



PRIVATE AND CONFIDENTIAL

Report by Wilkin Chapman LLP, instructed by the Monitoring Officer of Enfield London Borough Council, into allegations concerning **Councillor Guney Dogan**, arising from a complaint made by Councillor Joanne Laban.

DATED: 2018

VOLUME 1 REPORT

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

a limited liability partnership registered in England number OC343261
authorised and regulated by the Solicitors Regulation Authority

CONFIDENTIAL DRAFT REPORT

This page is intentionally blank

CONFIDENTIAL DRAFT REPORT

Contents	Page
1. Executive Summary	4
2. Councillor Dogan's official details	5
3. Relevant legislation and protocols	6
4. The evidence gathered	9
5. Summary of the material facts	11
6. Reasoning as to whether there have been failures to comply with the Code of Conduct	12
7. Conclusion	17

Volume 2

Appendix A	Schedule of evidence taken into account and list of unused material
------------	---------------------------------------------------------------------

CONFIDENTIAL DRAFT REPORT

1. Executive Summary

- 1.1 Councillor Dogan is a member of Enfield Council (the Council).
- 1.2 He attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 1.3 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 1.4 Councillor Dogan participated in the election of Councillor Karakus to the position of Mayor. Councillor Dogan was not related to Councillor Karakus.
- 1.5 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 1.6 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 1.7 There is no evidence that Councillor Dogan was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.
- 1.8 Our conclusion is that there has been a breach of the code of conduct of the authority concerned by Councillor Dogan.

CONFIDENTIAL DRAFT REPORT

2. Councillor Dogan official details

- 2.1 Councillor Dogan was elected to the Council on 23 May 2014. He is a member of the Labour Party, Cabinet Member for the Environment and represents the Lower Edmonton Ward.
- 2.2 Councillor Dogan also sits on the Primary Exclusions Scrutiny Workstream and represents the Council on the London Councils Associated Joint Committee Transport and Environment Committee, North London Waste Authority and North London Waste Planning Members group.
- 2.3 We understand that Councillor Dogan has received training on the Councillors' Code of Conduct.

CONFIDENTIAL DRAFT REPORT

3. Relevant legislation and protocols

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which the Council is one) must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.

3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles:-

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;
- (e) Openness;
- (f) Honesty;
- (g) Leadership.

3.3 The Council, most recently, adopted a Code of Conduct on 17 July 2013 (attached at WC 1) under the provisions of the Localism Act 2011.

3.4 Paragraph 3 of the Code states:-

" Scope of the Code

3. *The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives."*

3.5 Paragraphs 15 to 18 of the Code states:-

"Registration and Declaration of Interests

15. *You shall fulfil conscientiously the requirements of the Authority in respect of the registration of interests in the Register(s) of Members' Interests and, where it is required or appropriate to do so, shall always draw attention to any relevant interests in any proceeding of the Authority or its Committees, or in any communications with the Authority, its Members or officers.*
16. *Such disclosures must be made even if the interest has already been included on the register of interests or where there is a notification pending to the Monitoring Officer.*
17. *In accordance with this Code, you must keep the register up-to-date and refresh such interests as requested by the Monitoring Officer.*

CONFIDENTIAL DRAFT REPORT

18. *These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."*

3.6 Paragraph 22 and 23 of the Code states:-

"Registration of Interest

22. *You must comply with the requirements of the law and the Council in registering your interests in the Register of Members' Interests. These are explained on the following pages. These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship.*

23. *When considering registering or disclosing any interest, you should ask yourself:*

Would a member of the public, with knowledge of the relevant facts, reasonably regard your interest as so significant that it is likely to prejudice your judgement of the public interest?"

In addition, the Council Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.

- a) *Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Town Clerk of the interest and must not take any steps or further steps in the matter."*

3.7 Paragraph 26 of the Code provides details of the interests which would constitute pecuniary interests for the purposes of Section 30(3) Of the Localism Act 2011. This covers Employment, office, trade, profession or vocation; Sponsorship; Contracts; Land; Licences; Corporate tenancies; and Securities.

3.8 Paragraph 31 of the Code states:-

Disclosure and Duties in Respect of Interests Held by Members

31. "Declaration of Interests not included in the Register

- (1) *If you have an interest in a matter under discussion at a meeting of the authority and you are aware of that interest, you must disclose the interest to the meeting (unless the Authority's Monitoring Officer considers that it is a sensitive interest- see Paragraph 1 3 of this Code*
- (2) *You must notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure (unless it is the subject of a pending notification)*
- (3) *You must then act in accordance with paragraph 2 below*

CONFIDENTIAL DRAFT REPORT

3.9 Paragraph 32 of the Code states:-

32. Disclosable Pecuniary Interests

(1) *Where you*

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

(2) Where you are an executive member taking portfolio decisions and are aware you have a disclosable pecuniary interest, you must notify the Monitoring Officer of that interest within 28 days and take no action in respect of the matter other than refer to another executive member to take the decision.

CONFIDENTIAL DRAFT REPORT

4. Evidence and facts

Our appointment

- 4.1 The Monitoring Officer (MO) of the London Borough of Enfield Council, in consultation with the Independent Person, identified potential breaches of the Code of Conduct.
- 4.2 In August 2018 the MO instructed Wilkin Chapman LLP to perform their investigatory functions in respect of the complaint by Councillor Laban.
- 4.3 The investigation was carried out by Jonathan Goolden, Dave Hayward and Alan Tasker.

The investigation

- 4.4 During the investigation the complainant, Councillor Laban, was contacted to confirm the details of her complaint and to seek any evidence of the alleged relationship between Councillor Dogan and Councillor Saray Karakus.
- 4.5 Councillor Dogan was contacted by letter and was asked to comment on the allegation, in particular his relationship with Councillor Karakus.

Background

- 4.6 The complaint submitted against Councillor Dogan alleged that he attended the Annual General Meeting of the Council on 23 May 2018. At the meeting the Council elected Councillor Saray Karakus to the position of Mayor for the 2018/19 municipal year.
- 4.7 Councillor Dogan, and a number of other Councillors, was related to Councillor Karakus. Councillor Dogan did not declare this relationship and voted on Councillor Karakus' appointment.

Councillor Laban's complaint

- 4.8 Councillor Laban submitted a complaint on 16 July 2018 (attached at WC 2).

Councillor Laban

- 4.9 Councillor Laban was contacted by letter for more details of the alleged relationship. In an email response to our letter Councillor Laban stated that:-
 - (a) the minutes of the meeting when the council appointed the Mayor, Deputy Mayor, Leader and Deputy and Leader show that no interests were declared by any councillor;
 - (b) the Mayor's role comes with a large SRA;
 - (c) Andrew Gilligan's article in The Times included the relationship between them all;
 - (d) she understood that Mr Gilligan talked to the councillors concerned in relation to the Mayor when he contacted them for a comment for the piece;

CONFIDENTIAL DRAFT REPORT

- (e) openness features in both the Enfield Code of Conduct and the Nolan Principles. The councillors in question failed to declare family ties when voting for councillors to take up appointments that came with financial increases.

Councillor Dogan

4.10 Councillor Dogan was contacted by letter and asked to comment on the allegations made by Councillor Laban. Councillor Dogan responded on 21 September 2018 and stated:-

- (a) he attended the Council meeting on 23 May 2018;
- (b) he did not declare any interests at the meeting;
- (c) he was not related to Councillor Karakus;
- (d) he had received training on the code of conduct.

CONFIDENTIAL DRAFT REPORT

5. Summary of the material facts

- 5.1 Councillor Dogan was a member of the Council and attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 5.2 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 5.3 Councillor Dogan participated in the election of Councillor Karakus to the position of Mayor. Councillor Dogan was not related to Councillor Karakus.
- 5.4 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 5.5 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 5.6 There is no evidence that Councillor Dogan was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.

CONFIDENTIAL DRAFT REPORT

6. Reasoning as to whether there have been failures to comply with the Council's Code of Conduct

- 6.1 The allegations referred for investigation relate to whether Councillor Dogan should have been involved in the election of Councillor Karakus to the position of Mayor.
- 6.2 It was alleged that Councillor Dogan was related to Councillor Karakus.
- 6.3 The first issue to consider is whether Councillor Dogan was acting in an official capacity in relation to the alleged conduct.

Official capacity

- 6.4 Section 27(2) of the Localism Act 2011 requires a local authority to adopt a code *"dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity"*.
- 6.5 Paragraph 3 of the Code states:-

"Scope of the Code

3. The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives.

- 6.6 When a member is acting in an official capacity was one of the central issues in *Livingstone v APE* [2006] EWHC 2533. Collins J held that the then Mayor of London was not acting in an official capacity when responding to being "door stepped" by a journalist when leaving the offices of the GLA.
- 6.7 The judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from the local standards committee. In the Case Tribunal's view, the *Livingstone* judgment established that for a councillor to be acting in an official capacity:-
 - (a) *the councillor should be engaged in business directly related to the Council or constituents;*
 - (b) *the link between the councillor's office and the conduct should have a degree of formality.*
- 6.8 In *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC), the tribunal indicated that merely acting, claiming to act or giving the impression of acting as a member was insufficient for the conduct to be covered by the code. There had to be sufficient material for the tribunal to properly conclude that the member was in fact acting as a representative of the council.
- 6.9 The wording of s27(2) of the Localism Act 2011 refers to a requirement to adopt a code dealing with the conduct of members when they are acting in that capacity. *MC* indicates that merely actions, claiming to act or giving the impression of acting as a member is insufficient. The member must actually be acting as such. The second half of the wording at paragraph 2(b) of the

CONFIDENTIAL DRAFT REPORT

Council's Code does not therefore accord with the law and no account has been taken of it.

- 6.10 In this case there is no doubt that attendance at the Annual General Meeting of the Council was for the purpose of acting on Authority business. Therefore, for the purpose of this investigation we have concluded that Councillor Dogan was acting in an official capacity when participating in the election of Councillor Karakus as Mayor.

Disclosable Pecuniary Interest (DPI)

- 6.11 It was alleged that Councillor Dogan had a Disclosable Pecuniary Interest in the election of Councillor Karakus as the position of Mayor attracts a Special Responsibility Allowance of £14,000.

- 6.12 The Code states, at Paragraph 18 that members must register the interest of:-

"your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."

- 6.13 In this case there are two issues to consider, first would any relationship between Councillor Karakus and Councillor Dogan be such that any employment, office, trade, profession or vocation carried on for profit or gain carried out by Councillor Karakus be an interest which the Code requires to be registered? The second consideration is whether the position of Mayor falls within the definition of 'employment' as set out in the Code.

- 6.14 On the first point Family members and close associates are not defined in the Code. In the absence of any other definition, regard may be had to guidance provided by the former Standards Board for England (SfE) in relation to similar wording in the former national model code. At Q88 on page 101 of SfE's publication the Case Review 2010 (2011 version), it is stated that "a member of your family" should be given a very wide meaning, including anybody related by birth, marriage or civil partnership to the councillor such as :-

Partner
Parent
Parent in law
Son or daughter
Stepson or stepdaughter
Child of partner
Brother or sister
Brother or sister of partner
Grandparent
Grandchild
Uncle or aunt
Nephew or niece
Their partners

- 6.15 At Q89 on page 101 - 102 of the same SfE guidance, it is stated that a close associate is a person that the councillor is in regular or irregular contact with over a period of time, who is more than an acquaintance. SfE suggested that a close associate was a person a reasonable member of the public might

CONFIDENTIAL DRAFT REPORT

think the councillor would be prepared to favour or disadvantage when discussing a matter that affected that person because of the connection with them. That might be a friend, colleague, business associate or someone the councillor knew through general social contacts, but a close relationship was implied rather than mere acquaintance.

- 6.16 SfE advised that members and Monitoring Officers should consider the following cumulative factors:-

How many times did the two people meet?
Where did they meet?
Did they regularly attend the same social events?
Did they know each other's families?
Did they visit one another's homes?
Did they have regular business dealings?
Did they work for the same organisation?
Were they close or connected in other ways?

- 6.17 At Q90, SfE advised that enemies might also be close associates
- 6.18 From this it is evident that the requirements of the Council's Code are quite wide ranging when dealing with the Disclosable Pecuniary Interests of Members. Whether this is intentional or in practice workable is questionable but that is the requirement.
- 6.19 We therefore conclude that if the position of Mayor was considered to fall within the categories defined as employment Councillor Dogan would be required to register and disclose any relationship as a Disclosable Pecuniary Interest.
- 6.20 We now must consider whether the position of Mayor could be considered to be an employment, office, trade, profession or vocation carried on for profit or gain.
- 6.21 The position of Mayor is not an employment, trade, profession or vocation. Neither is the position normally regarded as an "office" within the meaning of the first category of Disclosable Pecuniary Interests, even if it was, the Special Responsibility Allowance is intended to compensate the office holder not remunerate them. Therefore, we conclude that the position is not one carried on for profit or gain.
- 6.22 Having regard to the reasoning set out above we have concluded that the position of Mayor is not one that should be registered as a Disclosable Pecuniary Interest. Therefore, if Councillor Dogan was related to Councillor Karakus this did not constitute a pecuniary interest in the election of Councillor Karakus to the position of Mayor.

Other Non-Pecuniary Interests

- 6.23 The Council's Code of Conduct at Paragraph 28 defines other pecuniary interests as:-

"Other interests that would qualify as grounds for bias in an application to quash a decision of the Authority."

CONFIDENTIAL DRAFT REPORT

- 6.24 Bias is usually defined by reference to the definition in *Porter v McGill* [2001] UKLH 67 “*whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.*” Bias is a lack of an ability to come to a matter with an open mind derived from a connection with either the parties or the matter under consideration. It is usually exhibited as apparent rather than actual bias, where the mere fact of the connection is enough to give the appearance of bias.
- 6.25 Having regard to the requirements of the Code to register the interests of family members (and others) it is reasonable to conclude that an informed observer would think that a Councillor would be influenced by such a relationship.
- 6.26 However, Councillor Dogan has confirmed that he is not related to Councillor Karakus. Furthermore, when asked for details of the alleged relationship the complainant merely referred to what appears to be an unsubstantiated report in the Sunday Times of 15 July 2018. In this article it is alleged that Councillor Dogan is the nephew of a former Councillor who, it is also alleged, is related to Councillor Karakus through his cousins.
- 6.27 From this limited information it is difficult to establish what if any relationship may exist. However, from the guidance provided by the then Standards Board it is evident that once relationships get to cousins, or relations of cousins, it is so remote that the relationship itself would not be one that should be registered under the Council's Code.
- 6.28 We therefore conclude that the relationship between Councillor Dogan and Councillor Karakus was not one that constituted an ‘Other Non-Pecuniary Interest’

Disclosure of interests

- 6.29 Paragraph 31 of the Code states:-

“Disclosure and Duties in Respect of Interests Held by Members

31. Declaration of interest not included in the Register

(1) *If you have an interest in a matter under discussion at a meeting of the authority and are aware of that interest, you must disclose the interest to the meeting (unless the Authority's Monitoring Officer considers that it is a sensitive interest.....)”*

(2) Not relevant

(3) *You must then act in accordance with paragraph 2 below.”*

- 6.30 From Paragraph 31. (1) it is clear that any interest, both pecuniary and non-pecuniary must be declared at a meeting of the authority when the matter is under discussion.

CONFIDENTIAL DRAFT REPORT

- 6.31 What is less clear is what the requirements of the Code are once an interest has been disclosed to the meeting. We have carefully considered the Code to interpret sub paragraph (3) of paragraph 31, that is 'You must act in accordance with paragraph 2 below'.
- 6.32 Paragraph 2 of the Code is at the commencement of the Code and refers to who the Code applies to. The only reference to 2 in the Code after Paragraph 31 is Paragraph 32. (2). This sub-paragraph relates to the action an executive member must take when taking a portfolio decision.
- 6.33 However sub-paragraph (1) of Paragraph 32 does deal with the action Members must take, this Paragraph states:-

32. Disclosable Pecuniary Interests

(1) Where you

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

- 6.34 We therefore consider that Councillor Dogan would have been required to declare to the meeting the existence of a non-pecuniary interest if one existed. We can conjecture what action Councillor Dogan should have taken following making any declaration however the Code is ambiguous on this point. First, in that there is no relevant paragraph 2 which Paragraph 31. (3) refers to. The sub-paragraph which starts 'You must' may be the paragraph referred to however this is clearly headed 'Disclosable Pecuniary Interests'.
- 6.35 On this basis, the Code is unclear whether Councillor Dogan would have been permitted to participate in the deliberation and vote on the election of Councillor Karakus to the position of Mayor if he did have an interest.
- 6.36 Our conclusion is that Councillor Dogan did not breach Paragraph 31. (1) of the Council's Code of Conduct by not making a declaration to the meeting on 23 May 2018 as any relationship to Councillor Karakus which may have existed was so remote.

CONFIDENTIAL DRAFT REPORT

7. Conclusion

- 7.1 Our conclusion is that there has not been a failure to comply with the code of conduct of the authority concerned.

Wilkin Chapman LLP

October 2018



PRIVATE AND CONFIDENTIAL

Report by Wilkin Chapman LLP, instructed by the Monitoring Officer of Enfield London Borough Council, into allegations concerning **Councillor Elif Erbil**, arising from a complaint made by Councillor Joanne Laban.

DATED: 2018

VOLUME 1 REPORT

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

a limited liability partnership registered in England number OC343261
authorised and regulated by the Solicitors Regulation Authority

CONFIDENTIAL DRAFT REPORT

This page is intentionally blank

CONFIDENTIAL DRAFT REPORT

Contents	Page
1. Executive Summary	4
2. Councillor Erbil's official details	5
3. Relevant legislation and protocols	6
4. The evidence gathered	9
5. Summary of the material facts	11
6. Reasoning as to whether there have been failures to comply with the Code of Conduct	12
7. Conclusion	17

Volume 2

Appendix A	Schedule of evidence taken into account and list of unused material
------------	---------------------------------------------------------------------

CONFIDENTIAL DRAFT REPORT

1. Executive Summary

- 1.1 Councillor Erbil is a member of Enfield Council (the Council).
- 1.2 She attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 1.3 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 1.4 Councillor Erbil participated in the election of Councillor Karakus to the position of Mayor. Councillor Erbil was not related to Councillor Karakus.
- 1.5 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 1.6 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 1.7 There is no evidence that Councillor Erbil was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.
- 1.8 Our conclusion is that there has not been a breach of the code of conduct of the authority concerned by Councillor Erbil.

CONFIDENTIAL DRAFT REPORT

2. Councillor Erbil's official details

- 2.1 Councillor Erbil was elected to the Council on 18 May 2017. She is a Member of the Labour party and represents the Enfield Lock Ward.
- 2.2 Councillor Erbil is appointed to the Enfield Lock Ward Forum, Learning Difficulties Partnership Board and the Planning Committee.
- 2.3 Councillor Erbil represents the Council on the Health and Social Partnership Boards and the Royal Free Hospital NHS Foundation Trust – Council of Governors.
- 2.4 We are not aware whether Councillor Erbil has received any training on the Councils Code of Conduct.

CONFIDENTIAL DRAFT REPORT

3. Relevant legislation and protocols

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which the Council is one) must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.

3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles:-

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;
- (e) Openness;
- (f) Honesty;
- (g) Leadership.

3.3 The Council, most recently, adopted a Code of Conduct on 17 July 2013 (attached at WC 1) under the provisions of the Localism Act 2011.

3.4 Paragraph 3 of the Code states:-

" Scope of the Code

3. *The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives."*

3.5 Paragraphs 15 to 18 of the Code states:-

"Registration and Declaration of Interests

15. *You shall fulfil conscientiously the requirements of the Authority in respect of the registration of interests in the Register(s) of Members' Interests and, where it is required or appropriate to do so, shall always draw attention to any relevant interests in any proceeding of the Authority or its Committees, or in any communications with the Authority, its Members or officers.*
16. *Such disclosures must be made even if the interest has already been included on the register of interests or where there is a notification pending to the Monitoring Officer.*

CONFIDENTIAL DRAFT REPORT

17. *In accordance with this Code, you must keep the register up-to-date and refresh such interests as requested by the Monitoring Officer.*

18. *These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."*

3.6 Paragraph 22 and 23 of the Code states:-

"Registration of Interest

22. *You must comply with the requirements of the law and the Council in registering your interests in the Register of Members' Interests. These are explained on the following pages. These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship.*

23. *When considering registering or disclosing any interest, you should ask yourself:*

Would a member of the public, with knowledge of the relevant facts, reasonably regard your interest as so significant that it is likely to prejudice your judgement of the public interest?"

In addition, the Council Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.

a) *Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Town Clerk of the interest and must not take any steps or further steps in the matter."*

3.7 Paragraph 26 of the Code provides details of the interests which would constitute pecuniary interests for the purposes of Section 30(3) Of the Localism Act 2011. This covers Employment, office, trade, profession or vocation; Sponsorship; Contracts; Land; Licences; Corporate tenancies; and Securities.

3.8 Paragraph 31 of the Code states:-

Disclosure and Duties in Respect of Interests Held by Members

31. "Declaration of Interests not included in the Register

(1) *If you have an interest in a matter under discussion at a meeting of the authority and you are aware of that interest, you must disclose the interest to the meeting (unless the Authority's Monitoring Officer considers that it is a sensitive interest- see Paragraph 1 3 of this Code*

(2) *You must notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure (unless it is the subject of a pending notification)*

CONFIDENTIAL DRAFT REPORT

(3) *You must then act in accordance with paragraph 2 below*

3.9 Paragraph 32 of the Code states:-

32. Disclosable Pecuniary Interests

(1) *Where you*

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

(2) Where you are an executive member taking portfolio decisions and are aware you have a disclosable pecuniary interest, you must notify the Monitoring Officer of that interest within 28 days and take no action in respect of the matter other than refer to another executive member to take the decision.

CONFIDENTIAL DRAFT REPORT

4. Evidence and facts

Our appointment

- 4.1 The Monitoring Officer (MO) of the London Borough of Enfield Council, in consultation with the Independent Person, identified potential breaches of the Code of Conduct.
- 4.2 In August 2018 the MO instructed Wilkin Chapman LLP to perform their investigatory functions in respect of the complaint of Councillor Laban.
- 4.3 The investigation was carried out by Jonathan Goolden, Dave Hayward and Alan Tasker.

The investigation

- 4.4 During the investigation the complainant, Councillor Laban, was contacted to confirm the details of her complaint and to seek any evidence of the alleged relationship between Councillor Erbil and Councillor Saray Karakus.
- 4.5 Councillor Erbil was contacted by letter and was asked to comment on the allegation, in particular her relationship with Councillor Karakus.

Background

- 4.6 The complaint submitted against Councillor Erbil alleged that she attended the Annual General Meeting of the Council on 23 May 2018. At the meeting the Council elected Councillor Saray Karakus to the position of Mayor for the 2018/19 municipal year.
- 4.7 Councillor Erbil was related to Councillor Karakus. Councillor Erbil did not declare this relationship and voted on Councillor Karakus' appointment.

Councillor Laban's complaint

- 4.8 Councillor Laban submitted a complaint on 16 July 2018 (attached at WC 2).

Councillor Laban

- 4.9 Councillor Laban was contacted by letter for more details of the alleged relationship. In an email response to our letter Councillor Laban stated that:-
 - (a) the minutes of the meeting when the council appointed the Mayor, Deputy Mayor, Leader and Deputy and Leader show that no interests were declared by any councillor;
 - (b) the Mayor's role comes with a large SRA;
 - (c) Andrew Gilligan's article in The Times included the relationship between them all;
 - (d) she understood that Mr Gilligan talked to the councillors concerned in relation to the Mayor when he contacted them for a comment for the piece;

CONFIDENTIAL DRAFT REPORT

- (e) openness features in both the Enfield Code of Conduct and the Nolan Principles. The councillors in question failed to declare family ties when voting for councillors to take up appointments that came with financial increases.

Councillor Elif Erbil

4.10 Councillor Erbil was contacted by letter and asked to comment on the allegations made by Councillor Laban. Councillor Erbil responded on 20 September 2018 and stated:-

- (a) she was not related to Councillor Karakus;
- (b) she was related to Councillors Susan Erbil and Guney Dogan.

CONFIDENTIAL DRAFT REPORT

5. Summary of the material facts

- 5.1 Councillor Erbil was a member of the Council and attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 5.2 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 5.3 Councillor Erbil participated in the election of Councillor Karakus to the position of Mayor. Councillor Erbil was not related to Councillor Karakus.
- 5.4 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 5.5 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 5.6 There is no evidence that Councillor Erbil was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.

CONFIDENTIAL DRAFT REPORT

6. Reasoning as to whether there have been failures to comply with the Council's Code of Conduct

- 6.1 The allegations referred for investigation relate to whether Councillor Erbil should have been involved in the election of Councillor Karakus to the position of Mayor.
- 6.2 It was alleged that Councillor Erbil was related to Councillor Karakus.
- 6.3 The first issue to consider is whether Councillor Erbil was acting in an official capacity in relation to the alleged conduct.

Official capacity

- 6.4 Section 27(2) of the Localism Act 2011 requires a local authority to adopt a code *"dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity"*.
- 6.5 Paragraph 3 of the Code states:-

"Scope of the Code

3. The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives.

- 6.6 When a member is acting in an official capacity was one of the central issues in *Livingstone v APE* [2006] EWHC 2533. Collins J held that the then Mayor of London was not acting in an official capacity when responding to being "door stepped" by a journalist when leaving the offices of the GLA.
- 6.7 The judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from the local standards committee. In the Case Tribunal's view, the *Livingstone* judgment established that for a councillor to be acting in an official capacity:-
 - (a) *the councillor should be engaged in business directly related to the Council or constituents;*
 - (b) *the link between the councillor's office and the conduct should have a degree of formality.*
- 6.8 In *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC), the tribunal indicated that merely acting, claiming to act or giving the impression of acting as a member was insufficient for the conduct to be covered by the code. There had to be sufficient material for the tribunal to properly conclude that the member was in fact acting as a representative of the council.
- 6.9 The wording of s27(2) of the Localism Act 2011 refers to a requirement to adopt a code dealing with the conduct of members when they are acting in that capacity. *MC* indicates that merely actions, claiming to act or giving the impression of acting as a member is insufficient. The member must actually be acting as such. The second half of the wording at paragraph 2(b) of the

CONFIDENTIAL DRAFT REPORT

Council's Code does not therefore accord with the law and no account has been taken of it.

- 6.10 In this case there is no doubt that attendance at the Annual General Meeting of the Council was for the purpose of acting on Authority business. Therefore for the purpose of this investigation we have concluded that Councillor Erbil was acting in an official capacity when participating in the election of Councillor Karakus as Mayor.

Disclosable Pecuniary Interest (DPI)

- 6.11 It was alleged that Councillor Erbil had a Disclosable Pecuniary Interest in the election of Councillor Karakus as the position of Mayor attracts a Special Responsibility Allowance of £14,000.

- 6.12 The Code states, at Paragraph 18 that members must register the interest of:-

"your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."

- 6.13 In this case there are two issues to consider, first would any relationship between Councillor Karakus and Councillor Erbil be such that any employment, office, trade, profession or vocation carried on for profit or gain carried out by Councillor Karakus be an interest which the Code requires to be registered? The second consideration is whether the position of Mayor falls within the definition of 'employment' as set out in the Code.

- 6.14 On the first point Family members and close associates are not defined in the Code. In the absence of any other definition, regard may be had to guidance provided by the former Standards Board for England (SfE) in relation to similar wording in the former national model code. At Q88 on page 101 of SfE's publication the Case Review 2010 (2011 version), it is stated that "a member of your family" should be given a very wide meaning, including anybody related by birth, marriage or civil partnership to the councillor such as :-

- Partner
- Parent
- Parent in law
- Son or daughter
- Stepson or stepdaughter
- Child of partner
- Brother or sister
- Brother or sister of partner
- Grandparent
- Grandchild
- Uncle or aunt
- Nephew or niece
- Their partners

- 6.15 At Q89 on page 101 - 102 of the same SfE guidance, it is stated that a close associate is a person that the councillor is in regular or irregular contact with over a period of time, who is more than an acquaintance. SfE suggested that a close associate was a person a reasonable member of the public might think

CONFIDENTIAL DRAFT REPORT

the councillor would be prepared to favour or disadvantage when discussing a matter that affected that person because of the connection with them. That might be a friend, colleague, business associate or someone the councillor knew through general social contacts, but a close relationship was implied than mere acquaintance.

- 6.16 SfE advised that members and Monitoring Officers should consider the following cumulative factors:-

- How many times did the two people meet?
- Where did they meet?
- Did they regularly attend the same social events?
- Did they know each other's families?
- Did they visit one another's homes?
- Did they have regular business dealings?
- Did they work for the same organisation?
- Were they close or connected in other ways?

- 6.17 At Q90, SfE advised that enemies might also be close associates
- 6.18 From this it is evident that the requirements of the Council's Code are quite wide ranging when dealing with the Disclosable Pecuniary Interests of Members. Whether this is intentional or in practice workable is questionable but that is the requirement.
- 6.19 We therefore conclude that if the position of Mayor was considered to fall within the categories defined as employment Councillor Erbil would be required to register and disclose any relationship as a Disclosable Pecuniary Interest.
- 6.20 We now must consider whether the position of Mayor could be considered to be an employment, office, trade, profession or vocation carried on for profit or gain.
- 6.21 The position of Mayor is not an employment, trade, profession or vocation. Neither is the position normally regarded as an "office" within the meaning of the first category of Disclosable Pecuniary Interests, even if it was, the Special Responsibility Allowance is intended to compensate the office holder not remunerate them. Therefore, we conclude that the position is not one carried on for profit or gain.
- 6.22 Having regard to the reasoning set out above we have concluded that the position of Mayor is not one that should be registered as a Disclosable Pecuniary Interest. Therefore, if Councillor Erbil was related to Councillor Karakus this did not constitute a pecuniary interest in the election of Councillor Karakus to the position of Mayor.

Other Non-Pecuniary Interests

- 6.23 The Council's Code of Conduct at Paragraph 28 defines other pecuniary interests as:-

"Other interests that would qualify as grounds for bias in an application to quash a decision of the Authority."

CONFIDENTIAL DRAFT REPORT

- 6.24 Bias is usually defined by reference to the definition in *Porter v McGill* [2001] UKLH 67 “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.” Bias is a lack of an ability to come to a matter with an open mind derived from a connection with either the parties or the matter under consideration. It is usually exhibited as apparent rather than actual bias, where the mere fact of the connection is enough to give the appearance of bias.
- 6.25 Having regard to the requirements of the Code to register the interests of family members (and others) it is reasonable to conclude that an informed observer would think that a Councillor would be influenced by such a relationship.
- 6.26 However, Councillor Erbil has confirmed that she is not related to Councillor Karakus. Furthermore, when asked for details of the alleged relationship the complainant merely referred to what appears to be an unsubstantiated report in the Sunday Times of 15 July 2018. In this article it is alleged that Councillor Erbil is the niece of a former Councillor who, it is also alleged, is related to Councillor Karakus through his cousins.
- 6.27 From this limited information it is difficult to establish what if any relationship may exist. However, from the guidance provided by the then Standards Board it is evident that once relationships get to cousins, or relations of cousins, it is so remote that the relationship itself would not be one that should be registered under the Council's Code.
- 6.28 We therefore conclude that the relationship between Councillor Erbil and Councillor Karakus was not one that constituted an ‘Other Non-Pecuniary Interest’

Disclosure of interests

- 6.29 Paragraph 31 of the Code states:-

“Disclosure and Duties in Respect of Interests Held by Members

31. Declaration of interest not included in the Register

- (1) *If you have an interest in a matter under discussion at a meeting of the authority and are aware of that interest, you must disclose the interest to the meeting (unless the Authority's Monitoring Officer considers that it is a sensitive interest.....)”*
- (2) Not relevant
- (3) *You must then act in accordance with paragraph 2 below.”*

- 6.30 From Paragraph 31. (1) it is clear that any interest, both pecuniary and non-pecuniary must be declared at a meeting of the authority when the matter is under discussion.

CONFIDENTIAL DRAFT REPORT

- 6.31 What is less clear is what the requirements of the Code are once an interest has been disclosed to the meeting. We have carefully considered the Code to interpret sub paragraph (3) of paragraph 31, that is 'You must act in accordance with paragraph 2 below'.
- 6.32 Paragraph 2 of the Code is at the commencement of the Code and refers to who the Code applies to. The only reference to 2 in the Code after Paragraph 31 is Paragraph 32. (2). This sub-paragraph relates to the action an executive member must take when taking a portfolio decision.
- 6.33 However sub-paragraph (1) of Paragraph 32 does deal with the action Members must take, this Paragraph states:-

32. Disclosable Pecuniary Interests

(1) Where you

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

- 6.34 We therefore consider that Councillor Erbil would have been required to declare to the meeting the existence of a non-pecuniary interest if one existed. We can conjecture what action Councillor Erbil should have taken following making the declaration however the Code is ambiguous on this point. First, in that there is no relevant paragraph 2 which Paragraph 31. (3) refers to. The sub-paragraph which starts 'You must' may be the paragraph referred to however this is clearly headed 'Disclosable Pecuniary Interests'.
- 6.35 On this basis, the Code is unclear whether Councillor Erbil would have been permitted to participate in the deliberation and vote on the election of Councillor Karakus to the position of Mayor if she did have an interest.
- 6.36 Our conclusion is that Councillor Erbil did not breach Paragraph 31. (1) of the Council's Code of Conduct by not making a declaration to the meeting on 23 May 2018 as any relationship to Councillor Karakus which may have existed was so remote.

CONFIDENTIAL DRAFT REPORT

7. Conclusion

- 7.1 Our conclusion is that there has not been a failure to comply with the code of conduct of the authority concerned.

Wilkin Chapman LLP

October 2018



PRIVATE AND CONFIDENTIAL

Report by Wilkin Chapman LLP, instructed by the Monitoring Officer of Enfield London Borough Council, into allegations concerning **Councillor Susan Erbil**, arising from a complaint made by Councillor Joanne Laban.

DATED: 2018

VOLUME 1 REPORT

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

a limited liability partnership registered in England number OC343261
authorised and regulated by the Solicitors Regulation Authority

CONFIDENTIAL DRAFT REPORT

This page is intentionally blank

CONFIDENTIAL DRAFT REPORT

Contents	Page
1. Executive Summary	4
2. Councillor Erbil's official details	5
3. Relevant legislation and protocols	6
4. The evidence gathered	9
5. Summary of the material facts	11
6. Reasoning as to whether there have been failures to comply with the Code of Conduct	12
7. Conclusion	17

Volume 2

Appendix A	Schedule of evidence taken into account and list of unused material
------------	---------------------------------------------------------------------

CONFIDENTIAL DRAFT REPORT

1. Executive Summary

- 1.1 Councillor Erbil is a member of Enfield Council (the Council).
- 1.2 She attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 1.3 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 1.4 Councillor Erbil participated in the election of Councillor Karakus to the position of Mayor. Councillor Erbil was not related to Councillor Karakus.
- 1.5 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 1.6 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 1.7 There is no evidence that Councillor Erbil was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.
- 1.8 Our conclusion is that there has not been a breach of the code of conduct of the authority concerned by Councillor Erbil.

CONFIDENTIAL DRAFT REPORT

2. Councillor Erbil's official details

- 2.1 Councillor Erbil was elected to the Council on 3 May 2018. She is a member of the Labour Party and represents the Ponders End Ward.
- 2.2 Councillor Erbil is appointed to the Deaf Community Forum, Overview & Scrutiny Committee, Ponders End Ward Forum and the Transition of Children Leaving Care Scrutiny Workstream.
- 2.3 Councillor Erbil represents the Council on the Crimstoppers Trust.
- 2.4 We understand that Councillor Erbil has received training on the Councillors' Code of Conduct.

CONFIDENTIAL DRAFT REPORT

3. Relevant legislation and protocols

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which the Council is one) must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.

3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles:-

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;
- (e) Openness;
- (f) Honesty;
- (g) Leadership.

3.3 The Council, most recently, adopted a Code of Conduct on 17 July 2013 (attached at WC 1) under the provisions of the Localism Act 2011.

3.4 Paragraph 3 of the Code states:-

" Scope of the Code

3. *The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives."*

3.5 Paragraphs 15 to 18 of the Code states:-

"Registration and Declaration of Interests

15. *You shall fulfil conscientiously the requirements of the Authority in respect of the registration of interests in the Register(s) of Members' Interests and, where it is required or appropriate to do so, shall always draw attention to any relevant interests in any proceeding of the Authority or its Committees, or in any communications with the Authority, its Members or officers.*
16. *Such disclosures must be made even if the interest has already been included on the register of interests or where there is a notification pending to the Monitoring Officer.*
17. *In accordance with this Code, you must keep the register up-to-date and refresh such interests as requested by the Monitoring Officer.*

CONFIDENTIAL DRAFT REPORT

18. *These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."*

3.6 Paragraph 22 and 23 of the Code states:-

"Registration of Interest

22. *You must comply with the requirements of the law and the Council in registering your interests in the Register of Members' Interests. These are explained on the following pages. These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship.*

23. *When considering registering or disclosing any interest, you should ask yourself:*

Would a member of the public, with knowledge of the relevant facts, reasonably regard your interest as so significant that it is likely to prejudice your judgement of the public interest?"

In addition, the Council Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.

- a) *Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Town Clerk of the interest and must not take any steps or further steps in the matter."*

3.7 Paragraph 26 of the Code provides details of the interests which would constitute pecuniary interests for the purposes of Section 30(3) Of the Localism Act 2011. This covers Employment, office, trade, profession or vocation; Sponsorship; Contracts; Land; Licences; Corporate tenancies; and Securities.

3.8 Paragraph 31 of the Code states:-

Disclosure and Duties in Respect of Interests Held by Members

31. "Declaration of Interests not included in the Register

- (1) *If you have an interest in a matter under discussion at a meeting of the authority and you are aware of that interest, you must disclose the interest to the meeting (unless the Authority's Monitoring Officer considers that it is a sensitive interest- see Paragraph 1 3 of this Code*
- (2) *You must notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure (unless it is the subject of a pending notification)*
- (3) *You must then act in accordance with paragraph 2 below*

CONFIDENTIAL DRAFT REPORT

3.9 Paragraph 32 of the Code states:-

32. Disclosable Pecuniary Interests

(1) *Where you*

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

(2) Where you are an executive member taking portfolio decisions and are aware you have an disclosable pecuniary interest, you must notify the Monitoring Officer of that interest within 28 days and take no action in respect of the matter other than refer to another executive member to take the decision.

CONFIDENTIAL DRAFT REPORT

4. Evidence and facts

Our appointment

- 4.1 The Monitoring Officer (MO) of the London Borough of Enfield Council, in consultation with the Independent Person, identified potential breaches of the Code of Conduct.
- 4.2 In August 2018 the MO instructed Wilkin Chapman LLP to perform their investigatory functions in respect of the complaint of Councillor Laban.
- 4.3 The investigation was carried out by Jonathan Goolden, Dave Hayward and Alan Tasker.

The investigation

- 4.4 During the investigation the complainant, Councillor Laban, was contacted to confirm the details of her complaint and to seek any evidence of the alleged relationship between Councillor Erbil and Councillor Saray Karakus.
- 4.5 Councillor Erbil was contacted by letter and was asked to comment on the allegation, in particular her relationship with Councillor Karakus.

Background

- 4.6 The complaint submitted against Councillor Erbil alleged that she attended the Annual General Meeting of the Council on 23 May 2018. At the meeting the Council elected Councillor Saray Karakus to the position of Mayor for the 2018/19 municipal year.
- 4.7 Councillor Erbil was related to Councillor Karakus. Councillor Erbil did not declare this relationship and voted on Councillor Karakus' appointment.

Councillor Laban's complaint

- 4.8 Councillor Laban submitted a complaint on 16 July 2018 (attached at WC 2).

Councillor Laban

- 4.9 Councillor Laban was contacted by letter for more details of the alleged relationship. In an email response to our letter Councillor Laban stated that:-
 - (a) the minutes of the meeting when the council appointed the Mayor, Deputy Mayor, Leader and Deputy and Leader show that no interests were declared by any councillor;
 - (b) the Mayor's role comes with a large SRA;
 - (c) Andrew Gilligan's article in The Times included the relationship between them all;
 - (d) she understood that Mr Gilligan talked to the councillors concerned in relation to the Mayor when he contacted them for a comment for the piece;

CONFIDENTIAL DRAFT REPORT

- (e) openness features in both the Enfield Code of Conduct and the Nolan Principles. The councillors in question failed to declare family ties when voting for councillors to take up appointments that came with financial increases.

Councillor Erbil

4.10 Councillor Erbil was contacted by letter and asked to comment on the allegations made by Councillor Laban. Councillor Erbil responded on 14 September 2018 and stated:-

- (a) she attended the Council meeting on 23 May 2018;
- (b) she did not declare any interest as she did not see any issues arising in relation to interests at the meeting;
- (c) she was not related to the Mayor, the only Councillors she was related to were Councillors Elif Erbil and Guney Dogan;
- (d) she had received training on the code of conduct and had been given advice by Jeremy Chambers on declarations of interest.

CONFIDENTIAL DRAFT REPORT

5. Summary of the material facts

- 5.1 Councillor Erbil was a member of the Council and attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 5.2 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 5.3 Councillor Erbil participated in the election of Councillor Karakus to the position of Mayor. Councillor Erbil was not related to Councillor Karakus.
- 5.4 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 5.5 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 5.6 There is no evidence that Councillor Erbil was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.

CONFIDENTIAL DRAFT REPORT

6. Reasoning as to whether there have been failures to comply with the Council's Code of Conduct

- 6.1 The allegations referred for investigation relate to whether Councillor Erbil should have been involved in the election of Councillor Karakus to the position of Mayor.
- 6.2 It was alleged that Councillor Erbil was related to Councillor Karakus.
- 6.3 The first issue to consider is whether Councillor Erbil was acting in an official capacity in relation to the alleged conduct.

Official capacity

- 6.4 Section 27(2) of the Localism Act 2011 requires a local authority to adopt a code *"dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity"*.
- 6.5 Paragraph 3 of the Code states:-

"Scope of the Code

3. The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives.

- 6.6 When a member is acting in an official capacity was one of the central issues in *Livingstone v APE* [2006] EWHC 2533. Collins J held that the then Mayor of London was not acting in an official capacity when responding to being "door stepped" by a journalist when leaving the offices of the GLA.
- 6.7 The judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from the local standards committee. In the Case Tribunal's view, the *Livingstone* judgment established that for a councillor to be acting in an official capacity:-
 - (a) *the councillor should be engaged in business directly related to the Council or constituents;*
 - (b) *the link between the councillor's office and the conduct should have a degree of formality.*
- 6.8 In *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC), the tribunal indicated that merely acting, claiming to act or giving the impression of acting as a member was insufficient for the conduct to be covered by the code. There had to be sufficient material for the tribunal to properly conclude that the member was in fact acting as a representative of the council.
- 6.9 The wording of s27(2) of the Localism Act 2011 refers to a requirement to adopt a code dealing with the conduct of members when they are acting in that capacity. *MC* indicates that merely actions, claiming to act or giving the impression of acting as a member is insufficient. The member must actually be acting as such. The second half of the wording at paragraph 2(b) of the

CONFIDENTIAL DRAFT REPORT

Council's Code does not therefore accord with the law and no account has been taken of it.

- 6.10 In this case there is no doubt that attendance at the Annual General Meeting of the Council was for the purpose of acting on Authority business. Therefore for the purpose of this investigation we have concluded that Councillor Erbil was acting in an official capacity when participating in the election of Councillor Karakus as Mayor.

Disclosable Pecuniary Interest (DPI)

- 6.11 It was alleged that Councillor Erbil had a Disclosable Pecuniary Interest in the election of Councillor Karakus as the position of Mayor attracts a Special Responsibility Allowance of £14,000.

- 6.12 The Code states, at Paragraph 18 that members must register the interest of:-

"your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."

- 6.13 In this case there are two issues to consider, first would any relationship between Councillor Karakus and Councillor Erbil be such that any employment, office, trade, profession or vocation carried on for profit or gain carried out by Councillor Karakus be an interest which the Code requires to be registered? The second consideration is whether the position of Mayor falls within the definition of 'employment' as set out in the Code.
- 6.14 On the first point Family members and close associates are not defined in the Code. In the absence of any other definition, regard may be had to guidance provided by the former Standards Board for England (SfE) in relation to similar wording in the former national model code. At Q88 on page 101 of SfE's publication the Case Review 2010 (2011 version), it is stated that "a member of your family" should be given a very wide meaning, including anybody related by birth, marriage or civil partnership to the councillor such as :-

Partner
Parent
Parent in law
Son or daughter
Stepson or stepdaughter
Child of partner
Brother or sister
Brother or sister of partner
Grandparent
Grandchild
Uncle or aunt
Nephew or niece
Their partners

- 6.15 At Q89 on page 101 - 102 of the same SfE guidance, it is stated that a close associate is a person that the councillor is in regular or irregular contact with over a period of time, who is more than an acquaintance. SfE suggested that a close associate was a person a reasonable member of the public might

CONFIDENTIAL DRAFT REPORT

think the councillor would be prepared to favour or disadvantage when discussing a matter that affected that person because of the connection with them. That might be a friend, colleague, business associate or someone the councillor knew through general social contacts, but a close relationship was implied than mere acquaintance.

- 6.16 SfE advised that members and Monitoring Officers should consider the following cumulative factors:-

How many times did the two people meet?
Where did they meet?
Did they regularly attend the same social events?
Did they know each other's families?
Did they visit one another's homes?
Did they have regular business dealings?
Did they work for the same organisation?
Were they close or connected in other ways?

- 6.17 At Q90, SfE advised that enemies might also be close associates.
- 6.18 From this it is evident that the requirements of the Council's Code are quite wide ranging when dealing with the Disclosable Pecuniary Interests of Members. Whether this is intentional or in practice workable is questionable but that is the requirement.
- 6.19 We therefore conclude that if the position of Mayor was considered to fall within the categories defined as employment Councillor Erbil would be required to register and disclose any relationship as a Disclosable Pecuniary Interest.
- 6.20 We now must consider whether the position of Mayor could be considered to be an employment, office, trade, profession or vocation carried on for profit or gain.
- 6.21 The position of Mayor is not an employment, trade, profession or vocation. Neither is the position normally regarded as an "office" within the meaning of the first category of Disclosable Pecuniary Interests, even if it was, the Special Responsibility Allowance is intended to compensate the office holder not remunerate them. Therefore we conclude that the position is not one carried on for profit or gain.
- 6.22 Having regard to the reasoning set out above we have concluded that the position of Mayor is not one that should be registered as a Disclosable Pecuniary Interest. Therefore if Councillor Erbil was related to Councillor Karakus this did not constitute a pecuniary interest in the election of Councillor Karakus to the position of Mayor.

Other Non-Pecuniary Interests

- 6.23 The Council's Code of Conduct at Paragraph 28 defines other pecuniary interests as:-

"Other interests that would qualify as grounds for bias in an application to quash a decision of the Authority."

CONFIDENTIAL DRAFT REPORT

- 6.24 Bias is usually defined by reference to the definition in *Porter v McGill* [2001] UKLH 67 "*whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.*" Bias is a lack of an ability to come to a matter with an open mind derived from a connection with either the parties or the matter under consideration. It is usually exhibited as apparent rather than actual bias, where the mere fact of the connection is enough to give the appearance of bias.
- 6.25 Having regard to the requirements of the Code to register the interests of family members (and others) it is reasonable to conclude that an informed observer would think that a Councillor would be influenced by such a relationship.
- 6.26 However, Councillor Erbil has confirmed that she is not related to Councillor Karakus. Furthermore, when asked for details of the alleged relationship the complainant merely referred to what appears to be an unsubstantiated report in the Sunday Times of 15 July 2018. In this article it is alleged that Councillor Erbil is the daughter of a former Councillor who, it is also alleged, is related to Councillor Karakus through his cousins.
- 6.27 From this limited information it is difficult to establish what if any relationship may exist. However, from the guidance provided by the then Standards Board it is evident that once relationships get to cousins, or relations of cousins, it is so remote that the relationship itself would not be one that should be registered under the Council's Code
- 6.28 We therefore conclude that the alleged relationship between Councillor Erbil and Councillor Karakus was not one that constituted an 'Other Non-Pecuniary Interest'.

Disclosure of interests

- 6.29 Paragraph 31 of the Code states:-

"Disclosure and Duties in Respect of Interests Held by Members

31. Declaration of interest not included in the Register

- (1) *If you have an interest in a matter under discussion at a meeting of the authority and are aware of that interest, you must disclose the interest to the meeting (unless the Authority's Monitoring Officer considers that it is a sensitive interest.....)"*
- (2) Not relevant
- (3) *You must then act in accordance with paragraph 2 below."*

- 6.30 From Paragraph 31. (1) it is clear that any interest, both pecuniary and non-pecuniary must be declared at a meeting of the authority when the matter is under discussion.
- 6.31 What is less clear is what the requirements of the Code are once an interest has been disclosed to the meeting. We have carefully considered the Code to

CONFIDENTIAL DRAFT REPORT

interpret sub paragraph (3) of paragraph 31, that is 'You must act in accordance with paragraph 2 below'.

- 6.32 Paragraph 2 of the Code is at the commencement of the Code and refers to who the Code applies to. The only reference to 2 in the Code after Paragraph 31 is Paragraph 32. (2). This sub-paragraph relates to the action an executive member must take when taking a portfolio decision.
- 6.33 However sub-paragraph (1) of Paragraph 32 does deal with the action Members must take, this Paragraph states:-

32. Disclosable Pecuniary Interests
(1) Where you

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

- 6.34 We therefore consider that Councillor Erbil would have been required to declare to the meeting the existence of a non-pecuniary interest if one existed. We can conjecture what action Councillor Erbil should have taken following making the declaration however the Code is ambiguous on this point. First, in that there is no relevant paragraph 2 which Paragraph 31. (3) refers to. The sub-paragraph which starts 'You must' may be the paragraph referred to however this is clearly headed 'Disclosable Pecuniary Interests'.
- 6.35 On this basis, the Code is unclear whether Councillor Erbil would have been permitted to participate in the deliberation and vote on the election of Councillor Karakus to the position of Mayor if she did have an interest.
- 6.36 Our conclusion is that Councillor Erbil did not breach Paragraph 31. (1) of the Council's Code of Conduct by not making a declaration to the meeting on 23 May 2018 as any relationship to Councillor Karakus which may have existed was so remote.

CONFIDENTIAL DRAFT REPORT

7. Conclusion

- 7.1 Our conclusion is that there has not been a failure to comply with the code of conduct of the authority concerned.

Wilkin Chapman LLP

October 2018

CONFIDENTIAL DRAFT REPORT



PRIVATE AND CONFIDENTIAL

Report by Wilkin Chapman LLP, instructed by the Monitoring Officer of Enfield London Borough Council, into allegations concerning **Councillor Huseyin Akpinar**, arising from a complaint made by Councillor Joanne Laban.

DATED: 2018

VOLUME 1 REPORT

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

a limited liability partnership registered in England number OC343261
authorised and regulated by the Solicitors Regulation Authority

CONFIDENTIAL DRAFT REPORT

This page is intentionally blank

CONFIDENTIAL DRAFT REPORT

Contents	Page
1. Executive Summary	4
2. Councillor Akpinar's official details	5
3. Relevant legislation and protocols	6
4. The evidence gathered	9
5. Summary of the material facts	11
6. Reasoning as to whether there have been failures to comply with the Code of Conduct	12
7. Conclusion	17

Volume 2

Appendix A	Schedule of evidence taken into account and list of unused material
------------	---------------------------------------------------------------------

CONFIDENTIAL DRAFT REPORT

1. **Executive Summary**

- 1.1 Councillor Akpinar is a member of Enfield Council (the Council).
- 1.2 He attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 1.3 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 1.4 Councillor Akpinar participated in the election of Councillor Karakus to the position of Mayor. Councillor Akpinar was not related to Councillor Karakus.
- 1.5 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 1.6 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 1.7 There is no evidence that Councillor Akpinar was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.
- 1.8 Our conclusion is that there has not been a breach of the code of conduct of the authority concerned by Councillor Akpinar.

CONFIDENTIAL DRAFT REPORT

2. Councillor Akpinar's official details

- 2.1 Councillor Akpinar was elected to the Council on 3 May 2018. He is a member of the Labour party and represents the Upper Edmonton Ward.
- 2.2 Councillor Akpinar is appointed to the Health Scrutiny Panel, Overview & Scrutiny Committee, Safer Neighbourhood Board and the Upper Edmonton Ward Forum.
- 2.3 Councillor Akpinar represents the Council on the following outside bodies, Barnet, Enfield & Haringey Mental Health Trust Foundation, Enfield racial Equality Council, Joint Health Overview Scrutiny Committee for North London Sector and the Safer Neighbourhood Board.
- 2.4 We understand that Councillor Akpinar has received training on the Councillors' Code of Conduct.

CONFIDENTIAL DRAFT REPORT

3. Relevant legislation and protocols

- 3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which the Council is one) must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.
- 3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles:-
- (a) Selflessness;
 - (b) Integrity;
 - (c) Objectivity;
 - (d) Accountability;
 - (e) Openness;
 - (f) Honesty;
 - (g) Leadership.
- 3.3 The Council, most recently, adopted a Code of Conduct on 17 July 2013 (attached at WC 1) under the provisions of the Localism Act 2011.
- 3.4 Paragraph 3 of the Code states:-

" Scope of the Code

3. *The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives."*

- 3.5 Paragraphs 15 to 18 of the Code states:-

"Registration and Declaration of Interests

15. *You shall fulfil conscientiously the requirements of the Authority in respect of the registration of interests in the Register(s) of Members' Interests and, where it is required or appropriate to do so, shall always draw attention to any relevant interests in any proceeding of the Authority or its Committees, or in any communications with the Authority, its Members or officers.*
16. *Such disclosures must be made even if the interest has already been included on the register of interests or where there is a notification pending to the Monitoring Officer.*

CONFIDENTIAL DRAFT REPORT

17. *In accordance with this Code, you must keep the register up-to-date and refresh such interests as requested by the Monitoring Officer.*
18. *These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."*

3.6 Paragraph 22 and 23 of the Code states:-

"Registration of Interest

22. *You must comply with the requirements of the law and the Council in registering your interests in the Register of Members' Interests. These are explained on the following pages. These interests extend to those of your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship.*

23. *When considering registering or disclosing any interest, you should ask yourself:*

Would a member of the public, with knowledge of the relevant facts, reasonably regard your interest as so significant that it is likely to prejudice your judgement of the public interest?"

In addition, the Council Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.

- a) *Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Town Clerk of the interest and must not take any steps or further steps in the matter."*

3.7 Paragraph 26 of the Code provides details of the interests which would constitute pecuniary interests for the purposes of Section 30(3) Of the Localism Act 2011. This covers Employment, office, trade, profession or vocation; Sponsorship; Contracts; Land; Licences; Corporate tenancies; and Securities.

3.8 Paragraph 31 of the Code states:-

Disclosure and Duties in Respect of Interests Held by Members

31. "Declaration of Interests not included in the Register

- (1) *If you have an interest in a matter under discussion at a meeting of the authority and you are aware of that interest, you must disclose the interest to the meeting (unless the Authority's Monitoring Officer considers that it is a sensitive interest- see Paragraph 1 3 of this Code*
- (2) *You must notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure (unless it is the subject of a pending notification)*

CONFIDENTIAL DRAFT REPORT

(3) *You must then act in accordance with paragraph 2 below*

3.9 Paragraph 32 of the Code states:-

32. Disclosable Pecuniary Interests

(1) *Where you*

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

(2) *Where you are an executive member taking portfolio decisions and are aware you have a disclosable pecuniary interest, you must notify the Monitoring Officer of that interest within 28 days and take no action in respect of the matter other than refer to another executive member to take the decision.*

CONFIDENTIAL DRAFT REPORT

4. Evidence and facts

Our appointment

- 4.1 The Monitoring Officer (MO) of the London Borough of Enfield Council, in consultation with the Independent Person, identified potential breaches of the Code of Conduct.
- 4.2 In August 2018 the MO instructed Wilkin Chapman LLP to perform their investigatory functions in respect of the complaint of Councillor Laban.
- 4.3 The investigation was carried out by Jonathan Goolden, Dave Hayward and Alan Tasker.

The investigation

- 4.4 During the investigation the complainant, Councillor Laban, was contacted to confirm the details of her complaint and to seek any evidence of the alleged relationship between Councillor Akpinar and Councillor Saray Karakus.
- 4.5 Councillor Akpinar was contacted by letter and was asked to comment on the allegation, in particular his relationship with Councillor Karakus.

Background

- 4.6 The complaint submitted against Councillor Akpinar alleged that he attended the Annual General Meeting of the Council on 23 May 2018. At the meeting the Council elected Councillor Saray Karakus to the position of Mayor for the 2018/19 municipal year.
- 4.7 Councillor Akpinar was related to Councillor Karakus. Councillor Akpinar did not declare this relationship and voted on Councillor Karakus' appointment.

Councillor Laban's complaint

- 4.8 Councillor Laban submitted a complaint on 16 July 2018 (attached at WC 2).

Councillor Laban

- 4.9 Councillor Laban was contacted by letter for more details of the alleged relationship. In an email response to our letter Councillor Laban stated that:-
 - (a) the minutes of the meeting when the council appointed the Mayor, Deputy Mayor, Leader and Deputy and Leader show that no interests were declared by any councillor;
 - (b) the Mayor's role comes with a large SRA;
 - (c) Andrew Gilligan's article in The Times included the relationship between them all;
 - (d) she understood that Mr Gilligan talked to the councillors concerned in relation to the Mayor when he contacted them for a comment for the piece;

CONFIDENTIAL DRAFT REPORT

- (e) openness features in both the Enfield Code of Conduct and the Nolan Principles. The councillors in question failed to declare family ties when voting for councillors to take up appointments that came with financial increases.

Councillor Akpinar

4.10 Councillor Akpinar was contacted by letter and asked to comment on the allegations made by Councillor Laban. Councillor Akpinar responded on 28 August 2018 and stated:-

- (a) he attended the Council meeting on 23 May 2018;
- (b) he did not declare any interests at the meeting;
- (c) he was not related to Councillor Karakus nor any other Councillors;
- (d) he had a fair understanding of the code of conduct

CONFIDENTIAL DRAFT REPORT

5. Summary of the material facts

- 5.1 Councillor Akpinar was a member of the Council and attended the Annual General Meeting held on 23 May 2018. The meeting considered the election of a Mayor for the municipal year 2018/19.
- 5.2 Councillor Saray Karakus was elected to the position of Mayor for the municipal year 2018/19.
- 5.3 Councillor Akpinar participated in the election of Councillor Karakus to the position of Mayor. Councillor Akpinar was not related to Councillor Karakus.
- 5.4 The Council's Code requires Members to register and declare certain interests both pecuniary and non-pecuniary.
- 5.5 The Council's Code also requires Members to declare to any meeting of the authority any interest they have in a matter under discussion and they are aware of that interest.
- 5.6 There is no evidence that Councillor Akpinar was a relation or family member which was covered by the Council's Code of Conduct and therefore had no declarable interest in the election of Councillor Karakus as Mayor.

CONFIDENTIAL DRAFT REPORT

6. Reasoning as to whether there have been failures to comply with the Council's Code of Conduct

- 6.1 The allegations referred for investigation relate to whether Councillor Akpinar should have been involved in the election of Councillor Karakus to the position of Mayor.
- 6.2 It was alleged that Councillor Akpinar was related to Councillor Karakus.
- 6.3 The first issue to consider is whether Councillor Akpinar was acting in an official capacity in relation to the alleged conduct.

Official capacity

- 6.4 Section 27(2) of the Localism Act 2011 requires a local authority to adopt a code *"dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity"*.
- 6.5 Paragraph 3 of the Code states:-

"Scope of the Code

3. The Code applies to you in all aspects of your activities as a member, including when acting on Authority business, ward business or when otherwise purporting to act as a member. It does not seek to regulate what you do in your private and personal lives.

- 6.6 When a member is acting in an official capacity was one of the central issues in *Livingstone v APE* [2006] EWHC 2533. Collins J held that the then Mayor of London was not acting in an official capacity when responding to being "door stepped" by a journalist when leaving the offices of the GLA.
- 6.7 The judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from the local standards committee. In the Case Tribunal's view, the *Livingstone* judgment established that for a councillor to be acting in an official capacity:-
 - (a) *the councillor should be engaged in business directly related to the Council or constituents;*
 - (b) *the link between the councillor's office and the conduct should have a degree of formality.*
- 6.8 In *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC), the tribunal indicated that merely acting, claiming to act or giving the impression of acting as a member was insufficient for the conduct to be covered by the code. There had to be sufficient material for the tribunal to properly conclude that the member was in fact acting as a representative of the council.
- 6.9 The wording of s27(2) of the Localism Act 2011 refers to a requirement to adopt a code dealing with the conduct of members when they are acting in that capacity. *MC* indicates that merely actions, claiming to act or giving the impression of acting as a member is insufficient. The member must actually be acting as such. The second half of the wording at paragraph 2(b) of the

CONFIDENTIAL DRAFT REPORT

Council's Code does not therefore accord with the law and no account has been taken of it.

- 6.10 In this case there is no doubt that attendance at the Annual General Meeting of the Council was for the purpose of acting on Authority business. Therefore for the purpose of this investigation we have concluded that Councillor Akpinar was acting in an official capacity when participating in the election of Councillor Karakus as Mayor.

Disclosable Pecuniary Interest (DPI)

- 6.11 It was alleged that Councillor Akpinar had a Disclosable Pecuniary Interest in the election of Councillor Karakus as the position of Mayor attracts a Special Responsibility Allowance of £14,000.

- 6.12 The Code states, at Paragraph 18 that members must register the interest of:-

"your spouse, partner, civil partner, family members or persons with whom you have a close association or personal relationship and you are aware that they have the interest."

- 6.13 In this case there are two issues to consider, first would any relationship between Councillor Karakus and Councillor Akpinar be such that any employment, office, trade, profession or vocation carried on for profit or gain carried out by Councillor Karakus be an interest which the Code requires to be registered? The second consideration is whether the position of Mayor falls within the definition of 'employment' as set out in the Code.

- 6.14 On the first point Family members and close associates are not defined in the Code. In the absence of any other definition, regard may be had to guidance provided by the former Standards Board for England (SfE) in relation to similar wording in the former national model code. At Q88 on page 101 of SfE's publication the Case Review 2010 (2011 version), it is stated that "a member of your family" should be given a very wide meaning, including anybody related by birth, marriage or civil partnership to the councillor such as :-

Partner
Parent
Parent in law
Son or daughter
Stepson or stepdaughter
Child of partner
Brother or sister
Brother or sister of partner
Grandparent
Grandchild
Uncle or aunt
Nephew or niece
Their partners

- 6.15 At Q89 on page 101 - 102 of the same SfE guidance, it is stated that a close associate is a person that the councillor is in regular or irregular contact with over a period of time, who is more than an acquaintance. SfE suggested that a close associate was a person a reasonable member of the public might think

CONFIDENTIAL DRAFT REPORT

the councillor would be prepared to favour or disadvantage when discussing a matter that affected that person because of the connection with them. That might be a friend, colleague, business associate or someone the councillor knew through general social contacts, but a close relationship was implied than mere acquaintance.

- 6.16 SfE advised that members and Monitoring Officers should consider the following cumulative factors:-

- How many times did the two people meet?
- Where did they meet?
- Did they regularly attend the same social events?
- Did they know each other's families?
- Did they visit one another's homes?
- Did they have regular business dealings?
- Did they work for the same organisation?
- Were they close or connected in other ways?

- 6.17 At Q90, SfE advised that enemies might also be close associates
- 6.18 From this it is evident that the requirements of the Council's Code are quite wide ranging when dealing with the Disclosable Pecuniary Interests of Members. Whether this is intentional or in practice workable is questionable but that is the requirement.
- 6.19 We therefore conclude that if the position of Mayor was considered to fall within the categories defined as employment Councillor Akpinar would be required to register and disclose any relationship as a Disclosable Pecuniary Interest.
- 6.20 We now must consider whether the position of Mayor could be considered to be an employment, office, trade, profession or vocation carried on for profit or gain.
- 6.21 The position of Mayor is not an employment, trade, profession or vocation. Neither is the position normally regarded as an "office" within the meaning of the first category of Disclosable Pecuniary Interests, even if it was, the Special Responsibility Allowance is intended to compensate the office holder not remunerate them. Therefore we conclude that the position is not one carried on for profit or gain.
- 6.22 Having regard to the reasoning set out above we have concluded that the position of Mayor is not one that should be registered as a Disclosable Pecuniary Interest. Therefore if Councillor Akpinar was related to Councillor Karakus this did not constitute a pecuniary interest in the election of Councillor Karakus to the position of Mayor.

Other Non-Pecuniary Interests

- 6.23 The Council's Code of Conduct at Paragraph 28 defines other pecuniary interests as:-

"Other interests that would qualify as grounds for bias in an application to quash a decision of the Authority."

CONFIDENTIAL DRAFT REPORT

- 6.24 Bias is usually defined by reference to the definition in *Porter v McGill* [2001] UKLH 67 “*whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.*” Bias is a lack of an ability to come to a matter with an open mind derived from a connection with either the parties or the matter under consideration. It is usually exhibited as apparent rather than actual bias, where the mere fact of the connection is enough to give the appearance of bias.
- 6.25 Having regard to the requirements of the Code to register the interests of family members (and others) it is reasonable to conclude that an informed observer would think that a Councillor would be influenced by such a relationship.
- 6.26 However, Councillor Akpinar has confirmed that he is not related to Councillor Karakus. Furthermore, when asked for details of the alleged relationship the complainant merely referred to what appears to be an unsubstantiated report in the Sunday Times of 15 July 2018. In this article it is alleged that a number of Councillors were related to a former Councillor who, it is also alleged, is related to Councillor Karakus through his cousins. Councillor Akpinar is not mentioned in the newspaper article.
- 6.27 From this it is clear there is no evidence presented which identifies any relationship between Councillor Akpinar and Councillor Karakus.
- 6.28 We therefore conclude that Councillor Akpinar did not have an ‘Other Non-Pecuniary Interest’ in the election of Councillor Karakus to the position of Mayor.

Disclosure of interests

- 6.29 Paragraph 31 of the Code states:-

“Disclosure and Duties in Respect of Interests Held by Members

31. Declaration of interest not included in the Register

- (1) *If you have an interest in a matter under discussion at a meeting of the authority and are aware of that interest, you must disclose the interest to the meeting (unless the Authority’s Monitoring Officer considers that it is a sensitive interest.....)”*
- (2) Not relevant
- (3) *You must then act in accordance with paragraph 2 below.”*

- 6.30 From Paragraph 31. (1) it is clear that any interest, both pecuniary and non-pecuniary must be declared at a meeting of the authority when the matter is under discussion.
- 6.31 What is less clear is what the requirements of the Code are once an interest has been disclosed to the meeting. We have carefully considered the Code to interpret sub paragraph (3) of paragraph 31, that is ‘You must act in accordance with paragraph 2 below’.

CONFIDENTIAL DRAFT REPORT

- 6.32 Paragraph 2 of the Code is at the commencement of the Code and refers to who the Code applies to. The only reference to 2 in the Code after Paragraph 31 is Paragraph 32. (2). This sub-paragraph relates to the action an executive member must take when taking a portfolio decision.
- 6.33 However sub-paragraph (1) of Paragraph 32 does deal with the action Members must take, this Paragraph states:-

32. Disclosable Pecuniary Interests
(1) Where you

(a) are present at a meeting of the authority and

(b) have, or become aware that you have, a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,

You must

(c) not participate, or participate further, in any discussion of the matter at the meeting

(d) not participate in any vote, or further vote, taken on the matter at the meeting

(e) leave the room until the conclusion of the matter under discussion

- 6.34 We therefore consider that Councillor Akpinar would have been required to declare to the meeting the existence of a non-pecuniary interest if one existed. We can conjecture what action Councillor Akpinar should have taken following making the declaration however the Code is ambiguous on this point. First, in that there is no relevant paragraph 2 which Paragraph 31. (3) refers to. The sub-paragraph which starts 'You must' may be the paragraph referred to however this is clearly headed 'Disclosable Pecuniary Interests'.
- 6.35 On this basis, the Code is unclear whether Councillor Akpinar would have been permitted to participate in the deliberation and vote on the election of Councillor Karakus to the position of Mayor if he did have an interest.
- 6.36 Our conclusion is that Councillor Akpinar did not breach Paragraph 31. (1) of the Council's Code of Conduct by not declaring to the meeting on 23 May 2018 a relationship to Councillor Karakus when her election to the position of Mayor was discussed.

CONFIDENTIAL DRAFT REPORT

7. Conclusion

- 7.1 Our conclusion is that there has not been a failure to comply with the code of conduct of the authority concerned.

Wilkin Chapman LLP

October 2018

