



PRIVATE AND CONFIDENTIAL

Case reference: MC/09/1117

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Sandwell Metropolitan Borough Council, into **self-referred allegations concerning Councillor Richard Marshall** formerly of Sandwell Metropolitan Borough Council.

Dated: 7 August 2018

VOLUME 1 REPORT

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Councillor Marshall Copy

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

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1. Executive Summary

- 1.1 Councillor Richard Marshall is a member of Sandwell Metropolitan Borough Council (the Council) having been first elected in May 2014.
- 1.2 A complaint was made to the Council's Monitoring Officer by Councillor Marshall referring himself regarding issues raised in the media. His complaint related to "*The complaint about me by Cllr Crompton being played out in the media currently*".
- 1.3 Julian Saunders published a blog entitled "In the Public Domain" under the pseudonym "The Sandwell Skidder".
- 1.4 After a meeting between Mr Saunders, Councillor Marshall and the then new Leader of the Council, held in June 2016, Councillor Marshall sent a number of messages to Mr Saunders using the messaging service "WhatsApp". The messages referred to cover a period between August 2016 and May 2017.
- 1.5 A statement made by Mr Saunders was provided to us together with screen shots of the messages he received from Councillor Marshall. A copy of a blog entry dated 23 August 2017 was also provided. This detailed the communication between Councillor Marshall and Mr Saunders during the period referred to.
- 1.6 Councillor Marshall was invited to answer written questions or to be interviewed as part of our investigation to enable us to elaborate on the allegations in his complaint. Councillor Marshall responded to our questions in an email dated 11 April 2018. He did not elaborate on the complaint merely pointing out that the comment "*being played out in the media*" was self evident.
- 1.7 From our investigation we have reached the conclusion that Councillor Marshall was referring to articles which were initiated by a series of WhatsApp messages he sent to Mr Saunders in October 2016 which became referred to as the 'Spunkgate' story.
- 1.8 In carrying out our investigation we were constrained by the involvement of West Midlands Police who were looking into matters associated with the complaints referred to us for investigation that meant we were unable to interview some of the individuals involved. We do not consider that these constraints have materially affected the evidence required to reach our conclusion.
- 1.9 We have concluded that that Councillor Marshall failed to treat others with respect and therefore there has been a breach of the code of conduct of the authority concerned.

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2. Official details

- 2.1 Councillor Marshall is a member of Sandwell Metropolitan Borough Council, having been first elected in May 2014.
- 2.2 He is a Labour Councillor representing the Smethwick Ward.
- 2.3 From June 2014 to May 2015, he was a member of the Housing, Jobs and Economy Scrutiny Board and the Smethwick Town Centre Improvement Board. From May 2016 to November 2017 he was a Member of the Council's Cabinet with responsibility for Leisure and a Member of its Petitions Committee.
- 2.4 Councillor Marshall received training on the Council's code of conduct on 22 September 2015.

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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 Council must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.

3.2 Section 28 (1) of the Act provides that the Council 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 adopted a Code of Conduct in October 2016 (attached at WC 1). The code includes the following:-

"PART I

Purpose of the Code

1. *Sandwell Council ("The Authority") has adopted the following code dealing with the conduct that is expected of members and co-opted members of the authority ("members") when they are acting in that capacity as required by section 27 of the Localism Act 2011 ("the Act").*
2. *The code is intended to be consistent with the seven principles as attached to this code at Appendix C and applies whenever a person is acting in his/her capacity as a member of the authority or co-opted member in the conduct of the authority's business or acting as a representative of the authority.*

PART II

Rules of Conduct

- 1.5 *You must not bring your office or authority into disrepute.*
- 1.6 *You must treat others with respect and must promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability.*

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1.12 You must promote and support high standards of conduct when serving in your office.

Appendix C - The Seven Principles of Public Life

The principles of public life apply to anyone who is elected or works as a public office-holder. All public office-holders are both servants of the public and stewards of public services. The principles are:

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

Integrity Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work.

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

They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends.

They must declare and resolve any interests and relationships.

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

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

Honesty Holders of public office should be truthful.

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

4. Evidence and facts

Our appointment

- 4.1 Sandwell Metropolitan Borough Council's (the Council) arrangements for dealing with standards complaints state that the Monitoring Officer of the Council, in consultation with the appointed Independent Person, shall decide whether or not to investigate a complaint.
- 4.2 Surjit Tour, the Monitoring Officer (MO) of the Council, received a self referral from Councillor Marshall of an allegation in respect of his conduct on 6 November 2017. On 22 December 2017, Mr Tour informed Councillor Marshall that he had consulted the Independent Person and decided to refer the allegation for investigation. Mr Tour instructed an external investigator who was then unable to carry out the investigation. Mr Tour then instructed Wilkin Chapman LLP on 6 February 2018.
- 4.3 Wilkin Chapman LLP is a solicitors firm based in Lincolnshire and East Yorkshire with a national local government legal practice. Work in relation to this investigation was undertaken by Jonathan Goolden, Dave Hayward, Mark Lambert, Terry Ball and Alan Tasker.

The investigation

- 4.4 Councillor Marshall was invited to be interviewed or alternatively to answer a number of written questions submitted to him during the investigation. Councillor Marshall responded by email to some of the questions.
- 4.5 We were provided with a signed statement of Mr Julian Saunders dated 16 October 2017 together with screen shots of messages he received from Councillor Marshall. An unsigned version of this statement was provided to Mr Tour by solicitors acting for another Sandwell councillor on 17 October 2017. Those same solicitors provided a signed version on 25 October 2017.
- 4.6 We inspected Mr Saunders' blog and took prints of relevant posts.
- 4.7 Councillor Crompton was interviewed by West Midlands Police (WMP) in relation to this and other allegations. She provided a signed statement to WMP. We were given permission to use the statement for the purposes of our investigation. We have read the Police statement and produced a statement covering the relevant information in respect of this complaint.

The Complaint - Councillor Marshall

- 4.8 Councillor Marshall submitted a complaint to the Monitoring Officer dated 6 November 2017 (attached at WC 2). In the complaint he stated:-

"I'd like to self refer the complaint about me by Cllr Crompton being played out in the media currently to you for investigation."

Mr Julian Saunders

- 4.9 In a witness statement prepared by Mr Saunders and signed and dated 16 October 2017 (redacted copy attached at WC 3) Mr Saunders stated that:-

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- (a) he lived in Birmingham and was the principal author of "in The Public Domain", a blog more popularly known as "The Sandwell Skidder". The blog existed to expose corruption, cronyism and incompetence within Sandwell Metropolitan Borough Council;
- (b) Councillor Richard Marshall was a relatively inexperienced Councillor who had previously worked as a jobbing builder whose political career had been promoted by a former Council Leader. He was now a Cabinet Member;
- (c) following the former Leader's death he was contacted by a third party who informed him that the new Leader was anxious to start with a clean slate and was determined to root out the corruption which had become endemic during the former Leader's time in office. A meeting was held on 29 June 2016 at the Windsor public house in Birmingham city centre. The Leader attended together with his original contact and Councillor Marshall who turned up as the Leader's driver;
- (d) the meeting was a jolly occasion fuelled with alcohol. He agreed to give the new Leader and Councillor Marshall the benefit of considerable doubt. He said the Sandwell Skidder would continue to investigate Councillors Hussain and Ian Jones but would heartily support in print any anti-corruption measures. He pointed out that he would not be muzzled and if he found evidence of corruption from any quarter he would continue to report it;
- (e) following the meeting Councillor Marshall introduced him to the WhatsApp messaging service. Councillor Marshall then sent him a large number of messages.

4.10 Mr Saunders' blog post on 18 October 2017 under the heading '*Spunk on Comrade Maria!*', which was about Councillors Ian and Olwen Jones and Councillors Crompton and Allen being on holiday in Tenerife, included the following messages from Councillor Marshall:-

- referring to a Bristol blogger "*re his nicknames for people! He calls one of them "spunkface".*"
- "*Like I say hasn't got your tact! He'll be doing that over MC in her bikini tho!!*"
- "*Well it'd be better than doing Olwen. Just!.*"

Councillor Maria Crompton

4.11 Councillor Crompton was interviewed by West Midlands Police on 7 February 2018 and a statement was prepared which covered a wide range of matters of which only some are relevant to the allegation against Councillor Marshall. From this a statement was prepared covering the information relevant to this complaint a copy of which is attached at WC 4.

4.12 In her statement Councillor Maria Crompton stated that:-

- (a) she had been a Labour Councillor for Tividale Ward in Sandwell Metropolitan Borough Council since 2003 and became a Cabinet Member two or three years ago, which was two or three years prior to

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the death of Darren Cooper in the spring of 2016, who was the then Leader of the Council;

- (b) she knew of a man called Julian Saunders, known publically as, "The Skidder", who ran a blog called, "In The Public Domain" which anyone could access and read, and was aware that it was read by a lot of people, including fellow Council Members;
- (c) she only recently read the blog after colleagues told her of offensive and humiliating comments made about her and her partner, Peter Allen, a councillor representing Great Bridge Ward;
- (d) Councillor Richard Marshall was, at the time of the incidents, a Cabinet Member but had since stepped aside as he was being investigated by the Standards Committee of the Council and the Labour Party;
- (e) Councillor Ian Jones represented Tipton Green Ward and his wife, Councillor Olwen Jones, represented Wednesbury South Ward;
- (f) she believed Ian and Olwen Jones had been victimised as a result of the actions of Councillor Marshall, who had used Mr Saunders as a conduit for bullying, harassing, tormenting and actually terrifying members of the Council, both councillors and officers;
- (g) she felt he had breached the Data Protection Act, all seven of the Nolan Principles of Public Life and the Code of Conduct;
- (h) between 5 October 2016 and 12 October 2016 she and her partner, Councillor Peter Allen, went on holiday to Tenerife. Unknown to her, Councillors Ian and Olwen Jones were also on holiday in Tenerife, but they stayed at different resorts and different hotels and did not travel on the same flight. She found out they were also in Tenerife following a Facebook post about Ian Jones' birthday, when Peter Allen had wished him Happy Birthday. There was a brief Facebook communication and then no further communication with the Jones after that;
- (i) on 18 October 2017 whilst in her office a colleague told her that Mr Saunders had mentioned her in his blog. The title of the post was, "*Spunk On Comrade Maria!*" Initially she thought he was using the word "Spunk" in the American sense, as having some get up and go.;
- (j) on his blog Saunders stated Eling and Marshall had identified the fact that Councillors Ian and Olwen Jones had gone on holiday to celebrate Ian Jones' 65th birthday and that Councillor Maria Crompton and Peter Allen were "joining them". There was then a WhatsApp message from Councillor Marshall's mobile phone, provided and paid for by the Council, to Mr Saunders which stated,

"Like I said, let's work together and fuck these off. BTW have you seen that MC and the Joneses are in Tenerife together for IJS birthday??"
- (k) this was followed by the Facebook message Peter Allen sent to Ian Jones wishing him a happy birthday. She believed that Marshall had

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sent Saunders that Facebook message as Marshall may have still been a friend of hers on Facebook at that time and able to see those messages;

- (l) Mr Saunders then followed this with saying that Councillor Marshall had informed him that Councillors Crompton and Allen's "cards were marked" and,

"Lying bastards have been telling us for weeks that they are 'collateral damage' and never to speak to the Joneses again"

She understood this was Councillor Marshall saying to Mr Saunders that he thought Councillor Peter Allen and her were on 'their side' and against Ian Jones and his wife, but that was not the case as she was not interested in taking sides for anyone;

- (m) Councillor Marshall told Mr Saunders about a blogger from Bristol who had nicknames for people including 'Spunkface', to which Saunders replied:-

"Not bad for Jones?"

Councillor Marshall replied,

"Like I say hasn't got your tact! He'll be doing that over MC in her bikini tho!!"

Mr Saunders replied,

"Steady, I have only just had breakfast!"

Councillor Marshall replied,

*"Well it'd be better than doing Olwen. Just" and
"Don't forget to tweet about them twats on holiday, you terrify them"*

- (n) she found the comments made about her highly offensive, humiliating and degrading and that they had brought her to tears, her stomach turned and she felt shocked and sickened. She was anxious that the comments were there for anyone to read. It left her feeling anxious and trying to avoid situations where she might come across Marshall;
- (o) on 19 October 2017 she drew the matter to the attention of Katie Powell (Acting Regional Director for the Labour Party in West Bromwich) who agreed to forward her complaint to the Labour Party Complaints Director;
- (p) on 21 October 2017 she called Mr Saunders directly and asked what telephone number had been used to send the WhatsApp messages and he informed her it was 07814 295188, which she then confirmed was Marshall's Council provided mobile number;
- (q) on 24 October 2017 she and her partner, Councillor Peter Allen, met Mr Saunders at the Boston Tea Party Coffee Shop in Harbourne, where Mr Saunders showed her his mobile phone with the messages on it. She could see they had been sent by Councillor Marshall from

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his Council mobile phone. The first message between them was dated 9 August 2016. The last message was dated 1 August 2017. She saw hundreds and hundreds of messages between Councillor Marshall and Mr Saunders whilst looking at Mr Saunders' phone and took photos of relevant messages and the contact details for Councillor Marshall's Council mobile phone. She found Mr Saunders to be perfectly pleasant and quite helpful. She forwarded the photos to the Labour Party;

- (r) there was currently an investigation on-going with the Labour Party into her complaint, as well as the complaints of many others;
- (s) as a result of reading the comments made about her, she felt physically sick, distressed, tormented and harassed, and felt humiliated and belittled by Councillor Marshall specifically, being shocked that someone in such a high public position could behave in such a manner.
- (t) she felt that Mr Saunders made the messages public in an effort to shine a light on the current culture of bullying and intimidation orchestrated by the current leadership.

Councillor Marshall

- 4.13 Councillor Marshall was sent a number of questions by email on 9 April 2018 (copy attached at WC 5).
- 4.14 Councillor Marshall replied by email on 10 April 2018 (copy attached at WC 6), in his email he stated that:-
 - (a) a meeting took place between Mr Saunders, the Leader of the Council, former Councillor Mick Davies and himself. Mr Saunders had for years claimed to have evidence of wrongdoing at the Council. The meeting was set up to establish what if any evidence he had;
 - (b) he did contact Mr Saunders, mostly via WhatsApp. Without full disclosure of the complete unredacted text he was not prepared to comment as he felt that cherry picked comments had no context and were being used for others personal and political agendas;
 - (c) the comments were made by him without the knowledge or input of anyone else;
 - (d) he self referred to the Monitoring Officer in the hope that the process would be quick and transparent. He still had not been told the exact complaint against him from Councillor Crompton and he thought that the story being in both local and national press at the time and him only finding out via a reporter would make the comment '*being played out in the media*' self evident.

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5. Summary of the material facts

- 5.1 Councillor Marshall was a member of the Sandwell Metropolitan Borough Council representing the Smethwick Ward.
- 5.2 Mr Julian Saunders was the principal author of a blog known as The Sandwell Skidder. The purpose of the blog was to expose corruption, cronyism and incompetence within Sandwell Metropolitan Borough Council.
- 5.3 In 2016 Mr Saunders was invited to meet with the new Leader of the Council. Mr Saunders met with the new Leader on 29 June 2016. The Leader was accompanied by an individual who Mr Saunders did not name. From Councillor Marshall's email we conclude this was ex Councillor Mick Davies. Also present was Councillor Marshall who Mr Saunders referred to as the Leader's driver. Mr Saunders was told that the new leadership wished to start with a clean slate and was determined to root out corruption.
- 5.4 Councillor Marshall said Mr Saunders had for years claimed to have evidence of wrongdoing at the Council. The meeting was set up to establish what if any evidence he had.
- 5.5 Following the meeting Councillor Marshall introduced Mr Saunders to the WhatsApp messaging service.
- 5.6 Over the period from August 2016 to May 2017 Councillor Marshall regularly sent Mr Saunders messages using WhatsApp. Evidence on Mr Saunders' blog and from Councillor Crompton indicates that the messages came from Councillor Marshall's mobile telephone. Mr Saunders provided evidence in his statement of screen shots which showed the time of the messages summarised in two blog posts dated 23 August 2017.
- 5.7 The post identified by Councillor Crompton in her statement was published on 18 October 2017 under the heading '*Spunk on Comrade Maria*'. At the end of a lengthy post, reference was made to Councillor Marshall sending Mr Saunders a considerable amount of what Councillor Marshall perceived to be damaging information about Councillor Ian Jones, his wife Councillor Olwen Jones and Councillor Steven Jones including information of a clearly personal nature.
- 5.8 A formal complaint was submitted to the Council's Monitoring Officer by Councillor Marshall referring to the complaints being played out in the media.

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6. Additional submissions received from Councillor Marshall

Comments by Councillor Marshall

- 6.1 The following comments were received from Councillor Marshall on 20 July 2018 on the draft version of this report:-

“Before I proceed , it has to be stressed that the conversations I had with Saunders were never intended for public viewing, either in whole or part. It was a private conversation between two individuals to what he openly advertised as a ‘confidential hotline’ . My part in all of this was to gain his confidence to get him to pass on evidence of wrongdoing that he had long purported he had. I came to the conclusion fairly early on that although he wasn’t unintelligent , he was an obsessed simpleton, who saw conspiracy in everything and he actually had no firm evidence of anything , he lived at the back end of the rumour mill and fed his ‘followers ‘ information from there

He likes to portray himself as a journalist sharing news , however many politicians including myself over my term of office, had and do have, conversations with real journalists who don’t print every comment or conversation that you have with them as you build up a relationship built on trust, this is the basis of the relationship I believed I had with this charlatan who doesn’t even live in Sandwell , he is little more than a clatterfart

The primary evidence base has been tampered with by way of redaction by Saunders to save his own skin and therefore has no context in many areas, including the total lack of any phone calls made. He himself told me that he was getting emails sent via Cllr Ian Jones who he’d spent a lot of his time previously trying to expose as a fraud and involved in wrongdoing yet he was also meeting up with him and other members of Sandwell Labour together with Sandwell Tories and UKIP in back street pubs in Wednesbury on numerous Friday nights. I firmly believe that this ‘expose’ of myself was little more than entrapment, orchestrated by Saunders not for the public good as he tries to make out but borne out of spite and malice and his hatred of all things Sandwell Labour related. He portrays himself as an intellectual and belittles the IQ of the Labour Cllr’s in Sandwell yet this was the man who spent a whole day asking all his trusted sources who ‘tom night was’ and what part of the council he worked in

I disagree in the main with the report and its conclusions, mainly because of the lack of primary evidence, the lack of context and therefore assumptions have been made by the author/s having totally failed in their attempts to interview me , on two occasions only giving me 24hrs notice after months of inaction. They are taking a part written only story and taking it at face value with no emotion and little context.

I will pick up on some points as follows but this is by no means an exhaustive list :-

2.3 The author can’t even get basic facts right that are available via google , worse still I suspect they were supplied to the author by a council officer. How can the rest of the report be taken seriously?

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7.13 *How can you possibly prove this??*

7.28 redacted as referring to another matter.

7.28 redacted as referring to another matter.

7.28/9/30 redacted as referring to another matter.

7.33 redacted as referring to another matter.

7.33 redacted as referring to another matter.

7.34 redacted as referring to another matter.

7.37 *These comments were never intended for public consumption so how can that be used as a test? They were sent to a publicly advertised 'confidential hotline' ' I will never betray a confidence Richard' said Saunders on numerous occasions . I personally feel sorry for all the other Cllr's and Council Officers that have spent years talking to him and that still are, and await him to turn on them . These conversations were totally about Labour Group issues and nothing whatsoever to do with my role in Council or council business and I wholly refute any suggestions otherwise.*

7.42/3/4 *I had no control whatsoever over what Saunders wrote, although he writes and acts like a petulant child he is actually a grown man , any comments he published , he published not me, any accusations of bullying of females or any other individual should be levelled at him and him alone*

7.46/7 *Both the author and Saunders come to the same conclusion that Cllr Marshall actually told nobody anything. The only information passed to Saunders by myself was little more than canteen gossip that was doing the rounds amongst low ranking officers, there was no high grade information that only cabinet members or indeed Cllr's would only know it was merely a mixture of gossip and nonsense*

There were , and still are rogue elements within Sandwell Labour and within Council that have acted inappropriately or supported those that have acted inappropriately. Labour Regional Office is aware of these issues as are Council Directors , Police and Sport England . The public purse has been misused over a significant number of years by these individuals and it is up to the appropriate officers and authorities to take action

Rather than break the Nolan Principles I believe I have upheld them , I have acted solely in the interests of the people of Smethwick and Sandwell and made no gain whatsoever in fact I have paid the ultimate price for doing so and lost my role as a servant of the people for trying to expose the wrongdoing and wrong doers . I stood up for what was right , it is up to others to decide if they are willing to do so, the good people of Sandwell deserve the best"

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Response to comments by Councillor Marshall

- 6.2 The comments received from ex-Councillor Marshall have been considered and where appropriate responded to in the following paragraphs. Paragraph 2.3 has been amended to reflect those comments.
- 6.3 A number of attempts were made to interview Councillor Marshall, first in a letter (sent by email) dated 9 February seeking his availability during week commencing 26 February. At 12.55pm on 12 February he responded stating he was available for a telephone interview on 13 or 16 February. Arrangements were made to conduct the interview at 1pm on 16 February, unfortunately due to ongoing discussions with West Midlands Police we had to postpone the interview. On 26 February we contacted Councillor Marshall by email and offered an appointment at 9.30am on 5 March. On 28 February and 1 March we left telephone messages seeking a response. On 2 March Councillor Marshall responded stating that he was not available on 5 March. On 4 April we offered an appointment on 5 or 6 April at a time and venue convenient to him. On Monday 9 April we sought his availability during that week or as an alternative we provided a number of questions for him to respond to in writing. Councillor Marshall provided a brief response to some of those questions which is set out in the report.
- 6.4 The evidence used in the report is based on screen shots of WhatsApp messages with supporting evidence that these were sent from Councillor Marshall's Council mobile phone. We note that he states they were not intended for publication however our conclusions are based on the fact that Councillor Marshall was aware that the recipient published material on his blog. There is also references in Councillor Marshall's messages inviting Mr Saunders to use the information in his messages.
- 6.5 Our conclusions on paragraph 7.13 are based on evidence in a number of Councillor Marshall's messages, not specifically relating to Ms Dudley, which support our conclusions. For example a message sent on 21 August 2016 states "would you be interested in knowing that the Council are looking at a transient site". Similarly a message sent on 26 August 2016 makes reference to "the Council's legal costs". It is clear from the evidence provided that Councillor Marshall was providing information about the Council to Mr Saunders, this supports our conclusion that he was acting in an official capacity whilst communicating with Mr Saunders.
- 6.6 We have considered all the points made by Councillor Marshall however this has not changed the conclusions set out in the first draft of the report.

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7. Reasoning as to whether there have been failures

Whether Councillor Marshall was the author of the WhatsApp messages

- 7.1 Before considering the implications of the alleged conduct in the context of the code of conduct we needed to establish that it was in fact Councillor Marshall who was sending the messages to Mr Saunders. Unfortunately during our investigation Councillor Marshall reported to the Council that he had lost his mobile phone. Therefore we were unable to inspect the call details or the memory on his phone. However, there is evidence from Councillor Crompton, on Mr Saunders' blog and from a screen shot of Mr Saunders' mobile phone that clearly shows that the messages originated from Councillor Marshall's phone.
- 7.2 We have also carefully considered the content of other messages provided by Mr Saunders in his statement. It is evident that these messages contained information that only someone within the Council would be privilege to. This in itself does not confirm Councillor Marshall as the source.
- 7.3 Councillor Marshall responded to our questions regarding the source of Mr Saunders messages. His response was that he had messaged Mr Saunders using WhatsApp but was not prepared to acknowledge that all of the messages were from him without details of the messages. This was despite the fact that we provided Councillor Marshall with the relevant messages from Mr Saunders' blog.
- 7.4 Having regard to the above we have concluded there is sufficient evidence to establish that all the messages in question were sent by Councillor Marshall.

Official Capacity

- 7.5 Section 27(2) of the Localism Act 2011 requires the Council to adopt a code of conduct dealing with the conduct that is expected of members of the Council "*when they are acting in that capacity*".
- 7.6 The Council's Code of Conduct reflects the requirement of section 27(2) of the Localism Act.
- 7.7 Though relating to the former 2007 model code of conduct, the Upper Tribunal decision in *MC v Standards Committee of the London Borough of Richmond [2011] UKUT 232 (AAC)* is a helpful distillation of the previous High court cases on capacity, those being – *Livingstone v Adjudication Panel for England [2006] EWHC 2533* and *R(Mullaney) v Adjudication Panel for England [2009] EWHC 72*. The principles stated in MC are:-
- (a) *Was the Councillor, as a matter of ordinary English, actually conducting the business of their authority, including the business of the office of councillor?*
 - (b) *A fact sensitive approach is required to the above.*
 - (c) *The question is one for the tribunal to determine, not a reasonable observer.*
- 7.8 In *McTigue v Middlesbrough Council (2009) APE 421* (a decision of the former Adjudication Panel for England), Councillor McTigue made a series of postings on the forum of the Middlesbrough Evening Gazette using the

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pseudonym “Indie” which related to wheelie bin collections and were alleged to be insulting of a local resident. Councillor McTigue argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym “Indie”. The tribunal:-

“...accepted that even if it became clear from the forum that an individual who was posting on the forum was a councillor, the Code of Conduct would not automatically be engaged. The question was whether in the postings on the forum the councillor was deemed to be, or gave the impression that he or she was, “acting in the role of councillor”. This was fact-sensitive and would very much depend on the content of the postings.”

- 7.9 The tribunal concluded that Councillor McTigue had given the impression that she was acting as a councillor, giving examples of a number of posts where she had referred to her work as a ward member.
- 7.10 Care must be taken in applying a tribunal case from a period when the relevant code of conduct (that set out in a national model) was expressed to apply not only when a member was carrying out their role as such but also when they gave that impression. However, *McTigue* is helpful in providing an example of how the principles of *MC* can be applied. When Councillor McTigue posted on the forum as “Indie” she was not acting as a Councillor when commenting about matters in general. Despite the lack of identification as a Councillor in her user name, she was acting as a Councillor when the content of her posts concerned ward matters.
- 7.11 As *MC* states, the question is whether as a matter of ordinary English was the Councillor actually conducting the business of their authority, including the business of the office of councillor? The substance of an interaction, rather than outward appearance is decisive.
- 7.12 In this case it is clear that Councillor Marshall's first contact with Mr Saunders was in the company of the new Leader of the Council. The meeting was arranged to engage with Mr Saunders in respect of his blog that dealt with the business of the Council. The Leader and Councillor Marshall were attempting to make use of Mr Saunders and his blog to the benefit of the Council.
- 7.13 Many of the subsequent messages sent by Councillor Marshall to Mr Saunders contained information directly related to the business of the Council. We have given careful consideration to the circumstances in this particular case, that is, the messages did not directly refer to Council business. These particular messages concerned the holiday arrangements of individual Councillors which Councillor Marshall could argue he was commenting on in a private capacity. However, taken in the context of the rest of the messages sent by Councillor Marshall to Mr Saunders and the fact that the subject of the messages was fellow Councillors we have concluded that on balance Councillor Marshall was commenting on matters relating to the Council. In reaching this conclusion we have been particularly mindful of the apparent underlying purpose of Councillor Marshall's messages which appear to undermine the reputation of individuals associated with the Council.
- 7.14 We therefore conclude that, whilst sending messages to Mr Saunders, Councillor Marshall was acting in an official capacity and was subject to the Code of Conduct.

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Respect

7.15 Paragraph 1.6 of the Code of Conduct states:-

“You must treat others with respect and must promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability”

7.16 The term “respect” is not defined in the Code. However, the requirement to treat others with respect must be viewed objectively. Account should be taken of the member’s intent and how their behaviour would reasonably be perceived.

7.17 The Standards Board for England Case Review 2010 (2011 Edition) provides guidance on treating others with respect by indicating a ‘rule of thumb’ comparison. Q15 of the Case Review 2010 advises that:-

“A very clear line has to be drawn between the Code of Conduct’s requirement of respect for others, including members of the authority with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.”

7.18 A rule of thumb is expressed in this comparison:

“You’re talking drivell” is likely to be an acceptable expression of disagreement.

Calling someone an “incompetent moron”, on the other hand, is more likely to be a failure to comply with paragraph 3(1).

We can see that the first comment is aimed at the expression of an idea or argument. The second is aimed at the person and their personal characteristics”.

7.19 Whilst some care must be taken in adopting wholesale a test applicable to a provision of the former national model code, it is the personalisation of comments that cause the user to breach the Code. The conduct must be unreasonable, unwarranted and personalised. In considering whether comments are disrespectful, regard must be had to the right to free speech in article 10 of the European Convention on Human Rights (see below regarding *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504).

7.20 We note the approach taken by the former Adjudication Panel in *Capon v Shepway District Council* (2008) APE 0399, conveniently summarised by the Case Review 2010 at page 32 as:-

“A tribunal considered the threshold for a failure to treat others with respect. The councillor made comments about the town clerk at a parish meeting saying that an officer found her “difficult to get on with”. The councillor added that “this is also the view of many towns’ people who say that when they try to contact the town clerk, she is downright rude to them”.

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7.21 The Tribunal considered that the threshold for a failure to treat another with respect had to be set at a level that allows for the passion and frustration that often accompanies political debate and the discussion of the efficient running of a Council. It should also be set within the context of who was involved in the exchange.

7.22 In that case, the comments were opinions of other individuals which the member honestly believed to be true. The member's conduct was not unfair, unreasonable or demeaning to the Town Clerk and not made in a malicious or bullying manner. The Town Clerk was very experienced in her dealings with Councillors and given her seniority was entirely able to defend her position. Therefore, the tribunal decided that the threshold was not reached.

7.23 The Case Review 2010 confirms that members are able to criticize officers. It states on page 41, Q22 of the Guidance that:-

"In some cases officers have been known to reject reasonable criticism appropriately made and describe it as bullying. The Government did not intend the Code of Conduct to constrain members' involvement in local governance, including the role of members to challenge performance. Members are able to question and probe poor officer performance provided it is done in an appropriate way. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time.

This paragraph does not mean that members cannot express disagreement with officers. This disagreement might, in the appropriate content, manifest itself in criticism of the way in which an officer or officers handled particular matters.

It is important that members raise poor performance in the correct way and at the proper forum, such as in a private meeting with a senior manager, and not in a public meeting or through a published article in the media"

7.24 We have also had regard to the right to freedom of speech on political matters set out in Article 10 of the European Convention on Human Rights (ECHR) as considered in *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504, where it was held:-

- Article 10 of ECHR protects not only the substance of political comment but the form in which it is conveyed;
- a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, non rational and aggressive is to be tolerated;
- political comment includes comment on public administration and the adequacy of the performance of public duties by others, but not gratuitous personal comments;
- whilst civil servants are open to criticism, there is a public interest that they are not subject to unwarranted comments that disenable them from performing public duties and undermines public confidence;

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- there is a need to weigh up the public interest in protecting civil servants against enhanced protection for political comment.
- 7.25 The above guidance and cases are set out to provide an overview of how treating others with respect has been considered. Whilst these cases may not be directly relevant in this instance they do provide some advice on the type of comments that may and may not be appropriate.
- 7.26 In determining whether Councillor Marshall's conduct amounted to a failure to treat others with respect, as referred to in relevant guidance and case law, it is appropriate to carefully consider his comments and the apparent motivation for them.
- 7.27 From Councillor Marshall's meeting with Mr Saunders in June 2016 it is evident that Councillor Marshall set up a communication channel with Mr Saunders using WhatsApp. From the messages published by Mr Saunders on his blog it is clear these included comments about individuals connected with the Council.
- 7.28 In one message Councillor Marshall referred to Councillors Ian and Olwen Jones' holiday to Tenerife to celebrate Councillor Ian Jones' 65th Birthday and that Councillors Maria Crompton and Peter Allen were joining them. The message to Mr Saunders said:-
- "Like I said, let's work together and fuck these off. Btw have you seen the MC, and the Jonses are in Tenerife together for IJS birthday??"*
- 7.29 There followed a number of messages which included inappropriate comments about Councillor Crompton and the others in Tenerife. These included:-
- *re his nicknames for people! He calls one of them "spunkface".*
 - *Like I say hasn't got your tact! He'll be doing that over MC in her bikini tho!!*
 - *Well it'd be better than doing Olwen. Just!*
- 7.30 *Capon* indicates that the threshold for finding a failure to treat others with respect must allow for the exercise of the passions and frustrations which often accompany political debate.
- 7.31 It is evident that Councillor Marshall's comments were not made in the heat of the moment when the guidance provides for what may at times be considered intemperate and inappropriate comments to be acceptable. It is evident that the messages were part of a premeditated campaign against a number of Councillors including Councillor Crompton. We have concluded that the messages were totally inappropriate and that they included gratuitous personal comments that were unreasonable and unwarranted.
- 7.32 We have therefore concluded that Councillor Marshall's conduct did fall short of the standard required by the Council's Code of Conduct by not treating Councillor Crompton, and others, with respect. He therefore failed to follow paragraph 1.6 of the code.

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Disrepute

7.33 Paragraph 1.5 of the Code of Conduct states:-

“You must not bring your office or your authority into disrepute”

7.34 It is evident that Councillor Marshall sent the messages to Mr Saunders with the intention of Mr Saunders using some or all of the information on his blog. Councillor Marshall had no control over how the information would be used once he sent it to Mr Saunders. It is therefore reasonable to conclude that Councillor Marshall was aware that it was very likely the information would end up in the public domain.

7.35 Q43 on page 68 of the Case Review 2010 (2011 Edition) published by SfE advises that disrepute is:-

“...a lack of good reputation or respectability.

In the context of the Code of Conduct, a member’s behaviour in office will bring that member’s office into disrepute if the conduct could reasonably be regarded as either:

- 1) Reducing the public’s confidence in that member being able to fulfill their role; or*
- 2) Adversely affecting the reputation of members generally, in being able to fulfill their role.”*

7.36 Q44 on the next page of the Case Review 2010 advises that:-

“An officer carrying out an investigation...does not need to prove that a member’s actions have actually diminished public confidence, or harmed the reputation of the authority...the test is whether or not a members’ conduct “could reasonably be regarded” as having these effects.

The test is objective and does not rely on any one individual’s perception. There will be a range of opinions that a reasonable person could have towards the conduct in question.”

7.37 Q42 on page 68 of the Case Review 2010 indicates that:-

“A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member’s office or Authority, as opposed simply to damaging the reputation of the individual concerned.”

7.38 Councillor Marshall made comments about members of the Council whilst they were on holiday. It is evident that these comments had a relevance to the business of the Council, as they were about serving Councillors.

7.39 In applying the circumstances of Councillor Marshall’s actions we consider that they would have an adverse effect on the public’s confidence in the ability of the Council to carry out its function. As such we consider that Councillor Marshall did bring the office of Councillor and that of the authority into disrepute.

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- 7.40 We have therefore concluded that Councillor Marshall did breach paragraph 1.5 of the Code of Conduct.

Bullying

- 7.41 Paragraph 1.7 of the Code of Conduct states:-

“You must not bully any person.”

- 7.42 The term bullying is not defined within the code however bullying and intimidation is referred to in the Standards Board Guidance on the Code issued in May 2007. It states on page 9 of the Guidance that:-

“Bullying may be characterized as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.”

This can be contrasted with legitimate challenges which a member can make in challenging policy or scrutinizing performance.

- 7.43 It is evident that the underlying purpose of the messages was to put in the public domain critical comments about Councillor Crompton and other individuals. We consider that these comments could be detrimental to Councillor Crompton's confidence. The comments could be considered to be intimidatory and designed to diminish Councillor Crompton's reputation. However as a fellow Councillor it is difficult to perceive how Councillor Marshall might be considered to have any influence over Councillor Crompton.
- 7.44 We therefore conclude that, on balance, Councillor Marshall's conduct towards Councillor Crompton in his messages to Mr Saunders did not breach paragraph 1.7 of the Code of Conduct.

Other matters considered

- 7.45 During our investigation the issue of Councillor Marshall's use of his Council provided mobile phone was raised in the context of paragraph 1.11 of the Code of Conduct. This deals with the use of the Council's resources. We have studied the Council's Protocol for the Provision and Administration of Mobile Telephones for Elected Members and note that there is no reference to private use of the phone, neither allowing nor prohibiting such use. Reference is made to Councillors contributing to the cost of the monthly tariff charge and that the tariff includes inclusive calls. The Protocol also makes specific reference to the fact that third party apps such as WhatsApp can be used to send pictures and videos etc. In that absence of any reference to private use in the Protocol we have not pursued this matter further.
- 7.46 We also note that Councillor Crompton referred to the Nolan Principles and the Code of Conduct when she was interviewed. We have carefully considered all the evidence available to us and those aspects of the Code of Conduct not referred to directly in this report and consider that there was insufficient evidence to prove that other parts of the Code of Conduct were breached.

8. Finding

- 8.1 Our findings are that there has been a breach of the code of conduct of the authority concerned.

Wilkin Chapman LLP

Investigating Solicitors

7 August 2018

Councillor Marshall Copy

Maxwellisation Response

Response from Cllr Marshall

Before I proceed, it has to be stressed that the conversations I had with Saunders were never intended for public viewing, either in whole or part. It was a private conversation between two individuals to what he openly advertised as a 'confidential hotline'. My part in all of this was to gain his confidence to get him to pass on evidence of wrongdoing that he had long purported he had. I came to the conclusion fairly early on that although he wasn't unintelligent, he was an obsessed simpleton, who saw conspiracy in everything and he actually had no firm evidence of anything, he lived at the back end of the rumour mill and fed his 'followers' information from there

He likes to portray himself as a journalist sharing news, however many politicians including myself over my term of office, had and do have, conversations with real journalists who don't print every comment or conversation that you have with them as you build up a relationship built on trust, this is the basis of the relationship I believed I had with this charlatan who doesn't even live in Sandwell, he is little more than a clatterfart

The primary evidence base has been tampered with by way of redaction by Saunders to save his own skin and therefore has no context in many areas, including the total lack of any phone calls made. He himself told me that he was getting emails sent via Cllr Ian Jones who he'd spent a lot of his time previously trying to expose as a fraud and involved in wrongdoing yet he was also meeting up with him and other members of Sandwell Labour together with Sandwell Tories and UKIP in back street pubs in Wednesbury on numerous Friday nights. I firmly believe that this 'expose' of myself was little more than entrapment, orchestrated by Saunders not for the public good as he tries to make out but borne out of spite and malice and his hatred of all things Sandwell Labour related. He portrays himself as an intellectual and belittles the IQ of the Labour Cllr's in Sandwell yet this was the man who spent a whole day asking all his trusted sources who 'tom night was' and what part of the council he worked in

I disagree in the main with the report and its conclusions, mainly because of the lack of primary evidence, the lack of context and therefore assumptions have been made by the author/s having totally failed in their attempts to interview me, on two occasions only giving me 24hrs notice after months of inaction. They are taking a part written only story and taking it at face value with no emotion and little context.

I will pick up on some points as follows but this is by no means an exhaustive list :-

2.3 The author can't even get basic facts right that are available via google, worse still I suspect they were supplied to the author by a council officer. How can the rest of the report be taken seriously?

7.13 How can you possibly prove this??

7.28 How can it be proven that 'Manboob' is not just simply a typo?

7.28 The author asserts that 'Manboob' is mocking of a masculine given name yet in your own description they are only found on men or boys, how the author can then move this on to have a racial element is bordering on the ridiculous and I take extreme exception to this type of accusation especially considering my work within the varying communities of Smethwick over the years both as a volunteer and public servant

7.28/9/30 The author has cherry picked a redacted written conversation which by definition has no emotion and in this case no context and concluded that this 'cannot be in the heat of the moment' Well I personally recall this part of that conversation and it was in the heat of the moment and there is no way anyone can prove otherwise. You have concluded that words used in a private

conversation never intended for public viewing are 'gratuitous, unreasonable and unwarranted' can you please explain how?

7.33 'Cllr Marshall implied that travellers would have a detrimental impact on the area' This is a widely held belief by many, not just within the communities of Sandwell but across many parts of England. I attended a public meeting organised by the West Midlands PCC, filmed by the BBC in my role as Cabinet Member, there were representatives from all West Midlands Councils. My years of personal experience of travellers was reaffirmed at that meeting by many others who'd had similar experience from various partner organisations. The author is at best naive, it is widely known that travellers do not have WC facilities within their caravans as they believe it to be unhygienic. This therefore leaves them with the option of using areas around any site that they temporarily set up at, ask any council worker that has the joy of cleaning up after they have visited. I have visited these sites, has the author?? I would also like to be presented with the written report that this site was being considered for use as a travellers site, failing that a copy of the minute and meeting it was discussed at or the admission that there are no such documents or conversations that had taken place

7.33 The author has again concluded incorrectly. The only person to have had any kind of premeditated campaign against Cllr Hussain or any other person for that matter was Saunders himself. Who is well known to have spent years trying to destroy Hussain's reputation then went on to be a character witness for him, turning everything on its head that he'd said about him, announcing publicly that Hussain was indeed the victim in all this

7.34 The Report presented was wholly inaccurate. SMBC had spent near to 800k of public money on the Wragge Report for it to conclude that no one was at fault. I was angry and frustrated and extremely concerned, as were other Councillors, that we had senior officers seemingly actively still trying to cover things up, and also passing information either directly or indirectly to Saunders and others. I still never passed on specifics but felt that the public needed to know what we were still having to deal with. MD was 'being kept out of the loop' as early as September/October 2016 as she was suspected of passing confidential information to both Cllr's Hussain and Jones. I have sworn I will not reveal that source but will if forced too. I had very little contact or dealings with Melanie on any level, 'Imelda and Melly' were well used nicknames for her amongst officers and other Cllr's how I can be accused of bullying her, via a 3rd party at that, is beyond the pale

7.37 These comments were never intended for public consumption so how can that be used as a test? They were sent to a publicly advertised 'confidential hotline' 'I will never betray a confidence Richard' said Saunders on numerous occasions. I personally feel sorry for all the other Cllr's and Council Officers that have spent years talking to him and that still are, and await him to turn on them. These conversations were totally about Labour Group issues and nothing whatsoever to do with my role in Council or council business and I wholly refute any suggestions otherwise.

7.42/3/4 I had no control whatsoever over what Saunders wrote, although he writes and acts like a petulant child he is actually a grown man, any comments he published, he published not me, any accusations of bullying of females or any other individual should be levelled at him and him alone

7.46/7 Both the author and Saunders come to the same conclusion that Cllr Marshall actually told nobody anything. The only information passed to Saunders by myself was little more than canteen gossip that was doing the rounds amongst low ranking officers, there was no high grade information that only cabinet members or indeed Cllr's would only know it was merely a mixture of gossip and nonsense

There were , and still are rogue elements within Sandwell Labour and within Council that have acted inappropriately or supported those that have acted inappropriately. Labour Regional Office is aware of these issues as are Council Directors , Police and Sport England . The public purse has been misused over a significant number of years by these individuals and it is up to the appropriate officers and authorities to take action

Rather than break the Nolan Principles I believe I have upheld them , I have acted solely in the interests of the people of Smethwick and Sandwell and made no gain whatsoever in fact I have paid the ultimate price for doing so and lost my role as a servant of the people for trying to expose the wrongdoing and wrong doers . I stood up for what was right , it is up to others to decide if they are willing to do so, the good people of Sandwell deserve the best