigating Officer found a lack of evidence to substantiate the allegations and therefore did not uphold the complaints made.

### **3.8 Summary of *Allegation Two*:**

- 3.8.1 *Allegation Two* is the complaint that is detailed above in this Report, namely that the Subject Member breached the Council’s Code of Conduct for Elected and Co-opted Members (the Code of Conduct) by *seeking to exert influence over officers in the Council with a view to receiving preferential treatment*.
- 3.8.2 Ms Foster made the following findings in relation to *Allegation Two*:

- (a) Cllr Khan contacted various senior officers of the Council in February and March 2021 to complain about matters in relation to the boundary dispute, including one complaint made via his Personal Assistant, the sending of video evidence and complaints made to both a Director and the Chief Executive. While the Subject Member did not contact Planning Enforcement Officers directly, senior officers with management/executive responsibility for planning enforcement, were contacted during these dates to raise planning enforcement issues and with the objective of some action being taken in relation to those issues;
- (b) The Subject Member's contact with officers culminated in an email of 30 March 2021. The audience and content of that email (which included senior planning officers and the Leader of the Council) and the fact that the Subject Member sent it from his Council email address and addressed it "Dear Colleagues" indicate that it was intended as an instruction to the officers to whom it was sent to act in the way the Subject Member directed, and was considered by the Subject Member to be a matter of which the Leader and Chief Executive of the Council should be aware. By sending that email, the Subject Member was using his position in the Council to seek to advance his own interests;
- (c) The Subject Member's use of the phrase "*I am extremely disappointed with the involvement of my own Council*" indicates an intention to influence the recipients of the email by using proprietary and authoritarian language. In expressing disappointment, the Subject Member is signalling disapproval of the actions taken by the Planning Enforcement department to a wide audience and without having first established whether the position was as had been described by another individual;
- (d) That another individual may have contacted certain persons about the matter (including Council personnel in senior positions) does not make it right for the Subject Member to do the same. As a senior member of the Council bound by the Code, the Subject Member was in a wholly different position to the individual concerned who is a local resident.
- (e) Calling rather than emailing senior officers and asking his Personal Assistant to raise matters with the Planning Enforcement Officers does not indicate openness or transparency.

3.8.3 The Investigating Officer concluded that on the balance of probabilities the Subject Member did fail to comply with paragraphs 10 and 13 of the Council's Code of Conduct and there was evidence to suggest that the Subject Member failed to act in accordance with the Nolan principles of *Selflessness* and *Integrity*.

3.9 A redacted version of the Investigating Officer's Report is attached at **Appendix 5a to this Report**. The Investigating Officer's Report has been pseudonymised to assign each Complainant and Witness a Coded Letter. A Table explaining the pseudonymised Coded Letters in the Investigating Officer's Report is attached at **Appendix 5b to this Report**. A copy of the email referred to above, dated 30 March 2021, is attached at **Appendix 5c to this Report**.

#### **4. Response to the Investigating Officer's Report**

- 4.1 Under the Council's Complaints Protocol, all parties have an opportunity to consider the Report and make a formal response to the Investigating Officer's Report, if they so wish.
- 4.2 In this case the Complainants did not make any comment on the Investigating Officer's Report.
- 4.3 The Subject Member made the following comments:

*"It is clear from the evidence on the public planning portal that [the owner of the neighbouring property in the boundary dispute] is someone who despises the Council and Council members. He does not wish to be bound by the Planning Rules and Laws."*

The Council's Independent Person was provided with a copy of the Investigating Officer's Report and has been asked to give his views on it. The Independent Person will provide those orally at the hearing.

#### **5. Hearings Procedure**

- 5.1 The Hearing Procedure is attached at **Appendix 6 to this Report** and will be followed during the hearing into this complaint. The Chair will have the right to depart from the procedure where he or she considers it appropriate to do so.

#### **6. Options Available to the Committee**

- 6.1 At the end of the hearing, the Committee must consider whether the complaint has been upheld. The Committee may decide, on the information/representations before it that:
- The Subject Member has not failed to comply with the Code of Conduct; or
  - The Subject Member has failed to comply with the Code of Conduct in whole or in part.
- 6.2 In the event that the Committee finds that the Subject Member has failed to comply with the Code of Conduct, it must consider what sanctions, if any, it should apply. The sanctions available to the Committee are to:
- (i) decide to take no action;
  - (ii) publish its findings in respect of the Member's conduct;
  - (iii) send a formal letter of censure to the Member;
  - (iv) report its findings to the Council either for information or to recommend censure of the Member;



- (v) recommend to the Member's Group Leader that the Member be removed from any or all Committees or Sub-Committees of the Council (where applicable);
- (vi) recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular portfolio responsibilities (where applicable);
- (vii) recommend the Monitoring Officer to arrange training for the Member.

Any recommendation made under (v) to (vii) above will require the cooperation of all parties.

- 6.3 Where a Subject Member does not accept a sanction which has been imposed upon him/her by the Ethics Committee, the Monitoring Officer will submit a report to full Council which will then consider what action, if any, it should take as a result of the Subject Member's failure.

## **7. Results of consultation undertaken**

- 7.1 Both the Complainants and the Subject Member have been consulted at each stage of these proceedings.

## **8. Timetable for implementing this decision**

- 8.1 Any decisions of the Committee will be implemented within an appropriate time frame.

## **9. Comments from the Chief Operating Officer (Section 151 Officer) and the Director of Law and Governance**

- 9.1 Financial implications

There are no specific financial implications arising from the recommendations within this report.

- 9.2 Legal implications

The Council is required under Section 28 of the Localism Act 2011 to adopt a suitable Code of Conduct and to have in place arrangements under which allegations of failure to comply with the Code may be investigated and decisions on allegations can be made. The hearing into this complaint meets this requirement and assists the Council in promoting and maintaining high standards of ethical behaviour as is required under section 27 of the Act.

## **10. Other implications**

- a. **How will this contribute to the Council Plan**  
([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?

Not applicable

- b. **How is risk being managed?**

Failure to consider and deal appropriately with complaints about councillors' behaviour could lead to damage to the Council's reputation as well as that of individual councillors. The hearing into this complaint is designed to ensure that the Council discharges its duty to promote and maintain high standards of conduct.

- c. **What is the impact on the organisation?**

The hearing is to consider whether the behaviour of the Subject Member breached the Code of Conduct and as such will have no direct impact on the organisation. Nevertheless, the conclusions reached by the Committee may be relevant to other councillors.

## 6.2 Equalities / EIA

There are no public sector equality duties which are of relevance at this stage.

- d. **Implications for (or impact on) climate change and the environment**

None

- e. **Implications for partner organisations?**

None

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Suzanne Bennett	Governance Services Officer	Law and Governance	28/06/22	28/06/2
Sarah Harriott	Corporate Governance Solicitor	Law and Governance	28/06/22	28/06/22
<b>Names of approvers for submission: (officers and members)</b>				
Graham Clark	Lead Accountant	Finance	24/06/22	24/06/22
Adrian West	Members and Elections Team Manger	Law and Governance	24/06/22	24/06/22
Councillor Walsh	Chair of Ethics Committee		14/06/22	14/06/22

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**PART 4A: CODE OF CONDUCT FOR ELECTED AND CO-OPTED MEMBERS COVENTRY CITY COUNCIL**

**INTRODUCTION AND GENERAL PRINCIPLES**

**1. Introduction**

- 1.1** The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that councillors can be held accountable and all adopt the behaviours and responsibilities associated with the role. Your conduct as an individual councillor affects the reputation of all councillors. The role of councillor should be one that people aspire to and individuals from a range of backgrounds and circumstances should be putting themselves forward to become councillors.
- 1.2** As councillors, you represent local residents, work to develop better services and deliver local change. The public have high expectations of you and entrust you to represent your local area; taking decisions fairly, openly, and transparently. You have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.
- 1.3** Importantly, you should be able to undertake your role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.
- 1.4** This Code has been designed to protect your democratic role, encourage good conduct and safeguard the public's trust in local government.

**2. Definitions**

- 2.1** For the purposes of this Code of Conduct, a "councillor" means a member or co-opted member of a local authority or a directly elected mayor. A "co-opted member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who
- (a) is a member of any committee or sub-committee of the authority, or;
  - (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;
- and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".
- 2.2** For the purposes of this Code of Conduct, "local authority" includes county councils, district councils, London borough councils, parish councils, town councils, fire and

rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

### **3. Purpose of the Code of Conduct**

The Code of Conduct sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

### **4. Application of the Code of Conduct**

**4.1** This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

**4.2** This Code of Conduct applies to you when:

- you are acting in your capacity as a councillor and/or as a representative of your council
- you are claiming to act as a councillor and/or as a representative of your council
- you are giving the impression that you are acting as a councillor and/or as a representative of your council
- you refer publicly to your role as a councillor or use knowledge you could only obtain in your role as a councillor.

**4.3** The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

- 4.4 You are also expected to uphold high standards of conduct and show leadership at all times.
- 4.5 Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

## **5. The Nolan Principles**

- 5.1 Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles. These are:

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

## **4A- Code of Conduct for Elected and Co-opted Members**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

### **6. General principles of councillor conduct**

- 6.1** Building on the Nolan Principles, the following general principles have been developed specifically for the role of councillor.
- 6.2** In accordance with the public trust placed in you agree that you will, on all occasions:
- act with integrity and honesty
  - act lawfully
  - treat all persons fairly and with respect; and
  - lead by example and act in a way that secures public confidence in the role of councillor.
- 6.3** In undertaking your role, you agree to:
- impartially exercise your responsibilities in the interests of the local community
  - not improperly seek to confer an advantage, or disadvantage, on any person
  - avoid conflicts of interest
  - exercise reasonable care and diligence; and
  - ensure that public resources are used prudently in accordance with your local authority's requirements and in the public interest.

## **STANDARDS OF COUNCILLOR CONDUCT**

- 7.** This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken. Guidance is included to help explain the reasons for the obligations and how they should be followed. Guidance is shown in italics.

### **8. Respect**

**As a councillor you must:**

- 8.1** **treat other councillors and members of the public with respect.**
- 8.2** **treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

*Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.*



*In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.*

*In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidating or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.*

### **9. Bullying, harassment and discrimination**

**As a councillor you must:**

- 9.1 not bully any person.**
- 9.2 not harass any person.**
- 9.3 promote equalities and not discriminate unlawfully against any person.**

*The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient". Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or during phone calls, in the workplace or at work-related social events. Such behaviour may not always be obvious or noticed by others.*

*The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.*

*Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.*

*The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.*

### **10. Impartiality of officers of the council**

**As a councillor, you must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

*Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.*

**11. Confidentiality and access to information**

**As a councillor, you must not:**

**11.1 disclose information:**

- a. given to you in confidence by anyone**
- b. acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, unless**
  - i. you have received the consent of a person authorised to give it;**
  - ii. you are required by law to do so;**
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - iv. the disclosure is:**
    - 1. reasonable and in the public interest; and**
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - 3. you have consulted the Monitoring Officer prior to its release.**

**11.2 improperly use knowledge gained solely as a result of your role as a councillor for the advancement of yourself, your friends, your family members, your employer or your business interests.**

**11.3 prevent anyone from getting information that they are entitled to by law.**

*Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.*

**12. Disrepute**

**As a councillor, you must not bring your role or local authority into disrepute.**

## **4A- Code of Conduct for Elected and Co-opted Members**

*As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your or its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.*

*You are able to hold the local authority and fellow councillors to account and are able to challenge constructively and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.*

### **13. Use of position**

**As a councillor, you must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.**

*Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.*

### **14. Use of local authority resources and facilities**

**As a councillor, you must when using the resources of the local authority or authorising their use by others:**

- a. act in accordance with the local authority's requirements; and**
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which you have been elected or appointed.**

*You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor. Examples include:*

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

*These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.*

### **15. Complying with the Code of Conduct**

**As a councillor, you must:**

- 15.1 undertake Code of Conduct training provided by the local authority.**
- 15.2 cooperate with any Code of Conduct investigation and/or determination.**
- 15.3 not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- 15.4 comply with any sanction imposed on you following a finding that you have breached the Code of Conduct.**

*It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.*

## **PROTECTING YOUR REPUTATION AND THE REPUTATION OF THE LOCAL AUTHORITY**

### **16. Interests**

**As a councillor, you must register and declare your interests.**

*You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.*

*You should note that failure to register or declare a disclosable pecuniary (i.e. financial) interest is a criminal offence under the Localism Act 2011.*

*The Appendix sets out the detailed provisions on registering and declaring interests. If in doubt, you should always seek advice from your Monitoring Officer.*

### **17. Gifts and hospitality**

**As a councillor, you must:**

- 17.1 not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on**

**your part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**

**17.2 register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**

**17.3 register with the Monitoring Officer any significant gift or hospitality that you have been offered but have refused to accept.**

*In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered.*

*You do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.*

## **APPENDIX TO CODE**

### **Registering interests**

1. Within 28 days of this Code of Conduct being adopted by the local authority or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) and Table 2 (Other Registerable Interests). Disclosable Pecuniary Interests means interests relating to money and finances.
2. You must ensure that your register of interests is kept up-to-date and, within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
3. A 'sensitive interest' is an interest which, if disclosed, could lead to the councillor/member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.
4. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### **Declaring interests**

5. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests, you must declare the interest. You must not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest, just that you have an interest.
6. Where a matter arises at a meeting which directly relates to one of your Other Registerable Interests, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', again you do not have to declare the nature of the interest.
7. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

**4A- Code of Conduct for Elected and Co-opted Members**

8. Where a matter arises at a meeting which affects –
- a) your own financial interest or well-being;
  - b) a financial interest or well-being of a friend, relative, close associate; or
  - c) a body included in those you need to declare under Disclosable Pecuniary Interests

you must disclose the interest.

9. Where the matter affects the financial interest or well-being:
- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
  - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
<b>Contracts</b>	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a

**4A- Code of Conduct for Elected and Co-opted Members**

	<p>beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
<b>Land and Property</b>	<p>Any beneficial interest in land which is within the area of the council.</p> <p>‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
<b>Licences</b>	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.</p>
<b>Corporate tenancies</b>	<p>Any tenancy where (to the councillor’s knowledge)—</p> <p>(a) the landlord is the council; and the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
<b>Securities</b>	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one</p>



**4A- Code of Conduct for Elected and Co-opted Members**

	hundredth of the total issued share capital of that class.
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**Table 2: Other Registerable Interests**

	Any unpaid directorship
	Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council; and
	<p>Any body:</p> <ul style="list-style-type: none"> <li>(a) Exercising functions of a public nature; or</li> <li>(b) Directed to charitable purposes; or</li> <li>(c) One of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union); or</li> <li>(d) Whose rules or requirements of membership could be regarded as suggesting a degree of loyalty to that body. this could arise by reason of a body having an obligation of secrecy about its rules, its membership or conduct and/or a commitment of allegiance to or support for that organisation or body</li> </ul> <p>of which you are a member or in a position of general control or management.</p>



## APPENDIX 2: Member/Officer Protocol

### **PART 4D: MEMBER OFFICER PROTOCOL**

#### **1. Status of this Code**

- 1.1 This Protocol seeks to offer guidance on some of the issues which most commonly arise in relation to the relationships between Members and Officers.
- 1.2 The Protocol is partly a statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty. In particular, it covers the behaviour that is expected between Members and Officers.
- 1.3 The Protocol gives guidance only but it may be taken into account if there is a complaint about a Member or an Officer. Members must observe the Members' Code of Conduct. Any complaints received in relation to alleged breaches of the Code of Conduct will be considered initially by the Monitoring Officer. Officers are also obliged to comply with the Code of Conduct for Employees. Any complaints received about Officers behaviour or conduct will be considered by the relevant managers.

#### **2. Roles of Members and Officers**

Officers and Members both serve the public but they have different roles. Officers are employees of the Council and are politically neutral. Their role is to advise Members and implement the policies of the Council to the best of their abilities. Members are office holders and will often belong to a political party. They are obliged to exercise their own judgement in respect of matters before them but may also legitimately pursue party political objectives. Employees are answerable to the Chief Executive, not to individual Members (whatever office they hold), but there should be good communication between senior officers and Members with special responsibility for their area of work.

#### **3. Expectations**

- 3.1 *What Members can expect from Officers:*
  - (a) A commitment to the authority as a whole, not to any political group;
  - (b) A working partnership;
  - (c) An understanding of and support for respective roles, workloads and pressures;
  - (d) Timely responses to enquiries and complaints in accordance with agreed standards: (see paragraph 7)
  - (e) Professional advice, not influenced by political views or preference;
  - (f) Regular up-to-date information on matters that can be reasonably considered appropriate and relevant to the Member's needs, having regard to any individual responsibilities that they have and positions that they hold;

- (g) Awareness and sensitivity to the political environment;
- (h) Respect and courtesy;
- (i) Training and development in order to carry out their roles effectively;
- (j) Not to have personal issues raised with them by Officers outside the agreed procedures;
- (k) Officers should not try to persuade individual Members to make a decision in their personal favour or raise things to do with their employment with individual Members. Nor should they approach individual Members with allegations about other Officers. They should use the Council's grievance, whistle blowing and disciplinary procedures instead; and
- (l) Compliance with the Employee Code of Conduct.

3.2 *What Officers can expect from Members:*

- (a) A working partnership;
- (b) An understanding of and support for respective roles, workloads and pressures;
- (c) Political policy direction and leadership;
- (d) Respect and courtesy;
- (e) Members should generally restrict their discussion on strategic or significant issues to more senior officers (that is the Chief Executive, Deputy Chief Executives, Directors or Heads of Service); Members should raise all queries on operational matters initially with Directors or Heads of Service who will ensure that Members receive a prompt response.
- (f) Members are encouraged to use regular briefings and/or normally make appointments before visiting Officers in order to try to avoid frequent unscheduled interruptions;
- (g) Members should not pressure Officers to work outside their normal hours or to do anything they are not allowed to do or that is not part of their normal work;
- (h) Not to be subject to bullying, harassment or intimidation. Members should have regard to the seniority and experience of Officers in determining what constitutes a reasonable request. Members with special responsibilities should be particularly aware of this;
- (i) Members should not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly;
- (j) Members should not make detrimental remarks about individual Officers during meetings, in public or to the media; and
- (k) Members should at all times comply with the Member Code of Conduct.

#### **4. Limitations on behaviour**

The distinct roles of Members and Officers necessarily impose limitations upon behaviour. By way of illustration and not as an exclusive list:

- (a) Personal relationships between individual Members and Officers can confuse the separate roles and get in the way of the proper discharge of the authority's functions. In this situation, others may feel that a particular Member or Officer may be treated more favourably.
- (b) Personal relationships should be avoided. Where they do exist, the officer concerned must notify his or her manager.
- (c) The need to maintain the separate roles means that there are limits to the matters on which Members may seek the advice of Officers, both in relation to personal matters and party-political issues;
- (d) Relationships with particular individuals or party groups should not be such as to create public suspicion that an employee favours that Member or group above others.

#### **5. Politeness and respect**

- 5.1 Members and Officers should show each other politeness and respect. Members have the right to challenge Officers' reports or actions, but they should avoid personal and/or public attacks; and ensure their criticism is fair and constructive.
- 5.2 Officers should not publicly criticise Council decisions even if they do not personally agree with those decisions.

#### **6. Complaints about Members or Officers**

- 6.1 If an Officer feels a Member is not treating them with politeness and respect, they should consider talking to the Member directly. If they do not feel they can talk to the Member or talking to the Member does not help, they should talk to their Head of Service or Director immediately. The manager approached will talk to the Member or the Leader of their political group and may also tell other senior officers. The Officer will be told the outcome. Officers may also make a complaint alleging a breach of the Members' Code of Conduct.

#### **7. Members' enquiries**

- 7.1 Officers should answer Members' enquiries, in whatever form, within five working days. If that is not possible, they should send a holding reply. Where a Senior Officer considers that the enquiry received is inappropriate, the Member should be advised of this and the reason or reasons why the enquiry is considered to be inappropriate. Members should contact a more senior officer in the event that a response is not received within this time. The Chief Executive may be asked to resolve any issues arising from unreasonable delays in responding to Members' enquiries.

##### *Casework*

- 7.2 Where a Member is making an enquiry of Officers as part of their ward

casework, Officers will normally assume that they have the implicit consent of an individual to disclose personal information about them to the Member but only where:

- the Member represents the ward in which the individual lives;
- the Member makes it clear that they are representing the individual in any request for their personal information to the local authority; and
- the information is necessary to respond to the individual's complaint.

In all other cases Officers may need to seek the explicit consent of the individual to share their personal data with the Member in order to comply with the Data Protection Act 1998.

7.3 Personal information about third parties (i.e. individuals who have not sought the Member's assistance) may only be shared with a Member where the law permits this. See also paragraphs 8.1.3 and 8.1.4 below.

## **8. Information and advice**

### *8.1 Requests for written information*

- 8.1.1 Members should be provided with adequate information about services or functions on which they may be called upon to make decisions or to scrutinise the decisions of others, or which affect their constituents. This information will normally be made routinely available by Officers in the form of reports, departmental plans etc. Members are encouraged to make use of existing sources of information wherever possible.
- 8.1.2 Written information supplied to a Member regarding the implications of current Council policies or containing statistical information about Council services may be copied to the relevant Cabinet Member.
- 8.1.3 The Leader of the Council or Leader of any other political group may request the Chief Executive or the relevant Deputy Chief Executive, or other designated Officer to prepare reports on matters relating to the authority for consideration by the group. Such requests must be reasonable and should not seek confidential information in relation for instance to casework or personal details of applicants for services.
- 8.1.4 Wherever possible, such requests will be met. However, if the Officer considers that the cost of providing the information, or the nature of the request is unreasonable or inappropriate, the request will be referred to the Chief Executive for determination, where necessary in consultation with the Leaders of the political groups. Requests will also only be met where they comply with data protection or other legal requirements.
- 8.1.5 Officer reports to political groups should be limited to a statement of relevant facts, identification of options and the merits and demerits of such options for the authority. Reports should not deal with any political implications of the matter.

### *8.2 Briefings*

- 8.2.1 In order for them to discharge their responsibilities Cabinet Members will be briefed by senior officers (Deputy Chief Executives, Directors or Heads of Service) on service issues, proposals and policy development either on an ad hoc or a regular basis, in accordance with the requirements of the Member involved.
- 8.2.2 The other political party groups may also have nominated Shadow Cabinet Members and, if those so request, the relevant senior officers will make themselves available to meet with them to brief them on service issues. The other political party groups should be aware that at times the amount of information that officers can share with them may be limited due to issues of confidentiality.
- 8.2.3 The content of these informal briefing sessions shall remain confidential as between Officers and the political group concerned.

### *8.3 News items*

When an event or development occurs in the city which has or will have a significant impact on the Council or city residents, the Chief Executive will ensure that the Leaders of all political groups are informed as soon as possible.

### *8.4 Ward Members*

- 8.4.1 Senior officers should ensure that Ward Members are given information relevant to their ward where appropriate. As well as letting Ward Members know when there has been a significant incident in their ward, Ward Members should be notified about the following types of issue:
- Public consultation events affecting their wards;
  - Proposed changes to services sited within their wards;
  - Applications and proposals in their wards
- 8.4.2 Ward Members should be invited by Officers to public events, such as openings, festivals etc., in their wards regardless of political affiliation.
- 8.4.3 The Media and Communications Team will advise Cabinet Members of 'photo shoots' taking place. The team will aim to give 48 hours' notice of any photo shoot to the Cabinet Member.
- 8.4.3 If Officers organise a public meeting about a specific ward issue, all the Ward Members should be invited and given as much notice as possible.
- 8.4.4 If Officers undertake consultation about specific ward issues they should consult the Members for that ward at the start of the consultation.
- 8.4.5 Ward Members should be told in advance about anything which particularly affects their ward and which is potentially controversial.

### *8.5 Officer attendance at Group Meetings*

- 8.5.1 The Leader of the Council or Leader of any other political group may ask the Chief Executive or relevant Deputy Chief Executive to give or arrange a private briefing for the party group on a matter of relevance to the Council.
- 8.5.2 Any briefings offered to or requested by a party group will be offered to the other party groups.
- 8.5.3 While Officers may attend political group meetings at which individuals who are not elected Members may be present, Members need to understand that those Officers' ability to share confidential information with the Group may be limited. In particular Officers will not be able to share personal information with third parties present if to do so would cause the Council to breach the Data Protection Act 1998.
- 8.5.4 Decisions at group meetings are not Council or Cabinet decisions and party groups do not have any delegated authority to make formally binding decisions.

#### *8.6 Advice for Members with special responsibilities*

- 8.6.1 The Lord Mayor, Cabinet Members and Committee Chairs can ask the Chief Executive, Deputy Chief Executives, Directors and Heads of Service for extra background information and advice on different courses of action.
- 8.6.2 Although these Members have additional responsibilities and different relationships because of their more frequent contact with Officers, these Members must still respect the impartiality of Officers. This includes not asking them to undertake work of a party-political nature, or to do anything which would prejudice that impartiality.
- 8.6.3 The Leaders of minority political groups can ask the Chief Executive, Deputy Chief Executives, Directors or Heads of Service for background information or more details about items coming to the next meeting of a Committee or Cabinet. The appropriate Chair or Cabinet Member will be entitled to receive the same information.
- 8.6.4 Party Group Leaders can ask for advice on presenting their budget in a correct and accurate form. This will be given in confidence.

### **9. Members' briefings on agendas and reports**

#### *9.1 Briefings on agendas*

Deputy Chief Executives, Directors and Heads of Service will give briefings on full Council, Cabinet and Committee agendas to the Leader and Deputy Leader and Committee Chairs as appropriate.

#### *9.2 Consultation on agendas*

The Leader will be consulted on agendas for the Cabinet. Committee Chairs will be consulted on agendas for their Committees.

#### *9.3 Requests for reports*

- 9.3.1 Instructions for reports to come to Cabinet or Committees can only come from the Leader, Cabinet, a Cabinet Member in respect of the Cabinet and a



Committee or a Committee Chair in respect of Committees. Cabinet Members may ask for reports to come to their Cabinet Member meetings.

- 9.3.2 Whilst Cabinet Members have political responsibility for drawing up proposals for consideration or for the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, senior officers will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. Any issues arising between a Cabinet Member and a senior officer in this respect should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

## **10. Support services to Members and Political Groups**

Support services should only be used for Council business. They should never be used for private purposes, for party political or campaigning activity.

## **11. Correspondence**

### *11.1 Between Members and Officers*

If emails or letters between Officers and Members are copied to someone else, they should say so. Blind copies should not be sent. Members should not forward information received from an Officer to a constituent or member of the public if that information is expressed to be private or confidential.

### *11.2 Letters on behalf of the Council*

Letters on behalf of the Council will normally be sent by Officers rather than Members. The Leader or Committee Chairs may write some letters on behalf of the Council, for example representations to government ministers. Members must never send letters that create obligations or give instructions on behalf of the Council.

## **12. The Council as an Employer**

The Council as a whole employs its Officers. The appointment and dismissal of Officers and any disciplinary or grievance proceedings will be carried out in accordance with the Employment Procedure Rules and any other agreed policies and procedures.

## **13. Responsibility for this Code**

The Monitoring Officer has overall responsibility for this Protocol and will periodically review how it is working.

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## **Member Code of Conduct: Consideration of a Complaint**

**Complaint against:** Councillor Khan

**Enclosures to this memo are:-**

- (a) 3 Complaints received
- (b) Supporting statements provided by complainant

### **Introduction**

Under the Council's Complaints Protocol, Stage 1 of the Protocol relates to how a complaint made against an elected member should be dealt with. The review must be carried out by the Monitoring Officer and the Chief Executive (or their respective nominees) as appropriate in consultation with the Group Leader of the Subject Member's party and the City Council's independent person.

### **1. Summary of Complaint**

Complaints have been received alleging that Councillor Khan breached the Code of Conduct for Elected Members as a result of a dispute with his neighbours.

### **2. Background and detail regarding the Complaint**

Councillor Khan has moved into a new property and building work is ongoing. A dispute has arisen between Councillor Khan and his neighbours which has become acrimonious and which has given rise to these complaints.

Several of the allegations made relate to criminal matters about which the police have been involved and it is understood they are not taking any further action.

The complainants and the witnesses do allege that as part of this dispute Councillor Khan attempted to use his position as a councillor making promises around planning processes and using his role to influence the police.

Councillor Khan denies these allegations and has been clear that he has not referred to himself as a Councillor and that these allegations are malicious and in response to the ongoing dispute between himself and his neighbours.

### **3. Analysis of Complaint**

The complaints include several alleged breaches to the Code of Conduct as provided at Part 4a of the City Council's constitution - Code of Conduct for Elected and Co-opted members.

The Code of Conduct for elected members only applies when

- A councillor is acting in their capacity as a councillor and/or as a representative of your council
- They are claiming to act as a councillor and/or as a representative of your council
- They are giving the impression that they are acting as a councillor and/or as a representative of your council
- They refer publicly to their role as a councillor or use knowledge they could only obtain in your role as a councillor.

Several of the allegations made by the complainants appear to relate to the neighbour dispute about which the police have been involved. Councillor Khan was not acting in his capacity as a Councillor and these are not matters for the City Council.

Allegations have been made about Councillor Khan inappropriately using his position as a Councillor, these allegations are denied by Councillor Khan. If they are correct, then this could give rise to a potential breach of the Code of Conduct for elected members.

### **4. Options Available**

4.1 The options for dealing with the complaint are:

- (a) referring the matter to an internal or external Investigating Officer for investigation
- (b) taking no further action on the complaint;
- (c) resolving the matter by informal resolution; or
- (d) any other way deemed appropriate.

4.2 The factors to be taken into account when determining how to deal with a complaint may include, but are not limited to, whether:

- (a) the complaint relates to an existing member of the Council or Parish Council;
- (b) the member was in office at the time and bound by the Code of Conduct at the time;
- (c) the member was acting in his or her official capacity;
- (d) the complaint is considered serious or significant in substance
- (e) the complaint would be in the public interest to pursue
- (f) the complaint is vexatious, malicious, politically motivated or inappropriate;
- (g) the complaint is substantially similar to a complaint already made to Standards for England, the Ethics Committee (or its predecessor the Standards Committee) or any other regulatory authority;
- (h) the complaint is unreasonable;
- (i) the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible.

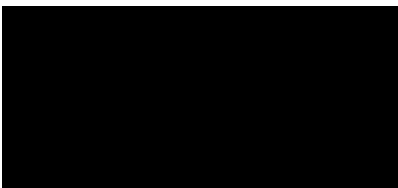
## **5. Recommended Action**

This stage 1 investigation is recommending that the complaint proceeds to Stage 2 of the complaints process and that an independent investigation is undertaken in respect of the complaints made that Councillor Khan attempted to use his position for his own personal gain.

## **6. Independent Persons consideration**

I have read the above report and I agree with the recommended action.

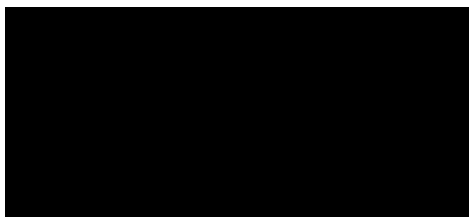
Signed:

A large black rectangular redaction box covering the signature of Steve Atkinson.

Steve Atkinson Independent Person

Dated: 25 May 2021

## Consultation with Group Leaders



Martin Reeves, Chief Executive

Julie Newman, Monitoring Officer

Date: 25 May 2021

Coventry City Council

Ethics Committee Complaints Protocol: Investigation into complaints made against Councillor  
Abdul Salam Khan

Report to the Monitoring Officer

Ros Foster  
Partner  
Browne Jacobson LLP  
28 January 2022

I have been instructed by the Monitoring Officer of Coventry City Council (“the Council”) to conduct an investigation into complaints made against Councillor Abdul Salam Khan (“Cllr Khan”).

### The Complainants

1. Four complaints were received by the Council: one from Person A, one from Person B and two from Person C. Person A’s complaint was supported by witness statements from Person D and Person E. Person B’s complaint raised similar issues to those raised by Person A.
2. One of Person C’s complaints alleged that Cllr Khan had not abided by Covid-19 rules in that he had not worn face coverings in a meeting with builders on 4 March 2021. Person C’s second complaint had raised another issue which dated back to August 2015, concerning the building of Foleshill Community Hall. Person C has stated that they do not wish to respond to this investigation until the latter matter is resolved. The preliminary assessment determined that Person C’s complaint about the historical issue is not to be investigated and as such that complaint has not been pursued.
3. I have referred to all the matters I have considered as, collectively, “the Complaints” and the complainants whose complaints have been investigated as “the Complainants”.

### Methodology

4. In conducting the investigation, I considered information provided by the Complainants and other witnesses, including video and photographic evidence. A number of persons were interviewed. All interviews took place via Microsoft Teams save for those with Persons F and G which were by telephone. All interviews were recorded and transcripts produced. Each person interviewed was informed that the investigation was confidential but that anything they said in interview could be put to other interviewees and could be referred to in this report.
5. I made a wide ranging request for information from the Council’s Planning Enforcement department. There were regrettably significant delays in responding to that request and the follow up enquiries that were made. Those delays inevitably affected the time within which the investigation could be concluded.
6. A draft of this report was sent to Cllr Khan and the Complainants for comment.

### The Complaints

7. As the Complaints allege similar breaches of the Members’ Code of Conduct (“the Code”) but relate to different incidents, I have dealt with them separately. I have distilled the principal points arising in the Complaints and set them out below.
8. The report sets out each of the allegations contained within the Complaints, the evidence that I have considered in relation to that allegation, and my conclusion as to whether or not, on the balance of probabilities, I have found that allegation to be made out. I have given reasons for my conclusions.
9. The Complaints and evidence considered in this investigation concern incidents that occurred on two properties and the boundary between those properties. It is understood that Cllr Khan’s son purchased a property called Property 1 in October 2020. That property is next to a property



owned/occupied by Persons H and E, Property 2<sup>1</sup>. While relations between the neighbours were initially amicable, as both parties began to undertake building and other works on their properties relations soured and a dispute ensued. This dispute became increasingly acrimonious between February and April 2021 and culminated in Police involvement between late March and early April 2021. The properties are in a conservation area and contain a number of trees that are subject to tree preservation orders (“TPO”). Property 1 is a listed building.

10. Persons B and D were contractors undertaking works at Property 2.

### Threshold Issues

11. Person C has declined to pursue their complaint or participate in the investigation. Their complaint relates to matters that do not engage the Code in any event (Cllr Khan’s conduct in dealing with builders on private land). Their complaint has accordingly not been upheld.

12. Neither Person B nor Person D have responded to requests for interview in connection with this investigation. The allegations made by them have been assessed with reference to evidence received from other sources.

13. Person A’s medical condition and treatment have meant that they have been unable to play an active role in the investigation. Evidence in support of their complaint has been provided by Persons H and E and, at Person A’s request, Persons H and E were sent the draft report on their behalf.

14. The matters raised by the Complainants only engage the Code in the event that they relate to conduct that pertains to Cllr Khan’s capacity as a councillor. Paragraph 4.2 of the Code states as follows:

This Code of Conduct applies to you when:

- you are acting in your capacity as a councillor and/or as a representative of your council
- you are claiming to act as a councillor and/or as a representative of your council
- you are giving the impression that you are acting as a councillor and/or as a representative of your council
- you refer publicly to your role as a councillor or use knowledge you could only obtain in your role as a councillor.

15. As noted above, the Complaints and the evidence submitted pertain to incidents and circumstances relating to Cllr Khan’s involvement with Property 1 and his dispute with the

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<sup>1</sup> Documents provided by Cllr Khan indicate that his son is the legal owner but has authorised Cllr Khan to deal with matters relating to the property, which Cllr Khan has done. The legal owner of Property 2 is not known but Persons H and E have acted as its proprietors. For the purposes of this investigation Cllr Khan has been treated as the proprietor of Property 1 and Persons H and E as the proprietors of Property 2

owner(s)/occupier(s) of the neighbouring property. Insofar as the Complaints allege that Cllr Khan relied upon, cited and/or abused his position as a councillor, the Code is engaged. Other matters raised by the Complainants and the witnesses such as Cllr Khan's alleged aggressive and offensive behaviour are not related to his role as councillor. Those matters do not engage the Code and have not been considered in this investigation.

16. Cllr Khan is alleged to have relied upon, cited and/or abused his position in three ways:
  - a. When the Police were called to the properties, he said that he knew the Superintendent/Sergeant, would not be arrested and no action would be taken;
  - b. He sought to exert influence over officers in the Council with a view to receiving preferential treatment. Cllr Khan is alleged to have made numerous complaints to officers about Property 2. Those complaints were alleged to have been dealt with swiftly and more efficiently than those made by the owners/occupiers of the neighbouring property relating to Cllr Khan's property, which were alleged to have resulted in no action or no response. Cllr Khan was alleged to have illegally cut down protected trees yet faced no action despite Person H having brought the matter to the Council's attention;
  - c. He used his position to seek to persuade the neighbours to sell him land, on the basis that Cllr Khan could secure planning permission for them in the event that they agreed to his proposal, alternatively that he would 'make life hell' for them in relation to planning if they did not.
17. These matters engage the Code. Cllr Khan has been a Council member for approximately 13 years. He has been a member of the Council's Cabinet for around 5 years. He is currently Cabinet member with responsibility for Policing and Equalities and chairs the Coventry Police and Crime Board. He is likely to have working relationships with officers of the local Constabulary - the Commander is the Deputy Chair of the Board.
18. Cllr Khan is the Deputy Leader of the Council and as such a senior member within the Council. It is possible that he was in a position to seek to exert undue influence on officers of the Council and/or use his position to further his own interests.

### The Witnesses

19. It is helpful at this stage to provide further information about the Complainants and witnesses whose evidence has been considered as part of this investigation.
20. The persons who submitted written evidence are as follows:
  - a. Person A: Person A submitted a complaint on 10 March 2021 and stated that it related to incidents that occurred on 19 and 21 February and 4 March 2021.
  - b. Person B: Person B submitted a complaint dated 11 April 2021 and a supporting letter dated 15 April 2021. They had been employed by Persons H and E to install a boundary fence on the boundary between Property 2 and Property 1. Their complaint related to incidents that were alleged to have occurred on 4 March and 2, 3 and 7<sup>2</sup> April 2021.

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<sup>2</sup> Person B referred to an incident that occurred on Tuesday 6 April 2021 but it has been established that it in fact occurred on Wednesday 7 April 2021

- c. Person D: Person D provided a statement signed on 12 April 2021. Person D had been doing groundwork at Property 2 between December and April 2021.
  - d. Person E: Person E is the owner/occupier of Property 1. They provided a written statement signed on 11 April 2021 and gave interview and other evidence to this investigation.
21. During the course of the investigation, further witnesses were identified and interviewed. Person H gave witness and other evidence. Cllr Khan suggested a number of persons for interview - Cllr Akhtar, Persons G, I and Person J. Person J was Cllr Khan's security guard and involved in a number of the incidents to which this investigation relates. Person J did not respond to our request for an interview.
- a. Cllr Pervez Akhtar: Cllr Akhtar has been a serving Coventry City councillor since May 2015, a member of the Planning Committee, Cllr Khan's deputy on Cabinet and a longstanding friend and colleague of Cllr Khan. Cllr Akhtar had been asked by Cllr Khan to mediate the dispute that had arisen with Person H.
  - b. Persons F and G: Persons F and G had undertaken work at Property 1 for Cllr Khan and had been present on some of the occasions to which the Complaints relate.
  - c. Person H: Person H is the owner/occupier of Property 2.

### Key events

22. Person H and Cllr Khan began complaining about the activities occurring on their respective properties in early 2021. Cllr Khan complained to the Council about building and tree works that were undertaken at Property 2 in February 2021. Planning enforcement officers attended and a Temporary Stop Notice was served on 24 February 2021 in respect of unauthorised activities taking place at Property 2. As works continued, including on the boundary between the properties, matters escalated and the Police attended the properties on a number of occasions. By the time the Police became involved both parties had employed security guards, Person H's guard had a guard dog and relations between the parties had completely broken down. Cllr Khan did not agree with the boundary as pegged out by Person H's workers and as such was of the view that works undertaken at Person H's instruction were encroaching on his land and/or had the potential to damage a manhole that served both properties. Cllr Khan also alleged that Person H had caused their workers to cut paving stones that were within the boundary of Property 1.
23. Person H alleged that the parties had agreed to jointly commission a surveyor to identify the boundary and that Cllr Khan did not accept the findings contained in that surveyor's report. Cllr Khan has denied that the survey was jointly commissioned. Persons H and E have alleged that Cllr Khan wanted to acquire some of Person H's land and used his status as a councillor to put pressure on Person H to agree to that transaction, suggesting that if they agreed, Cllr Khan would help Person H to obtain planning permission for works at Property 2. Cllr Khan has denied that he sought to acquire any of Person H's land and stated that he did not need to do so as the disputed land was within the curtilage of Property 1. Person H has also alleged that Cllr Khan has received preferential treatment from the Planning department - complaints made by Cllr Khan about activities at Property 2 were acted on immediately and action taken, whereas Person H's complaints about activities at Property 1, including the destruction of protected trees, were not responded to promptly or at all and no enforcement action was taken.

24. The Police attended the properties on the evenings of Tuesday 31 March and Friday 2 April 2021, in the morning and afternoon of Saturday 3 April 2021 and then and finally in the morning of Wednesday 7 April 2021. It is alleged that during those visits Cllr Khan used his influence with senior officers to secure a lenient disposal. Video and photographic evidence of the visits on 3 and 7 April 2021 have been provided.

25. A chronology of the principal events is as follows:

15 February 2021: Cllr Khan contacted Ms Anne Lynch<sup>3</sup> to allege that tree roots had been damaged during the installation of a septic tank at Property 2.

16 February 2021: Cllr Khan again contacted Ms Lynch making further allegations that trees had been removed by Person H and that Person H was building a summer house at the bottom of their garden and provided photographs.

Mr Paul Perry<sup>4</sup> was contacted by Mr Andrew Walster<sup>5</sup> who said that Cllr Khan had been in touch with him.

20 February 2021: Person E alleged that Cllr Khan “sent heavies” to threaten and assault Person H.

Person H made a report to the Police of malicious communications on the part of Cllr Khan.

24 February 2021: a Temporary Stop Notice (“TSN”) was served in relation to works being undertaken at Property 2 that prohibited the carrying out of any works at the property until the TSN expired 28 days later.

Mr Perry attended Property 2 at Person H’s request to discuss the TSN and developments on the property.

Person E submitted a complaint to the Planning department alleging that unauthorised works had been carried out to a listed building - the house at Property 1, and that the persons responsible were Cllr Khan and his son Ismail.

25 February 2021: Person H emailed the Planning department about the TSN. Included in that email was an allegation that Cllr Khan had asked Person H’s permission to remove two trees on the boundary, Person H had refused and Cllr Khan and his son had proceeded to get the trees removed<sup>6</sup>. Person H alleged that Cllr Khan had had several trees removed on both sides of his house by unskilled foreign workers and provided video and audio evidence in support of that allegation.

Photographic evidence shows Cllr Khan ripping down sheeting that had been placed on fencing by Person H. Cllr Khan’s actions in doing so were referred to in Person H’s email to the Council, which actions were said to have been reported to the Police. Person H stated that Cllr Khan

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<sup>3</sup> Head of Development Management

<sup>4</sup> Senior Planning Enforcement Officer

<sup>5</sup> Director of Streetscene and Regulatory Services

<sup>6</sup> Trees in conservation areas are afforded the same protection as trees that are subject to tree preservation orders: see section 211 of the Town and Country Planning Act 1990 (as amended)

had made “*threats of bodily harm and making my life hell in obtaining planning permission because he has authority in council [sic]*”.

The Council’s Tree Preservation Officer emailed Mr Perry and Mr Fothergill<sup>7</sup> confirming that Cllr Khan/the new owners of Property 1 and/or their further neighbours had removed some boundary trees without permission.

The Council’s Strategic Lead - Planning, Mr Rob Back, confirmed that the complaints about Property 1 should be progressed in the usual way.

26 February 2021: Mr Perry replied to Person H and said that their email had been passed to senior officers for consideration and offered dates for a site meeting,

1 March 2021: Mr Fothergill and Mr Perry conducted a detailed site visit at Property 2.

Person H emailed the officers and repeated the allegations against Cllr Khan made in their email of 25 February 2021.

According to Mr Perry’s note, in response to Person H’s allegations of unauthorised tree works at Property 1 Mr Fothergill had requested authority to proceed and arrange a site inspection with Cllr Khan, Mr Penlington and Mr Perry<sup>8</sup>.

2 March 2021: Mr Perry replied to Person H confirming permission for various works to be undertaken during the TSN period.

4 March 2021: Cllr Khan’s PA emailed Mr Fothergill and stated that Cllr Khan had just telephoned and asked her to let Planning Enforcement know that works had started at Property 2 - the fence had been dug out and moved onto Property 1’ property.

Mr Fothergill replied to Cllr Khan’s PA (copying in Ms Lynch and Mr Back) to explain the position including the outcome of the site visit that had been undertaken a few days earlier. He stated that at the site meeting:

*“Officers were shown a copy of a survey plan allegedly showing the legal boundary position between the two properties and [Person H] indicated [their] intention to reposition the fence to follow this line; however officers indicated that as landownership [sic] is not a material planning consideration and as the local planning authority does not keep land ownership records; officers could make no comment with regard to the accuracy of the plans or the ownership of the land in question. Officers indicated that such matters fell outside of the control of the local planning authority and constituted a private civil matter between the parties involved.*

*On the basis that the works being undertaken accord with the advice given above, they would be considered as permitted development and planning permission is not required. If Councillor Khan believes the works exceed the limitations [in the permitted development regulations] please let me know and I will arrange for an officer to visit the site as soon as possible.*

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<sup>7</sup> Planning Team Leader - Enforcement

<sup>8</sup> It is not known whether any such inspection has taken place. Mr Perry’s note says that as of 10 May 2021 he had not yet had any instructions to continue with that enquiry

*Unfortunately I am unable to provide any assistance with regard to the alleged trespass which is a civil matter for resolution between the parties involved.”*

Planning officers attended Property 2 later that day in response to Cllr Khan’s complaint. Photographic evidence shows Mr Fothergill measuring a fence.

Cllr Khan has stated that he and Person H called the Police (separately) about the fence works.

7 March 2021: Person H submitted a complaint to the Planning department that protected trees were being cut down at the front of Property 1 and this had spoiled the character of the listed building. Person H repeated the allegations they had first made on 25 February 2021 that Cllr Khan and his son had had other trees removed. Photographs were provided. Person H noted that the site visit in response to Cllr Khan’s complaint had taken place on a date that had not been one that had been offered for a meeting with Person H, which according to Person H *“clearly shows the influence Abdul Khan, the Deputy leader of the Council has on the officers...”* Person H stated that Mr Fothergill had measured a fence at Property 1 and had found that it exceeded the permitted height. Person H stated that no action had been taken against Cllr Khan in relation to any of the breaches they had reported to the Council. They continued:

*“I really hope the council officers are partial [sic] and not working on the instructions of Mr Khan or under any influence or pressure placed by Mr Khan, Cllr Praviz Akhtar or Cllr Tariq Khan.”*

8 March 2021: Person H emailed Mr Perry requesting permission to use a JCB to remove some tree stumps and roots from the boundary with Property 1 in order to erect a fence.

Mr Perry replied confirming permission to use the JCB.

Person H emailed back asking whether the Council would still have enough evidence to prosecute Cllr Khan for felling the trees if the stumps were removed given that Mr Penlington had confirmed that the felled trees were on Cllr Khan’s land.

10 March 2021: Mr Perry replied saying that as a separate investigation could be affected he was seeking a legal view.

11 March 2021: Mr Perry visited Property 2 at Person H’s request.

16 March 2021: Mr Perry visited Property 2. After the meeting Person H emailed Mr Perry requesting permission to use the JCB to remove the stumps and install a fence.

17 March 2021: Mr Perry replied confirming advice given at the meeting that the stumps may be useful evidence in any civil case Person H may bring against their neighbour and confirming permission for the fence to be erected and any consequent removal of stumps to be undertaken. Advice was given about the precautions needed to protect the trees in the vicinity.

19 March 2021: Cllr Khan sent a video to Mr Back of works being undertaken at Property 2. Mr Back referred it to Mr Fothergill who stated that it did not appear that excavations were being undertaken.

26 March 2021: Cllr Khan sent a further complaint to Mr Martin Reeves<sup>9</sup> alleging trespass and damage to property while removing stumps.

Mr Perry met Person H on site and checked the works. Mr Perry's note of the meeting stated as follows:

*"The security guard for Mr K had told [Person H] that the council were coming to stop the works and his face was a picture of confusion when I introduced myself - he shouted for 'Abdul' to come down but he never showed!"<sup>10</sup>*

30 March 2021: Cllr Khan sent an email at 06:45 titled "Works at Property 2/Property 1 Boundary" from his Council email address to Mr Back, Mr Walster, Ms Lynch, Mr Fothergill, Mr Perry, Mr Reeves and Cllr George Duggins (Leader of the Council). Addressed "Dear Colleagues", it contained a report of matters said to have come to the light the previous day when Cllr Khan had returned to Property 1, including an allegation that Person H had been excavating along the boundary right up to a manhole that served both properties and had ripped up significant chunks of paving belonging to Property 1. Cllr Khan stated that he had confronted a security guard present at Property 2 about the works and the guard had produced a piece of paper that he said was an email from Mr Perry permitting the works. Cllr Khan continued:

*"I am extremely disappointed with the involvement of my own Council. Whatever was written in the email of Paul Perry the neighbour has used any ambiguity to persuade the Police and a Security firm that he has the permission of the Council to undertake the works.*

*I understand the Council has no desire to become involved in this matter, however, I would ask as a minimum that I receive a letter as soon as possible this morning confirming that the Council has not granted permission for any works on the boundary and it most definitely has not granted permission for the destruction of the manhole at Property 1. The neighbour should also receive such a letter."*

Mr Reeves replied at 08:12 as follows:

*"Cllr Khan*

*Sorry to hear that there are still ongoing issues at your property. I know that Rob and planning colleagues will get back promptly to you on the specific clarification you are seeking from the Council."*

Mr Back replied at 08:41 as follows:

*"Morning Cllr Khan*

*Thanks for the email - we'll look into this as a priority and come back to you as soon as possible."*

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<sup>9</sup> Chief Executive of the Council

<sup>10</sup> Mr Perry's note suggests that this relates to his attendance on site before 30 March 2021 but his account corresponds with a photograph dated 1 April 2021



31 March 2021: the Police attended and were, according to Person E, with Cllr Khan in his property for two hours. They took no action on the basis that the matter was a civil dispute.

Person H sent Mr Perry photographs of the retaining wall and works to a tree at Property 1.

1 April 2021: Mr Perry attended the properties in response to Cllr Khan's email. Video footage has been provided that shows a security guard on Cllr Khan's side of the boundary interacting with Mr Perry. The security guard is heard to make reference to Cllr Khan and the Council and say that Cllr Khan was coming to intervene. Mr Perry replied warning the security guard not to use him or the Council as a threat.

Video evidence has been provided that shows Cllr Khan and his security guard attempting to stop Person D in their digger.

2 April 2021: Photographic evidence timed at 15:30 shows a meeting under a tree on Property 2 said by Cllr Khan to have been attended by him, Person H, Cllr Akhtar and Cllr Khan's relative, Person K. Cllr Khan has stated that this was held in an attempt to find an amicable solution to the boundary issue. It was unsuccessful.

Police appear to have attended at 18:51 in response to a 999 call made by or on behalf of Person H. No video or other footage of this visit has been provided. Cllr Khan's recollection was two male Police officers attended and went into Person H's house for around 30 minutes. They then came out and walked around to the side boundaries and spoke to Cllr Khan before leaving.

Mr Fothergill emailed Mr Back and Ms Lynch to report on the outcome of the site visit on 1 April 2021. Ms Lynch communicated that to Cllr Khan in a telephone conversation.

3 April 2021: Police attended at 08:43. Matters escalated over the course of the day as workers instructed by Persons H/E tried to undertake works on the boundary between the properties and persons on the Property 1' side attempted to stop them doing so. Video and photographic footage show Cllr Khan moving the camera on his property towards the altercation (15:52), walking away from the altercation to stay some distance away (16:11) then returning and handling a fence post that Person B, who was inside the trench that has been dug between the properties, was attempting to install (16:54). The Police attended again around 16:00.

7 April 2021: Police attended early in the morning when Cllr Khan was on a train to Birmingham to sit as a Magistrate. Cllr Khan terminated his journey and returned to the property. There is photographic evidence of him arriving in his suit and speaking to three Police officers. Cllr Khan does not appear to have been present when Cllr Khan's son is alleged to have asked the officers to wait as his dad was on his way and knows the Superintendent. According to Person E, officer PC [name redacted] told Cllr Khan that if any further breaches of the peace occurred, he would be arrested. Cllr Khan said that he was not present for much of that visit by the Police and that all the officer had said to him was that he needed to get an injunction.

22 April 2021: Person H sent Mr Perry a video said to show Cllr Khan's worker cutting a tree that Person H believed to be the subject of a TPO, and asked Mr Penlington to attend the site of the breach. Person H also sent photographs of the retaining wall at Property 2.

6 May 2021: Person H sent Mr Penlington photographs said to show unauthorised tree works taking place at Property 1.



7 May 2021: Mr Penlington forwarded the email to Mr Fothergill, Mr Perry and the Planning Enforcement department.

25 May 2021: Mr Fothergill forwarded the email to Mr Back and Ms Lynch, copied to Mr Perry, stating:

*"...as previously we shall await instruction before doing anything."*

### **The Complaints and written statements**

26. Person A alleged that Cllr Khan had used his powers as a councillor for his own advantage and profit but provided no further particularisation. Their medical condition and treatment have limited their ability to participate in the investigation.
27. Person B alleged that on 4 March 2021, the first time they met Cllr Khan, Cllr Khan and his associates had been disrupting the works being undertaken and had been intimidating those present. Person B alleged that Cllr Khan *"would explain that as a councillor he knew what were [sic] allowed to do and not to do and that if we didn't stop the work there would be serious consequences"*. Person B stated that they were assaulted on 3 April 2021 as a result of Cllr Khan, his son and security guard acting recklessly, causing Person B to suffer a puncture wound to their arm. Person B stated that the Police at first appeared very concerned but after speaking with Cllr Khan and his associates left with no action being taken. Person B's account continued as follows:
- "This was very upsetting and reminded me of something that I overheard Mr Khan say when my colleague frustrated at the aforementioned incident, suggested that someone was going to get arrested. Mr Khan replied "no one is going to be arrested" this was then repeated 4-5 times by Mr Khans [sic] security guard/advisor, "he is a councillor he will not be arrested, no one will be arrested"*.
28. Person B alleged that the Police returned on 6 April 2021, when the balance of the evidence indicates that that visit occurred on 7 April 2021. Person B's allegation in relation to that incident was as follows:
- "...the Police officer on this occasion was able to talk to Cllr Khan and his accomplices and warned them that if they interfered with the work they would face prosecution. Mr Khan was furious with this and then proceeded to make threats towards the police office [sic] and his colleagues, explaining that he needs to be speak [sic] to the Superintendent and implied that he would advise him not to get involved."*
29. Person D stated that they were aware of the conversations regarding the boundary with Person H, the proprietor of Property 2. On the occasions when Cllr Khan had approached Person D, he had not worn a facemask. When this occurred, Person D explained that Cllr Khan and his accomplices needed to speak to the owners. Person D alleged that Cllr Khan and his accomplices became very aggressive and violent.
30. Person D said that on many occasions they had witnessed Cllr Khan using his councillor status to bribe the owner, Person H, in proposing that he can help with planning applications in return for two metres of land. However, when Person H dismissed Cllr Khan's proposal, Cllr Khan became aggressive and violent towards Persons H and D and the contractors at Property 2. An incident occurred where Person D was assaulted while operating a fast moving ground cutter, and nearly

caused serious bodily harm; this was all witnessed and recorded. Police had been called many times but Cllr Khan had relied on his councillor status and bragged about being friends with a Sergeant of West Midlands police.

31. Person D has been contacted pursuant to this investigation via email and mobile phone. They have not responded to either.

32. In their signed statement, Person D stated:

*“I have on many occasions witnessed Cllr Abdul Khan using Councillor title [sic] to bribe the owner of Property 2 to help them with planning application [sic] in return of [sic] couple of meters of land from the owner Property 2 [sic]...When Police has been called by the Owner of Property 2 on many occasions when Abdul Khan has threatened using his Councillor title to stop the works and bragged about being friends with the Sergeant of West Midlands Police...This man uses and abuses his title every day for his personal benefit...”*

33. Person E’s statement said that since November 2020 there had been a feud about the boundary between Property 2 and Property 1. Person E had hired three surveyors and Cllr Khan did not agree with their resulting assessment. While physically present, Person E had witnessed discussions with Cllr Khan stating he was able to help with any planning applications due to his role and status as a councillor, and that similar statements had been made by Cllr Akthar. When Person H declined Cllr Khan’s proposal, he had become violent and aggressive, also causing damage to the property; this had been recorded and sent to the Police.

34. In their signed statement, Person E stated:

*“On many occasions Cllr Abdul Khan has used his Councillor title openly and his authority as an influence to the Police and other individuals who act as his mediators.”*

35. Person E stated at the time of the Police visit on 3 April 2021, Cllr Khan “very comfortably asked us to call 999 and said “you wait and see, Police will come and nothing will happen. I know the Sergeant.”” Person E further alleged that at the time of the final Police visit on 7 April 2021, Cllr Khan tried to use his Councillor title to persuade the officer but the officer responded by saying “I don’t care who you know or you take me out for dinner...if you try to obstruct, threaten or touch anyone working at Property 2, I will have no choice but to arrest you...”.

36. Person E continued:

*“The events have repeatedly taken place where Cllr Abdul Khan uses his Councillor title again and again to threaten us and openly says, “I will make your life hell”.”*

### **The video and photographic evidence**

37. Person H has provided video footage of the incidents when the Police attended on 3 and 7 April 2021. No records of the attendances on 31 March and 2 April 2021 exist. The footage of 3 April 2021 shows Cllr Khan staying some distance from the discussions between the officers and the workers and other personnel involved in the altercation. None of the footage provided contains evidence of Cllr Khan making any reference to his status as a councillor nor his relationship with any officer. Person J is shouting and may make reference to Cllr Khan’s role as a councillor (Person J is difficult to hear and/or understand at times). Cllr Khan has denied instructing Person J to

make any statement to that effect and Person J did not respond to our request for an interview. In another video provided, of a discussion between Mr Perry and a security guard on 1 April 2021, the security guard makes reference to Cllr Khan's role at the Council. Mr Perry responds by telling the security guard not to use him or the Council as a threat.

38. Person E provided a photograph of officers coming down the steps of Cllr Khan's house, timed at 09:43 on 7 April 2021. Cllr Khan can be seen to be wearing his suit and has demonstrated that he had been due to sit as a Magistrate in Birmingham that day and had had to return to Property 1 to deal with the incident that had occurred. Person E provided a photograph of officers alleged to be having refreshments in Cllr Khan's living room on 31 March 2021. Both photographs are alleged to demonstrate an over familiar relationship between Cllr Khan and the officers and Cllr Khan abusing his position.

### The interview evidence

39. Person A said that they had stayed at Property 2 while having their treatment. Person A said that they had found the situation with Cllr Khan to be stressful, but that their main concern had been Cllr Khan's use of his title as a councillor to intimidate Person E, tell them and their family what they could and could not do with their land and the consequences if the family did not do what Cllr Khan wanted or accept his position. Person A alleged that when they told Cllr Khan that they intended to make a complaint to the Council about him, Cllr Khan replied "*good luck, because it won't go anywhere*", but after that time did not refer to his status or authority. Person A alleged that prior to that they had heard Cllr Khan say, with reference to a planning application that Person E had submitted, that he would make it really difficult and would make sure permission was not granted.

40. Person E stated that they had lived at Property 2 since 2008 and that it was owned by their spouse Person H. Person E said that Cllr Khan had approached them and Person H saying that he wanted to build a wall on the boundary and was confident that due to his position as a councillor he could secure planning permission for the wall. Person E said that three surveys were conducted to ascertain the location of the boundary and Cllr Khan did not accept the outcome of them. Person E alleged that Cllr Akhtar had tried to persuade Person H to give Cllr Khan approximately two metres of land and said that if they agreed Cllr Khan would help them with planning matters. Person E said that Cllr Khan had complained when a fence was erected along the boundary and Mr Fothergill had attended the same day to measure the fence. Mr Fothergill had also measured a fence erected at Property 1 and found it to exceed the permitted height.

41. In relation to the trees, Person E alleged that Cllr Khan had arranged for trees to be felled that were subsequently found to have been within the boundary of Property 2, and that Cllr Khan had then blamed Persons H and E for felling the trees. Person E alleged that no action had been taken in response to any of the complaints made to the Planning department about Cllr Khan and/or activities at Property 1.

42. Person H's account was consistent with that of Person E. Person H said that Cllr Khan had approached them about building a wall on the boundary and removing some trees at the front of the properties and said that there would be no issues with the Council if he did so. Cllr Khan had had some trees removed that were subsequently found to be within the curtilage of Property

- 2, and then accused Persons H/E of felling them. Person H said that Council officers had said that because of Cllr Khan's role and status in the Council some process would have to be followed before they could attend Cllr Khan's property in connection with Person H's complaints. Person H believed nothing had been done in relation to the tree works as Cllr Khan is a councillor and Deputy Leader.
43. Person H alleged that they had been threatened with acts of violence by Cllr Khan and that Cllr Khan had got other members of the Council to try and persuade Person H to give Cllr Khan some of their land, in return for which Cllrs Khan and/or Akhtar would help with any future planning applications which Person H wished to make. Person H also stated that Cllr Khan slandered them in front of their contractors and when the Police were called no further action was taken as Cllr Khan is on the Police Board as representative of the Council. In support of this allegation Person H said that Cllr Khan would not speak to the officers in front of Person H but would talk to them in his house, following which the officers would say they could not do anything and leave. Person H said that when the Police visited on 7 April 2021, Cllr Khan's son had asked them to wait for Cllr Khan as he was on the way and knew the Superintendent. Person H said that the officer replied to say that he did not care who Cllr Khan knew or would take to dinner, if there was a further breach of the peace Cllr Khan would be arrested.
44. Person H stated that the dispute between them and Cllr Khan related to the boundary between the properties. Person H stated that Ismail Khan had instructed Survey Hub to report on the boundary but Cllr Khan had not agreed with their conclusions. Person H then instructed O'Brien Contractors to peg the boundary and Cllr Khan objected to that.
45. Cllr Khan denied all the allegations against him or that he had 'started a war' with his neighbours as alleged by Person E. He denied having asked any person to make any reference to his status as a councillor or knowledge of or connections with the Police in any dealings relating to the properties. In terms of the Police, he denied having any operational or other relationship with any Police officer or having told any person to refer to his status as a councillor when speaking to the Police, and stated that he does not have any influence with the Police in any event. He denied having given the officers any refreshments and said he invited them upstairs so that he could show them his paperwork and photographs and speak to them in private.
46. Cllr Khan pointed out that he is a solicitor and a Magistrate as well as a serving councillor and the improbability of him seeking to abuse his position or gain some advantage to obtain two metres of land from Person H. Cllr Khan rejected Person H's assertion that there had been three independent surveys carried out of the boundary. Cllr Khan said that Person H had brought a security guard with a dog onto the site with Person B and two other builders who proceeded to erect a fence within the curtilage of Property 1 and on 4 March 2021 Cllr Khan had called the Police to get the works stopped. Person H had also called the Police, alleging that Cllr Khan had tried to knock Person H's electrician over, which Cllr Khan denied. Cllr Khan said that the Police identified the matter as a civil dispute that would have to be dealt with in the courts.
47. Cllr Khan's position is that Person H has removed established fencing and bushes on the boundary between the properties, excavated a trench, undertaken works that could damage/destroy a manhole serving both properties and cut away paving within the boundary of Property 1 without permission. Cllr Khan stated in interview that he had instructed solicitors in relation to the

boundary dispute. He denied ever having sought to purchase or obtain any land from Person H or to have jointly commissioned a surveyor's report. He denied ever having complained to the Planning Enforcement department about the activities taking place at Property 1 or being involved with any action being taken in that regard and denied having made the complaint that led to the service of the TSN. Cllr Khan believed that Persons H and E thought he had made that complaint and that was 'when the trouble started'.

48. Cllr Khan denied having had any involvement with the Planning Enforcement department and, when asked if the Planning Enforcement officers had spoken to him or if he had been involved in their investigations, Cllr Khan said *"no, they haven't at all. No I haven't. I haven't been involved with them at all, no. They haven't spoken to me about it. Well I haven't asked them for anything; updates or what's happening or anything like that at all. It's entirely up to them..."* When asked if he had any information about what the current position was in relation to the TPOs, Cllr Khan stated *"...Well, nothing, because, again, I know my role, I know what the limits are, I've got no right to ask about his tree or any investigation that's against him, because I am not privy to that. I should not use that role to get that information. It's nothing to do with me..."*
49. Cllr Khan denied having cut down the trees that were within the curtilage of Property 2 and accused Person H of having done so, in order to take big machinery to the rear of the property to carry out the building work being done there. Cllr Khan insisted in interview and in subsequent correspondence that he had acted lawfully throughout and provided copies of communications with Person H about the works and the rectification required.
50. Cllr Khan stated that Persons H and E were liars and provided information about Person H's involvement in a High Court case, their imprisonment for a driving offence and planning issues involving Person H at other properties that Cllr Khan said demonstrated Person H's disregard for planning laws. Cllr Khan alleged that the Complaints were an attempt to use his status as a councillor as a means of attacking him and that Persons H and E and their witnesses were colluding and were making false and malicious allegations against him. Cllr Khan said that on one occasion when the Police had attended, Person A had been filming and had shouted *"Councillor Khan are you happy with what you're doing"* and Cllr Khan had replied *"Look, I'm Abdul Khan."*<sup>11</sup> Cllr Khan pointed out that despite numerous visits by the Police no one had been arrested or charged with any offence.
51. Cllr Khan was adamant that he had no influence in the Council and could not get planning permission for himself much less his neighbour. He cited as an example the fact that he had applied over a year previously for an additional wheelie bin and still had not received one but had not used his position in the Council to progress the matter.
52. Cllr Khan said that he had asked Cllr Akhtar to act as a mediator and try to resolve the dispute as Cllr Akhtar knew Person H. Cllr Khan had asked two other persons to mediate who knew Person H. Cllr Khan said that he had not instructed Cllr Akhtar to make any kind of promise on his behalf, and that he did not have any demands in any event save to persuade Person H that the boundary was where Cllr Khan alleged it to be and to have been for many years.

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<sup>11</sup> This may be the dialogue referred to by Cllr Akhtar (see paragraph 59)

53. Cllr Khan pointed out that he had been on his way to sit as a Magistrate on 7 April 2021 when the Police attended. He said that by the time he arrived the Police had said what they needed to say and he did not hear PC [name redacted] make the statement alleged by Person E (paragraph 35). Cllr Khan stated that he could not be responsible for statements made about him without his knowledge, authority or consent.
54. Cllr Khan admitted having removed the black sheeting from Person H's temporary fence and said that he did that to prevent Person H from concealing the works being undertaken at Property 2.
55. Person F described himself as a friend of Cllr Khan who they had known for 20 years and who Person F visited regularly. Person F was aware of the dispute between Cllr Khan and his neighbours and was of the view that Person H was trying to incorporate additional land into their property from Property 1 and that Cllr Khan had resisted that. Person H had built a large extension to their property and, according to Person F, had not left enough room for their car or any vehicles delivering building materials to get to the rear of the property and as such needed additional land (approximately 1.5 metres) from the Property 1' side.
56. Person F had been present on one occasion when the Police attended having been called by Person H. Person F said that Cllr Khan had not referred to his status as a councillor at any time during that visit by the Police or any other time when Person F had been present. It appears that Person F was present when the Police visited on 3 April 2021 as they described the officer telling Cllr Khan that he could not stop Person H's builders doing their work and that if he did he would be arrested. Person F said that Person H's allegations were false and that Person D had been paid extra to give evidence in support of those allegations.
57. Cllr Pervez Akhtar said that he had known Cllr Khan for many years and they had a close friendship. Cllr Akhtar had been a member of the Labour Party for approximately 27 years and had supported Cllr Khan in his election campaign. Cllr Akhtar had known Person H for an even longer time and had worked with them previously as a taxi driver<sup>12</sup>. It was for this reason that, when Cllr Khan told him that he was having problems with Person H, that Cllr Akhtar offered to speak to Person H on Cllr Khan's behalf. His first conversation with Person H took place in February 2021 when Cllr Akhtar had first visited Cllr Khan at Property 1. Person F said that two boundary lines were pegged out and he had suggested a line between the two, that Person H appeared to agree with.
58. Cllr Akhtar was present on 3 April 2021 helping with building work at Property 1. He thought that the Police may have been called because cars had been parked at the front of the properties and Cllr Khan had refused to move them. Cllr Akhtar said that he had been with Cllr Khan throughout the Police visit and neither he nor Cllr Khan had made any reference to their role as councillors or in relation to the Police Board. Cllr Akhtar had parked his car up against the boundary close to where Person H's builders were working to try and obstruct that work and stop those builders from, as Cllr Akhtar saw it, taking Cllr Khan's land.
59. Cllr Akhtar said that he had spoken to Person H a few times after the February meeting and after the 3 April incident he had gone to Property 2 to meet with Persons H and E. Cllr Akhtar said that after a long conversation he advised Person H to have a dialogue with Cllr Khan but over time it

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<sup>12</sup> Person H denies having a friendship with Cllr Akhtar



became apparent that the parties would not reach an amicable solution. Cllr Akhtar described his role in his dealings with Person H as being an advocate for Cllr Khan but someone who Person H had also reached out to. Cllr Akhtar recalled a person saying to Cllr Khan “*you’re councillor Khan*” and Cllr Khan had replied that he was not councillor Khan, he was Abdul Khan.

60. Person G had been working at Property 1 six days per week at the time of the events to which this investigation relates. Person J was present at the property on 3 April 2021 and reported that Cllr Khan had parked his car up to the boundary where the fencing works were taking place, which had led to the Police being called. Person J appears to have also been present on 7 April 2021. They had not at any time heard Cllr Khan refer to his role or status as a councillor or involvement with or knowledge of the Police.

### Assessment of the evidence

61. In assessing competing accounts, the inherent improbability that regulated professionals and those subject to binding Codes of Conduct will behave in a way that is contrary to their obligations must be taken into account. As case law has established:

*“Although there is no ‘heightened standard’ of proof in proceedings of this nature<sup>13</sup>, the inherent probability or improbability of an event is itself a matter to be taken into account in weighing the probabilities and deciding whether on balance the event occurred: see the speech of Lord Nicholls in *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 at 586-7, cited with approval in *Re B (A Child)* [2008] UKHL 35. The more improbable it is that the registrant would have behaved in the manner alleged, the more cogent and credible the evidence needed to satisfy the burden of proving on the balance of probabilities that he did”: *Virdee v The General Pharmaceutical Council* [2015] EWHC 169 (Admin) at [36].*

62. Cllr Khan is bound by the Code. The Code requires members of the Council, when acting in their capacity as such, to be committed to behaving in a manner that is consistent with the Nolan Principles governing standards in public life. Those principles include integrity, accountability and honesty. The Code goes on to require Council members not to conduct themselves in a manner that is likely to bring the authority into disrepute and to treat people properly, with respect, and not bully people.

63. It is inherently improbable that a leading councillor, who has been a solicitor for 22 years and a Magistrate for 15 years, would knowingly threaten residents, more so neighbouring residents whilst being recorded and in front of many individuals. It is inherently improbable that a councillor will threaten, bribe and get other individuals, including fellow councillors, to bribe residents of the Council for their own profit and advantage. Equally, it is inherently improbable that an elected member would shout and continually express “*I am a councillor, nothing will happen*”, that they have connections with the Police, act in an aggressive manner and assault individuals.

64. The Complainants and their witnesses and Cllr Khan and his witnesses have given different and frequently opposing accounts of the same events. That I have accepted some elements of a witness’ account and rejected others is not a reflection on their general credibility or reliability but a result of the balancing and evaluation of all the available evidence.

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<sup>13</sup> The case related to disciplinary proceedings but the principles apply in the present context

65. Similarly the fact that I have rejected a person's account does not mean that I have found them to be dishonest or seeking to intentionally mislead. As the High Court has recently reaffirmed, the evidence of witnesses can be affected by a number of factors. A person's 'truth' may be the subject of various cognitive influences including what the person thinks they would have said or done or what at the date of their account they think they should have said or done.
66. In *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin), Warby J explained the position as follows (at para 39):
- "We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.*
- Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of "flash bulb" memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.*
- Events can come to be recalled as memories which did not happen at all or which happened to somebody else.*
- The process of civil litigation itself subjects the memories of witnesses to powerful biases."*
67. All of these principles apply to the evidence that has been given to this investigation. I have given more weight to the written evidence and the video and photographic footage than the evidence given in interview some weeks after the events in question.
68. Applying the principles set out above, reliable and cogent evidence is required for me to be satisfied on the balance of probabilities that Cllr Khan has acted in manner alleged in the Complaints. In terms of corroboration, the following have been taken into account:
- a. The mobile recordings, which show the location and movements of the various individuals and the body language and demeanour of all those involved. The extent to which the footage supports or contradicts the accounts given is dealt with below.
  - b. The written accounts which were submitted to the Council were sent close in time to when the incidents were alleged to have occurred.
  - c. The consistency of those accounts.
69. Cllr Khan has maintained that the allegations against him are false and that the witnesses who were the contractors for Persons H and E have colluded, distorting their account of events in order to discredit and falsely accuse Cllr Khan.
70. There was some confusion amongst the witnesses as to the precise dates and times of particular events, which could be resolved to an extent by the date and time-marked video and photographic evidence. This had been provided by Persons H and E, and none was provided by Cllr Khan as footage from his camera was not available. The events attended by the Police were close in time and took place in heated circumstances when there were a number of persons present and in close proximity to each other and emotions were running high. Those factors inevitably affected the reliability of the witness' accounts.



71. Person D's evidence was provided by way of a written statement and is presented in a very similar manner to that of Person E. Person D has not responded to requests for interview and as such it has not been possible to verify their account. It has been afforded little weight.
72. Person B's statement relates primarily to alleged assault and intimidation. Person B was busy working on site and not party to all the altercations or the dialogue with the Police and Council officers. Person B has also not responded to requests for interview and as such it has not been possible to verify their account, so far as relevant to the matters considered in this investigation. It has been afforded little weight.
73. I now deal with each of the matters raised in the Complaints.

### Summary of factual findings

#### **Allegation one - when the Police were called to the properties, Cllr Khan said that he knew the Superintendent/Sergeant, would not be arrested and no action would be taken**

74. I do not find that Cllr Khan relied upon, cited or abused his position as a councillor in his dealings with the Police. During the course of this investigation I have seen evidence of behaviour that both parties may now regret, occurring as it did in the context of an increasingly heated and acrimonious neighbour dispute.
75. However I do not accept that Cllr Khan abused his position in the manner alleged. Some comments about his status as a councillor can be heard in the video and audio evidence of the visits by the Police; however, these appear to have been made by Person J and/or others present. When the Police attended on 3 April 2021, Cllr Khan stayed out of the vicinity of the discussion between the officers and the others present, and he was not at the property when the Police first arrived on 7 April 2021. Person H's evidence was that the comment about Cllr Khan knowing the Superintendent had been made by Cllr Khan's son on 7 April 2021 before Cllr Khan had arrived at the property.
76. Cllr Khan said that he spoke to officers inside Property 1 for reasons of privacy rather than to conceal conversations with the officers or seek to influence them, as had been alleged. I accept that explanation.
77. I do not doubt that Persons B, H and E believe that they heard Cllr Khan make the statements complained of. However, there is no corroborating evidence and the evidence that has been supplied by Persons H, E and B does not have that effect. The balance of the evidence available indicates that some comments were made about Cllr Khan's status and involvement with the Police but that such comments were made by others. Cllr Khan's evidence is that he did not ask or authorise anyone to make such statements, and we have been unable to interview Person J or Cllr Khan's son<sup>14</sup> to ascertain whether they made the statements and if so whether Cllr Khan told them to do so. I agree with Cllr Khan that he is not responsible for statements made about him without his knowledge, authority or consent.
78. It is inherently unlikely that Cllr Khan, as a solicitor and Magistrate, would act towards the Police in the manner alleged and as noted above, cogent evidence would be required to satisfy me on the balance of probabilities that he had so acted. Cllr Khan's evidence is that he has not sought to

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<sup>14</sup> Cllr Khan said that he was out of the country and unavailable

exert any influence and does not have any influence over the Police in any event. He had invited the officers inside the property in order to explain the position and show them some documentation. Persons F and G were present on a number of occasions when the Police attended and gave evidence that they had not heard Cllr Khan refer to his status as a councillor at any time.

79. Person H has referred to the fact that no action has been taken by the Police in respect of any of the matters that were the reason for their visits to the properties as evidence that Cllr Khan is able to exert undue influence on the Police. Only the Police can explain their own operational decisions, but it is evident that any such decisions can be informed by a variety of factors and are not necessarily indicators of bias or undue influence.

80. Allegation one is not made out and the aspects of the Complaints that relate to it are not upheld.

**Allegation two - Cllr Khan sought to exert influence over officers in the Council with a view to receiving preferential treatment.**

81. Persons H and E have alleged that complaints made by Cllr Khan relating to Property 1 were dealt with swiftly and more efficiently than those made by them in relation to Property 1, which were alleged to have resulted in no action or no response. Cllr Khan was alleged to have illegally cut down protected trees and built a fence in excess of the permitted height without planning permission yet has faced no investigation or action despite Person H having brought these matters to the Council's attention. Cllr Khan has stated that the complaints made against him by Persons H and E have not resulted in any response because they are malicious and false and that he stopped works on the boundary fence immediately on receipt of officers' advice that planning permission was required, obviating the need for any further action or response.

82. I made a request for full disclosure of the Planning Enforcement records for the two properties between February and April 2021. Having reviewed the records provided and the responses to the further enquiries made, I have made a series of factual findings. These are contained in paragraphs 83 to 97 below.

83. Cllr Khan contacted various senior officers of the Council in February and March 2021 to complain about matters occurring at Property 2, including one complaint made via his PA, the sending of video evidence and complaints made to both a Director and the Chief Executive. The contact comprised the following:

15 February 2021: Cllr Khan contacted Ms Lynch to allege that tree roots had been damaged during the installation of a septic tank at Property 2.

16 February 2021: Cllr Khan again contacted Ms Lynch making further allegations that trees had been removed by Person H and that Person H was building a summer house at the bottom of their garden and provided photographs.

Mr Perry was contacted by Mr Walster who said that Cllr Khan had been in touch with him.

4 March 2021: Cllr Khan's PA emailed Mr Fothergill and stated that Cllr Khan had just telephoned and asked her to let Planning Enforcement know that works had started at Property 2 - the fence had been dug out and moved onto Property 1' property.

19 March 2021: Cllr Khan sent a video to Mr Back of works being undertaken at Property 2.

26 March 2021: Cllr Khan sent a further complaint to Mr Reeves alleging trespass and damage to property while removing stumps.

30 March 2021: Cllr Khan emailed a series of senior officers and members (detailed further below).

84. In interview for this investigation, Cllr Khan denied having had any involvement with the Planning Enforcement department or having had any communication with them in relation to Property 2/Property 1, save raising a query about the status of paving stones within the curtilage of a listed building. It is clear however that Cllr Khan was in fact in contact with a range of senior officers on a number of occasions between February and March 2021.
85. In his response to the draft of this report, Cllr Khan has stressed that he did not contact either Mr Fothergill or Mr Perry direct and that as such his statement was accurate. That is correct, however Cllr Khan contacted senior officers with management/executive responsibility for planning enforcement, raising planning enforcement issues and with the objective of some action being taken in relation to those issues. The communications admit of no other interpretation. That Cllr Khan did not contact the Planning Enforcement Officers directly does not mean that he did not attempt to influence the actions of those officers, which he did by contacting their superior officers.
86. Cllr Khan's contact with officers culminated in his email of 30 March 2021. The audience and content of that email (which included senior planning officers and the Leader of the Council) and the fact that Cllr Khan sent it from his Council email address and addressed it "*Dear Colleagues*" indicate that it was intended as an instruction to the officers to whom it was sent to act in the way Cllr Khan directed, and was considered by Cllr Khan to be a matter of which the Leader and Chief Executive of the Council should be aware. By sending that email, Cllr Khan was using his position in the Council to seek to advance his own interests.
87. Cllr Khan's use of the phrase "*I am extremely disappointed with the involvement of my own Council*" indicates an intention to influence the recipients of the email by using proprietary and authoritarian language. In expressing disappointment, Cllr Khan is signalling disapproval of the actions taken by the Planning Enforcement department to a wide audience and without having first established whether the position was as had been described by Person H's security guard.
88. In his response to the draft of this report, Cllr Khan has claimed that he was simply urgently seeking an explanation of the situation and clarification of the information that been sent to Person H, which Cllr Khan suspected Person H was misrepresenting. That is not consistent with the wording of the email nor the nature and scope of the persons Cllr Khan sent it to.
89. Cllr Khan has further stated that he did not at any time during any communications with officers of Coventry City Council seek to influence them in any way in breach of the Nolan principles and that there was nothing improper in him sending the email on 30 March 2021. Cllr Khan has asserted that "*any reference/complaint [he] made to Officers was open and transparent and was for a legitimate and proper purpose*" and that he was not acting to advance his own interests and that, had a listed building and a TSN not been involved he would not have contacted the Council at all. In terms of the audience of the email, Cllr Khan has stated that he was simply contacting the same people who had been contacted by Person H about this matter. This 'tit-for-tat' justification

serves only to highlight the existence and nature of the dispute between the parties. That Person H may have contacted certain persons about the matter does not make it right for Cllr Khan to do the same. As a senior member of the Council bound by the Code, Cllr Khan was in a wholly different position to Person H as a local resident.

90. The statements made by Cllr Khan indicate a recognition that he was raising issues and making complaint(s) about matters in which he had a direct interest. Calling rather than emailing senior officers and asking his PA to raise matters with the Planning Enforcement Officers do not indicate openness or transparency. Cllr Khan's reference to acting for a proper purpose fails to recognise the nature of his direct personal interest in the matters to which the complaint(s)/reference(s) related. Cllr Khan has referred to the fact that officers were aware of his interest in the properties as evidence of transparency. Awareness of Cllr Khan's direct personal interest does not excuse Cllr Khan continuing to act in pursuit of those interests and using his status and access as a senior councillor to do so. Further, the acrimonious relationship between the parties and their mutual hostility and animosity have been evident throughout this investigation. These factors militate against Cllr Khan's claims to have been acting solely in the public interest and because of the status of the listed building and the TSN. Further, some of Cllr Khan's communications with officers pre-dated the TSN.
91. Cllr Khan has also stated that what officers did in response to his communications was a matter for them and any referral to Planning Enforcement was a matter for their discretion. However, his objective in sending his communications to officers was clear, as noted above, and in the email of 30 March 2021 Cllr Khan issued a request that "*as a minimum*" he and Person H be sent letters with content directed by Cllr Khan, to be done as soon as possible that morning. The use of the words "*as a minimum*" indicate that he expected further actions to also be taken.
92. Cllr Khan has also stated that he did not send any follow up to his email of 30 March 2021 and that indicates that he was not seeking to exert any influence. The lack of any follow up communication does not change the wording or audience or effect of the email that was sent.
93. The chronology set out at paragraph 25 above demonstrates that Cllr Khan's complaints about Property 2 were consistently dealt with swiftly. Person H's complaints were not dealt with in the same way. Their allegations of unauthorised tree removal at Property 1, confirmed by Mr Penlington in February 2021 to be correct in one respect<sup>15</sup>, have not resulted in any action being taken. The responses received from Mr Fothergill to my enquiries in this regard were as follows:
  - a. To the allegations contained in Person H's emails of 25 and 26 February, 7 March and 22 April and the evidence provided in relation to unauthorised tree works:

*No inspections or investigations undertaken to date as enforcement officers are aware that Cllr Khan is undertaking pre-application discussions with Anne Lynch and a planning application / listed building consent application is expected shortly to resolve issues - given the ongoing informal discussions it is not considered expedient at this time to pursue the matter further.*

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<sup>15</sup> Cllr Khan has stated that this indicates a site visit was undertaken in response to Person H's complaints

- b. To the further allegations and evidence of unauthorised tree works provided by Person H on 7 May 2021:

*As above, no formal investigation to date - informal discussions seeking to resolve issues ongoing between Cllr Khan and Anne Lynch and planning application / listed building consent application expected shortly. Whilst discussions are positive / progress is being made it is not considered expedient to pursue formal enforcement action. If this changes at any time and negotiations falter [sic] and / or matters remain unresolved the investigation can be reactivated and formal enforcement action considered. This is in line with the normal practice of the Council.*

94. It is not clear how allegations relating to the unauthorised removal of protected trees could be resolved by way of a new planning application. It is for the Council to take such action as it considers necessary in response to Person H's allegations, however given that the person complained of is a serving councillor it was incumbent on the Council to ensure that the complaints were dealt with in a fair and even handed manner. Following consideration of this report the Council may wish to consider writing to Person H to provide a comprehensive response to those aspects of their complaints which remain outstanding.
95. The request for information made to the Planning Enforcement department covered the period February to April 2021 as that was the period in which the events described in the Complaints occurred. Following consideration of this report the Council may wish to review Cllr Khan's dealings with the Planning Enforcement department and/or in relation to Property 2 (if any) since that time.
96. In the correspondence I have seen, Cllr Khan was correctly advised of the position under planning law and on the limits to the Council's role as regards the boundary and other civil disputes between the parties. It is clear from the chronology however, and I have found, that notwithstanding that advice Cllr Khan was in regular contact with a variety of senior officers, and his communications received a swift response.
97. In terms of site visits, Mr Fothergill stated that officers attended Property 2 on 4 March 2021 in response to a complaint from Cllr Khan as the complaint alleged that works were being undertaken in breach of the TSN. The nature of that complaint meant that an unannounced site visit was required. I accept that this site visit was undertaken, and on a date not previously offered to Person H for those reasons and not because of Cllr Khan's status or the fact that he had made the complaint. Mr Perry attended Property 2 in response to a complaint from Cllr Khan about a fence that was being erected and Mr Perry attended Property 2 on 1 April 2021, two days after Cllr Khan's email of 30 March 2021 and after the expiry of the TSN. As noted above, no site visits have been undertaken in response to the complaints about Cllr Khan/activities at Property 1.
98. Allegation two is made out and the aspects of the Complaints that relate to it are upheld.

**Allegation three - Cllr Khan used his position to seek to persuade the neighbours to sell him land, on the basis that he could secure planning permission for them in the event that they agreed to his proposal, alternatively that he would 'make life hell' for them in relation to planning if they did not**

99. There is no evidence to corroborate Persons H and E's allegations that Cllr Khan used his position in the way described above and Cllr Khan denies having done so. Cllr Akhtar, who entered into some discussions with Person H on Cllr Khan's behalf, has also denied ever having offered, or being requested by Cllr Khan to offer, any advantageous or disadvantageous treatment with planning matters to Person H. Cllr Khan denies ever having sought to purchase or acquire land from Person H.
100. Cllr Khan and Cllr Akhtar rightly pointed out that planning applications are evaluated by professional officers and, in the case of applications in which members have interests, are determined by the Planning Committee in public session. Cllr Khan does not sit on that Committee and as such has no pre-existing role or involvement in it. His interest in any application relating to Property 1 or Property 2 should be declared. His ability to exert any influence over the outcome of any such application is therefore extremely limited.
101. Person H has pointed out that Cllr Khan is a senior member of the Labour Group and that the membership of the Planning Committee is comprised of a majority of Labour councillors. That is a function of the rules relating to political balance and is not a sufficient basis on which I can conclude that Cllr Khan has influence over the Planning Committee.
102. A planning application submitted in respect of Property 2 was refused by the Council under delegated powers on 13 January 2022<sup>16</sup>. Person H stated that they have been informed that one objection to the application had been received from an unnamed councillor. The stated ground of refusal relates to the impact of the proposed development on the Conservation Area within which Property 2 is situated. Person H has alleged that this is evidence of Cllr Khan's influence over the Planning department and of Cllr Khan making good on his threat to make Person H's 'life hell' in relation to planning. Person H has been informed that any concerns about the decision taken are outside the remit of this investigation and should be raised with the Council and/or on appeal.
103. Given that, the lack of any supporting evidence and the inherent improbability of Cllr Khan purporting to rely upon influence on the planning process that he does not have, to secure additional property from his neighbours that he says he does not need or want, allegation three is not made out and the aspects of the Complaints that relate to it are not upheld.

### The Code

104. The matters referred to in paragraphs 83 to 98 above constitute evidence that Cllr Khan has breached the following provisions of the Code:

#### 10 Impartiality of officers of the council

**As a councillor, you must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

*Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to*

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<sup>16</sup> Reference HH/2021/3249



*understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.*

### 13 Use of position

**As a councillor, you must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.**

*Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.*

105. There is evidence that Cllr Khan has failed to act in accordance with the following Nolan principles:

#### **Selflessness**

Holders of public office should act solely in terms of the public interest.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships. (emphasis added)

106. Cllr Khan had a direct personal interest in matters occurring at Property 2. He was actively involved in an acrimonious and on occasion heated boundary dispute with his neighbours. Cllr Khan's actions in contacting different senior officers to pursue his complaints and allegations about those neighbours, including a Director and the Chief Executive, and in sending the email of 30 March 2021 are evidence that he inappropriately involved himself in a matter in which he had a direct interest and inappropriately sought to influence officers to act in a manner that was to his advantage in promulgating his dispute against his neighbours. There is evidence that he took advantage of his role and status as a councillor in contacting senior officers and in sending the email of 30 March 2021. There is also evidence that Cllr Khan knew he should not act in that way, as indicated in interview for this investigation (paragraph 48).

107. By virtue of his position as Deputy Leader and a Cabinet member, Cllr Khan had privileged access to senior officers of the Council including its Directors and its Chief Executive, access that would not be available to ordinary residents of the Council. That access is provided to enable him to exercise his official duties. It is not provided as a means for Cllr Khan to advance complaints about a matter in which he has a direct personal interest. Cllr Khan used his access for that purpose in the manner described in this report.

108. There is evidence that Cllr Khan was not acting solely in the public interest in making his complaints and allegations about Property 2 and his neighbours but that he was acting to further his own interests. While it is arguable that any complaint about unauthorised works in a conservation area or to protected trees is in the public interest, the manner in which Cllr Khan promulgated his complaints and his subsequent denial of having done so are inconsistent with him having acted solely in the public interest in raising those complaints.

109. Cllr Khan maintains that he was entitled to take the actions that he did and acted in the public interest. He has claimed that he was open and transparent in his communications and that he is entitled to raise complaints about breaches of planning law. He has stated that in his role as Cabinet Member, he had asked relevant officers to implement protocols which ensured members did not have any role in making decisions to prosecute or instigate enforcement proceedings against individuals as such decisions are at the absolute discretion of officers. Cllr Khan does not accept that there is any evidence that he has breached the Nolan principles in that he was not seeking to exert influence nor did he use his position improperly to his advantage or disadvantage or the advantage or disadvantage of anyone else. Cllr Khan's response to the draft of this report concludes with the following statement:

*"It is clear from the evidence on the public planning portal that [Person H] is someone who despises the Council and Council members. [They do] not wish to be bound by the Planning Rules and Laws."*

110. This response demonstrates Cllr Khan's continued and express personal hostility towards Person H, a lack of insight on the part of Cllr Khan and a lack of understanding of his obligations under the Code. Those obligations do not only apply to decision making by members but apply to a range of actions. The requirement for integrity in particular prohibits members from *acting* to gain material or other benefits and requires members to declare *and resolve* interests and relationships. Cllr Khan has not complied with that prohibition or that requirement.

Rosalind Foster  
Browne Jacobson LLP  
28 January 2022

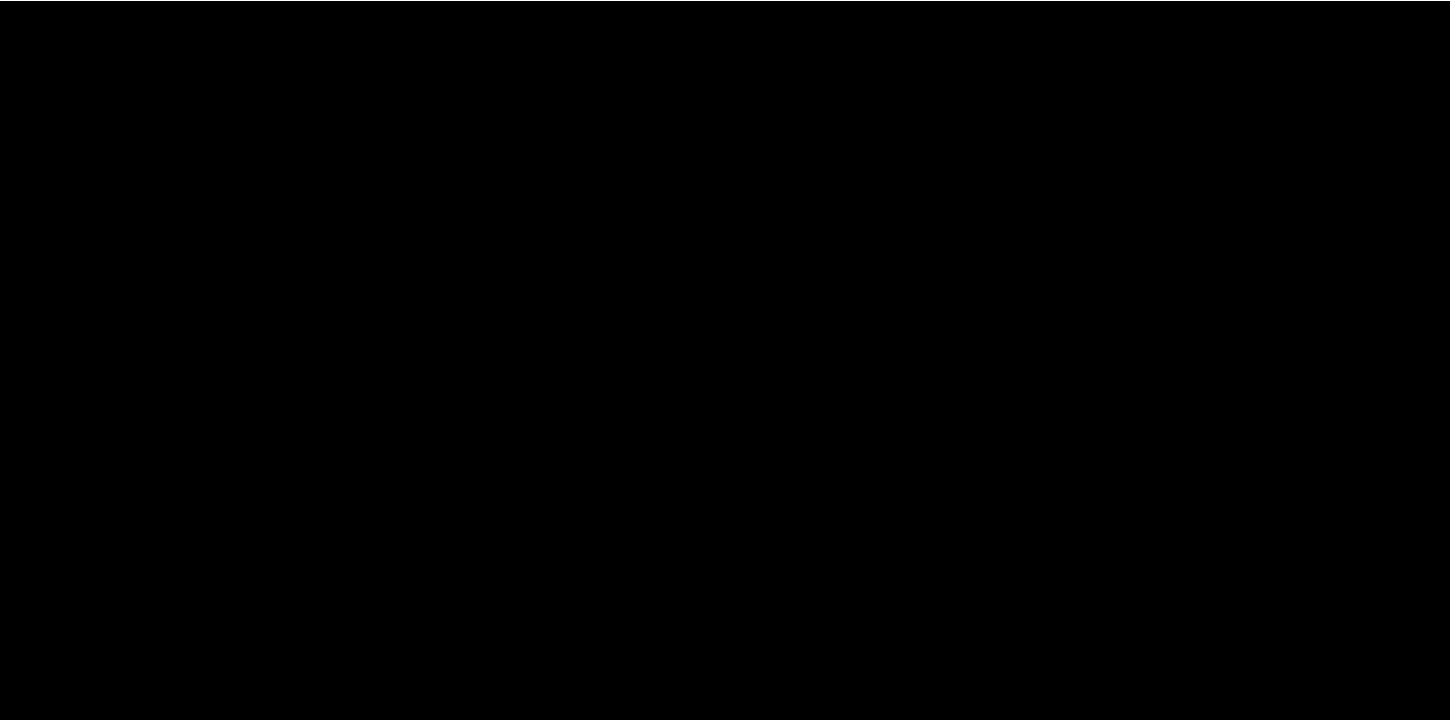




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<b>Descriptor</b>	<b>Category</b>	<b>Role/Interest</b>
Person A	Complainant	Relative of the owners of Property 2 who has stayed at the property
Person B	Complainant	Contractor working at Property 2
Person C	Complainant	Maker of one historic and one recent complaint against Cllr Khan
Person D	Witness	Contractor working at Property 2
Person E	Complainant	Owner/occupier of Property 2 and spouse of Person H
Person F	Witness	Regular visitor to Property 1
Person G	Witness	Worker at Property 1
Person H	Witness	Owner/occupier of Property 2 and spouse of Person E
Person I	Witness	Regular visitor to Property 1
Person J	Witness	Security guard working at Property 1
Person K	Present	Relative of Cllr Khan

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**From:** Back, Rob <Rob.Back@coventry.gov.uk>

**Sent:** 30 March 2021 08:41

**To:** Reeves, Martin <Martin.Reeves@coventry.gov.uk>; Khan, Abdul (Cllr) <Abdul.Khan@coventry.gov.uk>; Walster, Andrew <Andrew.Walster@coventry.gov.uk>; Lynch, Anne <Anne.Lynch@coventry.gov.uk>; Fothergill, Marcus <Marcus.Fothergill@coventry.gov.uk>; Perry, Paul <Paul.Perry@coventry.gov.uk>; Duggins, George (Cllr) <George.Duggins@coventry.gov.uk>

**Subject:** RE: Works at [REDACTED] Boundary

Morning Cllr Khan,

Thanks for the email – we'll look into this as a priority today and come back to you as soon as possible.

Regards,

Rob

**Rob Back**

Strategic Lead - Planning  
Coventry City Council  
One Friargate  
Coventry  
CV1 2GN

Telephone: 024 7697 6349

Email: [rob.back@coventry.gov.uk](mailto:rob.back@coventry.gov.uk)

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**From:** Reeves, Martin <[Martin.Reeves@coventry.gov.uk](mailto:Martin.Reeves@coventry.gov.uk)>

**Sent:** 30 March 2021 08:12

**To:** Khan, Abdul (Cllr) <[Abdul.Khan@coventry.gov.uk](mailto:Abdul.Khan@coventry.gov.uk)>; Back, Rob <[Rob.Back@coventry.gov.uk](mailto:Rob.Back@coventry.gov.uk)>; Walster, Andrew <[Andrew.Walster@coventry.gov.uk](mailto:Andrew.Walster@coventry.gov.uk)>; Lynch, Anne <[Anne.Lynch@coventry.gov.uk](mailto:Anne.Lynch@coventry.gov.uk)>; Fothergill, Marcus <[Marcus.Fothergill@coventry.gov.uk](mailto:Marcus.Fothergill@coventry.gov.uk)>; Perry, Paul <[Paul.Perry@coventry.gov.uk](mailto:Paul.Perry@coventry.gov.uk)>; Duggins, George (Cllr) <[George.Duggins@coventry.gov.uk](mailto:George.Duggins@coventry.gov.uk)>  
**Subject:** RE: Works at [REDACTED] Boundary

Cllr Khan

Sorry to hear that there are still ongoing issues at your property. I know that Rob and planning colleagues will get back promptly to you on the specific clarification you are seeking from the Council.

Best wishes as ever

Martin

---

**From:** Khan, Abdul (Cllr) <[Abdul.Khan@coventry.gov.uk](mailto:Abdul.Khan@coventry.gov.uk)>  
**Sent:** 30 March 2021 06:45  
**To:** Back, Rob <[Rob.Back@coventry.gov.uk](mailto:Rob.Back@coventry.gov.uk)>; Walster, Andrew <[Andrew.Walster@coventry.gov.uk](mailto:Andrew.Walster@coventry.gov.uk)>; Lynch, Anne <[Anne.Lynch@coventry.gov.uk](mailto:Anne.Lynch@coventry.gov.uk)>; Fothergill, Marcus <[Marcus.Fothergill@coventry.gov.uk](mailto:Marcus.Fothergill@coventry.gov.uk)>; Perry, Paul <[Paul.Perry@coventry.gov.uk](mailto:Paul.Perry@coventry.gov.uk)>; Reeves, Martin <[Martin.Reeves@coventry.gov.uk](mailto:Martin.Reeves@coventry.gov.uk)>; Duggins, George (Cllr) <[George.Duggins@coventry.gov.uk](mailto:George.Duggins@coventry.gov.uk)>  
**Subject:** Works at [REDACTED] Boundary

Dear Colleagues

I want to draw your attention to an issue which has come to light yesterday on returning to my house at around 4.30pm.

I was made aware the neighbour at [REDACTED] [Person H] had began some work near the boundary with [REDACTED]. I decided not to go and investigate at that time because it seemed the works were confined to [REDACTED].

On returning I went to the passage way leading to my back garden and noted the neighbour had been excavating along the boundary and removing tree stumps. [They] had ripped up significant chunks of paving belonging to [REDACTED] at one point [they have] removed at least half of the pathway. I have received mixed advice on the status of the paving. As I understand it any lifting/removing/making or damage the neighbour does to the paving is inconsequential, however, if I did the same I would be committing a criminal offence.

[They] had a security guard there who was a dog handler. When I began to ask the builder what [they] had done and why, [they] told me that I should speak to my neighbour. I advised him that I had not consented to any work on or near the boundary or to the lifting of the paving of [REDACTED] or the removal of any part of the passageway (which for me is protected but no so, it would seem for the neighbour). At that point the security guard became aggressive and began shouting at me. I said I had the right to ask the builder what [they were] doing and on whose authority. I was extremely concerned because the excavations were right up to the manhole which is connected to [REDACTED] septic tank. When I stated that there was a risk that the manhole would be destroyed the security

guard then told me that [Person H] had permission from the Council. I asked him to show me what he had and he produced a piece of paper which he claimed was an email from Paul Perry permitting the works. He would not let me read the email and said that I should contact Paul Perry to confirm. He went on to say that they had no choice but to destroy the manhole.

I am extremely disappointed with the involvement of my own Council. Whatever was written in the email of Paul Perry the neighbour has used any ambiguity to persuade the Police and a Security firm that [they have] the permission of the Council to undertake the works.

I understand the Council has no desire to become involved in this matter, however, I would ask as a minimum that I receive a letter as soon as possible this morning confirming that the Council has not granted permission for any works on the boundary and it most definitely has not granted permission for the destruction of the manhole at [REDACTED]. The neighbour should also receive such a letter.

**Councillor Abdul Salam Khan**  
**Deputy Leader of Coventry City Council**  
**Cabinet Member for Policing and Equalities**  
**Actively working with, for and on behalf of the people of Foleshill Ward**  
**Coventry City Council**  
**Room 34, Council House, Earl Street**  
**Coventry, CV1 5RR**

**Tel: 024 7683 1002 (Member Services)**

**Tel: 024 7683 1034 (Direct Dial)**

**Fax: 024 7668 2472**

**Mobile: 07903 847160**

**Email: [abdul.khan@coventry.gov.uk](mailto:abdul.khan@coventry.gov.uk)**

**Web: <http://www.coventry.gov.uk/>**

Browne Jacobson LLP

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## **Appendix 6: Hearing Procedure**

### **Hearing Procedure for Ethics Committee on 8 July 2022 – Councillor Abdul Salam Khan**

1. In line with the usual procedure this meeting will be chaired by one of the Committee's Independent Persons (the Independent Chair). The Independent Chair will confirm that the Committee has the report before them and has read the report and appendices. The Chair will confirm the attendance of the Independent Investigator (Rosalind Foster) and the Independent Person Steve Atkinson (both Rosalind Foster and Steve Atkinson will be attending virtually by way of hybrid arrangement).
2. The Chair will invite the Independent Investigator Rosalind Foster to outline her investigation.
3. The Chair will then invite Councillor Khan to ask any questions of the Independent Investigator. The Committee will then be asked if they have any questions for Rosalind Foster.
4. Councillor Khan will then be invited to state his case. The Chair will then invite Rosalind Foster to ask any questions of Councillor Khan. The Committee will then be asked if they have any questions for Councillor Khan.
5. The Chair will invite Rosalind Foster to sum up.
6. The Chair will invite Councillor Khan to sum up.
7. The Chair will ask the Independent Person, Steve Atkinson for his advice.
8. The Committee will adjourn to make a decision about whether or not Councillor Khan has breached the Code and will provide reasons for the formal decision notice.
9. The Committee will return to the room and advise the Chair of their decision who will then announce the decision with short reasons for the decision.
10. If the Committee decides that the Councillor has not failed to follow the Code, the Committee may then consider whether or not to make any recommendations to Council with a view to promoting high standards of conduct amongst councillors.
11. If the Committee finds that Councillor Khan has breached the Code of Conduct then the Committee will move on to consider whether or not any sanctions should be imposed.
12. The Chair will ask Councillor Khan to make any representations on the question of sanctions.
13. The Committee can ask for more information from either the Councillor or the Investigating Officer in relation to the imposition of sanctions.
14. The Chair will ask the Independent Person for his views on the imposition of sanctions.
15. The Committee will adjourn to consider whether or not any sanctions should be imposed and what they should be
16. The Committee will advise the Chair of their decision on sanctions and the Chair will announce the decision.

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