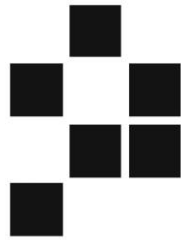


## **Chairs Announcement**

**Please note that members of the public and the press are now allowed by law to film, audio record, take photographs, blog or tweet at this meeting. I would ask at this point if anyone is intending to film the meeting? I would ask anyone who is recording to avoid any disruption of the meeting and to avoid filming members of the public. If you do film members of the public there is the potential for civil action against you by anyone who has not given their permission to be filmed.**

**We are not expecting a fire drill, so in the event of the fire alarm sounding, please leave the building as quickly as possible. The Governance Services Officer will direct you to the appropriate exit and assembly point.**



**Sandwell**  
Metropolitan Borough Council

**Ethical Standards and Member  
Development Committee**

**Friday, 28 September, 2018 at 2.30 pm**  
**in the Council Chamber at the Sandwell Council House,**  
**Oldbury**

**Agenda**

1. Apologies for absence. (Open to Public and Press)
2. Members to declare any interest in matters to be discussed at the meeting.
3. To confirm the minutes of the meeting held on 9 March 2018, as a correct record.
4. Appointment to Ethical Standards Sub Committees and Standards Working Group.
5. Appointment of Independent Persons.
6. Elected Member Standards Complaints – Update.
7. Work Programme 2018/19.

**J Britton**  
**Chief Executive**

Sandwell Council House  
Freeth Street  
Oldbury  
West Midlands

Distribution:

Councillor Lewis (Chair)

Councillor E M Giles (Vice-Chair);

Councillors Hartwell, P Hughes, Sandars, Shackleton, Trow and Underhill.

Mr Tew [Independent Person].

**Agenda prepared by Trisha Newton  
Democratic Services Unit  
Tel No: 0121 569 3193  
E-mail: [trisha\\_newton@sandwell.gov.uk](mailto:trisha_newton@sandwell.gov.uk)**

This document is available in large print on request to the above telephone number. The document is also available electronically on the Committee Management Information System which can be accessed from the Council's web site on [www.sandwell.gov.uk](http://www.sandwell.gov.uk)

Please note that this meeting may be filmed by members of the public and press, and may be filmed by the Council for live or subsequent broadcast on the Council's web site.

## **Apologies**

To receive any apologies from members

## **Declarations of Interest**

Members to declare any interests in matters to be discussed at the meeting.

**Minutes of the Ethical Standards  
and Member Development Committee**

**9<sup>th</sup> March, 2018 at 2.30 pm  
at the Sandwell Council House, Oldbury**

- Present:** Councillor Lewis (Chair);  
Councillor S Crumpton (Vice-Chair);  
Councillors E M Giles, P Hughes, Sandars, Trow  
and Underhill.
- Observer:** Mr J Tew, Mr R Tomkinson and Ms J Williams  
(Independent Persons).
- Apology:** Councillor Shackleton.

1/18 **Minutes**

**Resolved** that the minutes of the meeting of the Ethical Standards and Member Development Committee, held on 8<sup>th</sup> December 2017, be confirmed as a correct record.

2/18 **Appointment of Independent Person**

In accordance with the Localism Act 2011, arrangements must be put in place for the appointment by the Council of at least one Independent Person whose views must be sought and taken into account by the Council before it made its decision on an allegation against an elected member that it had decided to investigate.

The Independent Person's views may be sought by a member or co-opted member of the Council if that person's behaviour was the subject of an allegation, and may also be sought by the Council in relation to an allegation it had not yet decided to investigate.

## **Ethical Standards and Member Development Committee**

### **9<sup>th</sup> March, 2018**

The Council had decided to have three Independent Persons. Following a resignation, there was a vacancy. The position was advertised and four candidates were interviewed in December 2017 by the Leader of the Council and the Chair and Vice Chair of the Ethical Standards and Member Development Committee.

Mr John Tew had been offered the position and the appointment was approved by full Council at its meeting on 16<sup>th</sup> January 2018.

The Chair welcomed Mr Tew and introduced him to the Committee.

**Resolved** that the appointment of Mr John Tew as Independent Person for Standards matters, for a four year period ending 31<sup>st</sup> January 2022, be noted.

3/18

### **Member Development Programme – Update**

An update was provided to the Committee on the recent workshops held for elected members in order for members to identify their development and training needs to succeed in their various Councillor roles and achieving the strategic priorities of the Council.

In the past few years, the Council had invested in member development and successfully achieved the Member Development Charter accreditation from West Midlands Employers. However, the subjective development model underpinning member development had recently shifted to a more objective one. Furthermore, West Midlands Employers no longer provided Member Development Charter accreditation.

It had therefore been proposed to revise the revised Member Development Programme to assist members to lead their own development and ensure that they developed/acquired the requisite knowledge, experience and skills, as well as have the necessary support mechanisms, to succeed in their various Councillor roles.

The Council sought to build upon its successes as a member-led Council and recognised that to do so, all elected members had an important role to play in ensuring the Member Development Programme was member-led through their input in workshops and prioritisation of learning topics and attendance and contribution at the learning interventions as requested.

## **Ethical Standards and Member Development Committee**

### **9<sup>th</sup> March, 2018**

It was recognised that elected members could, during their period of office (whether one or over several terms), be appointed to various roles. The programme was purposely designed to facilitate discussions and debate with all elected members and would specifically consider the following roles an elected member could undertake. A similar but separate development programme had also been developed for the Executive and was led and overseen by the Leader of the Council.

Joined-up Member and Executive Development Programmes had been developed that were designed to engage all members and Cabinet Members so that their respective development, training and support needs could be properly examined and met. The programme would challenge and inform members so that they were equipped to meet the requirements of the 2030 Vision.

During week commencing 12<sup>th</sup> February 2018, facilitated sessions were held with all elected members for them to consider their specific role(s), consider and explore the challenges ahead, including the Vision 2030 and the West Midlands Combined Authority and to convey the strategic skills, knowledge and awareness that they needed to make a significant impact both individually and collectively. At these sessions, members were also asked to consider how they could convey the Council values of 'Trust, Unity and Progress' through their various roles.

Officers were analysing comments received by members from each of these sessions in order to identify the support requirements that members were requesting to help deliver Sandwell's Vision 2030 as well as other strategic priorities facing the Council as a Borough. The feedback/findings would be categorised thematically taking into account the various roles elected members undertook and would be reviewed by the Member Development Working Group.

Following agreement on the list of topics to be covered, members would also be asked to complete a paired comparison exercise which would ask them to rank what learning support sessions they would like most based on the topics drawn from the workshops. Upon completing these forms, officers would collate all the findings and produce a final list in ranked order of the interventions sought by members.

The Member Development Working Group would be consulted on the final list of interventions and their agreement would be sought based on the results.



## **Ethical Standards and Member Development Committee**

### **9<sup>th</sup> March, 2018**

A development programme would subsequently be produced and training sessions arranged through training providers, both internal and external, capable of delivering the support sessions as identified by members, throughout the next municipal year as detailed within the programme.

A review of Member Development Programmes would also include a refresh of the elected member induction arrangements and the implementation of Personal Development Plan interviews arranged with elected members to discuss and agree development, training and specific support needs.

Feedback on the Executive Development sessions and progression of the above stages in relation to the Executive Development Programme would be progressed with the Leader and Cabinet Members.

4/18

### **Annual report of the Ethical Standards and Member Development Committee and associated matters**

#### **Annual Report**

The Ethical Standards and Member Development Committee's terms of reference required the Committee to produce an annual report detailing the activities undertaken throughout the municipal year. The annual report would be referred to Full Council for consideration at its meeting on 17<sup>th</sup> April 2018.

#### **Allegations Update**

The Committee received details of complaints received in relation to member conduct and the progress on the complaints as follows:-

#### **Case reference MC/06/0616 - Councillor Hussain**

On 8<sup>th</sup> to 10<sup>th</sup> January 2018, the Ethical Standards Sub-Committee determined that Councillor Hussain had breached the Code of Conduct by his actions in connection with the sale of toilet blocks and the reduction or cancellation of parking tickets. The Decision Notice would be issued shortly and a Sanctions Hearing would take place during March.

**Ethical Standards and Member Development Committee**  
**9<sup>th</sup> March, 2018**

**Case reference MC/03/0517 - Councillor I Jones**

On 24<sup>th</sup> January 2018, the Ethical Standards Sub-Committee determined that Councillor I Jones had breached the Code of Conduct by his actions in connection with the removal of a plot of land from an already arranged and publicised auction during his term as a Cabinet Member.

The Sub-Committee imposed the following sanctions in relation to Councillor I Jones:

- (i) the Decision Notice should be published on Councillor I Jones' Member Profile on the Council's website for the remainder of his term of office (or, if later, until he complied with the sanctions set out below);
- (ii) recommendation that Councillor I Jones be suspended from membership of the Economy, Skills, Transport and Environment Scrutiny Board and not be appointed to any further Committee of the Council until he had carried out training to the satisfaction of the Monitoring Officer as set out below;
- (iii) the training would be bespoke to ensure that Councillor I Jones understood appropriate competencies, responsibilities, and behaviours in carrying out his responsibilities as a member of committees. Such training to be at Councillor I Jones' own expense.

**Case reference MC/02/0517**

Allegations concerning community events at Hill Top Park and Radcliffe Park and the indication that the Councillor may have included the names of council officers on official documents as organiser of an event without their knowledge; alleged failure of Councillor to register interests as Vice Chair of Hill Top Community Development Association, and failure to follow appropriate council procedures in arranging the event.

The subject Councillors had been unable to attend interviews with the Investigator due to medical reasons.

The Investigation into the allegations had been completed and the report of the Investigating Officer was being prepared.

**Ethical Standards and Member Development Committee**  
**9<sup>th</sup> March, 2018**

**Case reference MC/05/0717**

Allegations concerning land sales to two Councillors when displaced from their homes by a Compulsory Purchase Order. In addition, it was further alleged that housing was allocated to family members of one of the Councillors.

An Investigator had been appointed and the Investigation was proceeding, notwithstanding a lack of response to date from the subject Councillors.

**Case references MC/07/1017, MC/08/1017, MC/09/1117**

Three complaints including a self-referral from one Councillor concerning alleged “Whats app” texts published on a local blog site entitled “In the Public Domain”.

These allegations included disclosure of confidential information and inappropriate and disparaging references to individuals.

In accordance with the arrangements for dealing with Code of Conduct Complaints, the Council’s Independent Person had been consulted and a formal decision to proceed to investigate had been made by the Monitoring Officer.

An independent Investigator had been appointed and the matter was proceeding to witness interviews.

There were connected police enquiries ongoing and the Standards Investigation was initially delayed at the request of the police. The Investigation was however proceeding as it was in the public interest to deal with these allegations as soon as reasonable practicable.

**Register of Interests**

The statutory requirements relating to the Register of Members’ Interests were set out in Section 29 of the Localism Act 2011. It required the Monitoring Officer to establish and maintain a Register of Members’ Interests which also included the interests of co-opted members of the Council.

The Council’s present arrangements complied with the statutory provisions.

## **Ethical Standards and Member Development Committee**

### **9<sup>th</sup> March, 2018**

The statutory requirements also provided that the Council must ensure that copies of the Register were available at an office of the authority for inspection by members of the public at all reasonable hours. The Register was available for inspection at the Sandwell Council House upon a request being made to the Monitoring Officer.

The Council's arrangements enabled the public to view details of each individual Member's interests [including co-opted members] on the Council's website via the Committee Management Information System (CMIS).

One to one meetings with the Monitoring Officer and senior legal staff had been offered to all members and the majority of members had been assisted or received guidance in filling in their declaration of interest forms.

The Registers were periodically reviewed by the Monitoring Officer.

The work programme provided for an annual review of the Register by the Committee.

The Monitoring Officer would provide training to elected and co-opted Members on declarations of interests at the beginning of the next municipal year.

### **Member Code of Conduct**

The Localism Act 2011 introduced a revised standards regime. On 18<sup>th</sup> October 2016, the Council adopted a new Code of Conduct. The principles of good governance required the regular review of policies and processes that contributed to the ethical framework of the authority.

The Committee was asked to consider the establishment of a Standards Working Group to undertake a review of the Members' Code of Conduct and the Council's Arrangements for Dealing with Standards Allegations under the Localism Act 2011.

Any proposed changes would be reported to the Committee for consideration and onward approval by Full Council.

## **Ethical Standards and Member Development Committee**

### **9<sup>th</sup> March, 2018**

It was anticipated that the review of the Code and arrangements would be completed and referred to the Committee in June, with any changes proposed being submitted to Full Council in July 2018.

Training on the refreshed Code of Conduct and Arrangements for dealing with complaints would be provided to all elected and co-opted Members.

### **Local Authority Ethical Standards: Stakeholder Consultation**

The Committee on Standards in Public Life (CoSPL) had invited responses to its consultation to inform its review of local government ethical standards.

The CoSPL's website stated that robust standards arrangements were needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government.

The terms of reference for the review were to:

- examine the structures, processes and practices in local government in England for:
  - maintaining codes of conduct for local councillors
  - investigating alleged breaches fairly and with due process
  - enforcing codes and imposing sanctions for misconduct
  - declaring interests and managing conflicts of interest
  - whistleblowing;
- assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
- make any recommendations for how they can be improved;
- note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

The consultation would close at 5pm on 18<sup>th</sup> May 2018.

The Committee was requested to consider the consultation and authorise the Chair of the Committee (with assistance through the Standards Work Group) to formally respond to the consultation on behalf of the Council.

**Ethical Standards and Member Development Committee**  
**9<sup>th</sup> March, 2018**

**Resolved:-**

- (1) that the Chair of the Ethical Standards and Member Development Committee be authorised to agree the content and final version of the Annual Report for submission to Full Council at its meeting on 17<sup>th</sup> April 2018;
- (2) that the update provided in respect of complaints received in relation to member conduct be noted;
- (3) that the Chair of the Ethical Standards and Member Development Committee be authorised to respond on behalf of the Council to the Local Authority Ethical Framework: Stakeholder Consultation launched by the Committee in Standards in Public Life;
- (4) that, as part of the Council's review of governance, the establishment of a Standards Working Group to review the Council's Ethical Framework be approved, in accordance with the Terms of Reference set out at Appendix 1, with membership consisting of Councillors Lewis, S Crumpton, E M Giles and Sandars.

(Meeting ended at 4.23 pm)

Contact Officer: Trisha Newton Democratic Services Unit 0121 569 3193
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**Standards Working Group**

**Terms of Reference**

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**Scope**

To review the Council's Ethical Framework, namely:

- Council's Members' Code of Conduct;
- arrangements for Members' Register and declarations of Interest; and
- arrangements for Dealing with Standards Allegations under the Localism Act 2011.

To gather insight, consult and/or gather such data and information from sources as deemed necessary and appropriate to undertake an effective review of the Ethical Framework.

To consider and make recommendations on how the council can discharge its duty to promote high standards of conduct as required under the Localism Act 2011.

To consider and assist the Chairperson of the Committee to formally respond to the Local Authority Ethical Standards: Stakeholder Consultation.

**Membership**

Chairperson of the Standards and Member Development Committee.

Three other Members of the Standards and Member Development Committee

Independent Members shall be entitled to attend meetings of the Working Group in an advisory capacity.

The Working Group may invite other members or third parties to working Group meetings as it considers appropriate and necessary to undertake the review.

**Ethical Standards and Member Development Committee**  
**9<sup>th</sup> March, 2018**

**Quorate and Meetings**

At least three Members of the Working Group.

Meetings shall be held as required.

**Chairperson of the Working Group**

The Chairperson of the Working Group shall be the Chairperson of the Committee or in his absence the Committee's Deputy Chairperson.

**Decision-making**

To submit recommendations to the Ethical Standards and Member Development Committee on revisions to the Council's Ethical Framework.

**Voting**

By majority vote with the Chairperson (or Deputy as applicable) having a casting vote.


**Access to Information Rules**

The Working Group is not a constitutional meeting of the council or a sub-committee of the Standards and Member Development Committee and as such is not subject to the Access to Information Rules.



## Ethical Standards and Member Development Committee

28 September 2018

<b>Subject:</b>	<b>Appointment to Ethical Standards Sub-Committees and Standards Working Group</b>
<b>Director:</b>	<b>Director - Monitoring Officer - Surjit Tour</b>
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Trisha Newton <a href="mailto:Trisha_newton@sandwell.gov.uk">Trisha_newton@sandwell.gov.uk</a> 0121 569 3193

### DECISION RECOMMENDATIONS

That the Ethical Standards and Member Development Committee:

- 2.1 Appoints to two Ethical Standards Sub-Committees for the 2018/19 municipal year, with flexibility between membership to cater for availability and workload, with delegated powers to carry out the functions set out in the following terms of reference, and with the membership set out below:

Terms of reference of the Ethical Standards Sub Committee

- To consider investigation reports referred to it by the Monitoring Officer.
- To conduct hearings (including the imposition of sanctions).

Membership

<b>SUB-COMMITTEE 1</b>		<b>SUB-COMMITTEE 2</b>	
Member	Substitute	Member	Substitute
Lewis	E M Giles	E M Giles	Lewis
Hartwell	P Hughes	P Hughes	Hartwell
Shackleton	Sandars	Sandars	Shackleton
Trow	Underhill	Underhill	Trow

- |   |
|---|
| <p>2.2 In view of the change in Committee membership for the 2018/19 municipal year, confirm the appointment of members to the Standards Working Group (to review the Council's Ethical Framework in accordance with the Terms of Reference set out at Appendix 1).</p> |
|---|

## **1 PURPOSE OF THE REPORT**

- 1.1 The Localism Act 2011 requires authorities to adopt arrangements for dealing with complaints about breaches of the Member Code of Conduct. The Council's arrangements for dealing with complaints provide for a Sub-Committee of the Ethical Standards and Member Development Committee to consider investigation reports referred to it by the Monitoring Officer and to conduct hearings (including the imposition of sanctions).
- 1.2 The Council at its annual meeting held on 22 May 2018 agreed the membership of the Ethical Standards and Member Development Committee for the 2018/2019 municipal year. The Committee now needs to make appointments to the Ethical Standards Sub Committees for this municipal year.
- 1.3 At its meeting on 9 March 2018, the Ethical Standards and Member Development Committee gave approval to the establishment of a Standards Working Group to review to Council's Ethical Framework (as set out in the Terms of Reference at Appendix 1). The Committee is requested to confirm which three members should be appointed to the Group, alongside the Chair.
- 1.4 The working group is not a decision-making body but will enable matters and issues to be discussed and explored, and a report being prepared for the consideration of the Committee in due course.

## **2 IMPLICATIONS FOR SANDWELL'S VISION**

- 2.1 High standards of conduct are an essential part of good corporate governance and this in turn has a direct relationship with the delivery of high quality services.

## **3 STRATEGIC RESOURCE IMPLICATIONS**

- 3.1 There are no resource implications arising from this report.

## **4 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 4.1 Section 28(6) of the Localism Act 2011 provides that a relevant authority must have in place arrangements under which allegations that a member or co-opted member of the authority has failed to comply with the authority's code of conduct can be investigated, and arrangements under which decisions on allegations can be made. There is no statutory requirement as to the nature of these arrangements.

## **5 FINANCIAL IMPLCIATIONS**

- 5.1 There are no direct financial implication arising from this report, save that a successful recruitment exercise for an Independent Person will mean that any training and other expenses (such as travel costs) incurred by the Independent Person(s) in the course of discharging their duties will be met by the Council (in accordance with current approved arrangements).

## **6 OTHER OPTIONS CONSIDERED**

- 6.1 The Committee is required to appoint members to the sub-committees to ensure relevant standards complaints are effectively addressed.
- 6.2 The Committee is not required to have a working group to review the Ethical Framework, however it is considered good practice to periodically review the Code of Conduct and Arrangements for dealing with complaints and a working group provides a helpful way to undertake such a review. A working group also enables broader discussion and debate to take place on how the Council can promote and maintain higher standards of conduct.

**Surjit Tour**  
**Director – Monitoring Officer**

## Standards Working Group

### Terms of Reference

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#### Scope

To review the Council's Ethical Framework, namely:

- Council's Members' Code of Conduct;
- arrangements for Members' Register and declarations of Interest; and
- arrangements for Dealing with Standards Allegations under the Localism Act 2011.

To gather insight, consult and/or gather such data and information from sources as deemed necessary and appropriate to undertake an effective review of the Ethical Framework.

To consider and make recommendations on how the council can discharge its duty to promote high standards of conduct as required under the Localism Act 2011.

To consider and assist the Chairperson of the Committee to formally respond to the Local Authority Ethical Standards: Stakeholder Consultation.

#### Membership

Chairperson of the Standards and Member Development Committee.

Three other Members of the Standards and Member Development Committee

Independent Members shall be entitled to attend meetings of the Working Group in an advisory capacity.

The Working Group may invite other members or third parties to working Group meetings as it considers appropriate and necessary to undertake the review.

## **Quorate and Meetings**

At least three Members of the Working Group.

Meetings shall be held as required.

## **Chairperson of the Working Group**

The Chairperson of the Working Group shall be the Chairperson of the Committee or in his absence the Committee's Deputy Chairperson.

## **Decision-making**

To submit recommendations to the Ethical Standards and Member Development Committee on revisions to the Council's Ethical Framework.

## **Voting**


By majority vote with the Chairperson (or Deputy as applicable) having a casting vote.

## **Access to Information Rules**

The Working Group is not a constitutional meeting of the council or a sub-committee of the Standards and Member Development Committee and as such is not subject to the Access to Information Rules.

## Ethical Standards and Member Development Committee

28 September 2018

<b>Subject:</b>	<b>Appointment of Independent Members to the Ethical Standards and Member Development Committee</b>
<b>Director:</b>	<b>Director – Monitoring Officer – Surjit Tour</b>
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Trisha Newton Principal Democratic Services Officer <a href="mailto:Trisha_newton@sandwell.gov.uk">Trisha_newton@sandwell.gov.uk</a>

### **DECISION RECOMMENDATIONS**

That the Ethical Standards and Member Development Committee:

1. Review and approve the process to appoint Independent Members to the Ethical Standards and Member Development Committee as set out in this report.

#### **1 PURPOSE OF THE REPORT**

- 1.1 For the Ethical Standards and Member Development Committee to review and approve the process to appoint an Independent Member pursuant to the Localism Act 2011.

## **2 IMPLICATIONS FOR SANDWELL'S VISION**

- 2.1 The Independent Person helps to provide public confidence in the manner in which the Council deals with complaints against its Elected and Co-opted Members.
- 2.2 The role of the Independent Person is advisory and is important in providing assurance to the Council and the public that standards matters are being dealt with effectively, fairly and proportionately.

## **3 BACKGROUND AND MAIN CONSIDERATIONS**

- 3.1 In accordance with the Localism Act 2011, arrangements must be put in place for the appointment by the Council of at least one Independent Person whose views must be sought and taken into account by the Council before it makes a decision on an allegation against an elected member that it has decided to investigate.
- 3.2 The Independent Person's views may be sought by a member or co-opted member of the Council if that person's behaviour is the subject of an allegation, and may also be sought by the Council in relation to an allegation it has not yet decided to investigate.
- 3.3 The Council has decided to have three Independent Persons. Following the expiry of the term of office for two Independent Persons, there are currently two vacancies.
- 3.4 To improve the prospects of securing successfully the appointment of two further Independent Persons, the Director – Monitoring Officer has liaised with his opposite number at Walsall MBC with a view to undertaking a joint recruitment exercise.
- 3.5 The benefits of a joint recruitment exercise include:
  - a broader remit may attract a broader pool of potential candidates;
  - there is greater opportunities for the sharing of knowledge and support amongst the Independent Persons
  - increased opportunities to gain greater experience; and
  - a joint recruitment exercise means the costs of the recruitment can be shared between both councils.
- 3.6 The role description for an Independent Person for standards matters is attached at Appendix 1. (This has not been agreed with Walsall Council but was used in the previous recruitment exercise).

## PROPOSED RECRUITMENT

- 3.7 Any successful recruitment exercise would be on the basis that the person(s) appointed would act as an Independent Person for both councils. Each council would however need to confirm the appointment of the Independent Person through Full Council. Each council would therefore still retain control over the appointment.
- 3.8 It is proposed that the arrangements for the recruitment exercise principally follows the same processes that we have undertaken in the past, such as an advert being placed in the local newspaper, Council website and other forums etc, that both council details and contact information is on relevant recruitment literature.
- 3.9 One change that is proposed is for the Recruitment Panel to be reconfigured as a joint panel made up of an equal number of Committee Members from both councils. The Chair and Vice Chair of the Panel will be agreed by the Panel Members. Any successful candidate must be by majority decision in favour.
- 3.10 Appendix 1 sets out the Role criteria for the Independent Person previously used. It is proposed that the Committee authorises the Committee Chair to approve a new joint job role (which is likely to be along similar lines to Appendix 1) with Walsall Council for the purposes of this recruitment exercise.
- 3.11 It is also proposed that the Committee authorises the Chair to finalise and agree all necessary recruitment arrangements/procedures between both councils to ensure an effective recruitment exercise is undertaken.

## **4 STRATEGIC RESOURCE IMPLICATIONS**

- 4.1 The role of Independent Person is a voluntary position and no annual allowance is paid in respect of this appointment. However, travelling and subsistence expenses are paid at the appropriate rate. The cost of advertising is met from within existing budgets.

## **5 LEGAL AND GOVERNANCE CONSIDERATIONS**



- 5.1 Section 27 of the Localism Act 2011 requires authorities to promote and maintain high standards of conduct by their members and co-opted members. The Act requires local authorities to have in place mechanisms to investigate allegations that a member has not complied with their Code of Conduct, and arrangements under which decisions on allegations may be made.
- 6.2 Section 28(7) of the Act requires local authorities to appoint at least one Independent Person to advise the Council before it makes a decision on an allegation. The Independent Person also advises a member facing an allegation who has sought the views of that person. There are restrictions on who can be appointed as the Independent Person, mainly, that the Independent Person cannot be a councillor, officer or their relative or close friend. Public notice has to be given of recruitment for the role.

## **Surjit Tour**

### **Director – Monitoring Officer**



### **APPOINTMENT OF INDEPENDENT PERSON – BACKGROUND INFORMATION**

Under the provisions of the Act the Council is responsible for deciding how to deal with standards issues at a local level, including adopting its own local code of conduct for elected members and determining what arrangements it will adopt to deal with complaints about member conduct.

The Act provides that the Council must appoint an Independent Person or persons to assist in discharging these responsibilities. Full details of the role and responsibilities of the Independent Person are included in this Recruitment Pack.

The Council already has one Independent Persons and is seeking to make a further two appointments.

The Independent Person will be required to be contactable at all times during normal working hours by telephone or by email and to attend hearings as necessary, which are usually held during the day and possibly at relatively short notice.

### **SELECTION CRITERIA SKILLS AND COMPETENCIES**

The Independent Person will have:

- a keen interest in standards in public life.
- a wish to serve the local community and uphold local democracy.
- the ability to be objective, independent and impartial.
- sound decision making skills
- leadership qualities, particularly in respect of exercising sound judgement.

The Independent Person will:

- be a person in whose impartiality and integrity the public can have confidence.
- understand and comply with confidentiality requirements.
- have a demonstrable interest in local issues.
- have an awareness of the importance of ethical behaviours.
- be a good communicator.

### Desirable additional criteria are:

- working knowledge/experience of local government or other public service and/or of large complex organisations.
- awareness of and sensitivity to the political process.
  
- knowledge and understanding of judicial/quasi-judicial or complaints processes.

You should demonstrate in your application how you meet the above criteria as this will assist the short-listing process.

Candidates will be assessed via the application form and by interview.

### Eligibility for Appointment

A person cannot be appointed as an Independent Person if they are or were within a period of 5 years prior to the appointment:

- a member, co-opted member or officer of the authority.
- a member, co-opted member or officer of a parish council in the District Council's area, or a relative or close friend of the above.

### Remuneration

This is a voluntary position and no annual allowance is payable in respect of this appointment, however travelling and subsistence expenses will be paid at the appropriate rate.

### Special conditions

1. The Independent Person must sign an undertaking to comply with the Council's Code of Conduct for Members and disclose their interests in the register of members' interests.
2. Applicants must disclose whether they hold any contract with the Council.
3. Applicants must disclose whether they are a party to any outstanding complaint or grievance against the Council.
4. Canvassing by the candidate will disqualify your application.

## **ROLE DESCRIPTION**


Responsible to: The Council

Liaison with: Monitoring Officer, Deputy Monitoring Officer, members of the Ethical Standards and Member Development Committee, officers and members of the Council and key stakeholders within the community.

1. To assist the Council in promoting high standards of conduct by elected and co-opted members of the Council and in particular to uphold the Code of Conduct adopted by the Council and the seven principles of public office, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
2. To be consulted by the Council through the Monitoring Officer, Deputy Monitoring Officer, and/or the Ethical Standards and Member Development Committee before it makes a decision on an investigated allegation and to be available to attend local hearings as necessary.
3. To be available for consultation by the Monitoring Officer, Deputy Monitoring Officer, and/or the Ethical Standards and Member Development Committee before a decision is taken as to whether to investigate a complaint or to seek local resolution of the same.
4. To be available for consultation by any elected member or co-opted member who is the subject of a standards complaint.
5. To develop a sound understanding of the ethical framework as it operates within the Council.
6. To participate in training and networking events to develop skills, knowledge and experience.
7. To act as advocate and ambassador for the Council in promoting ethical behaviour.

## Ethical Standards and Member Development Committee

28 September 2018

<b>Subject:</b>	<b>Elected Member Standards Complaints – Update</b>
<b>Director</b>	<b>Director - Monitoring Officer - Surjit Tour</b>
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Surjit Tour Director - Monitoring Officer

### **DECISION RECOMMENDATIONS**

That Ethical Standards and Member Development Committee:

- (1) considers the updated information on current complaints in accordance with the Council's Arrangements for dealing with Code of Conduct matters.
- (2) notes the details of the complaints and the progress/outcome in respect of each complaint.
- (3) considers any other action deemed appropriate in relation to any of the matters reported having regard to the Council's Arrangements for dealing with Code of Conduct matters and its statutory duty to promote and maintain high standards of Elected Member conduct under the Localism Act 2011.

#### **1 PURPOSE OF THE REPORT**

- 1.1 The Ethical Standards and Member Development Committee receives reports periodically on the complaints received in respect of Elected Member conduct and their progress and outcome.
- 1.2 This report provides a brief summary of updated information on current/recent complaints in accordance with the Council's Arrangements for dealing with Code of Conduct Matters.

## **2 IMPLICATIONS FOR SANDWELL'S VISION**

- 2.1 The increased awareness of the work of the Committee will help promote higher standards of conduct amongst Elected Members. It demonstrates that the Council will address poor conduct directly and that allegations made against Elected Members will be effectively managed and addressed in accordance with the Council's Arrangements for dealing with standards allegations under the Localism Act 2011 (see Appendix 10).
- 2.2 The open, transparent and robust approach taken to dealing with complaints against Elected Member conduct helps ensure the public, staff, partners and other stakeholders maintain confidence in the Council and Elected Members.

## **3 BACKGROUND**

- 3.1 Appendices 1-8 to this report contain details of complaints that have and are being addressed, together with investigating officers' reports and findings in those cases that have been subject to investigation. All complaints are dealt with in accordance with the Arrangements for dealing with standards allegations under the Localism Act 2011.
- 3.2 The Committee will note from the Schedule of Complaints (Appendix 1) that only two 'live' standards cases currently remain outstanding. Over the last twelve months, a considerable number of standards complaints have been dealt with either at the preliminary stage, by local resolution or by the standards sub-committee.
- 3.3 There can be little dispute over the Council's commitment and determination to (i) openly and effectively deal with standards complaints, and (ii) challenge and hold to account those Elected Members whose conduct is alleged to fall below the standard of conduct expected of them. The approach taken by the Council is consistent with its representations to the LGA Peer Review and the recommendations of the Peer Review provided in January 2018 to continue to effectively deal with all standards complaints against Elected Members.

- 3.4 It is important to note that the majority of the more significant complaints relate to events that go back several years – with one relating to events going back as far as 1999. The Committee will also note and be aware that the vast majority of Sandwell Elected and Co-opted Members all observe the Code of Conduct appropriately and have exemplary records of conduct.
- 3.5 The Monitoring Officer will consider each complaint in accordance with the Arrangements, and if appropriate refer for investigation, irrespective of the passage of time.
- 3.6 However, complaints that relate to events dating back many years require careful consideration as the passage of time can lead to evidential difficulties and unfair prejudice, particularly as memories do fade over time. However, such factors must be weighed up against (i) the public interest, (ii) probative value of an investigation, and (iii) ensuring the public's confidence in the Council's Ethical Framework and Arrangements for dealing with complaints against Elected Members is maintained.
- 3.7 The Committee will also note that four specific complaints relate to two former Elected Members, namely Mahboob Hussain and Richard Marshall:
- Appendix 4 - Investigation Report - Reference MC/05/0717 (former Cllr Hussain)
- Appendix 6 - Investigation Report - Reference MC/07/1017 (former Cllr Marshall)
- Appendix 7 - Investigation Report - Reference MC/08/1017 (former Cllr Marshall)
- Appendix 8 - Investigation Report - Reference MC/09/1117 (former Cllr Marshall)
- 3.8 The complaints were received against the abovementioned persons when they were both Elected Members. Unfortunately, it was not possible to complete the investigations and hold an Ethical Standards Sub-Committee (in accordance with the Arrangements) into all four complaints prior to the aforementioned persons ceasing to be Elected Members following their terms of office coming to end in May 2018.

- 3.9 Once a person ceases to be an Elected Member, the Code of Conduct cease to apply to that person and in turn the Arrangements for dealing with the complaint also cease to apply. Accordingly, notwithstanding both persons being found to have breached the Members' Code of Conduct following independent investigations (during their respective terms of office), it is not possible to progress these matters to an Ethical Standards Sub-Hearing (and consider potential sanctions (if appropriate)).
- 3.10 However, that does not preclude the Committee considering the above-mentioned reports given the Council's overarching statutory duty to promote and maintain high standards of conduct pursuant to section 27, Localism Act 2011, and the high public interest arising in respect of these matters.

Section 27(1) provides that:

A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority.

- 3.11 Given the statutory duty and the Committee's duties and responsibilities arising under its terms of reference, the Committee is entitled to consider and determine what other action ought to be taken (if any) in the interests of promoting and maintaining high standards of conduct amongst Elected and Co-opted Members in light of the update provided.
- 3.12 The Committee is referred to Appendices 1-8 at the end of this report for further details of each reported complaint.

## **4 STRATEGIC RESOURCE IMPLICATIONS**

- 4.1 There are resource implications arising directly as a result of undertaking investigations in standards complaints. The cost of investigations varies depending on each matter. Such costs are inevitable and necessary if the Council is to ensure the public maintains confidence in Elected and Co-opted Members, as well as the Council as a whole.

## **5 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 5.1 The new standards arrangements are set out in chapter 7 of the Localism Act 2011, and in secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosure of Pecuniary Interests) Regulations 2012.



- 5.2 The duty upon the Council to promote high standards of conduct arises under section 27 Localism Act 2011 which is detailed within the main body of this report.
- 5.3 Under section 28(1) Localism Act 2011, the Council must have a Members' Code of Conduct. The current Code is attached at Appendix 9 to this report.
- 5.4 The Council must also have arrangements for dealing with complaints against Elected Members which must include provisions for investigating complaints and making decisions in respect of any allegations that are made against an Elected Member (section 28, Localism Act 2011). The Council has adopted 'Arrangements for dealing with standards allegation under the Localism Act 2011' to comply with this requirement – see Appendix 10 to this report.

## 6 **APPENDICES:**

1. Schedule of Complaints.
2. Investigation Report - Reference MC/02/0517 (Cllr I Jones)
3. Investigation Report - Reference MC/02/0517 (Cllr O Jones)
4. Investigation Report - Reference MC/05/0717 (former Cllr Hussain)
5. Investigation Report - Reference MC/07/1017 (Cllr Eling)
6. Investigation Report - Reference MC/07/1017 (former Cllr Marshall)
7. Investigation Report - Reference MC/08/1017 (former Cllr Marshall)
8. Investigation Report - Reference MC/09/1117 (former Cllr Marshall)
9. Members' Code of Conduct
10. Arrangements for dealing with standards allegations under the Localism Act 2011

**Surjit Tour**  
**Director – Monitoring Officer**

## **SCHEDULE OF COMPLAINTS**

This Schedule separates standards complaints into four categories:

- Complaints subject to formal investigation that do not require a hearing of the Ethical Standards Sub-Committee.
- Complaints subject to proposed informal resolution or other resolution
- Complaints in respect of no further action to be taken at the preliminary stage.
- Other complaints.

### **Complaints subject to formal investigation that do not require a hearing of the Ethical Standards Sub-Committee**

**1. Case Reference: MC/02/0517a**  
**Subject Member: Councillors Ian Jones**

Allegations concerning community events at Hill Top Park and Radcliffe Park and the indication that Councillor Ian Jones may have included the names of Council officers on official documents as organiser of an event without their knowledge and failure to follow appropriate Council procedures in arranging the events.

The investigating officers' report is attached for information at Appendix 2.

Finding: No breach of Code.

**Case Reference: MC/02/0517b**  
**Subject Member: Councillor Olwen Jones**

Allegations concerning community events at Hill Top Park and Radcliffe Park and an alleged failure of Councillor Olwen Jones to register her interest as Vice-Chair of Hill Top Community Development Association and failure to follow appropriate Council procedures in arranging the events.

The investigating officers' report is attached for information at Appendix 3.

Finding: Breach of Code.

**2. Case Reference: MC/05/0717**  
**Subject Member: Former Councillor Mahboob Hussain**

Allegations concerning land sales to the Councillor when displaced from his home by a Compulsory Purchase Order (CPO). In addition, further matters relating to housing allocated to individuals including family members.

The investigating officers' report is attached for information at Appendix 4

Finding: Breach of Code.

**3. Case Reference: MC/05/0717**  
**Subject Member: Councillor Babu Singh Bawa**

Allegations concerning land sales to the Councillor when displaced from his home by a Compulsory Purchase Order (CPO).

A draft report has been prepared. Councillor Bawa has requested further information. Due to an inaccuracy in the email to the Monitoring Officer there has been a delay in the Maxwellisation process being completed. Councillor Bawa will be provided with a copy of the report and given two weeks for Maxwellisation to be undertaken. The report will be finalised thereafter and reported to the next meeting of the Ethical Standards and Member Development Committee which is due to take place on 7 December 2018.

Finding: To be determined.

**4. Case Reference: MC/07/1017(a)**  
**Subject Member: Councillor Eling**

A complaint was received concerning alleged "Whats App" texts published on a local blog site entitled "In the Public Domain".

The allegations included disclosure of confidential information and inappropriate and disparaging references to individuals.

The investigating officer's report is attached for information at Appendix 5.

Finding: No breach of Code.

**5. Case References: MC/07/1017(b); MC/08/1017; MC/09/1117  
Subject Member: Former Councillor Richard Marshall**

Three complaints including a self-referral from (then) Councillor Richard Marshall concerning alleged "Whats App" texts published on a local blog site entitled "In the Public Domain".

These allegations included disclosure of confidential information and inappropriate and disparaging references to individuals.

The investigating officers reports are attached for information at Appendices, 6, 7 and 8.

Finding: Breach of Code.

**Complaints subject to proposed local resolution or other resolution**

**6. Case Reference: MC/11/1217  
Subject Member: Councillor Ian Jones**

Complaint concerning comments made by Councillor Ian Jones during his appearance before the Ethical Standards Sub-Committee on 1<sup>st</sup> December 2017 in relation to a named individual which the complainant stated are both defamatory and untrue.

The Monitoring Officer considered the matter and consulted with the Council's Independent Person. As a result the Monitoring Officer determined that this was a matter that could be dealt with by way of informal resolution, namely by way of apology from Councillor Jones to the complainant. This was because the statement made by Councillor Jones contained unfounded allegations that had no relevance to the Code of Conduct Complaint that the Sub-Committee was dealing with on 1 December 2017 in relation to Councillor Jones' own conduct; and also such comments were made at a public hearing where the complainant was not present and unable to respond.

Councillor Jones has refused to apologise for the comments made.

Paragraph 8.1 of the arrangements for dealing with standards allegations under the Localism Act 2011 provides that if a member fails to comply with the local resolution within the timescales set the matter will be referred to the Standards Committee and full Council for information.

**7. Case Reference: MC/06/0817**

Two separate, but related allegations concerning failure to declare an interest at a Planning Committee in relation to a local company who the Councillor in question had solicited donations from for the benefit of a local organisation.

Following preliminary enquiries the Monitoring Officer, having consulted with the Council's Independent Person, determined that the matter should be dealt with by way of advice to the Member concerned in relation to declarations of interests and no formal investigation was necessary.

**Complaints in respect of which no further action is to be taken at the preliminary stage**

**8. Case Reference: MC/18/0318**

Allegations concerning failure by the subject Councillor to attend a meeting with the complainant at a local school and failure to assist the complainant in relation to various aspects of his complaint concerning the school.

Following preliminary enquiries, the Monitoring officer, having consulted with the Council's Independent Person, determined that the complaint did not merit formal investigation and no further action was necessary in relation to the complaint.

**9. Case Reference: MC/01/0618**

Allegations concerning Committee and Cabinet decision making in 2012, 2013 and 2017 in relation to a Legal Options Agreement concerning a proposed land development.

Following preliminary enquiries which included consideration of a due diligence exercise undertaken in relation to the history of the matter, and the obtaining of Counsel's advice, the Monitoring Officer, having consulted with the Council's Independent Person, determined that the complaint did not merit formal investigation and no further action was necessary in relation to the complaint.

**10. Case Reference: MC/10/1117**

**Subject Members: Former Councillor Marshall and Councillor Eling**

There is nexus of fact and law in respect of this complaint which overlaps with complaint references: MC/07/1017, MC/08/1017 and MC/09/11/17.

The complaint principally covers the same evidential material and issues raised in the three separate complaints referred to above. The Monitoring Officer in consultation with the Council's Independent Person determined that no further investigation was necessary and to do so would simply be a duplication of the investigatory work already undertaken and lead to the unnecessary expenditure of Council funds and resources. The Monitoring Officer was of the view that any public interest in ensuring this complaint had been properly and fairly considered and determined had been achieved through the detailed investigations of the three complaints referred to above.

The Monitoring Officer acknowledged that this complaint included three additional matters which did not fall within the scope of the original complaints and had determined that no further action was required in relation to these.

### **Other Complaints**

11. There is one matter currently the subject of a formal investigation in accordance with the arrangements for dealing with standards allegations under the Localism Act 2011 and will be considered further by the Monitoring Officer once the investigation has been concluded.

### **Overall**

There are currently two live matters outstanding.

## PRIVATE AND CONFIDENTIAL

Report of an Investigation in Accordance with the Arrangements for Dealing with  
Standards Allegations Under the Localism Act 2011

In the case of Councillor Ian Jones

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**INVESTIGATION REPORT CONTENTS**


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Report Author: SMBC Legal Services

Report Date: 22 May 2018

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

[IL2: PROTECT]



## Background

1. The Monitoring Officer had a complaint referred to him from audit committee on 23<sup>rd</sup> March 2017. The Monitoring Officer considered those matters and referred them for investigation by Legal Services on 31<sup>st</sup> July 2017. A copy of the Monitoring Officers decision notice can be found at pages 29-31 of the bundle.
2. The complaint arose from a dispute over payment of outstanding debts for the provision of equipment and rides used at a community event held at Hill Top Park and Ratcliffe Park in July 2016.
3. The investigation team consisted of Officers from Legal Services.
4. This report details the results of investigations carried out.

## Summary of Allegations

5. Allegation 1-That Councillor Ian Jones may have included the names of council officers on official documents as organisers of an event without their knowledge.

Allegation 2 –That Councillor Ian Jones may have arranged an event at Hill Top Park on the 2<sup>nd</sup> July 2016 and Ratcliffe Park on 23<sup>rd</sup> July 2016 without following the appropriate procedures.

6. The investigator was also asked to investigate another councillor in connection with this event. This is the subject of a separate report.

[IL2: PROTECT]

7. The investigation officer did not find this case to be document heavy.
8. The investigator has considered whether witness evidence will be required and provide any assistance in relation to the allegation; the majority of the relevant witnesses in relation to this matter gave evidence by way of written statements/emails in 2016 in relation to a debt enquiry (a copy of which can be found at pages 153-160 of the bundle). The witness evidence provided as part of that investigation was relevant and provided the narrative required for this investigation. Consent was sought for the witnesses to use the evidence they provided as part of this investigation. The documentary evidence was self-explanatory. Additional witness statements were taken from Tom Hogan, Roz Beddows and Carole Griffiths, a copy of which can be found at pages 250-256 of the bundle. Amie Merry the other officer with relevant evidence has since left the Local Authority. Amie had a discussion with the investigation officer on the telephone and said she would provide a written statement but at the date of completing this report one has not been forthcoming and the investigator has sufficient evidence to complete this report without further evidence.
9. Arrangements were sought to interview Councillor Ian Jones. Unfortunately Councillor Ian Jones's wife, Mrs Olwen Jones has had health issues and it was agreed with their Solicitor that because of this Cllr Ian Jones would not attend interview but he would instead provide written comments. Written comments were to be provided by 23 January 2018. A further opportunity was provided for Cllr Jones to provide written responses

[IL2: PROTECT]

to certain question by 4<sup>th</sup> May 2018, a copy of the questions can be found at pages of the bundle. These have not been answered to date.

10. The investigation brief was agreed with the Monitoring Officer, who with the exception of guidance on procedural matters has remained independent from the investigation.
11. The investigation process involved collating documentary evidence, reviewing files to gather relevant evidence and interviewing relevant witnesses. This included reviews of emails and other key documents.
12. All interviews and requests for documentary evidence have been carried out with the intention of maintaining a high degree of confidentiality.
13. This report will be issued directly to the Monitoring Officer.

#### Relevant Legislation and Protocols

14. The Members have adopted a Members' Code of Conduct. This has been regularly reviewed. The most recent code was adopted on 17 January 2017.
15. At the date of this incident the relevant code was the 2016 code of conduct which can be found at pages 38-51 of the bundle.
16. I have also considered the Arrangements for dealing with Standards Allegations (page 21-28ab of the bundle).

[IL2: PROTECT]

## Official Capacity/ Scope of the Code

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

## Relevant Case Law

18. Whether a member is acting in an official capacity, was one of the central issues in *Livingstone v APE* [2006] EWHC 2533 (page 208 of bundle). Collins J held that the then Mayor of London was not acting in an official capacity when responding to being "door stepped" by a journalist when leaving the offices of the Greater London Authority. The case made clear that a distinction is to be drawn between the individual as a Councillor and the individual as an individual and that a Councillor is not a Councillor twenty four hours a day. The case provided helpful guidance on whether the Code applied when a Member does not appear to act as a Member but does misuse their office. Mr Justice Collins made the following comments:

*"If the words 'in performing his functions' are applied literally, it may be said that such misuse, and other misconduct which is closely linked to his position as such may not be covered. It seems to me*

[IL2: PROTECT]

*that the expression should be construed so as to apply to a member who is using his position in doing or saying whatever is said to amount to misconduct. It is obviously impossible for a member who was acting in his official capacity to argue that by acting improperly he was not performing his functions. Such a construction would emasculate the system set up by Parliament”.*

19. The Livingstone judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from a decision of the local standards committee. In the Case Tribunal's view, Livingstone should be interpreted to mean that for a councillor to be acting in an official capacity:-

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

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

[IL2: PROTECT]

*between elected members and their officers...local government in this country could not sensibly function without it."*

## Human Rights

21. Throughout the investigation I have remained mindful of the articles contained within the European Convention on Human Rights, in particular, the articles set out below.
22. Article 6 of the European Convention on Human Rights provides:-
- (1) *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
23. Article 8 of the European Convention on Human Rights provides:-
- (1) *Everyone has the right to respect for his private and family life, his home and his correspondence;*

[IL2: PROTECT]

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

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

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

(2) *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of the protection of the reputation or rights of others.*

#### Arrangements for dealing with Standards Allegations

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

[IL2: PROTECT]

Conduct are dealt with. The council's "arrangements" are set out in the bundle of documents at page 21-28ab of the bundle.

26. The Monitoring Officer will decide whether a complaint merits formal investigation. In consultation with the Independent Persons it was determined in this case that the complaint did merit investigation, and as such, the Monitoring Officer appointed an Investigating Officer from Legal Services.

#### Member training and Positions Held

27. On 2<sup>nd</sup> May 2008 and 3<sup>rd</sup> May 2012 Councillor Ian Jones signed a declaration and acceptance of the member code of conduct (please see pages 163-164 of the bundle).

28. Councillor Ian Jones also received training on the Member code of conduct on 4 March 2015 and 22 September 2015 (please see page 162 of the bundle).

#### 29. Chronology of relevant events

15/6/16 Cllr Olwen Jones requests an event be put in Radcliffe Park 1-5 and 23 July 2016.

15/6/16 Amie Merry (officer) informs Cllr O Jones that the council cannot apply for the money but Hill Top can so she asks Cllr O Jones whether she would like her to fill in a form and take it to Hill Top to agree.

[IL2: PROTECT]



21/6/16 Cllr Olwen Jones visited the local office regarding organizing the event. Cllr Jones asked Amie to contact the supplier Jolly jester for quotes for the equipment.

21/6/16 Amie Merry typed the LAB application form on Cllr O Jones behalf to take to Hill Top.

22/6/16 Jolly jesters provides quotes to council officer (Amie Merry) for event in the park.

29/6/16 Amie Merry questions the quote figures and corresponds with Jolly Jesters, resulting in Amie Merry amending the funding application.

29/6/16 Cllrs O Jones and I Jones take a copy of the Local Area Budget application form to Hill Top and the form is signed by Carole Griffiths and Roz Beddows.

1/7/16 first event takes place.

5/7/16 Cllr O Jones e mails Sunish Patel to book Radcliffe Park for the event on 23/6/16.

7/6/16 Sunish Patel provides Cllr O Jones with a copy of the parks booking form. This form does not relate to the funding of the event.

21/6/16 The parks booking form is not completed and submitted 6 weeks before the event in line with the event booking guidelines. Sunish Patel asks his manager if the event can be booked as a last minute booking and it is confirmed that the event can be booked but will not be supported by council officers.

21/6/16 Cllr I jones informed that the event can go ahead with Council public liability insurance but that he will need to complete and submit the booking forms.

22/7/16 a parks county side and event planning application form (the park booking form) is completed with the organizers listed as Tom Hogan and Amie Merry and submitted to Sunish Patel by Cllr I Jones. It is unclear who filled in the form.

23/7/16 second event takes place.

[IL2: PROTECT]

25/7/16 Jolly jesters sent a copy of the invoice to the council for payment.

27/7/16 Amie Merry provides Hill Top and Cllr O Jones with a copy of the youth funding application and states that the funding can be linked to the Local Area Budget given the amount. Amie ask that Jolly jesters are paid through Hill Top.

23-27/7/16 Around this time Hill Top withdraw the funding application by telephone call to the Neighborhood Office.

27/7/16 onwards Jolly jesters request payment for the event from the council.

### Investigation Outcome

29 On balance a breach of the Member's Code of Conduct in respect of allegations one and two is not substantiated. The following paragraphs of the code were considered in detail (please see pages 36-46 of the bundle);

1.5 You must not bring your office or your authority into disrepute (page 39 of the bundle)

1.9 You must respect the impartiality and integrity of the authority's statutory officers and its other employees (please see page 39 of the bundle).

### Allegation 1

[IL2: PROTECT]

31. That Councillor Ian Jones may have included the names of council officers on official documents as organisers of an event at Ratcliffe Park without their knowledge.

32. E-mails in the bundle of documents indicate that the other Councillor under investigation in relation to this matter requested that various activities including trampolines be ordered by officers for an event at Hill Top (please see pages 87-95 of the bundle). The event is first discussed around 15 June 2016 (Please see page 87 of the bundle). On this date an event is requested and officers clearly say that the council cannot apply for money for this event so an application will need to be made by Hill Top. However, witness evidence supports that council officers were directed to assist Cllrs wherever possible. The documentary and witness evidence supports that officers did the majority of the organising of the event and corresponded with the providers of equipment and completed the relevant grant application forms. This provided a substantial lack of clarity on the roles and responsibilities of those involved.

33. The evidence then supports that the other Councillor involved in this matter, Cllr O Jones had discussions with the equipment provider Malcolm Gwinnett of Jolly jesters to provide a bouncy castle and various equipment for the event between 22 June and 21 July (please see pages 108-112 of the bundle).

[IL2: PROTECT]

Councillor Ian Jones then assists in the preparation of the event from at least 21 July when he contacts officers at the council house by telephone to put in place liability insurance and book the park (please see page 112 of the bundle and witness accounts at pages 155-160 of the bundle). Councillor I Jones then submits a risk assessment form for the event on 22 July 2016 by e-mail (please see pages 122-124) and a hand delivered, though unsigned Park booking application form (please see pages 96-107 of the bundle). A text message on 22 July 2016 confirms that Cllr I Jones has hand delivered the form to the council house (please see page 124a of the bundle). The text message exchange states, "Thanks Ian, if possible can you send me the booking form please. Hope it all goes well tomorrow" .Councillor Ian Jones replies "Hi booking form was delivered by hand to Council House Oldbury in two envelopes addressed for your attention. I gave them to John Ralph the curator who said he would place them on reception to be passed to you this morning"

34. The application form names the event organizers as Amie Merry and Tom Hogan, the two officers who had assisted in the organising of the event. It names the person responsible for the events equipment as Malcolm Gwinnett. There is no accompanying document indicating the source of the application (please see pages 96-107 of the bundle). These are the officers that both

[IL2: PROTECT]

Councillors were discussing the event with and whom assisted the Cllrs with booking the event.

35. Norman Fletcher states that the event application form was submitted by Councillor Ian Jones in a briefing note dated 17<sup>th</sup> November 2016 to the Chief Executive regarding a debt payment for the event (please see pages 153-154 of the bundle). Both officers, Tom Hogan and Amy Merry are clear in the evidence they provide as part of the debt investigation and the additional evidence gathered as part of this investigation that they did not sign the form or have any knowledge that they were named on the booking form (please see pages 156-160 of the bundle). For clarity the booking form is not linked to the funding of the event.

#### Agreed Facts

36. There are none to date as no comments have been provided on the Allegations.

#### Disputed Facts

[IL2: PROTECT]

37. There are none to date as no comments have been provided on the allegations.

#### Findings of Fact

38. It is found that an application form was submitted to the Council for an event to take place at Ratcliffe Park, West Bromwich on the 23<sup>rd</sup> July 2016. It was submitted on the 22<sup>nd</sup> July 2016 the day before the event by Councillor Ian Jones.

39. The form named Amie Merry and Tom Hogan as the organisers of the event. On the balance of probabilities given Councillor Ian Jones involvement with the event and his discussions with officers it is found that Councillor Ian Jones more likely than not entered the officers names on the forms without their knowledge or consent. Whilst the officer's names should not have been added to the form there was a lack of clarity around roles and responsibilities and the officers remit at the time.

#### Acting in an Official Capacity

[IL2: PROTECT]

40. This was clearly an event that was for the benefit of the community and all officers and third parties concerns were dealing with Councillor Ian Jones as a councillor. At no point is there any evidence that this was a private or personal event and Councillor Jones could only have involvement with this event given his position as a councillor. All parties and correspondence refer to Ian Jones as Councillor throughout the evidence. As such I conclude that Councillor Ian Jones was acting in his official capacity as a councillor.

#### Allegation 2

41. That Councillor Ian Jones may have arranged an event at Hill Top Park on the 2<sup>nd</sup> July 2016 and Ratcliffe Park on 23<sup>rd</sup> July 2016 without following the appropriate procedures.

42. Documentary evidence from an e-mail dated 15 June 2016 supports that the other councillor involved in this matter was informed on 15 June 2016 that the council would not support the events and Hill Top would have to apply for funding to put on the event if they wished (please see page 87 of the bundle).

43. Witness evidence from Carole Griffiths and Roz Beddows from Hill Top Community Center dated 15<sup>th</sup> December 2016 in relation to the debt for the  
[IL2: PROTECT]

equipment and further evidence gathered as part of this investigation suggest that Carol Griffiths and Roz Beddows from Hill Top were presented with a pre filled in Local Area Budget form to sign to fund the events (please see pages 159-160 in the bundle). The Local Area Budget Form was taken to them by Councillors Olwen and Ian Jones on or around 29 June 2016. This form was filled in by council officers. The Councillors told them that that they wished to put on an event at Hill Top Park and that the Local Area Budget Form assisted with funding. The Community Center told them that they were not in a position to assist with the event as they did not have the staff. The Councillors said to Hill Top that they would be organizing and hosting the events. The Officers say they signed the form but did not complete other parts of the application form. The form was taken away by the Councillors. The witness evidence from Hill Top suggests that they were not confident and felt uneasy signing the form.

44. No application form can be produced from Council records applying to hold an event at Hill Top Park on the 2<sup>nd</sup> July 2016. There is no evidence of any council involvement in this event at all. The only evidence that can be found of this event is when the council are billed for the equipment provided for the event by Mr Gwinnett of Jolly Jesters.

[IL2: PROTECT]



45. The Officers knew nothing of the event when it occurred. Malcolm Gwinnett, a supplier of accessories for the event states the event did go ahead and invoiced Councillor Olwen Jones.

46. No council officers were not asked to display any promotional leaflets or posters. The invoice was for £900 (see pages 93 and 94 in the bundle).

47. The evidence supports that the event on 2 July went ahead without following any council process or procedure.

38. Carol Griffiths and Roz Beddows (from Hill Top) dispute that they had anything to do with organizing the event. They signed the Local Area Application Form as it was presented to them by the Councillors they say and that the form was for funding. Carole Griffiths evidence is that she cancelled the LAB form on or around the 23<sup>rd</sup> July 2016. (the LAB form is at pages 88-92 in the bundle). This was done by telephone call to the council. The documentary evidence suggests that the application could have been cancelled as late as 27 July 2016 after the event had taken place. This is supported by Officers discussing another funding stream through the Youth Budget after the event with the Cllrs.

[IL2: PROTECT]

39. As regards the event at Radcliffe Park, Dial Lane West Bromwich a park booking application form was submitted the day before the event was held on 23<sup>rd</sup> July 2016. This form named Amie Merry and Tom Hogan as the organizers. This document is at pages 96-107 in the bundle. This form was not related to funding for the event.

40. Also enclosed in the bundle is a record from Amie Merry with appendices at pages 135-152 in the bundle, provided as part of the debt investigation. She summarises her involvement stating that she "never agreed or approved any invoice or notice or booking form from Jolly Jesters. I have made it clear to all parties involved that I am mainly a middle man". She also says that despite dealing with Councillor Mrs Olwen Jones about holding the event "she did not confirm, organize or attend this event". Relevant emails are exhibited to her statement in the appendices as are Jolly Jester Invoices. They are presented in varying forms but essentially there are 2 invoices – one made out to Councillor Olwen Jones for the Hilltop Community Centre event dated 2<sup>nd</sup> July 2016 and one made out to Councillor Mrs Olwen Jones and Amie Merry for the Radcliffe Park event dated 23<sup>rd</sup> July 2016. This is an indication as to whom Malcolm Gwinnett the proprietor of Jolly jesters and provide of the equipment thought he was dealing with.

[IL2: PROTECT]

41. Contained in the bundle is a risk assessment document Emailed by Councillor Ian Jones to Sunish Patel on the 22<sup>nd</sup> July 2016, the day before the event in response to his request for one on the same date. This document and other relevant documents surrounding the risk assessment are at pages 122-124 in the bundle. Sunish Patel`s Email requesting this is was sent to Councillor Mrs Olwen Jones and Councillor Ian Jones. In addition to this there are other preparatory documents submitted by Jolly Jesters, the equipment suppliers that relate to insurance at pages 113-118 in the bundle.

42. The application form for this event (pages 96-107 in the bundle) was submitted the day before the event by Councillor Ian Jones. Whilst this was clearly out of process it was confirmed as a late booking by the council. Processes were not followed in booking this event.

44. The Councils Regulations and Conditions of Letting in Respect of Parks, Open Spaces and Playing Fields with accompanying guidance notes. (pages 59-71 in the bundle.) state that the Council and other parties are notified of the event. It anticipates a site plan being provided by the Council 14 days prior to the event occurring. It anticipates the hirer giving notice of 14 days to the Police and Fire Service. It draws attention to Health and Safety issues the hirer needs to be aware of. There is no evidence that any of this took place.

[IL2: PROTECT]

a. Agreed Facts

There are none to date as no comments have been provided on the allegations.

b. Disputed Facts

There are none to date as no comments have been provided on the allegations

c. Findings of Fact

i). It is found that 2 events took place at Council Parks. One was held at Hill Top Park on the 2<sup>nd</sup> July 2016. Another was held at Radcliffe Park on the 23<sup>rd</sup> July 2016.

ii). No application form was submitted to the Council for the event on 2<sup>nd</sup> July 2016. A park booking application form, risk assessment and insurance forms were submitted on the 22<sup>nd</sup> July 2016 for the event on the 23 July but there is no evidence that the council's events policy was followed. The insurance forms were submitted by Jolly Jesters proprietor Malcolm Gwinett. The risk assessment form and Application Form was submitted by Councillor Ian Jones.

[IL2: PROTECT]

iii). Councillors Olwen Jones and Councillor Ian Jones met with staff prior to the first event on the 2<sup>nd</sup> July 2016 and said they wished to put on an event at Hill Top Park. They were told no assistance could be provided with the event as staffs were not available. They were involved in arranging the first event.

iv). Councillor Ian Jones was involved in arranging the second event and supplied the application form the day before the event took place.

v). I find that council staff were not the organisers of the event and that Councillor Ian Jones involved himself in organising the events without following proper procedures. In particular the Councils terms and conditions of hiring parks were not followed.

vi) I find that funding application for the events was likely pulled after the event had taken place. Had the application not been withdrawn this complaint would likely not have arisen.

Whilst I do not find any breaches of the member code of conduct on balance I do find a complete failure to follow the procedures for booking and running an event.

d. Acting in Official Capacity?

[IL2: PROTECT]

From the evidence I have considered, Councillor Ian Jones was acting in the capacity as a member during the course of his duties as a member.

### Conclusion

Whilst I conclude that Councillor Ian Jones actions did not on balance breach the Member Code of Conduct in respect of both allegations 1 and 2 I do find that they were unhelpful and put officers and third party organisations in a difficult position. This whole issue could have been avoided had the proper process been followed.

The lack of clarity of role and responsibilities compounded this issue. I am assured that there is now firm processes in place and events will not be booked and funded unless the required processes are followed ahead of the proposed event.

Refresher training for all members is recommended and a further review of grant funding applications and administration.

### Related Documents

Evidence bundle

[IL2: PROTECT]



Sandwell MBC  
Sandwell Council House  
PO BOX 2374  
Oldbury  
B69 3DE

**FAO: Surjit Tour**  
**Director – Monitoring Officer**



Your Ref IL2  
Our Ref BH/15.6027/23  
Date 30 July 2018

Dear Sirs,

**Cllrs Olwen and Ian Jones**

Thank you for your opportunity to comment on the draft investigation report.

We make the following comments on behalf of both councillors at this stage, limiting our comments to the findings and evidence rather than to what might happen next:

Missing Evidence

1. The investigation appears not have spoken to those we would expect to be material witnesses:
  - a. Jan Britton
  - b. Darren Carter
  - c. Cllr Elaine Costigan
  - d. Cllr Eling
  - e. Cllr Pam Hughes
  - f. Cllr Bob Lloyd
  - g. Malcolm Gwinnett (supplier of trampolines and rides)
  - h. Julian Saunders
  - i. Richard Marshall

Mr Gwinnett in particular can comment on the council's processes and procedures and his interactions with those involved, and yet has not been spoken to.

Failure to Consider Context of the Allegations

2. The council has commissioned an independent legal investigation into the "Eling/Marshall Messages" with Julian Saunders. We understand that the standards hearing into these matters has been delayed. However, the evidence and findings in relation to this investigation and pending hearing reveal a vendetta being pursued against our clients, and a determination to "get" them by whatever means possible. The current investigation would appear to be the fruit of that poisoned tree.



3. By way of example, the following messages have been published from Mr Marshall, which evidence the witch-hunt that was seeking out allegations against our clients (emphasis added):

We made a conscious decision to hit them with something new each week which we've achieved, some of that has been with your help so I thank you good sir.

No but I can get it checked out. We are wearing auditors out daily

I've just told our Audit Team I want it looking into

We have picked up more dodgy house deals for Roufs family today

Trawling over Jones and Bawa and Rouf what said what and when

The Joneses have now been kicked out of Town Hall and out of Wednesbury Celebrates and have moved onto Hill Top Community Centre.... Looks like they are starting another 'community organisation' there to [sic]".

I'm being touted by officers in Neighbourhoods as "the hatchet man" so my cover is blown and that I've "been tasked with burying the Joneses" bless them".

#### General Observations

4. Bearing in mind the background to the allegations, the following observations are made in relation to the substance of the alleged wrongdoing:
- a. It would appear that the processes which are in place for the provision of activities through the Town team structures (including the engagement of councillors and decision-making) changed without those changes being notified to councillors, and now being used retrospectively to support allegations of wrongdoing.
  - b. The evidence reveals ambiguity surrounding the processes and the function of officers. Moreover, redundancies in the Communities Team resulted in the reallocation of functions to other officers with predictable consequences. The officers were aware of the events taking place and the scheduled timeframe for them.
  - c. The original Local Area Budget application form (completed by the Town Lead Councillor Elaine Costigan) has not been reviewed as part of the evidence, but would clearly demonstrate that the events had clearly been accepted as happening. It was, our clients believe, only after the council's leadership election that the political allegiances changed, resulting in at best selected memory from those concerned.

We trust that these comments will be taken into account. Please contact us in the event of any query.

Yours faithfully,



**JONAS ROY BLOOM**

Ben Henry  
Jonas Ray Bloom Solicitors  
King Edward Building  
205-213 Corporation Street  
Birmingham  
B4 6SE

My Ref: MP/AHR  
Your Ref:  
Please ask for: Maria Price  
Telephone No: 0121 569 3175  
Fax No:  
Email: [Maria\\_price@sandwell.gov.uk](mailto:Maria_price@sandwell.gov.uk)

Date: 4 September 2018  
*Please assist us by quoting our  
reference on all correspondence*

Dear Mr Henry

**Re: Councillors Olwen and Ian Jones**

The Monitoring Officer has passed me your comments on your clients' reports, received by letter dated 30 July 2018. Given that you have dealt with both Councillors in one letter I propose to do the same.

I have noted your comments and added your letter to the investigation reports at p210 of Olwen Jones' report and p257 of Ian Jones' report.

I am not of the view that your comments add anything further to the investigation reports, given that I have found insufficient evidence to substantiate the allegations save for Councillor Olwen Jones' failure to declare her interests. I cannot see that interviewing further witnesses would have progressed this matter further.

As such I have now finalised my investigation reports, without any amendment save adding your comments to the evidence as stated above and submitted them to the Monitoring Officer for consideration under section 6 of the arrangements for dealing with standards allegations under the Localism Act 2011 which states as follows:-

Continued...

- 2 -

“Having received and taken account of any comments made on the draft report and undertaken any further investigation he/she considers relevant and appropriate, the investigating officer will send his/her final report to the Monitoring Officer.”

The Monitoring Officer will now contact you in due course.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'M. Price', with a stylized flourish at the end.

**Maria Price**  
**Service Manager - Legal**

Ben Henry  
Jonas Ray Bloom Solicitors  
King Edward Building  
205-213 Corporation Street  
Birmingham  
B4 6SE

My Ref: ST/AHR  
Your Ref:  
Please ask for: Surjit Tour  
Telephone No: 0121 569 3172  
Fax No:  
Email: [Surjit\\_tour@sandwell.gov.uk](mailto:Surjit_tour@sandwell.gov.uk)

Date: 13 September 2018  
*Please assist us by quoting our  
reference on all correspondence*

Dear Mr Henry

**Re: Councillor Ian Jones - Standards Complaint**

I have now received the final report from the Investigating Officer in relation to this matter under Section 6 of the Arrangements for dealing with standards allegations under the Localism Act 2011.

Having reviewed the Investigating Officer's report I am satisfied that it is sufficient and I concur with its findings. As such I make the following findings:

**Allegation 1**-That Councillor Ian Jones may have included the names of council officers on official documents as organisers of an event without their knowledge.

**FINDING:** On balance, I do not find this allegation proven. As such I am satisfied that no further action is required under section 7 of the arrangements.

Continued...

- 2 -

**Allegation 2** –That Councillor Ian Jones may have arranged an event at Hill Top Park on the 2<sup>nd</sup> July 2016 and Ratcliffe Park on 23<sup>rd</sup> July 2016 without following the appropriate procedures.

FINDING: On balance, I do not find this allegation proven. As such I am satisfied that no further action is required under section 7 of the arrangements.

No further action will be taken in respect of this complaint and I will now proceed to closing my file.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Tour', written in a cursive style.

**Surjit Tour**  
**Director – Monitoring Officer**

## PRIVATE AND CONFIDENTIAL

Report of an Investigation in Accordance with the Arrangements for Dealing with  
Standards Allegations Under the Localism Act 2011  
In the case of Councillor Olwen Jones

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**INVESTIGATION REPORT CONTENTS**


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Report Author: SMBC Legal Services

Report Date: 23 May 2018

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

[IL2: PROTECT]

## Background

1. The Monitoring Officer had a complaint referred to him from audit committee on 23<sup>rd</sup> March 2017. The Monitoring Officer considered those matters and referred them for investigation by Legal Services on 31<sup>st</sup> July 2017. A copy of the Monitoring Officers decision notice can be found at pages 32-34 of the bundle.
2. The complaint arose from a dispute over payment of outstanding debts for the provision of equipment and rides used at a community event held at Hill Top Park and Ratcliffe Park In July 2016.
3. The investigation team consisted of Officers from Legal Services.
4. This report details the results of investigations carried out.

## Summary of Allegations

5. Allegation 1-That Councillor Olwen Jones failed to register her interest as Vice Chair of the Hill Top Community Development Association (until 2015)

Allegation 2 –That Councillor Olwen Jones may have arranged an event at Hill Top Park on the 2<sup>nd</sup> July 2016 and Ratcliffe Park on 23<sup>rd</sup> July 2016 without following the appropriate procedures.

6. The investigator was also asked to investigate another councillor in connection with this event. This is the subject of a separate report.

[IL2: PROTECT]

7. The investigation officer did not find this case to be document heavy.
8. The investigator has considered whether witness evidence will be required and provide any assistance in relation to the allegation; the majority of the relevant witnesses in relation to this matter gave evidence by way of written statements /e-mails in 2016 during an investigation in relation to unpaid invoices for Jolly jesters which can be found at pages 199-208 of the bundle. Consent was sought from the witnesses to use the evidence they provided as part of this investigation. Additional witness evidence was gathered from Hill Top and council officers which can be found at pages 280-286 of the bundle.
9. Arrangements were sought to interview Councillor Olwen Jones. Unfortunately Councillor Olwen Jones has had health issues and it was agreed with her Solicitor that she would not attend interview but she would instead provide written comments, these were not provided within the agreed time scales. The final timescale for providing responses was 4 May 2018. At the date of writing this report no written account has been received. A further opportunity will be provided to make comments on this draft report before finalisation.
10. The investigation brief was agreed with the Monitoring Officer, who with the exception of guidance on procedural matters has remained independent from the investigation.

[IL2: PROTECT]



11. The investigation process involved collating documentary evidence, reviewing files to gather relevant evidence and interviewing relevant witnesses. This included reviews of emails and other key documents.
12. All requests for documentary evidence have been carried out with the intention of maintaining a high degree of confidentiality.
13. This report will be issued directly to the Monitoring Officer.

#### Relevant Legislation and Protocols

14. The Members have adopted a Members' Code of Conduct. This has been regularly reviewed. The most recent code was adopted on 17 January 2017.
15. At the date of this incident the relevant code was the 2016 code of conduct, together with the registration of interests and conflicts of interests which can be found at pages 38-51 of the bundle.
16. I have also considered the Arrangements for dealing with Standards Allegations (page 21-31y of the bundle of document).

#### Official Capacity/ Scope of the Code

17. Section 27(2) of the Localism Act 2011 requires the council to adopt a Code of Conduct "dealing with the conduct that is expected of members ... when they are acting in that capacity." The council's Member Code of Conduct is expressed to set out the standards of  
[IL2: PROTECT]

conduct that are expected of members when they are acting in that capacity and applies to members in all aspects of their activities as members. It does not seek to regulate what members do in their purely private and personal lives.

## Relevant Case Law

18. Whether a member is acting in an official capacity, was one of the central issues in *Livingstone v APE* [2006] EWHC 2533 (page 208 of bundle). Collins J held that the then Mayor of London was not acting in an official capacity when responding to being “door stepped” by a journalist when leaving the offices of the Greater London Authority. The case made clear that a distinction is to be drawn between the individual as a Councillor and the individual as an individual and that a Councillor is not a Councillor twenty four hours a day. The case provided helpful guidance on whether the Code applied when a Member does not appear to act as a Member but does misuse their office. Mr Justice Collins made the following comments:

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

[IL2: PROTECT]

19. The Livingstone judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from a decision of the local standards committee. In the Case Tribunal's view, Livingstone should be interpreted to mean that for a councillor to be acting in an official capacity:-
- (a) the councillor should be engaged in business directly related to the council or constituents; or
  - (b) the link between the councillor's office and the conduct should have a degree of formality.

20. *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) confirms that the correct test to be applied in Standards Cases is the civil standard of proof; on the balance of probabilities. He was found to have breached the Code of Conduct as he had referred to the Adult Social Care Directorate as a shambles and shambolic, he had improperly sought to interfere with the housing allocation decision-making process, failed to show respect and consideration to officers and bullied officers. The Court considered the relationship between members and officers and found that there "*is a mutual bond of trust and confidence between elected members and their officers...local government in this country could not sensibly function without it.*"

Human Rights

[IL2: PROTECT]

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

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

(1) *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

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

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

(2) *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the*

[IL2: PROTECT]

*economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

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

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

(2) *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of the protection of the reputation or rights of others.*

#### Arrangements for dealing with Standards Allegations

25. Pursuant to the provisions of the Localism Act 2011, the council has put in place “arrangements” under which allegations that a member or co-opted member of the authority has failed to comply with the authority’s Code of Conduct are dealt with. The council’s “arrangements” are set out in the bundle of documents at page 21.

[IL2: PROTECT]

26. The Monitoring Officer will decide whether a complaint merits formal investigation. In consultation with the Independent Persons it was determined in this case that the complaint did merit investigation, and as such, the Monitoring Officer appointed an Investigating Officer.

#### Member training and Positions

27. Councillor Mrs Olwen Jones was the vice chair of Hill Top Community Development Association from 9 October 2012 when she was first elected as chair (please see page 118 of the bundle). Documentary evidence supports that Cllr Olwen Jones was re-elected as vice chair for a further year on 9 October 2015 and was vice chair at the date of the alleged incidents (please see pages 124-125 of the bundle). In addition to this Councillor Mrs Olwen Jones held the post of Wednesbury Deputy Town lead from 2014-2016

28. On 9<sup>th</sup> May 2011 Councillor Mrs Olwen Jones signed a declaration of acceptance of the member code of conduct (please see pages 211-212 of the bundle). Cllr Olwen Jones was trained on the members code of conduct on 4<sup>th</sup> March 2015 and 22 September 2015 (please see page 210 of the bundle).

[IL2: PROTECT]

29. Chronology of relevant events

9/10/12 Cllr Olwen Jones elected as Vice Chair of Hill Top Development Association

15/6/16 Cllr Olwen Jones requests an event be put in Radcliffe Park 1-5 and 23 July 2016

15/6/16 Amie Merry (officer) informs Cllr O Jones that the council cannot apply for the money but Hill Top can so she asks Cllr O Jones whether she would like her to fill in a form and take it to Hill Top to agree.

21/6/16 Cllr Olwen Jones visited the local office regarding organizing the event. Cllr Jones asked Amie to contact the supplier Jolly jester for quotes for the equipment.

21/6/16 Amie Merry typed the LAB application form on Cllr O Jones behalf to take to Hill Top

22/6/16 Jolly jesters provides quotes to council officer (Amie Merry) for event in the park

29/6/16 Amie Merry questions the quote figures and corresponds with Jolly Jesters, resulting in Amie Merry amending the funding application

29/6/16 Cllrs O Jones and I Jones take a copy of the Local Area Budget application form to Hill Top and the form is signed by Carole Griffiths and Roz Beddows.

1/7/16 first event takes place

5/7/16 Cllr O Jones e mails Sunish Patel to book Radcliffe Park for the event on 23/6/16.

7/6/16 Sunish Patel provides Cllr O Jones with a copy of the parks booking form. This form is not linked to the grant funding applications.

21/6/16 The parks booking form is not completed and submitted 6 weeks

[IL2: PROTECT]

before the event in line with the event booking guidelines. Sunish Patel asks his manager if the event can be booked as a last minute booking and it is confirmed that the event can be booked but will not be supported by council officers.

21/6/16 Cllr I Jones informed that the event can go ahead with Council public liability insurance but that he will need to complete and submit the booking forms

22/7/16 a parks county side and event planning application form (the park booking form) is completed with the organizers listed as Tom Hogan and Amie Merry and submitted to Sunish Patel by Cllr I Jones. It is unclear who filled in the form.

23/7/16 second event takes place

25/7/16 Jolly jesters sent a copy of the invoice to the council for payment

27/7/16 Amie Merry provides Hill Top and Cllr O Jones with a copy of the youth funding application and states that the funding can be linked to the Local Area Budget given the amount. Amie ask that Jolly jesters are paid through Hill Top

23-27/7/16 Around this time Hill Top withdraw the funding application by telephone call. There is no documentary evidence to support this it is however confirmed in the witness evidence of Carol Griffiths and Tom Hogan.

27/7/16 onwards Jolly jesters request payment for the event from the council

[IL2: PROTECT]



## Investigation Outcome

30. There has been a potential breach of the Member's Code of Conduct in respect of allegations one. In particular the following paragraphs of the members code of conduct have been breached (please see pages 38-51 of the bundle);

31. Members are required within 28 days of taking office register disclosable pecuniary interests and other registerable interests with the Monitoring Officer (please see page 44 of the bundle). Members are also required to register with the Monitoring Officer any change to the interests or new interests. Interest are defined in Appendices A (disclosable pecuniary interests) and B (other registerable interests), please see pages 47-50 of the bundle. A copy of Cllr Olwen Jones declarations of interests can be found at pages 52-104 of the bundle.

32. Further information is included below.

## Allegation 1

33. That Councillor Mrs Olwen Jones failed to register her interest as Vice Chair of Hill Top Community Development Association (until October 2016, been the last date there is evidence of her been the vice chair of Hill Top Community Development Association).

[IL2: PROTECT]

34. The documentary evidence supports that Councillor Mrs Olwen Jones was Vice Chair of Hill Top Community Development Association from 9 October 2012 when she was first elected to the position (please see pages 118-125 of the bundle for minutes of the meetings indicating Councillor Mrs Olwen Jones position).

35. Documentary evidence is also provided of a grant application made by Councillor Mrs Olwen Jones in connection with the Wednesbury Celebrates Project in her capacity as Vice Chairperson (please see pages 126-132 of the bundle). The document is undated but relates to a proposed project start date of 5<sup>th</sup> September 2016 and an end date of 25<sup>th</sup> August 2017.

36. At no point from 2012 to date has Councillor Mrs Olwen Jones declared her interest as Vice chair of Hill Top Community Association on her register of interests register of interests (please see pages 52-104 of the bundle).

37. Hill Top Community Center is a registered charity. It is unclear if Councillor Olwen Jones receives any funding for her position but her position is one which could fall into a disclosable pecuniary interest.

[IL2: PROTECT]

38. The position would be registerable interests. The relevant Part of the Code(s) of Conduct can be found at pages 38-51 of the bundle.

39. The issue of declaration of interests relates to the Codes of Conduct in force in June 2016 which contains the following provisions-

Part 2 Registration of interests

*2.2. You must, within 28 days of becoming aware of it, register with the Monitoring Officer any change to the interests or new interests which fall within the categories set out in Appendix A and B. (please see page 44 of the bundle).*

a. Agreed Facts

None to date as Councillor Olwen Jones has not commented on the allegations.

b. Disputed Facts

None to date as Councillor Olwen Jones has not commented on the allegations.

c. Findings of Fact

i).Counsellor Mrs Olwen Jones was Vice Chairperson of the Hill Top Community Development Association from at least 9<sup>th</sup> October 2012 to 9<sup>th</sup> October 2016

[IL2: PROTECT]

ii). This was not declared on her Register of Members Interests Forms dated 30<sup>th</sup> April 2013,(x2) ,27<sup>th</sup> November 2014,28<sup>th</sup> April 2015 and 11<sup>th</sup> July 2016 (please see pages 52-104 of the bundle).

iii). A number of other interests were declared on the forms. There was no apparent reason why the membership and Vice-Chair of the Hill Top Community Development Association was not declared.

Cllr Olwen Jones has failed to keep her register of interests up to date and declare her interests in Hill Top Community Association.

d. Acting in Official Capacity?

From the evidence I have considered, Councillor Olwen Jones was acting in her capacity as a member during the course of her duties as a member.

Allegation 2

40. That Councillor Olwen Jones may have arranged an event at Hill Top Park on the 2<sup>nd</sup> July 2016 and Ratcliffe Park on the 23<sup>rd</sup> July 2016 without following the usual event arrangement procedures.

41. Documentary evidence from an e-mail dated 15 June 2016 supports that Councillor Olwen Jones did request events to be run on 2 and 24 July 2016

[IL2: PROTECT]

but that she was informed on 15 June 2016 that the council would not support the events and Hill Top would have to apply for funding to put on the event if they wished (please see page 133 of the bundle).

42. Witness evidence from Carole Griffiths and Roz Beddows from Hill Top Community Center dated 15<sup>th</sup> December 2016 in relation to the debt for the equipment and further evidence gathered as part of this investigation suggest that Hill Top were presented with a pre filled in form to sign to fund the events ( please see pages 159-160 in the bundle and the witness statements of Carol Griffiths and Roz Beddows at pages 283-286). The Local Area Budget Form was taken to them by Councillors Olwen and Ian Jones on or around 29 June 2016. This form was filled in by council officers. The Councillors told them that that they wished to put on an event at Hill Top Park and that the Local Area Budget Form assisted with funding. The Community Center told them that they were not in a position to assist with the event as they did not have the staff. The Councillors said that they would be organizing and hosting the events. The Officers say they signed the form but did not complete other parts of the application form. The form was taken away by the Councillors. The witness evidence from Hill Top (Carol Griffiths and Roz Beddows) suggests that they were not confident and felt uneasy signing the form.

[IL2: PROTECT]

43. No application form can be produced from Council records applying to hold an event at Hill Top Park on the 2<sup>nd</sup> July 2016. There is no evidence of any council involvement in this event at all. The only evidence that can be found of this event is when the council are billed for the equipment provided for the event by Mr Gwinnett of Jolly Jesters.

44. The Officers knew nothing of the event when it occurred. Malcolm Gwinnett, a supplier of accessories for the event states the event did go ahead and invoiced Councillor Olwen Jones.

45. No council officers were asked to display any promotional leaflets or posters. The invoice was for £900 (see pages 93 and 94 in the bundle).

46. The evidence supports that the event on 2 July went ahead without following any council process or procedure.

47. Carol Griffiths and Roz Beddows (from Hill Top) dispute that they had anything to do with organizing the event. They signed the Local Area Application Form as it was presented to them by the Councillors they say and that the form was for funding. Carole Griffiths evidence is that she cancelled the LAB form on or around the 23<sup>rd</sup> July 2016. (the LAB form is at pages 88-92 in the bundle). This was done by a telephone call to the  
[IL2: PROTECT]

council's Neighbourhood team. The documentary evidence suggests that the application could have been cancelled as late as 27 July 2016 after the event had taken place given the funding options that are then discussed with Cllr O Jones after the event and consideration of the Youth funding Grant.

48. As regards the event at Radcliffe Park, Dial Lane West Bromwich a park booking application form was submitted the day before the event was held on 23<sup>rd</sup> July 2016. This form named Amie Merry and Tom Hogan as the organizers. This document is at pages 96-107 in the bundle. This form did not relate to funding for the event.
49. Also enclosed in the bundle is a record from Amie Merry with appendices at pages 135-152 in the bundle, provided as part of the debt investigation. She summarises her involvement stating that she "never agreed or approved any invoice or notice or booking form from Jolly Jesters. I have made it clear to all parties involved that I am mainly a middle man". She also says that despite dealing with Councillor Mrs Olwen Jones about holding the event "she did not confirm, organize or attend this event". Relevant emails are exhibited to her statement in the appendices as are Jolly Jester Invoices. They are presented in varying forms but essentially

[IL2: PROTECT]

there are 2 invoices –one made out to Councillor Olwen Jones for the Hilltop Community Centre event dated 2<sup>nd</sup> July 2016 and one made out to Councillor Mrs Olwen Jones and Amie Merry for the Radcliffe Park event dated 23<sup>rd</sup> July 2016. This is an indication as to whom Malcolm Gwinnett the proprietor of Jolly jesters and provide of the equipment thought he was dealing with.

50. Contained in the bundle is a risk assessment document Emailed by Councillor Ian Jones to Sunish Patel on the 22<sup>nd</sup> July 2016, the day before the event in response to his request for one on the same date. This document and other relevant documents surrounding the risk assessment are at pages 122-124 in the bundle. Sunish Patel's Email requesting this was sent to Councillor Mrs Olwen Jones and Councillor Ian Jones. In addition to this there are other preparatory documents submitted by Jolly Jesters, the equipment suppliers that relate to insurance at pages 113-118 in the bundle.

51. The application form for this event (pages 96-107 in the bundle) was submitted the day before the event by Councillor Ian Jones. Whilst this was clearly out of process it was confirmed as a late booking by the council. Processes were not followed in booking this event.

[IL2: PROTECT]



52. The Councils Regulations and Conditions of Letting in Respect of Parks, Open Spaces and Playing Fields with accompanying guidance notes. (pages 59-71 in the bundle.) state that the Council and other parties are notified of the event. It anticipates a site plan being provided by the Council 14 days prior to the event occurring. It anticipates the hirer giving notice of 14 days to the Police and Fire Service. It draws attention to Health and Safety issues the hirer needs to be aware of. There is no evidence that any of this took place.

a. Agreed Facts

There are none to date as no comments have been provided on the allegations.

b. Disputed Facts

There are none to date as no comments have been provided on the allegations

c. Findings of Fact

[IL2: PROTECT]

i). It is found that 2 events took place at Council Parks. One was held at Hill Top Park on the 2<sup>nd</sup> July 2016. Another was held at Radcliffe Park on the 23<sup>rd</sup> July 2016.

ii). No application form was submitted to the Council for the event on 2<sup>nd</sup> July 2016. An application form, risk assessment and insurance forms were submitted on the 22<sup>nd</sup> July 2016 for the event on the 23 July but there is no evidence that the council's events policy was followed. The insurance forms were submitted by Jolly Jesters proprietor Malcolm Gwinett. The risk assessment form and park booking Application Form was submitted by Councillor Ian Jones.

iii). Councillors Olwen Jones and Councillor Ian Jones met with staff prior to the first event on the 2<sup>nd</sup> July 2016 and said they wished to put on an event at Hill Top Park. They were told no assistance could be provided with the event as staffs were not available. They were involved in arranging the first event.

iv). Councillor Ian Jones was involved in arranging the second event and supplied the application form the day before the event took place.

v). I find that council staff were not the organisers of the event and that Councillor Olwen Jones involved herself in organising the events without following proper procedures. In particular the Council's terms and conditions of hiring parks were not followed.

[IL2: PROTECT]

She clearly told both officers and Hill Top that this was her event yet she did not secure the funding for the events in advance.

vi) I find that the funding application for the events was likely pulled by Hill Tops withdrawal after the event had taken place. Had the application not been withdrawn this complaint would likely not have arisen.

Whilst I do not find that the correct procedures were followed for booking this event and securing the funding I do find that the process was confused and officers roles were blurred. It is due to these reasons that I cannot on balance find a breach of the members code of conduct.

d. Acting in Official Capacity?

From the evidence I have considered, Councillor Olwen Jones was acting in the capacity as a member during the course of his duties as a member.

Conclusion

[IL2: PROTECT]

I find a breach of allegation 1 and that Cllr O Jones has failed to declare her interests as vice chair of Hill Top Community Association.

Whilst I conclude that Councillor Olwen Jones's actions did not on balance breach the Member Code of Conduct in respect of allegation 2 I do find that they were unhelpful and put officers and third party organisations in a difficult position whilst she pushed her event forward despite the set procedures which she chose not to follow. This whole issue could have been avoided had the proper process been followed and funding secured before the events.

The lack of clarity of roles and responsibilities compounded this issue. I am assured that there are now firm processes in place and events will not be booked and funded unless the required processes are followed ahead of the proposed event.

Refresher training for grants funding for all members is recommended and a further review of grant funding applications and administration.

**Related Documents**  
Evidence bundle

[IL2: PROTECT]



Sandwell MBC  
Sandwell Council House  
PO BOX 2374  
Oldbury  
B69 3DE

**FAO: Surjit Tour**  
**Director – Monitoring Officer**



Your Ref IL2  
Our Ref BH/15.6027/23  
Date 30 July 2018

Dear Sirs,

**Cllrs Olwen and Ian Jones**

Thank you for your opportunity to comment on the draft investigation report.

We make the following comments on behalf of both councillors at this stage, limiting our comments to the findings and evidence rather than to what might happen next:

Missing Evidence

1. The investigation appears not have spoken to those we would expect to be material witnesses:
  - a. Jan Britton
  - b. Darren Carter
  - c. Cllr Elaine Costigan
  - d. Cllr Eling
  - e. Cllr Pam Hughes
  - f. Cllr Bob Lloyd
  - g. Malcolm Gwinnett (supplier of trampolines and rides)
  - h. Julian Saunders
  - i. Richard Marshall

Mr Gwinnett in particular can comment on the council's processes and procedures and his interactions with those involved, and yet has not been spoken to.

Failure to Consider Context of the Allegations

2. The council has commissioned an independent legal investigation into the "Eling/Marshall Messages" with Julian Saunders. We understand that the standards hearing into these matters has been delayed. However, the evidence and findings in relation to this investigation and pending hearing reveal a vendetta being pursued against our clients, and a determination to "get" them by whatever means possible. The current investigation would appear to be the fruit of that poisoned tree.

3. By way of example, the following messages have been published from Mr Marshall, which evidence the witch-hunt that was seeking out allegations against our clients (emphasis added):

We made a conscious decision to hit them with something new each week which we've achieved, some of that has been with your help so I thank you good sir.

No but I can get it checked out. We are wearing auditors out daily

I've just told our Audit Team I want it looking into

We have picked up more dodgy house deals for Roufs family today

Trawling over Jones and Bawa and Rouf what said what and when

The Joneses have now been kicked out of Town Hall and out of Wednesbury Celebrates and have moved onto Hill Top Community Centre.... Looks like they are starting another 'community organisation' there to [sic]".

I'm being touted by officers in Neighbourhoods as "the hatchet man" so my cover is blown and that I've "been tasked with burying the Joneses" bless them".

#### General Observations

4. Bearing in mind the background to the allegations, the following observations are made in relation to the substance of the alleged wrongdoing:
- a. It would appear that the processes which are in place for the provision of activities through the Town team structures (including the engagement of councillors and decision-making) changed without those changes being notified to councillors, and now being used retrospectively to support allegations of wrongdoing.
  - b. The evidence reveals ambiguity surrounding the processes and the function of officers. Moreover, redundancies in the Communities Team resulted in the reallocation of functions to other officers with predictable consequences. The officers were aware of the events taking place and the scheduled timeframe for them.
  - c. The original Local Area Budget application form (completed by the Town Lead Councillor Elaine Costigan) has not been reviewed as part of the evidence, but would clearly demonstrate that the events had clearly been accepted as happening. It was, our clients believe, only after the council's leadership election that the political allegiances changed, resulting in at best selected memory from those concerned.

We trust that these comments will be taken into account. Please contact us in the event of any query.

Yours faithfully,



**JONAS ROY BLOOM**

Ben Henry  
Jonas Ray Bloom Solicitors  
King Edward Building  
205-213 Corporation Street  
Birmingham  
B4 6SE

My Ref: MP/AHR  
Your Ref:  
Please ask for: Maria Price  
Telephone No: 0121 569 3175  
Fax No:  
Email: [Maria\\_price@sandwell.gov.uk](mailto:Maria_price@sandwell.gov.uk)

Date: 4 September 2018  
*Please assist us by quoting our  
reference on all correspondence*

Dear Mr Henry

**Re: Councillors Olwen and Ian Jones**

The Monitoring Officer has passed me your comments on your clients' reports, received by letter dated 30 July 2018. Given that you have dealt with both Councillors in one letter I propose to do the same.

I have noted your comments and added your letter to the investigation reports at p210 of Olwen Jones' report and p257 of Ian Jones' report.

I am not of the view that your comments add anything further to the investigation reports, given that I have found insufficient evidence to substantiate the allegations save for Councillor Olwen Jones' failure to declare her interests. I cannot see that interviewing further witnesses would have progressed this matter further.

As such I have now finalised my investigation reports, without any amendment save adding your comments to the evidence as stated above and submitted them to the Monitoring Officer for consideration under section 6 of the arrangements for dealing with standards allegations under the Localism Act 2011 which states as follows:-

Continued...



- 2 -

“Having received and taken account of any comments made on the draft report and undertaken any further investigation he/she considers relevant and appropriate, the investigating officer will send his/her final report to the Monitoring Officer.”

The Monitoring Officer will now contact you in due course.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'M. Price', with a stylized flourish at the end.

**Maria Price**  
**Service Manager - Legal**

Ben Henry  
Jonas Ray Bloom Solicitors  
King Edward Building  
205-213 Corporation Street  
Birmingham  
B4 6SE

My Ref: ST/AHR  
Your Ref:  
Please ask for: Surjit Tour  
Telephone No: 0121 569 3172  
Fax No:  
Email: [Surjit\\_tour@sandwell.gov.uk](mailto:Surjit_tour@sandwell.gov.uk)

Date: 13 September 2018  
*Please assist us by quoting our  
reference on all correspondence*

Dear Mr Henry

**Re: Councillor Olwen Jones - Standards Complaint**

I have now received a final report from the Investigating Officer in relation to this matter under Section 6 of the arrangements for dealing with standards allegations under the Localism Act 2011.

Having reviewed the Investigating Officer's report I am satisfied that it is sufficient and I concur with its findings. As such I make the following findings:

1. **Allegation 1** - That Councillor Olwen Jones failed to register her interest as Vice Chair of the Hill Top Community Development Association (until 2015)

**FINDING:** In respect of allegation 1, I find this allegation to be made out. Given the passage of time and the fact that Councillor Olwen Jones is no longer involved with ~~Tipton Community Association~~ ~~Association~~ I am minded to seek a local resolution to deal with this matter.



Continued...

Sandwell Council House  
PO Box 2374  
Oldbury  
Sandwell  
West Midlands  
B69 3DE  
DX: 710070 Sandwell  
Web: [sandwelllegalservices.co.uk](http://sandwelllegalservices.co.uk)

I recommend that Councillor Olwen Jones is provided with specific training regarding declarations of interests. She is to complete this training within the next 4 months as part of the Member Development Programme. For the avoidance of doubt, I will not be recommending that this matter proceeds to a local hearing. However, failure to complete the training may result in this matter being reported to the Ethical Standards and Member Development Committee and possibly Full Council.

2. **Allegation 2** –That Councillor Olwen Jones may have arranged an event at Hill Top Park on the 2<sup>nd</sup> July 2016 and Ratcliffe Park on 23<sup>rd</sup> July 2016 without following the appropriate procedures.

**FINDING:** In relation to allegation 2, I find this allegation, on balance, unsubstantiated. As such I am satisfied that no further action is required for this allegation under section 7 of the arrangements.

Yours sincerely



**Surjit Tour**  
**Director – Monitoring Officer**

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

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**INVESTIGATION REPORT CONTENTS**

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**Report Author: SMBC Legal Services**

**Report Date: July 2018**

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

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

**Summary of Allegations**

1. Following the Council's Audit Committee meeting on the 26<sup>th</sup> January 2017, audit allegations against Councillor Mahboob Hussain and Councillor Bawa were referred to the Monitoring Officer. Following initial enquiries by the Monitoring Officer a decision was made to instigate a formal investigation under the procedures required by the Localism Act 2011.
  
2. This report details the results of investigations carried out.
  
3. Although the subject of this complaint is no longer a Councillor, throughout this report I will refer to him as Councillor Hussain; he was an elected member at the time of the complaint and at the time that this investigation was commenced.
  
4. The allegations were detailed in the audit reports dated September 2016 and January 2017. The Audit Committee Report and minutes from the meeting of the 26<sup>th</sup> January 2017 also contain relevant information. I reviewed these documents in full.

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

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

7. The second allegation is that

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

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

### **Investigation Outcome**

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

9. *In relation to allegation one:*

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. *The second allegation:*

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Investigation Procedure**

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

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

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

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

### **Arrangements for dealing with Standards Allegations**

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

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

### **Relevant Legislation and Protocols**

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

20. These allegations span a number of years; therefore, I have considered the Code and/or standards regime that was in place at the time of the incident alleged.

21. I have considered the arrangements for dealing with standards allegations, the Council's Constitution, specifically Article 2 The Code of Conduct: Guide for Members May 2007, Protocol for Member / Officer Relations 2011 and 2013 and ACAS guidelines – Harassment and Bullying.

22. I have also considered the guidance from the Standards Board for England which has now been disbanded but is still relevant, given the timeframe of these allegations, specifically in relation to Personal and Prejudicial Interests.

### **Official Capacity/ Scope of the Code**

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

## Relevant Case Law

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

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

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



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

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

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

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

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

28. A case decided by the First Tier tribunal on an appeal from Bromsgrove Borough Council dealt with a failure to declare a personal interest at two Parish Council meetings where the business discussed was the proposed development of land in the village. The case is Councillor David Matthews of Alvechurch Parish Council v Bromsgrove District Council Standards Committee, LGS\2011\0565. The personal interest was a relationship that the Councillor had; first Cousin once removed.
29. The relevant Code of Conduct stated that a councillor had a personal interest when *“a decision in relation to [the business of the Council] might reasonably be regarded as affecting the wellbeing or financial position of a relevant person to a greater extent than the majority of ...other council tax payers, ratepayers or inhabitants”*. A relevant person was defined as including a member of the councillor’s family or a person with whom the councillor has a close connection.
30. In this case, the councillor was found not to have breached the code of conduct. The tribunal stated *“had there been a close association then, regardless of whether or not the co-owner was to*

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

## **Human Rights**

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

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

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

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

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

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

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

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

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

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

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

### **Allegation One**

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

a. Relevant part of the Code of Conduct

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

In relation to the National Code, paragraph 7 is relevant

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

The relevant Nolan principles for this matter are:

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

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

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

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

b. Investigation Methodology

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

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

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

c. Agreed Facts

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

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

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

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

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

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

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



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

d. Disputed Facts

Councillor Hussain has not co-operated with this investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Findings of Fact

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

1996 – 1997      Vice Chair – Finance and Resources  
Strategy Committee

1997 – 1998      Vice Chair – Finance and Resources  
Strategy Committee

1998 – 1999      Vice Chair – Finance and Resources  
Strategy Committee

1999 – 2000      Vice Chair – Finance and Resources  
Strategy Committee

2000 – 2001      Cabinet Member for Housing Strategy

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

f. Acting in Official Capacity?

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

g. Conclusions

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

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

**Allegation Two**

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

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

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

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

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

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



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

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

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

a. Relevant part of the Code of Conduct

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

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

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

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

b. Investigation Methodology

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

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

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

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

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

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

Councillor Hussain has not co-operated with this investigation.

c. Agreed Facts

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

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

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

d. Disputed Facts

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

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

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

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

e. Findings of Fact

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

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

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

f. Acting in Official Capacity?

Not applicable.

g. Conclusions

There is no breach of the Code of Conduct.

42. Allegation 1B: 47 Fountain Lane 2007

a. Relevant part of the Code of Conduct

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

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

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

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

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

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

b. Investigation Methodology

As above (para 41 (b)).

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

c. Agreed Facts

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

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

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

d. Disputed Facts

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

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

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

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

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



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

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

e. Findings of Fact

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

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

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

f. Acting in Official Capacity?

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

g. Conclusions

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

43. Allegation 1C: 124 Basons Lane

a. Relevant part of the Code of Conduct

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

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

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

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

b. Investigation Methodology

As above (para 41 (b)).

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

c. Agreed Facts

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

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

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

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

d. Disputed Facts

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

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

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

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

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

Homeless priority was awarded on the 10.11.11.

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

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

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

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

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

e. Findings of Fact

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

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

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

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

f. Acting in Official Capacity?

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

g. Conclusions

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

44. Allegation 1D: 109 West Bromwich Street

a. Relevant part of the Code of Conduct

The relevant Nolan principles for this matter are:

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

b. Investigation Methodology

As above (para 41 (b)).

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

c. Agreed Facts

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

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



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

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

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

d. Disputed Facts

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

e. Findings of Fact

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

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

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

f. Acting in Official Capacity?

n/a

g. Conclusions

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

45. Allegation 1E: 26 Douglas Avenue

a. Relevant part of the Code of Conduct

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

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

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

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

b. Investigation Methodology

As above (para 41 (b)).

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

c. Agreed Facts

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

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

d. Disputed Facts

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

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

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

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

e. Findings of Fact

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

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

f. Acting in Official Capacity?

n/a

g. Conclusions

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

46. Allegation 1F: 229 Queens Road

a. Relevant part of the Code of Conduct

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

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

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

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

b. Investigation Methodology

As above (para 41 (b)).

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

c. Agreed Facts

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

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

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

d. Disputed Facts

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

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

On the 3.9.10 SB was awarded band 2 priority.

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

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

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

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

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

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

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

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

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

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



e. Findings of Fact

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

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

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

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

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

f. Acting in Official Capacity?

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

g. Conclusions

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

## Overall Conclusions

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

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

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

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



**PRIVATE AND CONFIDENTIAL**

**Case reference: MC/08/1017**

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Sandwell Metropolitan Borough Council, into **allegations made by Councillor Mahboob Hussain concerning Councillor Steve Eling** both of Sandwell Metropolitan Borough Council.

Dated: 23 May 2018

# VOLUME 1 REPORT

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CONFIDENTIAL REPORT

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## CONFIDENTIAL REPORT

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

## CONFIDENTIAL REPORT

### 1. Executive Summary

- 1.1 Councillor Steve Eling is a member of Sandwell Metropolitan Borough Council (the Council) having been first elected in May 1986.
- 1.2 A complaint was made to the Council's Monitoring Officer by Councillor Mahboob Hussain. Councillor Hussain alleged that Councillor Eling had carried out an orchestrated campaign, in association with Councillor Marshall, against him, his family and another Councillor. Councillor Hussain also alleged that Councillor Eling had provided a statement to the Labour Party in relation to disciplinary proceedings against him that contained confidential information that Councillor Eling obtained in his capacity as Leader of the Council.
- 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 Eling and Councillor Marshall, held in June 2016, Councillor Marshall sent a number of messages to Mr Saunders using the messaging service "WhatsApp". The messages were sent during a period between August 2016 and May 2017.
- 1.5 Councillor Hussain provided a statement from Mr Saunders together with screen shots of the messages he received from Councillor Marshall. A copy of blog entries dated 23 August 2017 was also provided. This was published under the headings "In The Public Domain?: The Eling/Marshall Files 2016-Technical Blog" and "In The Public Domain?: The Eling/Marshall Files 2017-Technical Blog".
- 1.6 The messages referred to in Councillor Hussain's complaint related to two messages in September 2016 which Councillor Hussain considered evidenced an orchestrated campaign against him. Councillor Hussain also referred to a statement made by Councillor Eling to the Labour Party.
- 1.7 Councillor Hussain was invited to be interviewed as part of our investigation in order to provide further information on the allegations in his complaint. Councillor Hussain declined pointing out that the relevant information was set out in his complaint. Councillor Eling was interviewed and a statement was prepared.
- 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. We do not consider that these constraints have materially affected the evidence required to reach our conclusion.
- 1.9 We have found that Councillor Eling did not breach the code of conduct of the authority concerned.



## CONFIDENTIAL REPORT

### 2. Official details

- 2.1 Councillor Eling is a member of the Council, having been first elected in May 1986.
- 2.2 He is a Labour Councillor representing the Abbey Ward.
- 2.3 From 1990 he was a member of the Policy Committee and Chair of the Community Development Committee. From 2001 he was a member of the Council's Cabinet and became Deputy Leader in 2004. During 2009 he was Acting Leader following the resignation of the then Leader, Councillor Thomas. Councillor Eling became Leader of the Council in May 2016, following the death of the then Leader, Councillor Cooper
- 2.4 Councillor Eling attended training on the Council's code of conduct on 2<sup>nd</sup> December 2015.

## CONFIDENTIAL 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 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*

- 1.1 *You must act solely in the public interest and should never improperly see to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a close associate, an employer or a business carried on by you.*
- 1.3 *You must not disclose any information given to you as a member in breach of any confidence.*

## CONFIDENTIAL REPORT

1.5 *You must not bring your office or authority into disrepute.*

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.

## CONFIDENTIAL REPORT

### 4. Evidence and facts

#### *Our appointment*

- 4.1 The Council's arrangements for dealing with standards complaints state that the Monitoring Officer, 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, instructed Wilkin Chapman LLP on 6 February 2018 to carry out an investigation on his behalf of a complaint submitted by Councillor Mahboob Hussain.
- 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 During the investigation Councillor Hussain was invited to be interviewed, he replied stating that all the evidence was set out in his complaint and the attachments.
- 4.5 Councillor Hussain provided a signed statement of Mr Julian Saunders together with screen shots of messages he received from Councillor Marshall.
- 4.6 We inspected Mr Saunders' blog and printed off relevant posts.
- 4.7 Councillor Steve Eling was interviewed by telephone and a statement was prepared.

#### *The Complaint - Councillor Mahboob Hussain*

- 4.8 Councillor Hussain submitted a complaint to the Monitoring Officer dated 10 October 2017 (copy attached at WC2). In the complaint he stated:-

*The Sandwell Skidder website has published allegations that Councillor Eling sought to use the website to carry out a smear campaign against me. This involves him disclosing information about confidential Council business and personal matters about me and my family for political gain and to pursue a vendetta against me.*

- 4.9 Councillor Hussain declined to be interviewed stating in a telephone conversation with Mr Ball on 1 March 2018 that his complaint was clear and "*in black and white*". In his complaint Councillor Hussain made specific reference to a statement provided by Councillor Eling to the Labour Party and to two entries on Mr Saunders' blog. These are summarised below:-
  - (a) 14 September 2016- Councillors Eling and Marshall were carrying out an orchestrated campaign against Councillor Hussain;
  - (b) 28 September 2016- Further confirmation of an orchestrated campaign by Councillors Eling and Marshall were carrying out against Councillor Hussain and his family.

## CONFIDENTIAL REPORT

### *Mr Julian Saunders*

4.10 In a witness statement prepared by Mr Saunders and signed and dated 16 October 2017 and provided by Councillor Hussain's solicitors as part of his complaint (copy attached at WC 3) Mr Saunders stated that:-

- (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, Mr Saunders was contacted by a third party who informed him that the new Leader (Councillor Eling) was anxious to start with a clean slate and was determined to root out the corruption which it was said 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) prior to the meeting Mr Saunders had written extensively about a number of issues but frequently about various activities of senior and powerful Councillors Mahboob Hussain and Ian Jones. At the meeting, the Leader and Councillor Marshall wanted him to stop writing critical articles about the Council;
- (e) 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;
- (f) following the meeting, Councillor Marshall introduced him to the Whats App messaging service. Councillor Marshall then sent him a large number of messages although only a few related to Councillor Hussain whom Councillor Marshall generally referred to as "Manboobs".

### *Councillor Marshall*

4.11 Councillor Marshall was sent a number of questions by email on 9 April 2018 (copy attached at WC 4).

4.12 Councillor Marshall replied by email on 10 April 2018 (copy attached at WC 5), in his email he stated that:-

- (a) a meeting took place between Saunders, Cllr Eling, ex Cllr Mick Davies and himself, Saunders had for years claimed to have evidence of wrongdoing at SMBC, the meeting was set up to establish what if any evidence he had;

## CONFIDENTIAL REPORT

- (b) he did contact Saunders, mostly via WhatsApp but without full disclosure of the complete unredacted text he was not prepared to comment as cherry picked comments had no context and being used for others personal and political agendas;
- (c) the comments were made by him without the knowledge or input of anyone else.

### *Councillor Eling*

4.13 Councillor Eling was interviewed on 26 April 2018 and a statement was prepared and signed on 27 April 2018 (copy attached at WC 6). He stated that:-

- (a) he was a Member of Sandwell Metropolitan Borough Council and the current Leader of the Council having been first elected May 1986 to represent the Abbey Ward. He became a member of the Policy Committee in 1990 and Chaired the Community Development Committee. When the Council introduced a Cabinet in 2001 he was appointed to serve on the Cabinet, a position he has retained to the present day. He was elected to the position of Leader of the Council in May 2016;
- (b) in June 2016 he attended a meeting with Julian Saunders which was arranged by others. His understanding of the purpose of the meeting was to meet with Mr Saunders who published of a Blog that had engaged in a social media war of words with the former Leader of the Council. It was suggested that the meeting would be an opportunity to move forward from the hostile relationship Mr Saunders had with the previous leadership at the Council;
- (c) Mr Saunders' concerns were that issues raised with the Council about wrong doing were not investigated. The outcome of the meeting was that he gave an undertaking to Mr Saunders that he would investigate any genuine concerns raised;
- (d) he was not aware that following the meeting Councillor Marshall began communicating with Mr Saunders using the WhatsApp messaging service. He was not sure when he became aware of this but recalled a conversation with Councillor Marshall when he did become aware. He asked Councillor Marshall if it was wise to communicate in this way with Mr Saunders. Councillor Marshall said Mr Saunders had given an assurance that the communications would be treated with utmost confidentiality;
- (e) he was never party to any of the WhatsApp messages and was not aware of the content of Councillor Marshall's messages. He became aware of some of the communication sometime after Mr Saunders published details of the messages on his blog in August 2017;
- (f) in 2016 concerns were raised regarding the conduct of Councillor Hussain. This resulted in a number of investigations being undertaken including a Standards complaint, what became known as the Wragge report and a complaint to the Labour Party;

## CONFIDENTIAL REPORT

- (g) in relation to the complaint to the Labour Party he was asked on two occasions to provide a witness statement. He believed this was what Councillor Hussain was referring to when in the allegation that he wrote to the Labour Party and divulged confidential information. The information he provided was factual and in the public domain;
- (h) in the witness statements he provided information relating to the process being followed by the Council during the investigation of the Standards complaint and the progress on the matter. One of the complaints made to the Labour Party related to allegations of bullying by Councillor Hussain. He commented that he was aware of the allegations but had no direct knowledge of the alleged misconduct. At no time did he make any comment regarding his opinion of the matters being investigated;
- (i) he responded to the request from the Labour Party for a witness statement as the Party's rules required him, and all members of the Party, to cooperate fully with any such investigation. This included Internal Party disciplinary investigations and Code of Conduct investigations such as the one currently being undertaken against him;
- (j) he believed Councillor Hussain would have copies of the witness statements he had provided as these would have been disclosed to him as part of the process followed by the Labour Party. A disciplinary hearing was set to consider the complaints against Councillor Hussain for October 2017. The hearing did not proceed as Councillor Hussain was ill. He did not have a copy of the statements which were prepared following an interview with the individual investigating the complaints.

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### 5. Summary of the material facts

- 5.1 Councillor Eling was a member of the Council representing the Abbey Ward. Councillor Eling was the Leader of the Council.
- 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 perceived corruption, cronyism and incompetence within the Council.
- 5.3 In 2016 Mr Saunders was invited to meet with Councillor Eling. Mr Saunders met with Councillor Eling on 29 June 2016, Councillor Eling was accompanied by Councillor Marshall and a former Councillor, Mick Davies. Mr Saunders was told that the new leadership wished to move on from the previous relationship with the Council.
- 5.4 Following the meeting Councillor Marshall introduced Mr Saunders to the Whats App messaging service.
- 5.5 Over the period from August 2016 to May 2017 Mr Saunders regularly received messages on Whats App about issues relating to the Council. Subsequently, Mr Saunders published many of these messages on his blog. A summary of the messages was published on 23 August 2017 on the In The Public Domain? Blog under the heading "The Eling/Marshall Files 2016 - Technical Blog" and "The Eling/Marshall Files 2017 - Technical Blog".
- 5.6 The entries identified by Councillor Hussain in his complaint showed that some of the information in the messages would only be known by someone with access to information held by the Council. It was established that Councillor Marshall was the sender of the messages received by Mr Saunders although Councillor Hussain believed Councillor Eling was involved. Councillor Marshall, in response to questions submitted to him acknowledged that he had been individually responsible for the messages.
- 5.7 A formal complaint was submitted to the Council's Monitoring Officer by Councillor Hussain.



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### 6. Additional submissions received from Councillor Eling

- 6.1 The following comments were received from Councillor Eling on the draft version of this report:-

*Section 2 Official details. Can we reword paragraph 2.3 as follows :*

*“From 1990 he was a member of the Policy Committee and Chair of the Community Development Committee. From 2001 he was a member of the Council’s Cabinet and became Deputy Leader in 2004. During 2009 he was Acting Leader following the resignation of the then Leader, Councillor Thomas. Councillor Eling became Leader of the Council in May 2016, following the death of the then Leader, Councillor Cooper.”*

*Response to comments*

- 6.2 Comments from Councillor Eling were received on 16 May 2018 via the Deputy Monitoring Officer, Phil Tart. Paragraph 2.3 has been amended as requested.

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### 7. Reasoning as to whether there have been failures

#### *Official Capacity*

- 7.1 Section 28(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*”.
- 7.2 The Council’s Code of Conduct reflects the requirement of section 28(2) of the Localism Act.
- 7.3 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.*
- 7.4 In *McTigue, 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 pseudonym “Indie” which related to wheellie 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.”*
- 7.5 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.
- 7.6 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.

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- 7.7 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.
- 7.8 In this case there are two aspects to Councillor Hussain's allegation first, that Councillor Eling was complicit in the messages sent by Councillor Marshall to Mr Saunders. The second, that Councillor Eling disclosed confidential information about Councillor Hussain in a statement submitted to the Labour Party.
- 7.9 We have established that Councillor Eling was acting in an official capacity when he engaged in communication with Councillor Marshall as the messages were primarily about the Council and/or Council business. From this it follows that if Councillor Eling was complicit in these messages it is reasonable to presume that he was acting in an official capacity. Therefore for the purposes of this report we have concluded that if Councillor Eling was involved with Councillor Marshall then he would have been acting in an official capacity for this part of the complaint.
- 7.10 With regard to the statements made to the Labour Party regarding its investigation into complaints made about Councillor Hussain it is less clear. It is possible that Councillor Eling was making a statement in his capacity as a Member of the Labour Party for which there is no requirement to be a Councillor. However, Councillor Eling has acknowledged that some of the information he provided in his statement related to the progress on a standards complaint being investigated by the Council. Therefore, on balance, we have concluded that councillor Eling was also acting in an official capacity when he provided the statement to the Labour Party.
- 7.11 We therefore conclude that, in both aspects of this complaint, Councillor Eling was acting in an official capacity and was subject to the Code of Conduct.

### *Respect*

- 7.12 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.*

- 7.13 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.
- 7.14 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."*

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7.15 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”.*

7.16 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).

7.17 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”.*

7.18 Tribunal considered that the threshold for a failure to treat another with respect has 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.

7.19 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.

7.20 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.*

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*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 .....*"

7.21 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;
- there is a need to weigh up the public interest in protecting civil servants against enhanced protection for political comment.

7.22 The above guidance and cases are set out to provide an overview of how treating others with respect has been considered. These are not directly relevant in this instance however, they do provide some advice on the type of comments that may and may not be appropriate.

7.23 In determining whether Councillor Eling's alleged 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 the basis of the allegations.

7.24 It is alleged that Councillor Eling was complicit in the messages sent to Mr Saunders by Councillor Marshall. It is evident from reading Mr Saunders blog of August 2017 that Councillor Eling's alleged involvement is based on Mr Saunders' interpretation of 'we' in some of Councillor Marshall's messages. An example being the blog entry referring to 14 September 2016 which states:-

"We [Eling and Marshall] made a conscious decision to hit them with something new each week....."

We do not consider this sufficient evidence that the 'we' actually referred to Councillor Eling, it could refer to another individual or to a group of individuals.

7.25 In Councillor Marshall's response to our questions he stated that he was individually responsible for the messages sent to Mr Saunders. From this we

## CONFIDENTIAL REPORT

have concluded that Councillor Eling was not involved in the alleged activity to discredit Councillor Hussain through the communication with Mr Saunders.

- 7.26 We have therefore concluded that Councillor Eling's was not involved in the WhatsApp communication with Mr Saunders and therefore Councillor Eling's conduct did not fall short of the standard required by the Council's Code of Conduct in respect of his treatment of Councillor Hussain. He therefore did not fail to follow paragraph 1.6 of the code.

### *Confidential information*

- 7.27 Paragraph 1.3 of the Code of Conduct states:-

*"You must not disclose any information given to you as a member in breach of any confidence."*

- 7.28 The term confidential is not defined. It is alleged that Councillor Eling disclosed information` that he must have obtained in his capacity as a Councillor and Leader of the Council.

- 7.29 Information is a broad term. It includes facts, advice and opinions. It covers written material, including tapes, videos, CDs, DVDs and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all of the following apply:

- (a) it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
- (b) it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
- (c) disclosure of it would be detrimental to the party wishing to keep it confidential.

- 7.30 In this case Councillor Eling is alleged to have submitted a statement to the Labour Party which contained confidential information about Councillor Hussain.

- 7.31 Unfortunately other than the statement in his complaint which states:-

*"In addition to the comments on the skidder website Councillor Eling has provided a statement to the Labour Party in relation to disciplinary proceedings against me. This contains confidential material which he obtained in his capacity as leader of the council which he has disclosed in breach of confidence to the labour party for blatantly political purposes...."*

Councillor Hussain has not provided any further details of what the confidential information might be despite being invited to elaborate on his complaint.

- 7.32 Councillor Eling has not retained a copy of the statements which were prepared for him by an individual conducting the investigation. However he has signed a statement in which he stated that he only provided factual information on the conduct of investigations being carried out by the Council. Councillor Eling has stated that the information was not confidential.



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7.33 In the absence of any details of what confidential information was alleged to have been disclosed and how that information may have been obtained by Councillor Eling it has not been possible to establish any credibility to the allegation.

7.34 We have therefore concluded that Councillor Eling did not breach paragraph 1.3 of the Code of Conduct.

### *Disrepute*

7.35 Paragraph 1.5 of the Code of Conduct states:-

*You must not bring your office or your authority into disrepute*

7.36 In both cases Councillor Hussain states that the alleged conduct is likely to be in breach of that part of the code dealing with disrepute.

7.37 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."*

7.38 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."*

7.39 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."*

7.40 Both in respect of the complaint about treating Councillor Hussain with respect and the disclosure of confidential information we have found that Councillor Eling did not breach the Code of Conduct. It is not necessary to have breached other parts of the Code of Conduct for a Councillor's conduct to bring the Council or the office of Councillor into disrepute.

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7.41 Therefore we have considered whether any of the alleged conduct, if proven, might have breached this part of the Code. There is nothing specific in Councillor Hussain's complaint which might indicate what particular aspect of the conduct he might be referring to. Having carefully considered the information, provided we have failed to find any evidence of conduct that might bring the authority or the office of councillor into disrepute. We have concluded that Councillor Eling's conduct did not damage the reputation of the office of Councillor or the Authority and therefore he did not fail to follow paragraph 1.5 of the Code.

### *Other matters considered*

7.42 We note that Councillor Hussain referred to a number of paragraphs of the Code of Conduct in his complaint. 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 not been a breach of the code of conduct of the authority concerned.

Wilkin Chapman LLP  
**Investigating Solicitors**

23 May 2018





**PRIVATE AND CONFIDENTIAL**

**Case reference: MC/07/1017**

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Sandwell Metropolitan Borough Council, into **allegations made by Councillor Mahboob Hussain concerning former Councillor Richard Marshall** both 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

## CONFIDENTIAL REPORT

### 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 Mahboob Hussain. Councillor Hussain alleged that Councillor Marshall had disclosed confidential information about Council business and personal information about him and his family to a blogger, Julian Saunders. It was alleged that this was done in an attempt by Councillor Marshall to gain political advantage and as part of a vendetta against Councillor Hussain. The complaint also referred to matters about bringing the authority into disrepute and inappropriate comments about Councillor Hussain.
- 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 were sent during a period between August 2016 and May 2017.
- 1.5 Councillor Hussain provided a statement from Mr Saunders 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 communications between Councillor Marshall and Mr Saunders during the period referred to in Councillor Hussain's complaint.
- 1.6 The messages referred to in Councillor Hussain's complaint included comments about Councillor Hussain's personal affairs, business and employment information about members of his family and derogatory comments about Councillor Hussain, members of his family and also the travelling community.
- 1.7 Councillor Hussain was invited to be interviewed as part of our investigation in order to provide further information on the allegations in his complaint. Councillor Hussain declined pointing out that the relevant information was set out in his complaint. Similarly Councillor Marshall was invited to be interviewed but declined to make himself available. A number of questions relevant to the allegations were submitted to Councillor Marshall. He responded to some of these in an email.
- 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 found 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. We also conclude that Councillor Marshall's misconduct was likely to bring the authority in to disrepute.

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### 2. Official details

- 2.1 Councillor Marshall is a member of the 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 and a Member of its Petitions Committee.
- 2.4 Councillor Marshall received training on the Council's code of conduct on 22 September 2015.

**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*

- 1.1 *You must act solely in the public interest and should never improperly see to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a close associate, an employer or a business carried on by you.*



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- 1.2 *You must not place yourself under a financial or other obligation to outside individuals or outside organisations that may influence you in the performance of your duties.*
- 1.3 *You must not disclose any information given to you as a member in breach of any confidence.*
- 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.*
- 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 The Council's arrangements for dealing with standards complaints state that the Monitoring Officer, 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 complaint from Councillor Hussain via his solicitors Weightmans on 10 October 2017. On 22 December 2017, Mr Tour informed Councillor Hussain 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 During the investigation Councillor Hussain was invited to be interviewed. He replied stating that all the evidence was set out in his complaint and the attachments.
- 4.5 Councillor Hussain provided 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 initially on 17 October. A signed version was then provided on 25 October 2017.
- 4.6 We inspected Mr Saunders' blog and took prints of relevant posts.
- 4.7 Councillor Richard Marshall was invited to be interviewed or alternatively to answer a number of written questions submitted to him. Councillor Marshall responded by email to some of the questions.

##### *The Complaint - Councillor Mahboob Hussain*

- 4.8 Councillor Hussain submitted a complaint to the Monitoring Officer dated 10 October 2017 (copy attached at WC2). In the complaint he stated:-

*"The Sandwell Skidder website has published allegations that Councillor Marshall sought to use the website to carry out a smear campaign against me. This involves him disclosing information about confidential Council business and personal matters about me and my family for political gain and to pursue a vendetta against me."*

- 4.9 Councillor Hussain declined to be interviewed stating in a telephone conversation with Mr Ball on 1 March 2018 that his complaint was clear and "*in black and white*". In his complaint Councillor Hussain made specific reference to a number of entries on Mr Saunders' blog. These are summarised below:-

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- (a) 21 and 31 August 2016 - Councillor Marshall offered to disclose information about a proposed traveller site in Lodge Street;
- (b) undated - Councillor Marshall made a derogatory comment about travellers;
- (c) 13 September 2016 - Councillor Marshall disclosed details of an audit investigation;
- (d) 14 September 2016 - Councillor Marshall carrying out an orchestrated campaign against him;
- (e) 28 September 2016 - Councillor Marshall further orchestrated campaign against him and his family;
- (f) 5 October 2016 - derogatory comments by Councillor Marshall about officers of the Council and suggestions of a witch hunt against anyone supportive of him;
- (g) 6 October 2016 - derogatory comments about Jan Britton by Councillor Marshall, explicit sexual comments about other councillors and apparent disclosure of confidential correspondence relating to a standards investigation;
- (h) 18 October 2016 - apparent disclosure of confidential staffing information about Councillor Hussain's son;
- (i) 18 November 2016 (though referred to by Councillor Hussain as 2017) - Councillor Marshall made allegations that Councillor Hussain was being investigated by the Department for Work and Pensions and stating that Councillor Marshall had "inside knowledge";
- (j) 3 January 2017- Councillor Marshall stated that it was "*a big month in the fight against the bastards*" and that the police were being called suggesting Councillor Marshall was aware of an audit report relating to him and Councillor Jones and was willing to disclose it to the media;
- (k) 19 January 2017- Councillor Marshall disclosed details of the audit investigation for political purposes;
- (l) 5 May 2017- Councillor Marshall made derogatory comments about fellow Councillors and a local Member of Parliament and disclosed information about witnesses in active court proceedings.

*Mr Julian Saunders*

4.10 In a witness statement prepared by Mr Saunders and signed and dated 16 October 2017 and provided by Councillor Hussain's solicitors as part of his complaint (redacted copy attached at WC 3) Mr Saunders stated that:-

- (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

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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 it was said 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 although only a few related to Councillor Hussain whom Councillor Marshall generally referred to as "Manboobs". He then listed the messages he received from Councillor Marshall, the relevant ones being:-
- 21 August 2016  
*"Would you be interested in knowing that the council are looking at a transient site? And that land at the back of Lodge St is being considered? (Mr Saunders replied- Really? That would be good for house sales!) It really wouldn't would it!!"*
  - 31 August 2016  
*"Happy for you to break the story re temp traveller camp behind our mates housing development. But it'd be nice if you insinuated that you'd found out via WMP [West Midlands Police] source. Via tweets that is."*
  - Undated  
*"I saw your tweet about the air quality at his [Councillor Hussain's son's new build] houses by the motorway and I thought, air quality will be the last (thing) on their minds when travellers are shitting in the back gardens!!"*
  - 13 September 2016  
*"I've had another warning off one of Manboob's henchmen today so I know I'm on the right track, bless them. Manboobs is being interviewed by audit officers tom btw."*

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- 14 September 2016

*"We made a conscious decision to hit them with something new each week which we've achieved, some of that has been with your help I thank you good sir... On that note, would you be happy to bump into us at the pub again at some point... share notes, have a catch up, ....."*

- 28 September 2016

*"When I asked whether it was true Cllr Hussain had relatives working in the Council's Legal Department:  
'Not sure on that, we think he may have up to five members of his family in Council we are trying to weed them out.'"*

- 5 October 2016

*"I'm just concerned I shared some very detailed information on the Joneses and other things with a very senior officer 2 weeks ago today and within 2 days you said to me your phone wouldn't stop ringing and then comments from lower ranking officers coming back about me. We have officers linked to the Dark Side that we are unaware of and unless I can identify them they will remain in the organisation. Our plan has been as much as possible to follow the first rule of assassination, but we are going to miss some key individuals. Any help you can give identifying them would be much appreciated, I know you don't like naming names but even a direction would help."*

Mr Saunders pointed out that his informants contacted him anonymously or used false names. He suggested a "Truth and Reconciliation commission" with an amnesty for lower ranking officers if they told the truth.

*"We have been discussing that very thing, the one thing we have to do is bury Manboobs first the amount of staff that still believe he is coming back is untrue he's like bloody Voldemort. Even senior managers believe."*

*There are still people in the party actively blocking, without Watson and Spellar on our team we'd have no chance.*

*Have you heard rumours re MH [Mahboob Hussain] being reported to the police about wrongdoing as far back as 2005.*

*Can you remember what for? Someone has come forward saying that he was reported by the person [name redacted] whose was then marched off the premises 3 weeks after reporting him. We can't find any trace of it anywhere.*

*Another one has bit the dust but I can't tell you till next week...."*

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- 6 October 2016

*"MH has written to the party saying he isn't getting a fair hearing and he wants the process kicked out and is citing your Maria Price story as evidence."*

- 18 October 2016

*"Makes you wonder how far their tentacles spread with officers. Did I tell you about MH sons appeal against his sacking? He appealed. The night before his appeal his manager emailed saying "It's all my fault. I told him not to keep records" etc etc. What does he have on these people it's frightening."*

*It was heard 2 wks ago. By a different director. Nothings changed. But would anyone throw their career away for someone else's son?"*

- 18 November 2016

*"By the way MH is under investigation by the DWP [Department for Work and Pensions] for Benefit fraud. A letter has been written in to [the Leader] and the three MP's complaining about him being an embarrassment to the party and office of a Cllr saying that he is under investigation and is it not about time they did something about it."*

Mr Saunders asked how he knew as DWP did not disclose information about investigations.

*"It's been confirmed. From within."*

- 3 January 2017

*"Almost ready to call the police in. After the last time the relationship with 'us' and the police is at an all time low and they almost refusing to act without prima facia proof. The Jones and Manboobs have it in for me big style they've sussed what I'm up to. They have high-ranking officers still in their pockets."*

- 19 January 2017

*"Something you've missed...The dodgy CPO policy approved by the Finance Committee that could only ever benefited two people, Hussain and [name redacted] was chaired by... Adrian Bailey. Ties things up nicely eh?... Looks like the back scratching has been going on a long while eh, MH now Baileys biggest supporter... circle of life."*



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- 5 May 2017

*“However people were refusing to sign Bailey’s nomination papers because of the way he’s been and his open support for MH.”*

### *Councillor Marshall*

4.11 Councillor Marshall was sent a number of questions by email on 9 April 2018 (copy attached at WC 4).

4.12 Councillor Marshall replied by email on 10 April 2018 (copy attached at WC 5). 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 but without full disclosure of the complete un-redacted text he was not prepared to comment as 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.

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### 5. Summary of the material facts

- 5.1 Councillor Marshall was a member of the 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 perceived corruption, cronyism and incompetence within the 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 former 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. Subsequently, Mr Saunders published many of these messages on his blog. A summary of the messages was published on 23 August 2017 on the In The Public Domain? Blog under the heading "The Eling/Marshall Files 2016 - Technical Blog" and "The Eling/Marshall Files 2017 - Technical Blog".
- 5.7 Evidence on Mr Saunders' blog shows 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 his blog posts dated 23 August 2017.
- 5.8 The entries identified by Councillor Hussain in his complaint showed that some of the information in the messages sent by Councillor Marshall would only be known by someone with access to information held by the Council.
- 5.9 A formal complaint was submitted to the Council's Monitoring Officer by Councillor Hussain.



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### 6. Additional submissions received from the complainant and Councillor Marshall

6.1 The following comments were received from Councillor Hussain on the draft version of this report:-

No comments were received.

#### *Comments of Councillor Marshall*

6.2 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.*

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*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*

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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 redacted as referring to another matter.

7.42/3/4 redacted as referring to another matter.

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*

### *Response to comments by Councillor Marshall*

6.3 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

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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 concluded that 'Manboob' was not a typo based on the number of times the term is used in the messages copied in Mr Saunders' statement, in one case twice in the same message. In addition Mr Saunders stated when referring to the messages "a few related to Councillor Hussain whom Councillor Marshall generally referred to as Manboobs".
- 6.7 We have considered all the other 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 on Mr Saunders' blog, 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 the 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 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 pseudonym "Indie" which related to wheelie bin collections and were alleged



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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. In particular we are mindful of the fact that some of the information would have only been available to a Councillor.
- 7.14 We therefore conclude that, whilst sending messages to Julian Saunders, Councillor Marshall was acting in an official capacity and was subject to the Code of Conduct.

### *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."*

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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”.*

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

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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;
- 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 have 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.



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- 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.
- 7.28 In Councillor Marshall's messages to Mr Saunders there are a number of instances where personalised comments are made about Councillor Hussain, and other individuals including employees of the Council. In particular we consider the use of '*Manboob*' (a slang term referring to non cancerous increase in the size of male breast tissue) in relation to Councillor Mahboob to be particularly offensive and mocking of a masculine given name used in communities of Pakistani or Bangladeshi descent. We consider this comment to be unreasonable, unwarranted and personalised with a racial element.
- 7.29 Also of significant concern were the messages sent regarding the proposed temporary traveller site. In the first message Councillor Marshall clearly implied that the travellers would have a detrimental impact on the area. Of more concern was the message that stated "*air quality will be the last thing on their minds when travellers are shitting in the back gardens*". Whilst this is not personalised towards an individual we consider this to be an extremely derogatory comment towards a section of society.
- 7.30 It is possible to treat a group of individuals with disrespect, see *R (on the application of) Dennehy v London Borough of Ealing* [2013] EWHC 4102 where a councillor made adverse comments in a blog relating to the Indian community of Southall. That was "*...not the expression of a political view, but an unjustified personal and generic attack on a section of the public*". Therefore we consider this to be an unwarranted and unreasonable comment personalised towards a group of individuals defined by their ethnicity.
- 7.31 Many of the other comments made by Councillor Marshall caused concern for Councillor Hussain. We have carefully considered these and have concluded that, whilst there is evidence of a campaign by Councillor Marshall to discredit Councillor Hussain, in isolation each message just falls short of breaching the Code of Conduct.
- 7.32 *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.
- 7.33 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. We have concluded that the messages were part of a premeditated campaign against Councillor Hussain.
- 7.34 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 Hussain with respect. He therefore failed to follow paragraph 1.6 of the code.

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### *Disrepute*

7.35 Paragraph 15 of the Code of Conduct states:-

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

7.36 It is evident that Councillor Marshall sent the messages to Mr Saunders with the intention of Mr Saunders using some of 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.

7.37 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.”*

7.38 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.”*

7.39 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.”*

7.40 Councillor Marshall made comments about members of the Council being subject to investigation by various statutory authorities when this information was not in the public domain. This we consider could have an adverse affect on the public’s opinion of the reputation of the authority.

7.41 We have considered the fact that some of Councillor Marshall's messages may have contained accurate information. However, it is evident that some if not all of this was not in the public domain at the time. Of particular relevance is the message of 31 August 2016 in which Councillor Marshall states 'be nice

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*if you insinuated that you found out via WMP [West Midlands Police] source via tweets that is'. This was in relation to information about the proposed traveller site referred to above. The implication being that the information was not in the public domain and Councillor Marshall did not wish to be identified as the source.*

- 7.42 We have concluded that Councillor Marshall's misconduct was sufficient to damage the reputation of the office of Councillor or the Authority and thus he failed to follow paragraph 1.5 of the Code.

### *Confidential information*

- 7.43 Paragraph 1.3 of the Code of Conduct states:-

*"You must not disclose any information given to you as a member in breach of any confidence."*

- 7.44 The term confidential is not defined. It is alleged that Councillor Marshall disclosed information that he must have obtained in his capacity as a Councillor.

- 7.45 Information is a broad term. It includes facts, advice and opinions. It covers written material, including tapes, videos, CDs, DVDs and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all of the following apply:

- (a) it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
- (b) it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
- (c) disclosure of it would be detrimental to the party wishing to keep it confidential.

- 7.46 In this case Councillor Marshall is alleged to have sent messages to Mr Saunders with the possibility of the information being used by Mr Saunders on his blog. Examples of the information that is alleged to be confidential include reference to a proposed traveller site, details of an audit investigation and report, details of a standards investigation, staffing information and witnesses in court proceedings.

- 7.47 In most of these cases the messages refer to the fact that investigations are taking place or that a report has been prepared. There is little evidence that the detail of these were either known to Councillor Marshall or disclosed by him.

- 7.48 In the case where Councillor Marshall referred to employment matters relating to Councillor Hussain's son the information disclosed relates to an appeal against dismissal. It is not clear how Councillor Marshall obtained the information to which he refers.

- 7.49 We have carefully considered the wording of the Code in relation to confidential material. It is quite specific that the Code only covers information given to the Councillor as a member in breach of any confidence. From this we have concluded that the first test is whether the information was provided

## CONFIDENTIAL REPORT

to Councillor Marshall with a clear definition that is was to be treated as confidential. Other codes include a caveat that covers information which the member should reasonably regard as confidential. Therefore even if Councillor Marshall should have known the information he was sending to Mr Saunders was confidential we would need to prove that he was given the information in confidence.

- 7.50 Given that we have not been able to interview Councillor Marshall, that Councillor Hussain has declined to be interviewed and the limited nature of the information disclosed we have not pursued this further.
- 7.51 We have therefore concluded that Councillor Marshall did not breach paragraph 1.3 of the Code of Conduct.

### *Other matters considered*

- 7.52 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.
- 7.53 We also note that Councillor Hussain referred to a number of paragraphs of the Code of Conduct in his complaint. 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



## CONFIDENTIAL REPORT



PRIVATE AND CONFIDENTIAL

Case reference: MC/08/1017

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Sandwell Metropolitan Borough Council, into **allegations made by Ms Melanie Dudley concerning Councillor Richard Marshall** formerly of Sandwell Metropolitan Borough Council.

Dated: 7 August 2018

# VOLUME 1 REPORT

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## CONFIDENTIAL REPORT

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

## CONFIDENTIAL REPORT

### 1. Executive Summary

- 1.1 Councillor Richard Marshall was a member of Sandwell Metropolitan Borough Council (the Council) having been first elected in May 2014. He did not seek re-election in May 2018 and is no longer a councillor. For ease of reference he is referred to as Councillor Marshall in this report.
- 1.2 A complaint was made to the Council's Monitoring Officer by Ms Melanie Dudley, the Council's former Assistant Chief Executive. Ms Dudley alleged that Councillor Marshall had sent messages to Mr Julian Saunders which contained personal information about her and that the messages were disrespectful.
- 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 were sent during 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 in Ms Dudley's complaint.
- 1.6 The messages referred to in Ms Dudley's complaint included comments relating to her departure from the Council, references to the quality of her work and referring to her as 'Imelda' and 'Melly' in a derogatory manner. Ms Dudley also referred to a reference to a report which she prepared which was described as a 'whitewash' in one of the messages
- 1.7 Councillor Marshall was invited to be interviewed or to respond to a number of questions provided to him in writing. Councillor Marshall provided a brief response to some of the questions.
- 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 our ability to obtain the evidence required to reach our conclusion.
- 1.9 We have concluded that that Councillor Marshall failed to treat Ms Dudley with respect and therefore there has been a breach of the code of conduct of the authority concerned. We also conclude that Councillor Marshall's misconduct was likely to bring the authority into disrepute.

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### 2. Official details

- 2.1 Councillor Marshall was a member of Sandwell Metropolitan Borough Council, from May 2014 to May 2018.
- 2.2 He was 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.

**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.*
- 1.7 *You must not bully any person.*

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- 1.9 *You must respect the impartiality and integrity of the authority's statutory officers and its other employees.*
- 1.11 *You must only use the resources of the authority in accordance with its requirements. In particular you must ensure, when using or authorising the use by others of the resources of your authority, that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.*
- 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 complaint from Melanie Dudley, a former senior officer of the Council, on 26 October 2017. On 22 December 2017, Mr Tour informed Ms Dudley that he had consulted the Independent Person and decided to refer the allegations 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 to carry out an investigation on his behalf of a complaint submitted by Melanie Dudley.
- 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 During the investigation Councillor Richard Marshall was invited to be interviewed or alternatively to answer a number of written questions submitted to him. 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 Eling, Councillor Khatun and Jan Britton were interviewed by Mr Tasker and statement's obtained.
- 4.8 Melanie Dudley was interviewed by Mr Ball and a statement was obtained.
- 4.9 Ms Dudley was also interviewed by West Midlands Police (WMP) in relation to this and other allegations, a statement was prepared and signed. 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 - Melanie Dudley*

- 4.10 Melanie Dudley submitted a complaint to the Monitoring Officer dated 26 October 2017 (attached at WC 2). In the complaint she stated:-

*"My complaint against Mr Marshall is that he does not appear to have followed the principles of the code of conduct in respect to.  
Integrity,*



## CONFIDENTIAL REPORT

*Objectivity,  
Openness, and  
Honesty.*

*Specifically in terms of section 1 of part two of the code he breaks, 1.5, 1.6, 1.7, 1.9, 1.11, 1.12.*

*The source of my complaint can be found in purported written communications between Mr Marshall and Mr J Saunders. Mr Saunders publishes a blog called "the Sandwell Skidder".*

*As found in the public domain the two publications which are key to the above are an FOI published on 5.11.17 which is highly derogatory and the skidder Blog of 23.9.17 entitled the Eling Marshall files 2016.*

*There are also numerous tweets from @Ian crowmultimedia which confirm the comments.*

*As evidenced in these communications and tweets Mr Marshall indicates he is making my position less than tenable. He suggests subjects for tweets which are designed to bully me. He also refers to me as 'Imelda' and denigrates the quality of my work despite me having no direct professional relationship (beyond him being a cabinet member for a different portfolio)*

*The report Councillor Marshall refers to as a "whitewash" was in fact an accurate reflection of the written advice of a Mr James Goudie QC who had been consulted in order to achieve the highest possible level of objectivity.*

*My complaint is only just being submitted as until August 17 I was unaware of Mr Marshalls behaviour. The delay between then and now in submitting the complaint is because of the death of my mother in September.*

*I have not submitted copies of the evidence as they are easily available on the internet.*

*As far as I am aware neither Councillor Marshall nor the Labour Party have issued any proceedings doubting the veracity of what Mr Saunders has published."*

4.11 Melanie Dudley was interviewed by Mr Ball from which a statement was prepared and signed on 3 June 2018 (attached at WC 3). In her statement Ms Dudley stated that:-

- (a) she had spent most of her working career in the public service or local government arena. She previously worked for the Council between 1989 and 1991. Her current period of working for the Council had been for 15 years joining as a deputy director. This was a Chief Officer position although at the lowest level. Following this she undertook the roles of Director of Children's Services, Transformation, Improvement and Efficiency and then undertook the role of Assistant Chief Executive for the Council from December 2014 until 3 October 2016;
- (b) during 2015, as part of a management of workforce programme, individuals were asked if there was any intention of leaving. This was in order to ensure that the Council managed its vacancies. The option was not however immediately available to those of chief officer level. In early 2016 persons of chief officer level were sent a letter asking whether they would wish to take up this opportunity;
- (c) due to personal family reasons she availed herself of this opportunity requesting to finish in 2017 on her 55th birthday. This request was approved;

## CONFIDENTIAL REPORT

- (d) during 2016 the Monitoring Officer (MO) retired. As at this time there were significant issues within the Council. As a result of this it was decided that she would take on the role of MO until she left in order that she could clear out the problems and leave a fresh start for the new MO when appointed;
- (e) the reason she was asked and best suited was the fact that she was not mentioned in any reports and therefore was free to undertake this task;
- (f) in August 2016 she gave advice to the Chief Executive, Jan Britton and Leader of the Council, Steve Eling plus his deputy Syeda Kathun concerning a data breach, there was a disagreement concerning her advice. She was asked to declare the issue as a non breach which she could not do as she disagreed with it. She expressed her displeasure to a manager at what she considered to be intimidating behaviour;
- (g) on returning from holiday on 6 September 2016 she was informed that she was no longer wanted as Monitoring Officer. She expressed the view that this rendered her position untenable and that she should go home. A financial package was offered to her the next day;
- (h) subsequent figures and detail of this package, disclosed to Julian Saunders and published in the Sandwell Skidder, were untrue as were the disclosures that she was sent on 'gardening leave' and subject of disciplinary process;
- (i) on 26 October 2017 she submitted a formal complaint to the MO of the Council;
- (j) she felt Councillor Marshall had breached the following aspects of the Council's code of conduct;
- (k) with respect to paragraph 1.5, Councillor Marshall had shared information with Julian Saunders referring to her as 'Imelda', highlighting that she cared more about appearance than ability, also implying nasty things regarding the Marcos regime. He identified discipline issues which were untrue. He said "when I first met her she was nice, I didn't know there was another side to her" implying that she had a bad side. He had also referred to alleged affairs that she had, which she strongly refuted as untrue;
- (l) regarding paragraph 1.6, this overlapped with the above as Councillor Marshall did not respect her. He mentioned her physical appearance, the fact she was a woman and that he wanted to kick her. He also intimated that the only way she got to the top was by using her femininity;
- (m) regarding paragraph 1.7, Councillor Marshall was attempting to bully her by asking that people 'poke her with a sharp stick' and asked 'give Mel another kicking'. She was referred to as "MD", "Mel" or "Imelda" or her full name and much of the content was derogatory and abusive. She felt that Councillor Marshall had absolute influence as without the pressure he placed on her, through social media, she would not have left the Council until her agreed date;

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- (n) with regard to respect at paragraph 1.9, Councillor Marshall implied she had no integrity, that she was anti him and basically treated her as the enemy. All she had ever done was advise and work in the best interest of Sandwell Council and the communities;
- (o) with respect to paragraph 1.11, Councillor Marshall used the Council's resources, namely his Council phone, inappropriately in that he had passed derogatory WhatsApp messages and also used information from within his position, passing this to Julian Saunders who then published this in his blog;
- (p) with respect to High Standards, 1.12, she did not know what standards the man had. His behaviour was not that of a human being let alone a person in public office with additional responsibilities as a Leader;
- (q) she had no personal relationship with Councillor Marshall outside of the work environment. She first saw him as a school governor in 2010 when she travelled with him and others to the Houses of Parliament as part of a delegation regarding funding in the Building Schools for the Future programme. Other than that she had bumped into him at civic events and in a councillor/council officer scenario and never on a one to one basis;
- (r) a FOI incident referred to as 05/11/17 which was only part of an extensive string of abuse, insinuation and falsehood which she suspected but had no proof until it was put into writing on the Sandwell Skidder blog. This, along with derogatory tweets made her feel dreadful, ghastly and worthless. If someone 'googled' her they saw terrible things. She was getting responses to job enquiries that her CV was brilliant but look at the search results. She had heard the term 'there is no smoke without fire'. She just wanted closure;
- (s) she had suffered continual beratement and personal attack, saying she was disloyal, incompetent and deserved a kicking. It was also awful that he implied that she was sexually promiscuous and used her sexuality with other councillors to get where she was;
- (t) she had an aging father, partner and children who were impacted by this continuous attack. She felt physically threatened and vulnerable. This behaviour had damaged her personal life, professional standing and her mental health;
- (u) she moved home as a result of this and felt this had also financially impacted on her personally as she was less able to find further appropriate employment due to her social media profile;
- (v) all she wanted was a formal apology and for this to stop so she could have closure. She felt the Sandwell Skidder was being fed by Councillor Marshall as this was clearly disclosed and must be stopped.

4.12 Melanie Dudley was also interviewed by West Midlands Police on 8 March 2018 from which a signed statement was prepared. Ms Dudley gave consent for her statement to the Police to be used for the purposes of our investigation. From this a statement was prepared covering the information relevant to this complaint (attached at WC 4). In her statement Ms Dudley stated that:-

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- (a) she worked for Sandwell Council between 1988 and 1991, then returned to the Council in 2001, where she performed various roles before becoming Assistant Chief Executive Officer in 2015;
- (b) in 2016 she began holding the post of Monitoring Officer, which was an interim post awaiting replacement of the previous Officer;
- (c) for almost every move she made at the Council there had been a competitive recruitment process requiring a panel interview;
- (d) Councillor Richard Marshall was a Cabinet Member but had stood to one side, having never been the Deputy Leader. She never worked closely with Councillor Marshall and first met him in the summer of 2009 when he was a Parent Governor. She was impressed by his commitment and encouraged him to become more involved in the Council, which he did. She never had any previous problems with Councillor Marshall;
- (e) she never socialised outside of civic duties with any Council or Cabinet Members;
- (f) Julian Saunders was an individual whose wife was made redundant after the closure of The Public, an arts centre that was not an effective use of Council money. The closure was not her decision, but she had been the messenger of the decision at a meeting, after which Saunders began making blogs and posts where she was part of a small group of individuals who were the enemy to blame in his opinion. She did not like the comments he made on his posts but did not let it bother her as most of it was guess work and opinions which were easy to discount and discredit;
- (g) in September 2016 she had a meeting with the Chief Executive who informed her that she was no longer wanted as Monitoring Officer which, along with other on-going practices, left her feeling her position with the Council was no longer tenable. She went home after the meeting and never returned to the Council again. She had not planned to leave until her birthday in 2017 but she felt she had no other choice;
- (h) she made a post on her Facebook account informing people to watch out for bullies as she was upset and felt she had been bullied out of her job, but she removed the post the next day;
- (i) in October 2017 she read Julian Saunders' blog, Sandwell Skidder – In The Public Domain, where he referred to her and the events of September 2016, including numerous messages sent to him by Councillor Marshall who told Mr Saunders to post about her, including instances where she had not invited another councillor to a meeting; being sent home to consider her position; that she had referred to them as bullies and to a tweet about her being on gardening leave. She recalled that at that material time Mr Saunders did post information requested by Councillor Marshall. She felt the posts were scathing, unpleasant and upsetting, and that Mr Saunders was making a commentary on her life;
- (j) another part of the blog, named "Tricky Dicky Dumped" disclosed a conversation between Councillor Marshall and Mr Saunders that she was boasting on social media regarding her severance package and

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Mr Saunders replied he was going to find out where it was so he could use it against her, which showed Councillor Marshall was using Mr Saunders to get to her;

- (k) she received a sum of money from the Council following her contract ending consistent with if she had worked up to her 55<sup>th</sup> birthday as planned, and also a sum to release her pension early which was paid to the pension scheme, but had not received anything above that;
- (l) she felt she had been the victim of bullying and sexual harassment by Councillor Marshall, who used Mr Saunders to try to make her position untenable and tarnish her on-going professional reputation. She felt incredibly hurt by the way she was treated;
- (m) she was very mindful that any future applications for work would reveal all the information on the internet posted by Mr Saunders at the hands of Councillor Marshall, and would have a detrimental effect on her chances with any future employer.

### *Mr Julian Saunders*

4.13 In a witness statement prepared by Mr Saunders, signed and dated 16 October 2017 (copy attached at WC 5) Mr Saunders stated that:-

- (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 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 although only a few related to Melanie Dudley.

4.14 Attached to Mr Saunders' statement were copies of the relevant blogs under the headings "The Eling Marshall Files 2016- Technical Blog" and "The Eling Marshall Files 2017- Technical Blog". Both blogs contained a number of references to Ms Dudley. These included the following:-



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- 3 September

*"Want to poke MD with a sharp stick again?"*

- 7 September

*"You may want to ask your followers if anyone knows where's Melly she left the council house early pm yesterday in a strop and hasn't come back since."*

- 8 September

*"I don't like to put words in your mouth but if you tweeted "staff told MD on gardening leave and not coming back"... It would piss off one person more than you could ever imagine and may lead to another scalp."*

- 4.15 On 5 October 2017 Mr Saunders also published details of a Freedom of Information request he submitted to the Council on a website entitled "What Do They Know" (copy attached at WC 6). The following letter appears on the website:-

*"Dear Sandwell Metropolitan Borough Council,*

*Cabinet Member Richard Marshall wrote to me on 13th September, 2016:*

*"I'm being asked if you can tweet that the meet was cancelled tomorrow by [a councillor] because the report he was given about officers involvement re Wragge was a 'whitewash which he literally threw out'."*

*"It was Imelda that did the report."*

*He later clarified that by "Imelda" he meant former Assistant Chief Executive, Melanie Dudley.*

*Please forward an unredacted copy of:*

- (a) the original report which [the councillor] took exception to; and*
- (b) a copy of each and every amended version of the revised report.*

*Yours faithfully,*

*Julian Saunders"*

*Councillor Eling*

- 4.16 Councillor Eling was interviewed by Mr Tasker from which a statement was prepared and signed on 20 July 2018 (attached at WC 7). In his statement Councillor Eling stated that:-

- (a) he was a Member of Sandwell Metropolitan Borough Council and the current Leader of the Council. He was first elected to the Council in

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May 1986 to represent the Abbey Ward. He became a member of the Policy Committee in 1990 and Chaired the Community Development Committee. When the Council introduced a Cabinet in 2001 he was appointed to serve on the Cabinet, He retained that position to the present day. he was elected to the position of Leader of the Council in May 2016;

- (b) he was aware of a complaint against Councillor Marshall made by Melanie Dudley in which there was a reference to Ms Dudley's departure from the Council's employment;
- (c) he was aware of an allegation that he attended a meeting in August 2016 together with Councillor Khatun, the Deputy Leader; Jan Britton, the Chief Executive and Melanie Dudley. He had no recollection of this meeting; therefore he looked through his diary for August 2016. There was nothing in his diary indicating that such a meeting took place;
- (d) he understood that the matter alleged to have been considered at this meeting related to an investigation into a data breach. Again he had no recollection of being involved in this matter other than a meeting in about February 2016 when he provided a statement to the officer investigating the alleged data breach. Melanie Dudley was not present at this meeting;
- (e) he was aware that the data breach was fully investigated both internally by the Council and by the Information Commissioner's Office. Whilst he was not party to any formal consideration of any reports he was aware that the finding was that there was no breach;
- (f) with regard to any suggestion that he influenced Melanie Dudley's departure from the Council, he had no involvement in the matter. He understood that Ms Dudley applied for and was granted early release under a scheme implemented by the Council early in 2016 although he believed she was due to leave early in 2017. The Council was implementing a review of the management structure and a number of officers left during that period in the interest of the efficiency of the service;
- (g) he never had any discussion with the Chief Executive regarding the arrangements for Ms Dudley's departure from the Council. Neither did he have any discussion with the Chief Executive or anyone else regarding Ms Dudley's position as the Council's Monitoring Officer. In fact he was not aware that Ms Dudley was ever appointed to the position of Monitoring Officer;
- (h) as Ms Dudley had already agreed a departure date with the Council it would seem unnecessary for him or any Councillor to be involved in the matter. Furthermore such staffing matters would not be something any Member of the Council would be involved in.

### *Councillor Sahida Khatun*

- 4.17 Councillor Khatun was interviewed by Mr Tasker from which a statement was prepared and signed on 24 July 2018 (attached at WC 8). In her statement Councillor Khatun stated that:-

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- (a) she was a Member of Sandwell Metropolitan Borough Council and the current Deputy Leader of the Council. She was first elected to the Council in May 1999 to represent the Tipton Ward. She had served on various Committees of the Council and been Chair of the Scrutiny Committee. She was appointed to serve on the Cabinet in 2015 and was elected to the position of Deputy Leader of the Council in May 2016;
- (b) she understood that a complaint was being investigated which included a reference to Ms Dudley's departure from the Council's employment;
- (c) she was aware of an allegation that she attended a meeting in August 2016 together with Councillor Eling, the Leader; Jan Britton, the Chief Executive and Melanie Dudley. She had no recollection of this meeting. She looked through her diary for August 2016. There was nothing in her diary that would suggest that such a meeting took place;
- (d) she had never had any discussion with the Leader of the Council or any officer regarding Melanie Dudley's position as the Monitoring Officer or her employment with the Council. This was not a matter that would be discussed by Councillors as the Chief Executive was ultimately responsible for the staff;
- (e) she was aware that Ms Dudley was leaving the Council's employment at some point but was not aware of the circumstances. She didn't see any reason for her to be informed of the detail or involved in the process;
- (f) she had never had any discussion with Ms Dudley regarding her employment with the Council.

### *Mr Jan Britton*

4.18 Mr Britton was interviewed by Mr Tasker from which a statement was prepared and signed on 20 July 2018 (attached at WC 9). In his statement Mr Britton stated that:-

- (a) he was employed by Sandwell Metropolitan Borough Council and held the position of Chief Executive and Head of Paid Service. He commenced employment with the Council in October 2006 as the Head of Environmental Services, was promoted to a Directors position before further promotion to the Chief Executive's position in September 2010. Prior to October 2006 he was employed by various District, County and London Borough Councils, moving to Sandwell from Buckinghamshire County Council;
- (b) he was aware of a complaint against Councillor Marshall made by Melanie Dudley which he understood that the complainant, Ms Dudley, made reference to her departure from the Council's employment;
- (c) he was aware of an allegation that he attended a meeting in August 2016 together with Councillor Eling, the Leader; Councillor Khatun, the Deputy Leader and Melanie Dudley. He had no recollection of any such meeting. He was absent from the Council for the last two weeks of August 2016 on annual leave. He had checked his diary for the first



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two weeks of August and the first week of September 2016, either side of his leave. There was nothing in his diary that suggested that a meeting involving those individuals took place;

- (d) whilst he would not claim to have perfect recall of meetings some two years ago he did believe that he would recall a meeting where, as alleged, there was conflict between a senior officer of the Council and the Leader;
- (e) during 2016 he dealt with Ms Dudley's request to leave the Council's employment, this was agreed in March 2016. He met with Ms Dudley in September 2016 and discussed with her a number of reasons why he considered it would be appropriate to bring forward her leaving date. The arrangements for her leaving were set out in a settlement agreement which both parties, that is the Council and Ms Dudley, agreed should remain confidential. Ms Dudley left the Council's employment in October 2016;
- (g) he was aware that it was alleged that the conflict referred to above related to an investigation into an alleged data breach. He confirmed that the Data Breach had no relevance or any influence on the reasons for Ms Dudley leaving the Council's employment.

### *Councillor Marshall*

- 4.19 Councillor Marshall was sent a number of questions by email on 9 April 2018 (attached at WC 10).
- 4.20 Councillor Marshall replied by email on 10 April 2018 (attached at WC 11), in his email he stated that:-
  - (a) a meeting took place between Mr Saunders, the Leader, 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 but without full disclosure of the complete unredacted text he was not prepared to comment as cherry picked comments had no context and being used for others personal and political agendas;
  - (c) the comments were made by him without the knowledge or input of anyone else.

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### 5. Summary of the material facts

- 5.1 Councillor Marshall was a member of 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 perceived 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 At the meeting the new Leader and Councillor Marshall informed Mr Saunders that they wanted him to stop writing critical articles about the Council. 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. Mr Saunders published many of these messages on his blog. A summary of the messages was published on 23 August 2017 on the In The Public Domain? Blog under the heading "The Eling/Marshall Files 2016 - Technical Blog" and "The Eling/Marshall Files 2017 - Technical Blog". A further blog was posted on 31 October 2017 under the heading "Eling & Marshall Planned Melanie's Demise!".
- 5.7 Evidence on Mr Saunders' blog shows 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 his blog posts dated 23 August 2017.
- 5.8 The entries identified by Ms Dudley in her complaint showed that some of the information in the messages sent by Councillor Marshall would only be known by someone with access to information held by the Council.
- 5.9 A formal complaint was submitted to the Council's Monitoring Officer by Ms Dudley.

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### 6. Additional submissions received from the complainant and Councillor Marshall

#### *Comments of Melanie Dudley*

- 6.1 The following comments were received from Melanie Dudley on a first draft version of this report:-

*“Firstly I welcome the report and am grateful that my complaint has been independently investigated. Specific comments are*

*1.9 The remit of this investigation and its conclusions are exclusively confined to my complaint against ex Cllr Richard Marshall. Therefore this section should not use the general term “others” not being treated with respect. It should explicitly say that he did not treat me (Melanie Dudley) with respect. The report unequivocally concludes I was not treated with respect. Please can this be explicitly expressed, naming me. Otherwise the summary is not fully accurate.*

*4.7 (a) [now 4.11(a)] I was Assistant Chief Executive from 2014 not 2015. I am aware this is an extract from the police statement of which I do not have a copy. It may have been I did not pick up this inaccuracy before signing the statement but it is factually incorrect.*

*4.10. [now 4.14] In Mr Saunders FOI, referred to in this paragraph, he named another Councillor as the Councillor who cancelled the meeting. This is in the public domain so it seems illogical to redact it in this report.*

*7.28 Some of the contents of Cllr Marshall’s messages are listed. However the one which distressed me most and made me fearful for my safety, was when he suggested I be given a kicking. I consider this to be serious and significant. It was discussed at length during both the police and independent investigator interviews. It should therefore be included in this report.*

*7.37 See 4.10*

*Those are my comments on the report*

*I would also wish to see the Standards Committee consider whether Cllr Marshall acted independently as he did not have first hand knowledge of my dealings with the Chief Executive during my last day on Council premises.*

*Secondly and more importantly, what steps are being taken to ensure that Cabinet members do not act in this way in the future? This has irreparably damaged me, I wish to prevent it happening to any one else.”*

#### *Response to comments by Melanie Dudley*

- 6.2 The comments received from Ms Dudley have been considered and noted. Paragraphs 1.9 and 7.28 have been amended to reflect those comments. This has not changed the conclusions set out in the first draft of the report.

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The other Councillor referred to in paragraph 4.14 has not been named as this report is concerned only with the conduct of Councillor Marshall.

### *Comments by Councillor Marshall*

- 6.3 Comments were received from Councillor Marshall on 20 July 2018 on the draft version of this and two other reports. The comments that relate to this report are set out below:-

*"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 :-*

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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 redacted as refer to another matter.

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

7.33 redacted as refer to another matter.

7.34 redacted as refer 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 redacted as refer to another matter.

*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"*

### *Response to comments by Councillor Marshall*

6.3 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.

6.4 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

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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.

- 6.5 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.
- 6.6 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.
- 6.7 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 on Mr Saunders' blog, from a screen shot of Mr Saunders' mobile phone that clearly shows that the messages originated from Councillor Marshall's phone supplied by the Council.
- 7.2 We have also carefully considered the content of the 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 was asked if the messages referred to in Mr Saunders' blog were sent by him. In response he confirmed that he had communicated with Mr Saunders using the 'WhatsApp' messaging service. However despite being provided with copies of blog posts and screen shots from Mr Saunders' mobile phone with examples of messages subject to our investigation he declined to comment on specific messages.
- 7.4 From the above we have concluded there is sufficient evidence to establish that the WhatsApp communication referred to in Ms Dudley's complaint was between Councillor Marshall and Mr Saunders.

#### *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

## CONFIDENTIAL REPORT

postings on the forum of the Middlesbrough Evening Gazette using the 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 contact with Mr Saunders in June 2016 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. In particular we are mindful of the fact that some of the information would have only been available to a Councillor.
- 7.14 We therefore conclude that, whilst sending messages to Julian Saunders, Councillor Marshall was acting in an official capacity and was subject to the Code of Conduct.

### *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.”*



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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.

- 7.16 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.”*

- 7.17 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”.*

- 7.18 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).

- 7.19 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”.*

- 7.20 The Tribunal considered that the threshold for a failure to treat another with respect has 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.

- 7.21 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

## CONFIDENTIAL REPORT

Councillors and given her seniority was entirely able to defend her position. Therefore, the tribunal decided that the threshold was not reached.

- 7.22 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 .....*"

- 7.23 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;
- there is a need to weigh up the public interest in protecting civil servants against enhanced protection for political comment.

- 7.24 From the above it is evident that officers of local authorities are expected to accept a degree of scrutiny and at times criticism. There is also reference to the degree of seniority, inferring that the more senior an officer the greater degree of criticism they might expect. This is particularly relevant when such comments or criticism is made in the heat and passion of political debate.

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- 7.25 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.
- 7.26 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.
- 7.27 In Councillor Marshall's messages to Mr Saunders there are a number of instances where personalised comments are made about Ms Dudley, and other individuals. Of particular relevance is Councillor Marshall's references to Ms Dudley by terms such as 'Melly' and 'Imelda'. We consider the use of such terms when referring to an officer of the Council to be unreasonable, unwarranted and personalised.
- 7.28 Looking at the content of some of the messages it is evident that there are examples that are totally inappropriate. For example when Councillor Marshall states:-

*"want to poke MD with a sharp stick again";*

*"You may want to ask your followers if anyone knows where's Melly she left the council house early pm yesterday in a strop and hasn't come back since." and*

*"No that's fine, there's going to be more leaks than Wales. Have you seen Halesowen News re Jones not being invited in, you can give Melanie a kicking for that if you wish."*

These we consider to be instances where it was not acceptable to use such language in an exchange of communication with another individual. We also consider this is exacerbated by the fact that Councillor Marshall knew the recipient of the messages was actively engaged in publishing such information on a public website.

- 7.29 *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.
- 7.30 From the above 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. We have concluded that the messages were part of a campaign to discredit Ms Dudley. We have also considered the fact that more senior officers might be expected to accept a greater degree of criticism than others; however this is if the criticism is made in an appropriate manner. We are mindful that Councillor Marshall was aware that his communication with Mr Saunders had the potential to be used on a public blog which we do not consider to be an appropriate means of raising concerns or criticism of a senior officer.

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- 7.31 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 Ms Dudley with respect. He therefore failed to follow paragraph 1.6 of the code.

### *Disrepute*

- 7.32 Paragraph 1.5 of the Code of Conduct states:-

*"You must not bring your office or your authority into disrepute"*

- 7.33 It is evident that Councillor Marshall sent the messages to Mr Saunders with the intention of Mr Saunders using some of 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.

- 7.34 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."*

- 7.35 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."*

- 7.36 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."*

- 7.37 We have considered the fact that many of Councillor Marshall's messages contained information about the Council. Some of these included comments which might lead a member of the public to believe the Council was not dealing with matters appropriately and therefore could damage the Council's reputation. Of most significance in this case was the message in which Councillor Marshall stated:-.

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*"I'm being asked if you can tweet that the meet was cancelled tomorrow by [a councillor] because the report he was given about officers involvement re Wragge was a 'whitewash which he literally threw out'."*

*"It was Imelda that did the report."*

This suggests that the Council's officers (and Ms Dudley in particular) were producing inaccurate and misleading reports. We consider that this might result in the public's confidence in the ability of the council to carry out its functions to be diminished.

- 7.38 We have therefore concluded that Councillor Marshall's misconduct was sufficient to damage the reputation of the office of Councillor or the Authority and thus he failed to follow paragraph 1.5 of the Code.

### *Bullying*

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

*"You must not bully any person."*

- 7.40 The term bullying is not defined within the code however bullying and intimidation was 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 scrutinising performance.

- 7.41 At Q22 on the same page, the Standards Board advised that members could criticise officers:-

*"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."*



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*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 .....*"

- 7.42 As set out in the paragraphs above on respect and disrepute we have looked at the appropriate manner in which Councillors may challenge the performance of officers. We have concluded that Councillor Marshall's messages were inappropriate we now consider whether they could be considered as bullying.
- 7.43 It is evident that the underlying purpose of the messages was to put in the public domain critical comments about Ms Dudley. We consider that these comments could be detrimental to Ms Dudley's confidence and her capability to carry out her duty as an officer of the Council. As a member of the Council's Cabinet it could certainly be perceived that Councillor Marshall had some influence over Ms Dudley as a senior member of her employing authority.
- 7.44 We therefore conclude that Councillor Marshall's conduct towards Ms Dudley in his messages to Mr Saunders was bullying and that this was a breach of paragraph 1.7 of the Code of Conduct.

### *Other matters considered*

- 7.45 Ms Dudley also raised the issue of Councillor Marshall's use of his Council provided mobile phone 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 Ms Dudley referred to paragraphs 1.9 and 1.12 of the Code of Conduct in her complaint. These cover respecting the impartiality of the authority's statutory officers and other employees and promoting and maintaining high standards of conduct. We have carefully considered all the evidence available to us and those aspects of the Code of Conduct and consider that these matters are adequately addressed in our reasoning on the other paragraphs of the Code.
- 7.47 In her statement to Mr Ball, Ms Dudley also referred to giving advice to a meeting regarding the Data Breach. Further reference to this was made in her comments on the draft report where she questions whether the Chief Executive acted independently during her final days with the Council. Whilst this was not part of the original complaint, in view of these comments we considered it appropriate to interview the Chief Executive, Leader of the Council and Deputy Leader on this point.
- 7.48 All three of the above individuals had no recollection of any meeting in August 2016 during which matters relating to the Data Breach, Ms Dudley's position as Monitoring Officer or her employment with the Council were discussed. In each case the individuals checked their diary for the period in

## CONFIDENTIAL REPORT

question and no record was found of any meeting at which they and Ms Dudley were present or where matters relating to her position might have been considered or discussed.

- 7.49 Significant points that were raised during these interviews were the fact that the Chief Executive was away from the Council on annual leave for half of August thus reducing the timescale for any meeting to two weeks. Further, as explained by the Leader of the Council, Ms Dudley's early departure from the Council had already been agreed, therefore there would have been little to gain in bringing this forward by a few months. Finally, as both Councillors observed, the employment matters relating to officers had been dealt with by the Chief Executive.
- 7.50 The Chief Executive acknowledged that he did discuss with Ms Dudley reasons he considered it appropriate that she brought forward her leaving date. These were set out in a confidential settlement agreed between the Council and Ms Dudley.
- 7.51 We therefore consider that there is no basis to conclude that any other councillor acted inappropriately or breached the Council's code of conduct in this matter.

**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



**Anita Rose**

---

**From:** Melanie Dudley  
**Sent:** 13 June 2018 17: [REDACTED]  
**To:** Surjit Tour  
**Subject:** Draft report Cllr Marshall

Dear Surjit

I am aware that you asked for additional submissions by today. I am sending this below but would ask that I might be able to add to this if the annexes referred to reveal anything further.

**ADDITIONAL SUBMISSIONS BY SARAH MELANIE DUDLEY**

Firstly I welcome the report and am grateful that my complaint has been independently investigated.

Specific comments are

4.7 (a) I was Assistant Chief Executive from 2014 not 2015. I am aware this is an extract from the police statement of which I do not have a copy. It may have been I did not pick up this inaccuracy before signing the statement but it is factually incorrect.

4.10. In Mr Saunders FOI, referred to in this paragraph, he named Cllr Eling as the Councillor who cancelled the meeting. This is in the public domain so it seems illogical to redact it in this report.

7.28 Some of the contents of Cllr Marshall's messages are listed. However the one which distressed me most and made me fearful for my safety, was when he suggested I be given a kicking. I consider this to be serious and significant. It was discussed at length during both the police and independent investigator interviews. It should therefore be included in this report.

7.37 See 4.10

Those are my comments on the report.

I would also wish to see the Standards Committee consider whether Cllr Marshall acted independently as he did not have first hand knowledge of my dealings with the Chief Executive during my last day on Council premises.

Secondly and more importantly, what steps are being taken to ensure that Cabinet members do not act in this way in the future? This has irreparably damaged me, I wish to prevent it happening to any one else.

I am happy to discuss the above if that would be helpful. You can reach me on [REDACTED]

Many thanks for your efforts in getting the matter this far

Melanie

## Anita Rose

---

**From:** Melanie Dudley [REDACTED]  
**Sent:** 13 June 2018 23:02  
**To:** Surjit Tour  
**Subject:** One amendment to my earlier email

Dear Surjit

Can you add to my submission sent earlier today

1.9 The remit of this investigation and its conclusions are exclusively confined to my complaint against ex Cllr Richard Marshall. Therefore this section should not use the general term "others" not being treated with respect. It should explicitly say that he did not treat me (Melanie Dudley) with respect. The report unequivocally concludes I was not treated with respect. Please can this be explicitly expressed, naming me. Otherwise the summary is not fully accurate.

Kind regards

Melanie

## 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



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

## CONFIDENTIAL REPORT

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



## CONFIDENTIAL REPORT

### 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' 65<sup>th</sup> 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.

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”.*



## CONFIDENTIAL REPORT

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.

## CONFIDENTIAL REPORT

### *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.

## CONFIDENTIAL REPORT

- 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



# Member Code of Conduct

**Approved 18 October 2016**

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**The Code of Conduct  
for Members and Co-Opted Members**

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**together with**

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**The Rules for  
Registration of Interests  
and  
Conflicts of Interest**

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# **Members' Code of Conduct**

## **FOR MEMBERS AND CO-OPTED MEMBERS OF THE AUTHORITY**

### **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 authority has a statutory duty under the Act to promote and maintain high standards of conduct by members and the Code sets out the standards that the authority expects members to observe.
3. The Code is not intended to be an exhaustive list of all the obligations that are placed on members. It is the responsibility of individual members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time. Failure to do so may result in a sanction being applied by the authority. Failure to take appropriate action in respect of a disclosable pecuniary interest may result in a criminal conviction and a fine of any amount and/or disqualification from office for a period of up to 5 years.
4. 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.

## Definitions

5. In this Code “meeting” means any formal meeting of— (a) the authority; (b) the executive of the authority; (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees. It also means any informal meeting, which is not a formal meeting under the Council’s constitution but which has been arranged in advance where authority business is being discussed between members or between members and officers.
6. In this Code a ‘member of your family’ includes the following relationships of the member, the member’s spouse or the member’s civil partner or any person with whom you are living as husband and wife or as if you were civil partners: a son/daughter (including a biological son/daughter, stepson/daughter, adopted son/daughter or male/female child for which the person has custodial responsibilities), mother, father, brother or sister, a niece, nephew, aunt, uncle, grandchild, grandparent
7. In this Code ‘a person with whom you have a close association’ means someone that you are in either regular contact with over a period of time or a significant contact who is more than an acquaintance or can be considered to be a friend, a colleague, a business associate or someone whom you know through general social contacts.

## PART II

### Rules of Conduct

#### 1. Behaviour

- 1.1 You must act solely in the public interest and should never improperly seek to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a close associate, an employer or a business carried on by you.

- 1.2 You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your duties
- 1.3 You must not disclose any information given to you as a member in breach of any confidence.
- 1.4 You must not prevent another person from gaining access to information to which that person is entitled by law.
- 1.5 You must not bring your office or your 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
- 1.7 You must not bully any person
- 1.8 You must not intimidate or attempt to intimidate any person who is or is likely to be -
  - (i) a complainant,
  - (ii) a witness, orinvolved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct;
- 1.9 You must respect the impartiality and integrity of the authority's statutory officers and its other employees.
- 1.10 When carrying out your public duties such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, you must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

- 1.11 You must only use the resources of the authority in accordance with its requirements. In particular you must ensure, when using or authorising the use by others of the resources of your authority, that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 1.12 You must promote and support high standards of conduct when serving in your office.
- 1.13 You must at all times facilitate and engage with the council and its committees on probity and ethical matters and submit yourself to the scrutiny necessary to ensure this without any undue delay.

## **2. Registration of interests**

- 2.1 You must, within 28 days of taking office as a member or co-opted member, register with the Monitoring Officer the interests which fall within the categories set out in Appendices A (disclosable pecuniary interests) and B (other registerable interests).
- 2.2 You must, within 28 days of becoming aware of it, register with the Monitoring Officer any change to interests or new interests which fall within the categories set out in Appendices A and B.
- 2.3 You must, within 28 days of taking office as a member or co-opted member, register with the Monitoring Officer the names of any members of your family or close associates who either work for the Council or have a contractual relationship with the Council, within 28 days of becoming aware of it, register with the Monitoring Officer any changes to such interests or any new such interests.

### **3. Declaration of interests at meetings and when acting alone**

- 3.1 Where a matter arises at a meeting which relates to an interest in Appendix A ('disclosable pecuniary interests') you must declare the existence and nature of the interest even where it has been entered in the authority's register, unless the matter is a 'sensitive interest' as described by the Localism Act 2011. Unless a dispensation has been granted, you must then leave the meeting room and may not participate in any discussion, vote on, or discharge any function related to the matter. Where the matter is a 'sensitive interest' you do not need to declare the nature of the interest but must still withdraw from the meeting without participating. When acting alone declare the interest and do not take any steps, or any further steps in relation to the matter.
- 3.2 Where a matter arises at a meeting which relates to or affects an interest in Appendix B ('other registerable interests') you must declare the existence and nature of the interest unless it is a sensitive interest. When acting alone declare the interest and do not take any steps, or any further steps in relation to the matter.
- 3.3 Where a matter arises at a meeting which relates to or affects either the employment with the Council or any contractual arrangement with the Council of a member of your family or close associate you must declare the existence and nature of the interest unless it is a sensitive interest. When acting alone declare the interest and do not take any steps, or any further steps in relation to the matter
- 3.4 Where a matter arises at a meeting or when acting alone which relates to or affects a financial interest of you, a family member or close associate (and it is not a disclosable pecuniary interest, other registerable interest or relating to or affecting a family member's or close associate's work for the Council or contractual



relationship with the Council) you must declare the existence and nature of the interest unless it is a sensitive interest

- 3.5 Where the matter relates to or affects the interest under paragraph 3.2 or 3.3 more than the majority of people in the area affected by the decision and a reasonable member of the public would think your view of the public interest would be so adversely affected, you must then leave the meeting room and may not vote on, or discharge any function related to the matter unless a dispensation has been granted. You may speak on the matter only if members of the public are also allowed to speak at the meeting. When acting alone declare the interest and do not take any steps, or any further steps in relation to the matter.

## Appendix A – Disclosable Pecuniary Interests

A pecuniary interest is a “disclosable pecuniary interest” in relation to a member (“M”) if it is of a description specified in this Schedule and either—

(a) it is an interest of M’s, or

(b) it is an interest of—

- (i) M’s spouse or civil partner,
- (ii) a person with whom M is living as husband and wife, or
- (iii) a person with whom M is living as if they were civil partners,

And M is aware that that other person has the interest.

Each category of person referred to above is described as the ‘relevant person’.

The duties to register, disclose and not to participate in respect of any matter in which a member has a disclosable pecuniary interest are set out in Chapter 7 of the Localism Act 2011.

Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows –

<i>Interest</i>	<i>Prescribed description</i>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992).
<b>Contracts</b>	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

<b>Land</b>	Any beneficial interest in land which is within the area of the relevant authority.
<b>Licences</b>	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
<b>Corporate tenancies</b>	Any tenancy where (to M’s knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
<b>Securities</b>	Any beneficial interest in securities of a body where— (a) that body (to M’s knowledge) has a place of business or land in the area of the relevant authority; and (b) either—  (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For this purpose –

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## Appendix B – Other Registerable Interests

Other registerable interests are:

- a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the authority.
- b) any body of which you are a member or in a position of general control or management and which
  - i) exercises functions of a public nature
  - ii) is directed to charitable purposes, or
  - iii) is a body which includes as one of its principal purposes influencing public opinion or policy (this includes political parties or trade unions).
- c) any person from whom you have received a gift or hospitality with an estimated value of at least £100 (you must register any gifts and hospitality worth over £100 that you receive personally in connection with your official duties).

Exactly as with a pecuniary interest “other registerable interest” applies in relation to a member (“M”) if it is of a description specified above and either—

(a) it is an interest of M’s, or

(b) it is an interest of—

- (i) M’s spouse or civil partner,
- (ii) a person with whom M is living as husband and wife, or
- (iii) a person with whom M is living as if they were civil partners,

And M is aware that that other person has the interest.

## 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:

<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	<p>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.</p> <p>They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends.</p> <p>They must declare and resolve any interests and relationships.</p>
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	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.
<i>Openness</i>	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.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	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.

# Arrangements for dealing with standards allegations under the Localism Act 2011

## 1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct. There is a separate procedure for dealing with Whistleblowing complaints

Under the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s member Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member against whom an allegation has been made.

## 2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority’s website and on request from the Sandwell Council House, Oldbury.

## 3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer  
 Sandwell Council House  
 Oldbury  
 B69 3DE

Or –

[Philip1\\_tart@sandwell.gov.uk](mailto:Philip1_tart@sandwell.gov.uk)

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from the Sandwell Council House, Oldbury.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. The process for deciding how to deal with anonymous complaints is set out in the attached charts.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

#### **4 Confidential Informant Process**

Any member of staff (including schools staff) within Sandwell Metropolitan Borough Council can report information anonymously to the Monitoring Officer who may authorise an investigation. The Informant may be interviewed as part of the investigation process, but will not need to reveal that they are the complainant. It will then be for the Investigator to confirm or otherwise the facts of the matter and come to a conclusion.

This process is only available to employees of Sandwell Metropolitan Borough Council. If the employee came under duress or other pressure from Councillors or Senior Officers to undertake improper behaviour the Monitoring Officer will expect them to be candid about that and it is unlikely any action will be taken against them. If the employee has colluded with the wrongdoing and benefitted from it then they cannot expect any sympathetic treatment.



## **5 Will your complaint be investigated?**

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint.

Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. The Monitoring Officer must consult with the Independent Person before deciding whether or not a formal investigation should be undertaken.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.

The member against whom your complaint is directed, may seek the views of the Independent Person at any stage in the process. This could be to provide a view on the complaint itself, the process under which the complaint will be dealt with or to provide a view on any other query the member may have relating to the complaint. An Independent Person's role is not to act as an 'advisor' to the subject member.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you do not agree with that offer, the Monitoring Officer will take account of your views in deciding whether the complaint merits formal investigation.

The Monitoring Officer will complete a decision notice, whether or not a matter is to be investigated, which will outline the reasons for the decision.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

The Monitoring Officer will normally only decide to investigate a complaint about alleged conduct that happened within six months of the date of receipt of the complaint. If the Monitoring Officer is of the view that exceptional circumstances apply, then this time limit may be waived.

The Monitoring Officer will not progress complaints which are repetitious or vexatious. If such a complaint is made by a fellow member, the Monitoring Officer will consider whether that member has acted otherwise than in accordance with the Code of Conduct for members in making the complaint and whether such action may amount to a breach of the same.

It should be noted that the recording of formal or informal meetings involving any Council issues is strictly prohibited. Covert recording without an individual's consent may be deemed a breach of data protection, a breach of the individual's human rights, a breach of the contract of employment with the Council and a breach of the Members' Code of Conduct.

## **6 How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer/Officers, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The investigation will be completed in accordance with the Protocol for Dealing with Investigations into Standards Allegations under the Localism Act 2011, which is a separate document.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

The Investigating Officer may ask the subject member to attend an interview about your complaint. The interview will normally be tape recorded, unless the member objects to this. This ensures that there is no ambiguity as to the matters discussed in interview.

If at any point during the investigation, the Investigating Officer forms the opinion that the investigation should cease, he/she will consult with the Monitoring Officer, who may consult the Independent Person and take a decision to stop the investigation at any stage.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send a copy of that draft report, in confidence, to the Monitoring Officer. The Monitoring Officer will then send the report to you and to the member concerned. At this stage you and the subject member as well as the Monitoring Officer can identify any matter in that draft report which you disagree with or which you consider requires more consideration. You and the subject member will be given a period of 14 days to comment on the draft report.

Having received and taken account of any comments made on the draft report and undertaking any further investigation he/she considers relevant and appropriate, the Investigating Officer will send his/her final report to the Monitoring Officer.

**7 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Member Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or has other concerns relating to the complaint or the investigation report, he may ask the Investigating Officer to reconsider his/her report. The Monitoring Officer may consult the Independent Person about this.

**8 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Member Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before a Sub-Committee of the Standards Committee or, after consulting the Independent Person, seek local resolution.

## 8.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant. If you as the complainant do not agree with the suggested resolution, the Monitoring Officer will take account of your views in deciding whether to proceed with the local resolution or refer it for a local hearing. It is however, the Monitoring Officer's decision. The purpose of the local resolution is to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority.

The range of resolutions that can be imposed is wide and each resolution will be tailored to fit the particular behaviour that has resulted in a breach of the Member Code of Conduct, for example, training on a specific issue. The Monitoring Officer will set a reasonable timescale for compliance with the local resolution.

If the member complies with the suggested resolution, within the timescale set by the Monitoring Officer, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action. If the member fails to comply with the resolution within the timescale set, the matter will be referred to the Standards Committee and Full Council for information.

The breach of the Member Code of Conduct and the resolution imposed will be publicised on the member's profile on the Council's website for a period to be determined by the Monitoring Officer, which is to be no less than the time required for compliance with any sanction. If a member fails to comply with a sanction in the timescale set, the information will remain on the profile until compliance is achieved.

## 8.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake the suggested resolution, then the Monitoring Officer will report the Investigating Officer's report to a Sub-Committee of the Standards Committee which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member. The local hearing will normally take place within six weeks of the decision to proceed to a local hearing being made.

The Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Sub-Committee of the Standards Committee may issue directions as to the manner in which the hearing will be conducted. If the matter to be heard is particularly complex, consideration may be given, by the Monitoring Officer and the Chair of the Committee, to have the hearing in front of the full Standards Committee rather than a sub-committee.

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Member Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Sub Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub Committee as to why he/she considers that he/she did not fail to comply with the Member Code of Conduct.

If the Sub-Committee, with the benefit of any advice from the Independent Person, conclude that the member did not fail to comply with the Member Code of Conduct, they may dismiss the complaint. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct.

In doing this, the Sub-Committee will give the member an opportunity to make representations to the Sub-Committee and will consult the Independent Person.

**9 What action can the Sub Committee of the Standards Committee take where a member has failed to comply with the Member Code of Conduct?**

The Council has delegated to the Standards Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly a Sub-Committee, on behalf of the Standards Committee, will publish the breach of the code of conduct and the sanction imposed on the member's profile on the Council's website for a period of time to be determined by the Sub Committee, which is to be no less than the time required for compliance with any sanction. If a member fails to comply with a sanction in the timescale set, the information will remain on the profile until compliance is achieved. The Sub Committee will also report its findings to Council for information.

The Standards Committee may –

- 9.1 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 9.2 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 9.3 Instruct the Monitoring Officer to arrange training for the member;
- 9.4 Recommend to Council to remove from all outside appointments to which he/she has been appointed or nominated by the authority;
- 9.5 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;
- 9.6 Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Take such steps as appropriate, reasonable and proportionate to the particular conduct that amounted to the breach of the code of conduct.

The Standards Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

## **10 What happens at the end of the hearing?**

At the end of the hearing, the Chair will state the decision of the Sub-Committee as to whether the member failed to comply with the Member Code of Conduct and as to any actions which the Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the member and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

If the member complies with the sanction imposed by the Standards Committee, within the timescale set, the Monitoring Officer will report the matter to the Standards Committee for information. If the member fails to comply with the sanction within the timescale set, the matter will be referred to the Standards Committee and Full Council for information.

## **11 Who are the Standards Committee?**

The Standards Committee is appointed each year by the Council. Details of the current membership of the Committee can be found on the Council's web site on the Committee Management Information System.

The Independent Person(s) is/are invited to attend all meetings of the Standards Committee and his/her/their views are sought and taken into consideration before a Sub Committee of the Standards Committee takes any decision on consideration of an investigation report on whether the member's conduct constitutes a failure to comply with the Member Code of Conduct and as to any action to be taken following a finding of failure to comply with the Member Code of Conduct.

## **12 Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she –

- 12.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 12.2 Is a relative, or close friend, of a person within paragraph 11.1 above. For this purpose, “relative” means –
  - 12.2.1 Spouse or civil partner;
  - 12.2.2 Living with the other person as husband and wife or as if they were civil partners;
  - 12.2.3 Grandparent of the other person;
  - 12.2.4 A lineal descendent of a grandparent of the other person;
  - 12.2.5 A parent, sibling or child of a person within paragraphs 11.2.1 or 11.2.2;
  - 12.2.6 A spouse or civil partner of a person within paragraphs 11.2.3, 11.2.4 or 11.2.5; or
  - 12.2.7 Living with a person within paragraphs 11.2.3, 11.2.4 or 11.2.5 as husband and wife or as if they were civil partners.

### **13 Publication of Standards Investigations**

The Council acknowledges that there is a need to balance the public interest in transparency of these types of matters with the requirement of fairness to a member who is subject to an allegation.

The contents of the initial assessment of a complaint and the investigation will remain confidential.

When a matter progresses to a local hearing before a Sub Committee of the Standards Committee, the hearing will be in public, unless there is a particular reason for the information that will be disclosed during it, to be exempt. The Monitoring Officer will make this decision prior to the hearing in consultation with the Independent Persons and the Chair of the Committee. Each case will be determined on its own merits.



In making this decision, particular consideration will be given to the necessity of transparency, the requirements of witnesses, any Data Protection issues that may become relevant and schedule 12A of the Local Government Act 1972 which outlines what exempt information is.

Consideration will also be given to the disclosure of the papers prior to and or after the hearing and whether any redactions of the papers need to be made.

## **14 Access to Information during an Investigation**

During an investigation and any subsequent hearing, it is important to ensure that information and evidence that has been gathered, is kept confidential in order to protect the integrity of the process. With that in mind, the access to certain information will be restricted.

### **13.1 Subject Access Requests**

The Data Protection Act 1998 entitles individuals (both members of the public and employees) to access personal data held about them by Sandwell Metropolitan Borough Council. These requests are referred to as Subject Access Requests.

There are certain circumstances where the Council can legitimately withhold personal information, if one of the exemptions within the Data Protection Act applies. Information which has been obtained during an investigation under these arrangements is likely to be exempt, under the Act, as it is likely that disclosure would prejudice the prevention and detection of crime and/or prejudice certain regulatory functions. Therefore, if a Subject Access Request is made during an investigation, relating to information relevant to the investigation, it is unlikely that it will be granted. The final decision will be made by the Monitoring Officer in consultation with the Information Management Unit of the Council.

### **13.2 Freedom of Information Requests**

The Freedom of Information Act 2000 places a statutory requirement on Sandwell Metropolitan Borough Council to provide information to the public. Any individual has a right to request information held by the Council, regardless of where they reside. This right also extends to employees, pressure groups, businesses, politicians and members of the press.

There are certain circumstances where information is exempt from disclosure. Information which has been obtained during an investigation under these arrangements is likely to be exempt as it is likely that the information is being held for the purposes of a criminal investigation; is or has been held for criminal proceedings conducted by a public authority; or was obtained or recorded for various investigative functions and relates to the obtaining of information from confidential sources.

The information described is exempt only where the public authority has a duty, or the power, to carry out investigations. The Council does have a duty and/or power to carry out an investigation in accordance with the Localism Act 2011, therefore, if a Freedom of Information Request is made during an investigation, relating to information relevant to the investigation, it is unlikely that it will be granted. The final decision will be made by the Monitoring Officer in consultation with the Information Management Unit of the Council.

## **15 Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Standards Committee in consultation with the Monitoring Officer and/or Independent Person as appropriate the right to depart from these arrangements (as far as they relate to the business of a Sub Committee of the Standards Committee) where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **16 Appeals**

There is no right of appeal for you as complainant against a decision of a Sub Committee of the Standards Committee.

If you feel that the authority has failed to deal with your complaint properly, you may seek independent legal advice or contact the Local Government Ombudsman.

# COMPLAINT FORM

## Allegation of Breach(es) of Code of Conduct for Members

(Please read the 'INFORMATION FOR POTENTIAL COMPLAINANTS' before completing this Form).

### Your details

1. Please provide us with your name and contact details. Anonymous complaints may be investigated if they indicate a potentially exceptionally serious or significant matter and the complaint is accompanied by sufficient documentary or other supportive evidence. The Council's policy on anonymous member complaints is set out in the Initial Assessment of Standards Complaints Assessment and Review Criteria which is available from the Monitoring Officer

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Contact telephone:</b>	
<b>Email address:</b>	
<b>Signature:</b>	
<b>Date of complaint:</b>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

The following people will see this Form:

- Members of the Assessment Sub-Committee
- The Monitoring Officer of the authority and appropriate officers supporting the Monitoring Officer.

A summary of your complaint may also be shared, by the relevant Assessment Sub-Committee or the Monitoring Officer, on the Sub-Committee's behalf, with the Member(s) you are complaining against. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete **Section 6** of this Form and you may also discuss your reasons or concerns with the Council's Monitoring Officer.

2. Please tell us which complainant type best describes you:

- A member of the public
- An elected or co-opted Member of the Council
- An independent member of the Standards Committee
- A Member of Parliament
- Chief Executive or other Council employee, contractor or agent of the Council.
- A Monitoring Officer
- Other ( )

3. Equality Monitoring Form - Please complete the Form attached at the back.

4. Please provide us with the name of the Member(s) you believe have breached the Code of Conduct for Members of the Council:

Title	First name	Last name

5. Please explain in this section (or on separate sheets) what the Member is alleged to have done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct. You should also supply dates, documentary evidence and details of any witnesses that you believe would substantiate the alleged breach(es).

It is important that you provide all the information you wish to have taken into account by the Assessment Sub-Committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the Member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said or did to insult you.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.

- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).
- If your allegation(s) relate to behaviour or conduct that occurred some time ago clearly explain why your complaint was not made earlier.

Please provide us with the details of your complaint. Please identify, if possible, which part of the Members Code of Conduct you consider has not been complied with.

***(Complete on separate sheet(s), as necessary)***

**Only complete this next section if you are requesting that your identity is kept confidential**

6. In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless there are exceptional circumstances that indicate that this should be done (please see Information for Potential Complainants).

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Assessment Sub-Committee will have regard to issues referred to in the flowchart attached as Appendix 2 to the Initial Assessment of Standards Complaints Assessment and Review Criteria. The Monitoring Officer will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your personal and complaint details even if you have expressly asked us not to.

Please be aware that there is a Confidential Informant Process for Sandwell Metropolitan Borough Council employees; any member of staff within Sandwell Metropolitan Borough Council can report information anonymously to the Monitoring Officer who may authorise an investigation. The Informant may be interviewed as part of the investigation process, but will not need to reveal that they are the complainant. It will then be for the Investigator to confirm or otherwise the facts of the matter and come to a conclusion. Please see a copy of the Council's 'arrangements for dealing with standards allegations under the Localism Act 2011' or speak to the Monitoring Officer for full details.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

7. Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

(Continue on separate sheet(s), as necessary)

7. Please indicate whether you have raised your complaint directly with the member concerned and if so what response you received.

(Continue on separate sheet(s), as necessary)

## **Additional Information**

8. Complaints must be submitted in writing. This includes fax and electronic submissions. Please use this Form to submit your complaint.
  
9. In line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.
  
10. If you need any support in completing this form, please contact the Monitoring Officer as soon as possible.

Once a valid complaint relating to an alleged breach of the Code of Conduct for Members has been received by the Monitoring Officer, it will be presented to a meeting of the Assessment Sub-Committee for consideration and decision. You and the Member against whom the complaint has been made will not be allowed to attend the deliberations of the Sub-Committee as the matter will be considered in private. You will be notified of the decision and any further stages in the process.



**Sandwell Metropolitan Borough Council  
Equality Monitoring Form  
Information for Monitoring Purposes Only**

**Ethnic Classification Categories to be used by Sandwell Metropolitan Borough:-**

**1. White**

- British
- Irish
- Any other White background (please write in)

**2. Mixed**

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other mixed background (please write in)

**3. Asian or Asian British**

- Indian
- Sikh
- Pakistani
- Bangladeshi
- Any other Asian background (please write in)

**4. Black or Black British**

- Caribbean
- African
- Any other Black background (please write in)

**5. Other ethnic group**

- Chinese
- Yemeni
- Any other (please write in)

# Protocol for Dealing with Investigations into Standards Allegations under the Localism Act 2011

## 1 Context

This protocol is to be used when conducting investigations into standards allegations under the Localism Act 2011. It should be read in conjunction with the 'arrangements' made under the Localism Act 2011.

## 2 Steps of the investigation

### Initial Decision

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of the complaint. The Monitoring Officer must consult with the Independent Person before deciding whether a formal investigation should be undertaken.

The Monitoring Officer will complete a decision notice, which can be found at appendix 1, whether or not a matter is to be investigated, which will outline the reasons for the decision. This will be sent to:

- Complainant
- Member against whom the complaint was made
- Investigator

If the Monitoring Officer decides that the complaint merits investigation, investigators will be appointed.

### Investigation Procedure

At the beginning of the investigation an investigation plan will be completed by the investigators overseen by the Monitoring Officer, which can be found at appendix 2. The plan will identify key dates, behavior alleged, the relevant parts of the code of conduct, issues for determination, evidence required/obtained and the witnesses to be interviewed.

When witnesses are interviewed, a statement will be taken from them which they will be able to check and sign. The format for such a statement can be found at appendix 3.

It is likely that the subject member will be interviewed at the end of the investigation; however this will be decided on a case by case basis. The interview will normally be tape recorded, unless the member objects to this. This ensures that there is no ambiguity as to the matters discussed in interview. A template interview plan can be found at appendix 4

The investigation will be reviewed on a weekly basis by the investigators, in consultation with the monitoring officer. The investigation review sheet will be completed on each occasion, which can be found at appendix 5.

If at any point during the investigation, the Investigating Officer forms the opinion that the investigation should cease, he/she will consult with the Monitoring Officer, who may consult the Independent Person and take a decision to stop the investigation at any stage. The Monitoring Officer will complete a Decision Notice to Cease an Investigation, which can be found at appendix 6.

### **Completion of Investigation**

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Monitoring Officer, the complainant and to the member concerned. At this stage the complainant and the subject member can identify any matter in that draft report which they disagree with or which they consider requires more consideration and will be given a period of 14 days to comment on the draft report.

Having received any comments, the Investigating Officer will assess them and complete a Comments Assessment Form which can be found at appendix 7. Once the Investigating Officer has completed this analysis and made any necessary amendments to the report, the Investigating Officer will send his/her final report to the Monitoring Officer.

## **Decision Notice of The Monitoring Officer for Dealing with Standards Allegations Under the Localism Act 2011**

**Reference:**

**Complainants:**

**Subject Member:**

**Person Conducting the Assessment :**

**Date of Assessment:**

### **Complaint**

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Official Capacity**

The Monitoring Officer has considered whether the conduct alleged occurred when the subject member was acting in his/her official capacity and has at this stage determined that he/she [was] [was not].

### **Decision**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to [refer the complaint for investigation] [take no further action].

At this stage, the Monitoring Officer is not required to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that

warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

### **Parameters of Investigation**

[Include brief instruction to investigators on the scope of the investigation; possible witnesses, relevant documents, issues to focus on and timescales]

### **Notification of decision**

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made
- Investigator

### **What happens now?**

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

### **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

**Signed:**

**Date:**

**Print name:**

Monitoring Officer of Sandwell Metropolitan Borough Council.

**The Monitoring Officer**

Governance Services

Sandwell Metropolitan Borough Council

Oldbury Council House

Freeth Street

Oldbury

B69 3DE

## Investigation Plan For Dealing with Standards Allegations Under the Localism Act 2011

**Case No:**

<b>Date received by monitoring officer:</b>	
<b>Date referred to investigator:</b>	

<b>Subject member:</b>		<b>Complainant:</b>	
<b>Authority:</b>		<b>Investigator:</b>	

**Target for monitoring officer's receipt of draft report**

<b>Date due:</b>	
<b>Explanation:</b>	

**Target for issue of draft report**

<b>Date due:</b>	
<b>Explanation:</b>	

**Target for issue of final report**

<b>Date due:</b>	
<b>Explanation:</b>	

## Case analysis

<b>Behaviour alleged</b>	
<b>Relevant Code paragraphs</b>	
<b>Issues for determination</b>	
<b>Evidence required</b>	
<b>Evidence obtained</b>	

## Possible witnesses

<b>Name of Witness</b>	
<b>Issue they may address</b>	
<b>Date of interview</b>	

**Possible witnesses**

<b>Name of Witness</b>	
<b>Issue they may address</b>	
<b>Date of interview</b>	

**Possible witnesses**

<b>Name of Witness</b>	
<b>Issue they may address</b>	
<b>Date of interview</b>	



## Other Matters

Identify any thoughts/lines of inquiry not outlined in the table and also highlight any problems in the referral process.

Completed by:

Date:



**Interview Plan  
For Dealing with Standards Allegations Under the Localism Act 2011**

**Case No:**

**Interviewee:** [Redacted]

**Subject member:** [Redacted] **Interviewer:** [Redacted]

**Authority:** [Redacted] **Date:** [Redacted]

**Nature of complaint**  
[Redacted]

**Purpose of interview**  
[Redacted]

**Facts already established (which relate to purpose of interview)**

[Redacted area]

**Facts to be established (which relate to purpose of interview)**

[Redacted area]

**Record of disclosure to witness before interview**

[Redacted area]

**Planned disclosure to witness during interview**

[Redacted area]

Areas to be covered in interview	Key questions

**Investigation Plan Review Sheet  
For Dealing with Standards Allegations Under the Localism Act 2011**

**Case No:**

<b>Date:</b>	
<b>Investigator:</b>	

<b>Subject member:</b>		<b>Complainant:</b>	
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**Reason for Review**

<input type="checkbox"/>	New allegation
<input type="checkbox"/>	Additional witnesses / evidence required
<input type="checkbox"/>	Periodic Review

**Details relating to above**

**Review of Targets**

<b>Revised draft report target:</b>	
<b>Revised date of final report target:</b>	

## Reasons for revisions



**Completed by:**

**Date:**

## **Decision Notice of The Monitoring Officer for Dealing with Standards Allegations Under the Localism Act 2011 to Cease an Investigation**

**Reference:**

**Complainants:**

**Subject Member:**

**Person Conducting the Assessment:**

**Date of Assessment:**

### **Complaint**

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Original Decision**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to refer the complaint for investigation on the [insert date].

### **Investigation Summary**

The investigation began on the [insert date]. To date, the investigation has revealed that [insert brief description of what has happened in the investigation so far].

### **Decision to Cease Investigation**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to cease the investigation. The reasons for this decision are as follows [insert reasons].



## **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

## **Notification of decision**

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made
- Investigator

## **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

**Signed:**

**Date:**

**Print name:**

Monitoring Officer of Sandwell Metropolitan Borough Council.

## **The Monitoring Officer**

Governance Services

Sandwell Metropolitan Borough Council

Oldbury Council House

Freeth Street

Oldbury

B69 3DE

**Comments Assessment Matrix  
For Dealing with Standards Allegations Under the Localism Act 2011**

**Case No:**

<b>Date:</b>	
<b>Investigator:</b>	

<b>Subject member:</b>		<b>Complainant:</b>	
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<b>Comments Made by:</b>	
<b>Date Received:</b>	

<b>Comment Received</b>	<b>Response</b>	<b>Amendment Necessary?</b>

## Ethical Standards and Member Development Committee

28 September 2018

<b>Subject:</b>	<b>Ethical Standards and Member Development Committee Work Programme 2018-19</b>
<b>Director:</b>	<b>Director - Monitoring Officer - Surjit Tour</b>
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Trisha Newton <a href="mailto:Trisha_newton@sandwell.gov.uk">Trisha_newton@sandwell.gov.uk</a> 0121 569 3193

### DECISION RECOMMENDATIONS

That the Ethical Standards and Member Development Committee:

Approve the work programme for 2018/19 which will be kept under review during the year by the Monitoring Officer and the Ethical Standards and Member Development Committee.

#### 1 PURPOSE OF THE REPORT

- 1.1 A draft work programme for 2018/2019 is attached at Appendix 1 for the Committee's consideration. The programme covers the areas that are within the remit of the Ethical Standards and Member Development Committee under its current terms of reference.
- 1.2 In addition Sub-Committees of the Standards Committee will deal with any case work.

## **2 IMPLICATIONS FOR SANDWELL'S VISION**

- 2.1 High standards of conduct are an essential part of good corporate governance and this in turn has a direct relationship with the delivery of high quality services. A planned work programme will help the Ethical Standards and Member Development Committee in promoting high ethical standards.

## **3 STRATEGIC RESOURCE IMPLICATIONS**

- 3.1 There are no resource implications arising from this report.

## **4 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 4.1 Whilst there is no longer a statutory requirement to establish a Standards Committee, there is a need to promote high ethical standards so the Council has agreed to continue with an Ethical Standards and Member Development Committee as part of its arrangements to deal with standards.

**Surjit Tour**  
**Director – Monitoring Officer**

**Standards Committee Work Programme  
2018/19**

**7 December 2018**

Member Code of Conduct – Annual Review  
Members Gifts and Hospitality Register –  
Annual Review  
Allegations Update  
National cases for information  
Register of Members’ Interests – Annual  
Review  
Committee on Standards in Public Life –  
Annual Report

**8 March 2019**

Allegations Update  
Annual Report of the Standards Committee  
Review of Casework  
National cases for information