



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

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

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

CONFIDENTIAL REPORT

This page is intentionally blank

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	12
6. Additional submissions of the complainant and Councillor Marshall	13
7. Reasoning as to whether there have been failures to comply with the Code of Conduct	14
8. Finding	21

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 2nd 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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

- 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."

CONFIDENTIAL REPORT

7.15 A rule of thumb is expressed in this comparison:

“You’re talking drivel” 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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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.

CONFIDENTIAL REPORT

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

