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PRIVATE AND CONFIDENTIAL

WIRRAL METROPOLITAN BOROUGH COUNCIL

**REPORT OF INVESTIGATION INTO ALLEGATION OF
BREACH OF CODE OF CONDUCT FOR COUNCILLORS**

Patricia Thynne

20th June 2014

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I. EXECUTIVE SUMMARY

1.1. I have undertaken an investigation into an allegation that a senior Labour Councillor, Cllr George Davies encouraged former Council employees to smear Cllr Jeff Green to take pressure off his own colleagues and gain political advantage. I have investigated whether Cllr George Davies has breached the following provisions of the Council's Code of Conduct for Councillors:

Para 1.1 Do treat others with respect

Paras 1.2 Do not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

1.2. I have sought to identify evidence of the alleged proposed "smear campaign" through interviews and consideration of available documents. Regrettably some key witnesses have declined to be interviewed. I have found no reliable evidence to support the specific allegation and therefore I have concluded:

1.2.1. That Cllr George Davies did not make the comments he is alleged to have made

1.2.2. That Cllr George Davies has not failed to treat others with respect

1.2.3. That Cllr George Davies has not acted in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

1.3. The only clear evidence of an attempt to mount a smear campaign against Cllr Jeff Green is the letter purporting to describe a meeting with him. There is insufficient evidence to identify the source of this attempt and there is no corroborated evidence as to who wrote the letter or that it was ever circulated. Its contents are less than an adequate basis for such a campaign but I am satisfied that it could be seen as an *attempt* to smear Cllr Green. This attempt failed.

1.4. There is enough evidence to suggest that the behavior of a number of councillors in the recent past was at best clouded by political motives and was at risk of breaching the Code of Conduct. Further investigation of these matters is unlikely to be the best method of encouraging improved behaviour. However, there is a need to ensure that

all councillors are supported to fully and genuinely embrace the Council's public commitment to changing that culture, values and behaviours.

2. BACKGROUND TO THE INVESTIGATION

2.1. This investigation was commissioned by the Deputy Monitoring Officer of the Council. It follows a question raised in the meeting of full Council on 16 December 2013 by Cllr Jeff Green:

"In the Corporate Plan the Leader of the Council refers to his success in changing the Council's culture. Is he aware of a tape recording produced as recently as August of this year in which it is alleged that a senior member of his administration can be heard: 1. Using language about a senior officer that is totally unacceptable and 2. Encouraging former Council employees to smear me to take the pressure off his own colleagues and gain political advantage. If he is aware what action has he taken and what does this say for his assertion that the culture is changing in his Group?"

Cllr Green wrote to Cllr Phil Davies, the Leader of the Council on 10th January raising further concerns, specifically whether the alleged proposal to attempt to smear Cllr Green had been investigated. Following this letter, the matter was referred to the Chief Executive by the Leader and it was decided that the allegations and concerns raised by Cllr Green should be referred to the Deputy Monitoring Officer for formal investigation under the Members' Code of Conduct Protocol.

2.2. Cllr Green was anxious to emphasise that he did not ask for there to be a formal investigation under the Members' Code of Conduct Protocol and nor did he identify Cllr George Davies as the possible source of the alleged attempt to smear him.

2.3. The recording referred to is alleged to involve two allegations one of which has already been the subject of a previous investigation. It had already been established that the recording was between Cllr George Davies and a former employee of the Council. I was asked to determine the following issues:

- Did the subject senior member (Cllr George Davies) make the comments he is alleged to have made on the recording?
- Could the recorded conversation of the subject member reasonably be regarded as failing to treat others with respect?
- Could the recorded conversation of the subject member reasonably be regarded as bringing the Council, or the subject member's office as a member of the Council into disrepute?

2.4. The subject of the investigation arises out of what was believed to be a single telephone conversation, between Cllr George Davies and a former employee of the Council who, together with a group of others, was in dispute with the Council. This particular group of former employees are referred to in this report as The Group. The telephone conversation took place at some time during July or August 2013. It appears that the telephone conversation was recorded and a segment has already been the subject of a previous investigation. Therefore, whilst Cllr Green's letter did not attempt to identify the origin of the alleged attempt to smear him, it was decided that the Subject Member under the Protocol was Cllr George Davies, being the only councillor known to have been party to that telephone conversation.

2.5. The recording of the telephone conversation was believed to be in the possession of one of the members of The Group, Person A. I therefore wrote to Person A and invited him to be interviewed as part of this investigation and requesting that he provide me with a copy or transcript of the recorded telephone conversation. Whilst Person A did respond to my invitation, he did not make any arrangements to be interviewed and nor did his colleague, Person B. I have therefore been obliged to undertake this investigation without hearing the recorded conversation nor having any detailed information as to its contents. I was also informed that two journalists: Person C and Person D, had heard the recording and had notes of its content. I wrote to both of these and invited them to be interviewed. One responded but declined to be interviewed, the other failed to respond. Therefore the only direct evidence available to me about the contents of those conversations is from Cllr George Davies. All other persons interviewed know only what they have been told by third parties.

3. THE COUNCIL'S CODE OF CONDUCT

3.1. The Council adopted a Code of Conduct for Councillors on 17 January 2012 and it was updated on 12 April 2012. The Code follows the requirements of s.27 of the Localism Act 2011 to promote and maintain high standards of conduct by members of the Council.

3.2. The following paragraphs of the Code are relevant to the present investigation:

Paragraph 1.1 Do treat others with respect

Paragraph 1.2 Do not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

4. THE EVIDENCE GATHERED

4.1. I have interviewed and taken account of oral evidence from the following:

4.1.1. Cllr Jeff Green, Leader of the Conservative Group of Wirral MBC

4.1.2. Cllr George Davies, Deputy Leader of the Labour Group of Wirral MBC

4.1.3. Cllr Phil Davies, Leader of the Labour Group and Leader of the Council of Wirral MBC

4.1.4. Cllr Steve Foulkes, former Leader of the Council

4.1.5. Joe Blott, Deputy Monitoring Officer for Wirral MBC

4.2. In addition I have considered the following documentary evidence:

4.2.1. Letter dated 10 January 2014 from Cllr Jeff Green to Cllr Phil Davies ('PT1')

4.2.2. E-mail dated 17 January 2014 from Chief Executive Graham Burgess to Cllrs Phil Davies, Jeff Green and Phil Gilchrist ('PT2')

4.2.3. Letter dated 20 January 2014 from Joe Blott, Deputy Monitoring Officer and Strategic Director for Transformation and Resources to Person A ('PT3')

4.2.4. Undated letter from The Group to Joe Blott ('PT4')

4.2.5. Undated letter from The Group to Bill Norman ('PT5')

4.2.6. Confidential report of the investigation relating to an allegation of inappropriate comment dated 22 October 2013 by Peter Mackay ('PT6')

4.2.7. Confidential report of Deputy Monitoring Officer following the investigation dated October 2013 ('PT7').

5. SUMMARY OF EVIDENCE

5.1. Cllr Jeff Green's evidence

5.1.1. In his evidence, Cllr Green stated that sometime in the autumn of 2013 he had been contacted by two journalists: Person C and Person D, and told that there was a recording of a telephone conversation between a senior Labour councillor and one of a group of former Council staff who were in a long-running dispute with the Council, referred to in this report as The Group. In this conversation, Councillor Green states, amongst other matters which have already been the subject of a separate investigation, that the senior Labour councillor is heard to ask the other person to produce a letter which would 'have a go' at Cllr Green and thereby take the pressure off Cllr Steve Foulkes who was then in trouble. The other person then asks what would be in it for them if they produced such a letter and they are told by the senior Labour councillor that: 'we take care of our own'. Cllr Green states that he believed that to mean that the members of The Group would get their jobs back.

5.1.2. Cllr Green informed me that he spoke to each journalist separately but got the impression that each had actually heard the recording. One of them appeared to have made notes of its content. At the meeting of full Council on 16th December 2013 Cllr Green informed me that he asked a question about this recording. This question received publicity in the local press and in the week following the Council meeting he received a telephone call from Person A, a member of The Group. Cllr Green told him what he knew of what was on the recording and Councillor Green said Person A confirmed that it was correct. Person A then told him that they had received threats from the Council that if they produced the tape it could go badly for them. He also told Councillor Green that he had contacted the Council to tell them to include the issues concerning Cllr Green in the initial investigation but he had been told that it would only focus on the other allegations.

5.1.3. Cllr Green stated that he had taken the allegation of an attempt to smear him seriously because of other facts: He stated that during the Council meeting of 15th July 2013 he had observed Cllr Steve Foulkes leave his seat and go to the gallery where he handed Person C an envelope. After the meeting Person C showed Cllr Green a letter which he took to be the contents of the envelope. The letter was addressed to Bill Norman, the former Director of Law and was from the Group. Its content was critical of Cllr Green. Cllr Green later confirmed that document PT5 was the letter shown to him by Person C. He believes that no such letter had been sent to Bill Norman.

5.1.4. Cllr Green emphatically denied that he had ever said or behaved in the manner described within document PT5.

5.1.5. Cllr Green also emphasised that he had not sought to raise an allegation of a breach of the Code of Conduct for Councillors and that he had not identified Cllr George Davies. He had asked at a public meeting of the Council for comments from the Leader, Cllr Phil Davies, on the alleged attempt to smear him. He wanted an investigation because he wanted it to be seen how little the Council had actually changed.

5.2. Cllr Phil Davies' evidence

5.2.1. Cllr Davies said that when he became Leader he recognised that he had a major cultural challenge. He described the Council as dysfunctional, there were service silos, a toxic political culture where everything was politicised. People were reluctant to innovate, the Council was inward looking and in denial. The Council has now begun a root and branch re-invention. There is a new Chief Executive and top team. The organisation has come a long way. There is an environment now where people try new ideas, the Council looks outward, learns from other authorities. Cllr Davies said that he promoted cross-party working. There is a Leaders Board where all three party leaders meet with the Chief Executive once a month. It has been a massive period of change. The organisation feels much more confident and positive. Cllr Davies sees the current allegation is a distraction to other things.

5.2.2. There have been a small number of former employees who have been whistleblowers and who are seeking compensation from the Council for perceived damage. This includes The Group. Their claim started before Cllr Davies became Leader. He has met them several times in his office. On 22nd July 2013 there was an informal meeting with the Group in Cllr Davies' office. The four members of the Group had come into the Town Hall and demanded to see him. One of them, Person A, had a recording on his mobile phone which they played to him. It appeared to be a tape of a phone conversation between Cllr George Davies and Person A. It was about one minute long, possibly an extract from a longer conversation. They played the opening section. The segment related solely to allegations concerning the use of inappropriate language about a Council officer. The recording made no reference to Cllr Green.

5.2.3. Cllr Davies believes that the Group were trying to use the content of the phone conversation to pressurise him into settling their claim. He also says that they told him that they would go to the press. They then stormed out of the room. During the conversation they made no reference to any other matter they might go to the press about. Following that meeting there was an independent investigation into the allegations referred to in the extract of the recording that had been played to Cllr Davies.

5.2.4. Prior to the meeting of full Council on 16th December 2013 when Cllr Green asked the question concerning the smear campaign against him, Cllr P Davies says that he had not heard any suggestion of a smear campaign. Following the Council meeting, Cllr Davies was advised by the Chief Executive that a further investigation should be commissioned. He also spoke to Cllr George Davies and he was told that he had no recollection of any campaign to smear Cllr Green.

5.2.5. Cllr Phil Davies said that there was categorically no campaign to smear Cllr Green and he did not understand why there was such an allegation. He had been genuinely surprised when Cllr Green made his allegations in December.

5.3. Cllr Steve Foulkes' evidence

5.3.1. Cllr Foulkes had been involved for a long period with the same group of former employees who called themselves The Group. During the time when he was Leader of the Council, some 3 or 4 years ago, they had come to his surgery. He had made it clear to them that if they were to succeed in their claim for compensation then they had to provide proof that they had suffered damage and that it was essential that there was hard evidence. Following that meeting Person A brought to him a large file of documents. He had flicked through this file and read something disturbing about how they had been treated – about how another councillor - Cllr Jeff Green - wanted to use them to get at Cllr Foulkes. The file of evidence was shortly after returned to Person A.

5.3.2. Cllr Foulkes says that he did not raise the document he had seen with Cllr Green at the time. A meeting was set up between the leaders of all three political groups and this had begun a dialogue between them and he felt encouraged by this.

5.3.3. Some years later, Cllr Foulkes became a member of the Audit and Risk Management Committee. In that role he says he was seeking to amend the formal policy for the Council on the treatment of whistleblowers. He says that he was anxious to introduce a clear prohibition against the political manipulation of whistleblowers. At the time some whistleblowers seemed to be feted and courted by some councillors whilst others were ignored. It occurred to him that the use of whistleblowers by politicians for political ends might itself constitute harm or damage that would support their claim compensation from the Council. He thought that the document he had seen would provide good evidence to support his case about preventing this happening in future.

5.3.4. Cllr Foulkes says that he asked Cllr George Davies, who was actively involved with The Group to talk to them and request a copy of the document he had read several years previously. He also asked that the document be signed by them to prevent people thinking that he had written it himself. He says he asked for the document both to support his own desire to amend the Council policy on whistleblowing and also because he thought it might strengthen their claim against the Council for compensation.

5.3.5. Cllr Foulkes received a photocopy of the document he requested: an undated letter (PT5) signed by five of The Group, including Person A and Person B and apparently addressed to Bill Norman, former Director of Law, HR and Asset Management of the Council who left the Council in October 2012. He believes this is the same document which he had seen 3 or 4 years ago.

5.3.6. Cllr Foulkes stated that he did not conduct smear campaigns. He has not used the letter to attack any individual. He states that as Deputy Mayor, he could not have left the Council Chamber during a meeting unless there was an adjournment. He also said that he had no animosity towards Cllr Green and he had had similar paths and he saw them as kindred.

5.4. Cllr George Davies' evidence

5.4.1. Cllr G Davies said that he had first got involved with The Group in about 2007/8. They had contacted the then Leader of the Council, Cllr Steve Foulkes and he had agreed to meet them and he had been asked to go with Cllr Foulkes as a witness. The Group had explained their case to Cllr Foulkes and he had told them he would talk to the then Chief Executive. One of them, Person B, came to Cllr George Davies' surgery 6 or 8 months later and asked for help. He arranged an appointment for them with the local MP Frank Field. Cllr Davies is Frank Field's agent and was present at numerous subsequent meetings between the group and Frank Field.

5.4.2. Cllr George Davies says that over the years he got to know The Group well and developed what he describes as a relaxed and unguarded way of talking to them.. He also admits that he has difficulty remembering the detailed content of conversations.

5.4.3. One of the four, Person A, telephoned him in about July 2013. Cllr George Davies says that the subject of the telephone call was the decision by the Council to refer whistleblowing cases to external solicitors. Person A was frustrated at the delay. It was during this telephone call that Cllr George Davies made the reference to the council officer which has been the subject of the previous investigation. Cllr George

Davies is adamant that they talked about no other issue and there was no conversation about any smear campaign against Cllr Green.

5.4.4. When asked if he could remember occasions when Cllr Foulkes was “in trouble” and might have needed help he said that these dated from the period when Cllr Foulkes was Leader of the Council. He said that since that period the culture of the Council had changed. In the old days that sort of political games playing would have been acceptable.

5.4.5. Cllr Davies said that in June or July 2013, he was asked by Cllr Foulkes to speak to The Group and ask them for a note or letter. He wanted something in writing and signed by them to support his case that all whistleblowers should be treated equally, with the same respect. At the time other whistleblowers’ cases seemed to be progressing but not The Group. He wanted something in writing which might show they were being treated differently. He spoke to Person B on the telephone. He admits he cannot remember exactly what was said but is adamant that Cllr Green was not mentioned. He states that he doesn’t understand modern technology so didn’t realise that it was possible to record a telephone conversation and if it was recorded, he wouldn’t have been aware of it. He wishes it to be clear in the strongest possible terms that there was no desire or conspiracy to smear Cllr Green and that it is not in his nature to do that.

5.5. Letter from The Group to Joe Blott (PT4)

5.5.1. The letter is undated and there is no address, only the name of the Addressee: Mr Blott. It is said to be from The Group and Person B is also named but the letter is not actually signed by anyone. The letter says it was written in response to letters to them dated 12th, 21st and 22nd of August.

5.5.2. The letter refers to a request they be interviewed as part of the previous investigation and asks that they not be contacted in future. The letter goes on to say that the investigation “makes no mention of the political cohesion (Smear Deal) from Wirral Labour Party that was set up with the whistleblowers on behalf of the Deputy Mayor Mr Foulkes including others, against Jeff Green the Wirral Conservative leader.”

5.5.3. The letter then goes on to say that Mr Blott had indicated that he had spoken to the Council Leader about this but when asked his “response was no comment”.

5.6. Joe Blott, Strategic Director, Transformation and Resources evidence.

5.6.1. Mr Blott has an undated letter on his file from one of The Group, Person B addressed to him (PT4). He does not know when it arrived. It was put on his desk some time in the late summer of 2013. He made a file note about it but unfortunately did not date that.

5.6.2. Mr Blott does recall a telephone conversation with Person A but has no recollection of any discussion about any ‘smear deal’ and no recollection of any conversation concerning the Leader, Deputy Leader or former leader or any smear campaign. He also says that he is unlikely to have said “no comment” as he does not use this phrase.

5.7. Letter from The Group to Bill Norman (PT5)

5.7.1. This letter is undated and there is no address, only the name of the Addressee. It is signed by five of The Group, including Person A and Person B. The addressee is Bill Norman, Director of Law, HR and Asset Management who was suspended from his post in June 2012 and left the Council's employment in October 2012.

5.7.2. In the letter there is reference to a conversation with Cllr Jeff Green about their claim. The letter then states that Cllr Green proposed that in order to move it forward that he contact “one of his friends in the local media and blow Councillor Steve Foulkes out of the water.” No detail is provided about what this might mean.

5.7.3. The letter then states that Cllr Green became irritated at the mention of Cllr Foulkes and “used some foul language”.

6. CONCLUSIONS ON THE EVIDENCE

- 6.1. It is not disputed that there was a telephone conversation between Cllr George Davies and Person A some time during July or August of 2013 during which the progress of the claim by The Group was discussed and which has been the subject of a previous investigation. Cllr George Davies is adamant that at no point during that telephone call was there any discussion of Cllr Foulkes or of any campaign to smear Cllr Jeff Green, the Leader of the Conservative Group.
- 6.2. It is not disputed that an extract of this telephone conversation was played to the Leader of the Council, Cllr Phil Davies, by Person A. Cllr Phil Davies is also adamant that the extract of the conversation played to him made no mention of Cllr Foulkes or of any campaign to smear Cllr Jeff Green.
- 6.3. Cllr Jeff Green has said that he was told about a recording of a telephone conversation between Cllr George Davies and one of The Group by two journalists, Person C and Person D. He was told that during the conversation Cllr G Davies is heard to ask the other person to produce a letter which would 'have a go' at Cllr Green and thereby take the pressure off Cllr Steve Foulkes who was then in trouble. Neither the two members of The Group: Person A and B, nor the two journalists, Person C and Person D would agree to be interviewed for this investigation so I have not been able to corroborate what Cllr Green has said.
- 6.4. Cllr George Davies stated that there was a second telephone conversation with The Group during the same period in 2013 when he spoke to Person B. It has not been possible to corroborate this but I see no reason to doubt Cllr George Davies' evidence on this.
- 6.5. Cllr Foulkes has confirmed that he asked Cllr George Davies to request a document from The Group. However, there are some differences in the accounts of Cllr G Davies and Cllr Foulkes concerning the nature of the document requested. Cllr George Davies' evidence was that he wanted "something in writing" whereas Cllr Foulkes says that he wanted a specific document which he had been shown some years previously by Person A. Cllr Foulkes stated that he was aware of the general content of the document he wanted before he requested it and that the document he received. PT5

was that document. Cllr Foulkes states that there was no intention to use the document to mount a smear campaign against Cllr Green. He has said that he wanted it to support his attempt to ensure that whistleblowers were not used as political footballs in future.

- 6.6. It has been difficult to establish the provenance of Document PT5. It is un-dated and appears to be a copy of a letter sent to an officer who had left the Council some time ago. The only other evidence of its age is Cllr Foulkes belief that it was the same document he had read some time previously. There is no evidence that it was actually sent and the veracity of its contents are strongly denied by Cllr Green. The content of Document PT5 it is capable of causing some embarrassment to Cllr Green. Cllr Green states that he observed Cllr Foulkes hand a document to the journalist, Person C during the Council meeting on 15th July 2013 and he believes that Document PT5 was the document shown to him by Person C after that meeting. Cllr Foulkes denies this.

7. CONCLUSIONS ON THE MATERIAL FACTS

- 7.1. On the balance of probabilities I have concluded:

7.1.1. That there were two telephone conversations involving Cllr G Davies and members of The Group relevant to this investigation, both of which are likely to have been recorded.

7.1.2. No one who consented to be interviewed for this investigation has heard the recording or recordings of those conversations. Only Cllr Phil Davies has heard a short extract from one conversation about a matter unrelated to the current investigation. There is therefore no direct evidence of the content other than the statement of Cllr George Davies who emphatically denies that there was a proposed "smear campaign".

7.1.3. Without any direct evidence from either of the members of The Group, Persons A and B who were parties to the telephone conversations, nor from the two journalists, Persons C and D, who may have actually heard the alleged recording and have taken notes of what they heard, it is difficult to give full weight to what Cllr

Green was told of the content of the alleged recording. His evidence unfortunately can be only uncorroborated, second-hand hearsay.

7.1.4. The only verifiable evidence of an attempted smear campaign is Document PT5. It seems probable that the document was created in the hope that it would aid the claims of The Group and that there was an intention to show Cllr Green in an unfavourable light. I find no evidence that Cllr George Davies was aware of the content of the document he requested during the second telephone conversation. I do find that Cllr Foulkes was aware before he requested it that the document was potentially embarrassing to Cllr Jeff Green but there is no corroborated evidence that he actually circulated the letter.

7.1.5. Whilst the content of Document PT5 may appear ineffective as a basis, I am satisfied that its contents can be seen as an *attempt* to smear Cllr Green. However the evidence is insufficient to identify with certainty the possible perpetrator of such an attempt. The attempted smear was inadequate and clearly failed.

8. FINDING

8.1. I have found no evidence that Cllr George Davies

8.1.1. Made the comments he is alleged to have made on the recording

8.1.2. Made any comments which could reasonably be regarded as failing to treat others with respect

8.1.3. Acted in any way which could reasonably be regarded as bringing the Council or his office into disrepute

8.2. I have found no evidence of any proposal by Cllr George Davies to smear Cllr Green or any other behaviour which was capable of breaching the Council's Code of Conduct and therefore no breach of the Code by Cllr George Davies.

8.3. On the balance of probabilities I am satisfied that Document PT5 is sufficient evidence of an *attempt* to smear Cllr Green. This attempt was inadequate and failed. There is insufficient evidence to identify the source of this attempt and there is no corroborated

evidence as to who wrote it or that it was ever circulated. However there is enough evidence to suggest that the behavior of a number of councillors in the recent past was at best clouded by political motives and was at risk of breaching the Code of Conduct. Further investigation of these matters is unlikely to be the best method of encouraging improved behaviour. However, there is a need to ensure that all councillors are supported to fully and genuinely embrace the Council's public commitment to changing that culture, values and behaviours.

8.4. Because of my findings in relation to the allegations against Cllr George Davies it is unnecessary for me to review the relevant guidance and available case law on the issue.

Patricia Thynne

20th June 2014

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