

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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Councillor Marshall Copy

CONFIDENTIAL REPORT

Contents	Page
1. Executive Summary	4
2. Councillor Marshall's official details	5
3. Relevant legislation and protocols	6
4. The evidence gathered	8
5. Summary of the material facts	18
6. Additional submissions of the complainant and Councillor Marshall	19
7. Reasoning as to whether there have been failures to comply with the Code of Conduct	23
8. Finding	32

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.

CONFIDENTIAL REPORT

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.

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

- 1.5 *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.*

CONFIDENTIAL REPORT

- 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;

CONFIDENTIAL REPORT

- (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:-

CONFIDENTIAL REPORT

- (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

CONFIDENTIAL REPORT

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 55th 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:-

CONFIDENTIAL REPORT

- 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

CONFIDENTIAL REPORT

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:-

CONFIDENTIAL REPORT

- (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

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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 :-

CONFIDENTIAL REPORT

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

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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.”

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

- 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.

CONFIDENTIAL REPORT

- 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:-.

CONFIDENTIAL REPORT

"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."

CONFIDENTIAL REPORT

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 [REDACTED]
Sent: 13 June 2018 17:17
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