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Wirral Borough Council

Weightmans reference: SG/186789/1

Report of an investigation into allegations concerning the conduct of  
Councillors Tom Anderson, Paul Hayes and Ian Lewis

The logo consists of the word "Weightmans" in white, sans-serif font, centered within a black rectangular box with a slightly wavy top edge.

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## Executive Summary

1. A complaint was made by Dr Maggie Atkinson, the Chair of the Wirral Safeguarding Children Board ("WSCB"). The complaint is in relation to alleged conduct of Cllrs Tom Anderson, Paul Hayes and Ian Lewis.
2. The complaint alleges that Cllrs Anderson and Hayes failed to comply with the code of conductor members ("the Code") of Wirral Borough Council ("the Council") in the way in which they behaved at a meeting of the Children and Families Overview and Scrutiny Committee ("OSC") of the Council on 14 November 2017. The actions of the councillors which gave rise to the complaint relate to a decision by Dr Atkinson not to publish a "SCR" which related to a case involving child sexual abuse ("CSE"). The complainant alleges that;
  - i. Cllrs Anderson and Hayes were disingenuous in that they asked questions at the OSC meeting on 14 November 2017 to which they already knew the answers;
  - ii. That Cllr Lewis by default failed to comply with Code as group leader as a result of the actions of Cllrs Anderson and Hayes;
  - iii. Cllrs Anderson and Hayes "hijacked" the OSC meeting and attacked Dr Atkinson in a belligerent, heated and aggressive fashion;
  - iv. Cllrs Anderson, Hayes and Lewis approaches to the media about the SCR amounted to a failure to comply with the Code; and
  - v. That Cllr Lewis publicly stated that Dr Atkinson had made a complaint about him at a meeting of the Health and Wellbeing Board on 14 March 2018 (this was raised some time after the original complaint was made but the Council's Monitoring Officer agreed that this should be added to my investigation).
3. I met with the complainant and the subject members. I also met with other witnesses with relevant information and gathered written evidence.

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4. I concluded that there had been no failure to comply with the Code by Cllrs Anderson or Cllr Lewis.
5. I concluded that there had been a failure to comply with the code on the part of Cllr Hayes in respect of comments which he made in the media (set out in paragraph 2 iv above) but that there had been no failure on his part to comply with the code in respect of the other aspects of the complaint

### Relevant Legislation

6. The Localism Act 2011 has governed standards of conduct for elected members in England since July 2012. Under the 2011 Act, the Council:
  - a. is under a duty to promote and maintain high standards of conduct;
  - b. must adopt a Code of Conduct which is consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
7. The 2011 Act requires the Council to have in place arrangements for investigating allegations of failure to comply with the Code, and taking decisions about them, including appointing one or more independent persons, one of whose views must be sought before a decision is made, and one of whose views may be sought by the member against whom an allegation is made.
8. The Council adopted a new Code of Conduct ("the Code") with effect from 1 August 2014 (SG1). The Council also adopted arrangements for dealing with allegations that a member had failed to comply with the Code (SG2).
9. So far as material, the Code provides as follows:

#### *... General Obligations*

1. *When acting in your role as a member of the Council  
1,1 DO treat others with respect.*

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*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.*

*1.3 DO NOT disclose information given to you in confidence by anyone, or information acquired by you, or ought reasonably to be aware is confidential in nature, except where–*

- (i) You have the consent of the person authorised to give it;*
- (ii) You are required by law to do so;*
- (iii) The disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person;*
- (iv) The disclosure is:*
  - a. Reasonable and in the public interest;*
  - b. Made in good faith and in compliance with the reasonable requirements of the authority; and*
  - c. Agreed with the Monitoring Officer prior to its release.*

#### **Members' official details**

10. Cllr Anderson has been a member of the Council since May 2008.

11. Cllr Hayes has been a member of the Council since May 2007. Cllr Hayes was at the time of the relevant events the conservative group spokesperson for children's services; he ceased to hold that office in May 2018.

12. Cllr Lewis has been a member of the Council for approximately 12 years in total. He was first elected 18 years ago but has had some periods during that time when he was not a councillor. Cllr Lewis is the leader of the conservative group.

## Summary of the Facts and Evidence Gathered

### Background

13. Dr Atkinson is the independent chair of the WCSB. This complaint arises following a SCR conducted by WCSB into a case involving child sexual exploitation ("CSE"). This followed the conviction of two brothers for a number of sexual offences at Liverpool Crown Court.
14. Dr Atkinson concluded that she should not publish the SCR. She did so following the receipt of legal advice and after consulting with the Department for Education's National Panel of Independent Experts ("the National Panel"). She did so because she did not believe that it was possible to publish the full SCR without disclosing information which could lead to the disclosure of the identity of the person who was the subject of the sexual abuse. Any disclosure of the identity of this person would amount to a criminal offence.
15. The Council had set up a Children's Services Members Task Force ("CSMTF") to address how to improve children's services within the Council. This was an informal group and as such its meetings were not in public nor were its reports, agendas or minutes published. The terms of reference of the group made it clear that all matters discussed at the meetings of the CSMTF were confidential. Cllrs Hayes and Lewis were members of the CSMTF. Cllr Anderson was not a member of the CSMTF.
16. The other members of the CSMTF were the leader of the Council. Cllr Phil Davies, the cabinet member for children's services, Cllr Bernie Mooney, the leader of the Liberal Democrat group, Cllr Phil Gilchrist and the Liberal Democrat spokesperson for children's services, Cllr Alan Brighthouse.
17. The SCR was discussed at the meeting of the CSMTF in September 2017. Dr Atkinson explained that she would not be publishing the report and her reasons for doing so. Cllr Hayes was unhappy about this and expressed his concern about the decision.

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18. Following the meeting Dr Atkinson wrote to Cllr Hayes on 3 October 2017 setting out her responses to Cllr Hayes's concerns. In the letter she explained why the decision had been made not to publish the SCR. Attached to the letter was a letter from the National Panel which confirmed:

*The panel considered carefully the information provided at their meeting on 14 August. Given the particular circumstances you identify, of concern at the impact publication may have together with the advice you have received, the panel accepted your decision not to publish.*

*In such cases should you decide to publish in anonymised form on the NSPCC website where it does not pose further risk to those involved, the panel encourages you to do so.*

19. Dr Atkinson attended the meeting of the OSC on 14 November 2017. She was there to present her annual report. She was asked some questions about CSE and training being provided. Cllr Anderson then asked her about the decision not to publish the SCR. He stated that he believed that it was "outrageous" that members of the committee would not be able to see a copy of the report.

20. After Cllr Anderson questioned Dr Atkinson another member of the committee spoke and then Cllr Hayes stated that he wished to put on record his disagreement with the decision not to publish the SCR. The OSC meeting was recorded by a local resident and can be seen on YouTube. The exchange took approximately 3-4 minutes (excluding the involvement of the other councillor).

21. Shortly after the meeting Cllr Hayes was quoted in the press as saying:

*The decision to keep this report under lock and key will undoubtedly lead to accusations of a cover up.*

22. Cllr Lewis attended a meeting of the Health and Wellbeing Board on 14 March 2018. At that meeting Cllr Lewis declared that he had an

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interest in an item being presented by Dr Atkinson as he was the subject of a complaint by her.

### The evidence obtained

23. The following witnesses were interviewed during the investigation:

Dr Atkinson	(SG3)
Cllr Anderson	(SG4)
Cllr Lewis	(SG5)
Cllr Hayes	(SG6)
Cllr Bernie Mooney	(SG7)
Cllr Thomas Usher	(SG8)

24. All have signed written records of their interviews.

25. The Council's Deputy Monitoring Officer, Vicki Shaw, described the process leading to my instructions and supplied me with relevant documentation, including the following:

- The letter of complaint (SG9)
- Letter from the complainant to Cllr Hayes dated 3 October 2017 (SG10)
- Letter from Cllr Anderson in response to the complaint (SG11)

26. During the course of my investigation I also watched relevant parts of the recording of the OSC meeting of 14 November 2017 and of the Health and Wellbeing Board meeting of 18 March 2018. I also received from Dr Atkinson a copy of a leaflet issued by Wirral Conservatives (SG12). I also obtained copies of press coverage of the decision not to publish the SCR (SG13).

27. During the course of the investigation Dr Atkinson complained that Cllr Lewis had mentioned her complaint in a public meeting by declaring it an interest at the Health and wellbeing Board (SG14). I also sought information from Cllr Lewis via email about this (SG15).

28. I also sought information via email about comments allegedly made by Dr Atkinson at the CSMTF in September 2017. I have prepared a table setting out the responses which I received (SG16).

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29. I also sought to find evidence of Cllr Lewis's interview with local news on the subject of the SCR. However, on a search of the internet I was unable to locate it. I asked the Council and Cllr Lewis if they had a copy of the interview or a transcript but neither did. Therefore, I was unable to view the interview.

#### Evidence of Dr Atkinson

30. Dr Atkinson made the complaint. She told me that she is the independent chair of WCSB. She explained that she is an experienced public servant. She explained that the WCSB is completely independent of the Council.
31. Dr Atkinson told me that she attended a meeting of the CSMTF in September 2017 and explained why the SCR was not going to be published. She stated that Cllrs Hayes and Lewis were at that meeting.
32. Dr Atkinson explained the reasons why the SCR was not being published. She also stated that this had been explained to members prior to the OSC meeting of 14 November 2017.
33. Dr Atkinson stated that the National Panel was aware of this decision and did not demur from it. She told me that Cllr Hayes, along with all Group leaders across the Council, the then-Acting Director of Children's Services and the Chief Executive, had all received the text of the National Panel's written agreement with her that non-publication was the appropriate course of action.
34. Dr Atkinson told me that members of the Council are regularly updated on progress with the action plan, those updates being on the public pages section of the WCSB website.
35. Dr Atkinson stated that her recollection was that Cllr Anderson had asked one question and then Cllr Hayes took up the sword and asked more questions. She stated that this was based on what she remembered; she had not viewed the recording to check

36. Dr Atkinson reaffirmed the comments in her letter of complaint that stated that the actions of Cllrs Anderson and Hayes did amount to an attack and were belligerent.

37. Dr Atkinson stated that she had no specific evidence that it was these specific members who had gone to the press. She stated that this was an assumption because of the timing. She stated that there was a report in the Liverpool Echo the day after the OSC meeting. She stated that the report was written by a journalist who had interviewed her during the trial of the CSE case. MA stated that the tone of the coverage was of a "cover up".

#### Evidence of Cllr Anderson

38. Cllr Anderson told me that he did not attack Dr Atkinson and was not belligerent.

39. Cllr Anderson stated that had never contacted the press about this issue. He stated that he was aware that Councillor Hayes had been quoted in the press but the complaint alleged that he also did so but he had not.

40. Cllr Anderson told me that he was and remained concerned about the SCR not being made public. He stated that the guidance clearly states that such reviews should be written in such a way to enable them to be published. He stated that at the meeting he did not actually ask for the SCR to be published but merely that it should be provided to members of the OSC. He stated that scrutiny has an important part to play in improving children's services and that Dr Atkinson herself had said this. He stated that he did not see how this could be done if members were not able to see important documents such as this. Cllr Anderson stated that he had never disclosed confidential information and it was beyond him why members could not see the report.

41. Cllr Anderson told me that he had not seen any evidence regarding the comment by Dr Atkinson that the National Panel had confirmed that the review should not be made public so was unable to comment on it.

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42. Cllr Anderson stated that he did not believe that Councillor Hayes asked Dr Atkinson any direct questions about the SCR at the meeting; he merely put on record his opinion that it should be published. TA stated that he did not believe that Councillor Hayes had attacked Dr Atkinson or been belligerent.

#### **Evidence of Cllr Ian Lewis**

43. Cllr Lewis stated that there was a reference in the complaint to him breaking the code of conduct "by default". He stated that he will happily take responsibility for the actions of his group but he does not get involved in the approach taken by members on the OSC. He said that he would never ask a member to take a particular line or ask a particular question at a meeting of the OSC. He stated that it is not his role to tell members on an OSC what to do; he stated that he might attend a meeting of an OSC if it was discussing an issue of particular interest to him.
44. Cllr Lewis told me that the first he knew about what had occurred at the OSC meeting was when the cabinet member for children's services had approached him as he was leaving Wallasey Town Hall at 6.30 one evening and accused him of talking to the Wirral Globe about the issue. He stated that he told her that he had not done so. He stated that after this he did respond to a request from regional TV news to talk about the case and had stated that he believed that the SCR should have been written in such a way that it could be published whilst protecting the identity of the individual so that everyone could see where mistakes had been made, as outlined in previous DfE guidance.

#### **Evidence of Cllr Hayes**

45. Cllr Hayes told me that he felt that he was being asked to answer questions when he did not know what the charge against him was. He stated that he did not believe the complaint made by Dr Atkinson was particularised. He stated that he remembered the evening and he had not been rude or aggressive towards Dr Atkinson at the OSC

meeting on 14 November 2017. He stated that he was simply acting as a member of the Council.

46. Cllr Hayes stated that he believed that Dr Atkinson was a very experienced public official and that she had been before House of Commons Select Committees in the past; as such she would be used to robust questioning. PH stated that he did not believe that he or his colleague Cllr Anderson had been particularly robust on 14 November 2017.
47. Cllr Hayes stated that Dr Atkinson alleged that he and Cllr Anderson had hijacked the meeting. Cllr Hayes stated that the time for which he and Cllr Anderson spoke at the meeting on the item involved was very brief. He stated that he addressed it very briefly in relation to the agenda item and the meeting of the Committee as a whole.
48. Cllr Hayes stated that it was ridiculous to make the allegation that he and Cllr Atkinson had been "belligerent". He stated that anyone with any experience of politics would not take the view that they had been belligerent. Cllr Hayes stated that Dr Atkinson seemed to be saying this merely because he did not accept her position. He stated that he was his role as questioning decisions he sees as fundamentally incorrect.
49. Cllr Hayes stated that the legal framework and guidance on SCRs is clear that they should be published, whilst protecting the anonymity of the victims. He stated that there had been a public court hearing which had detailed what had happened in this particular case without the victim being named. He stated that there was a lot of information already out there in the public arena. He stated he could not see how a report could not have been published without identifying the victim. He stated that frankly justice needs to be seen to be done. He stated that keeping the report behind closed doors had serious implications for the WSCB and the Council as to how it goes forward and prevents this type of thing happening again.

50. Cllr Hayes stated that Dr Atkinson herself had stated in the CSMTF meeting that she knew that she would be accused of "covering up" the SCR or words to that effect.

51. Cllr Hayes told me that he had issued a press release which stated, "The decision to keep this report under lock and key will undoubtedly lead to accusations of a cover up." He stated that this had already been suggested by Dr Atkinson herself at the CSMTF meeting. Cllr Hayes repeated that he believed that justice needs to be seen to be done. He stated that the Council's reputation and the reputation of those who work in child protection is damaged by the fact that the report has not been published.

#### Cllr Usher

52. Cllr Usher told me that he is the Chair of the OSC. He stated that he believed that the actions of Cllrs Hayes and Anderson at the meeting of the OSC on 14 November 2017 had been a political move and was disappointed that they would do this at a meeting of the Committee. He stated that he was aware that they had already had answers to the questions which they had raised at a previous meeting.

53. Cllr Usher stated that he believed that there was nothing wrong with asking to see outcomes of the SCR. He stated that the Committee would probably look at the outcomes and progress report in due course. He stated that had been told by Dr Atkinson that no matter what decision was made about the full report, outcomes would be published. Cllr Hayes was present when this was said. He stated that Dr Atkinson had been questioned at an earlier CSMTF about the decision not to publish the SCR and she had fully explained her reasons.

54. Cllr Usher stated he believed that Cllrs Anderson and Hayes were trying to peddle a story in the media of a cover up but this was a decision made by an expert for good reasons to protect an individual.

55. I asked Cllr Usher how he knew that Cllr Anderson knew the answers to the questions before he asked them at the Committee

meeting. He stated that he could not be sure that Cllr Anderson knew, as he had not been present at any other meetings with Cllr Anderson where the issue had been discussed. He stated that he would find it almost impossible to believe that Cllr Hayes and Cllr Anderson had not spoken about this issue before the OSC meeting.

**Cllr Mooney**

56. Cllr Mooney told me that she is the cabinet member responsible for children's services on the Council.

57. Cllr Mooney stated that at the OSC meeting on 14 November 2017 Cllrs Anderson and Hayes asked questions of Dr Atkinson which they had already received the answers to orally and in writing. She stated that the councillors raised the questions merely so that they could bring the issue into the public arena. Cllr Mooney stated that this is something that they often do in order to use things. She stated that Cllrs Anderson and Hayes misled the public because the headlines in the media were about a whitewash. She stated that the councillors had stated this on leaflets which had been circulated in Wallasey Village.

58. Cllr Mooney stated that she did have a word about the media coverage with Cllr Lewis. She explained that he had stated that he knew nothing about it. She stated that she had called him a liar in response. She stated that nothing like the media coverage would have gone on without Cllr Lewis knowing about it.

59. Cllr Mooney explained that Dr Atkinson had attended a meeting of the CSMTF on 20 September 2017 and had explained safeguarding services to members. She stated that Cllrs Hayes and Lewis were at that meeting. She stated that Dr Atkinson had explained what the SCR was, why it was not being published and that the Department for Education had approved that decision nationally because of the need to protect the confidentiality of the individual.

60. Cllr Mooney told me that she found the councillors actions sickening. She stated that Cllr Hayes knew that the standing orders of the CSMTF contained a confidentiality clause. She stated that Cllr

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Hayes knew what he was doing and used the case for political gains. She stated that she felt that was immoral.

### Evidence re comments at the CSMTF Meeting in September 2017

61. Cllr Hayes stated that at the CSMTF meeting in September 2017 Dr Atkinson said something herself to the effect that she knew that she would be accused of a cover up. He told me this after I had met with Dr Atkinson. Therefore, I put this to her by email. She responded stating that she "absolutely did not say what Councillor Hayes alleges."

62. I contacted all the other attendees at the meeting to ask them if they recalled Dr Atkinson saying something to this effect. Cllr Lewis stated that he did recall Dr Atkinson saying something along those lines. There were a number of other members from other groups at the meeting and a number of senior officers of the Council at the meeting including the chief executive and the director of children's services. No-one who was at the meeting other than Cllrs Hayes and Lewis could recall Dr Atkinson making a comment along the lines Cllr Hayes suggested.

### Findings of fact

63. There are many facts which are not in dispute.

64. It is not disputed that at the OSC meeting there was an exchange between Cllrs Anderson and Hayes and Dr Atkinson.

65. It is not disputed that Cllr Hayes issued a media release which stated;

*The decision to keep this report under lock and key will undoubtedly lead to accusations of a cover up*

66. It is not disputed that Cllr Lewis declared an interest at the Health and Wellbeing Board because of the complaint made by Dr Atkinson.

67. There is some dispute about the following:

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- (a) The extent of the knowledge or involvement which Cllr Anderson had of the responses provided by Dr Atkinson to Cllr Hayes about the SCR before the OSC meeting;
- (b) The extent of the knowledge or involvement which Cllr Anderson had with the media release/press coverage about the SCR;
- (c) The extent of the knowledge or involvement which Cllr Lewis had with the media release/press coverage about the SCR;
- (d) The extent of the knowledge or involvement which Cllr Lewis had with the actions of Cllrs Anderson or Hayes at the OSC meeting;
- (e) Whether Dr Atkinson said at the meeting of the CSMTF meeting in September 2017 something along the lines that she knew she would be accused of a cover up as a result of not publishing the SCR;
- (f) Whether the actions of Cllrs Anderson and Hayes at the OSC were an attack and/or belligerent and that they hijacked the meeting;

68. My findings on these issues are:

- (a) There is no evidence that Cllr Anderson was aware of the responses which Dr Atkinson had already provided to Cllr Hayes regarding the OSC, any suggestion that he did appears to be based purely on assumption with no evidence to support it. He and Cllr Hayes both denied that he was aware of this. My finding is that Cllr Anderson was not aware of the responses previously provided by Dr Atkinson to Cllr Hayes.
- (b) There is no evidence that Cllr Anderson was aware of the media release made by Cllr Hayes regarding the OSC prior to it being issued, any suggestion that he did or was involved appears to be based purely on assumption with no evidence to support it. He denied that he was aware of this. My finding is that

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Cllr Anderson was not aware of or involved in the comments made by Cllr Hayes to the media about the SCR prior to Cllr Hayes making them.

- (c) There is no evidence that Cllr Lewis was aware of the media release made by Cllr Hayes regarding the OSC prior to it being issued, any suggestion that he did or was involved appears to be based purely on assumption with no evidence to support it. He denied that he was aware of this. My finding is that Cllr Lewis was not aware of or involved in the comments made by Cllr Hayes to the media about the SCR prior to Cllr Hayes making them.
- (d) There is no evidence that Cllr Lewis was aware of the actions which Cllrs Anderson and Hayes proposed to take at the OSC, any suggestion that he did appears to be based purely on assumption with no evidence to support it. He and Cllr Hayes both denied that he was aware of this. My finding is that Cllr Lewis was not aware of let alone involved in the actions taken by Cllrs Anderson and Hayes at the OSC meeting.
- (e) On the balance of probabilities I find that Dr Atkinson did not make a comment along the lines suggested. This is because she is very clear that she did not say it. The only people who suggest she said it are Cllrs Lewis and Hayes who have a clear interest in seeking to suggest that it was not the conservative group who suggested a cover up and crucially no-one else at the meeting can recall the comment being made. Whilst the question was asked some time after the meeting it would seem likely that someone would recall a comment such as this which is a very unusual thing for someone to say about their own decision.
- (f) Having viewed the recording of the relevant part of the OSC meeting I find that Cllrs Anderson and Hayes were not belligerent. Their comments did not amount to an attack and they did not hijack the meeting. Their comments were put in a polite but firm fashion. The strongest comment was that of Cllr Anderson that he felt that it was "outrageous" that the

committee members would not be able to see the report. However, members are entitled to express views on matters within the remit of committees which they are members of and are able to do so in a robust fashion. This was not overly aggressive.

**Reasoning as to whether there is a breach of the Code.**

69. The relevant paragraph of the Code which I have considered during my investigation are paragraphs 1.1, 1.2 and 1.3.
70. The test in deciding whether or not there has been a breach of the code is objective: would a reasonable person aware of all the material facts and ignoring all immaterial factors consider that there has been a breach of the code?
71. The code of conduct only applies to the conduct of a member acting in an official capacity and not at any other time.
72. I have considered whether the councillors were acting in an official capacity at the relevant times. I consider that they were acting in an official capacity at all times in relation to the matters under investigation.
73. The complaints set out in paragraph 2 (i), (ii), (iii) and (v) relate to conduct at Council committee meetings so it is very clear that the actions of members at and in relation to those meetings are carried out in their capacity as councillors.
74. The complaint set out in paragraph 2 (iv) relates to comments made in the media by the councillors. The comments made by Cllr Hayes complained about relate to the SCR and he is explicit stating that he is making those comments as a councillor about council business. Therefore, in my view they are clearly made in his capacity as a councillor. He has not sought to argue that the comments were made in any other capacity.

75. I do not believe that there have been any failure to comply with the code in respect of the matters set out in paragraph 2 (i), (ii), (iii) and (v). The reasons for this are as follows;

- (i) As a result of my finding that Cllr Anderson did not know of the previous responses given by Dr Atkinson to Cllr Hayes he could not be said to be being disingenuous by asking questions to which he already knew the answer. Also his question was not about publication of the report but whether members of the committee could see the report which was a slightly different issue. Contrary to what Dr Atkinson said in her complaint Cllr Hayes did not actually ask her any questions at the meeting. He simply put on record his disagreement with her decision. None of this could amount to a breach of the Code. There was a considerable amount of information about the CSE in the public domain and the councillors did not say anything which was not properly able to be the subject of public scrutiny.
- (ii) I have found that Cllr Lewis had no involvement in the actions of Cllrs Anderson and Hayes at the OSC. A group leader cannot be held responsible for all the actions of his group and in any event my finding is that Cllrs Anderson and Hayes's actions at the OSC did not amount to a failure to comply with the Code in any event.
- (iii) it follows from my findings that Cllrs Anderson and Hayes's behaviour at the meeting was not an attack or belligerent and they did not hijack the meeting that there cannot have been a failure by them to comply with the Code as a result.
- (v) Cllr Lewis probably did not need to declare an interest at the Health and Wellbeing Board. It may be that he was concerned that if he was critical when that item was discussed there may be an allegation

that he was biased as a result of the complaint. If he felt able to participate then declaring the interest was unnecessary. It is of concern that Cllr Lewis chose to do this without seeking any advice. However, on balance I do not believe that there was a failure to comply with the Code. There was a potential bias issue and he did not disclose any details of the complaint.

76. I have considered whether Cllr Hayes's comments amount to a failure to comply with paragraph 1.1 and 1.2 of the Code. In my view they do. Councillor Hayes is an experienced and senior councillor. He would know the implications of the comments made in the press and that an independent chair would not easily be able to publicly respond to his comments.
77. In framing the comments in the way he did Cllr Hayes sought to put it in a way that implied that it was not him that was suggesting a cover up but that others would. This was disingenuous and it would be plain to anyone reading the comments that Cllr Hayes was suggesting that there may have been a cover up. Indeed the coverage in the Liverpool Echo on 29 November 2017 stated;

*And while the review has been withheld - leading to claims of a cover up by Wirral's Conservatives...*

78. The use of the term "cover up" suggest an attempt to conceal evidence of wrongdoing, error, incompetence or other embarrassing information. Cllr Hayes has provided no information to support any contention that there has been a cover up. To the contrary he has been provided with clear explanations as to why the report has not been published and also evidence to show that the decision was accepted by the National Panel. In making the comments he has impugned the integrity of the independent chair of the WCSB without providing any evidence to support such an accusation.

79. It is clearly within the rights of elected members to challenge decisions made by agencies. Such challenge can be robust but baseless accusations of impropriety, particularly where there has

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been scrutiny by a national independent body goes beyond what is reasonable scrutiny and challenge.

80. In considering whether there has been a failure to comply with paragraphs 1.1 and 1.2 of the Code, I have had regard to Article 10 of the European Convention on Human Rights which provides:

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

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

81. The right to freedom of expression is a crucially important right in a democratic society and may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference. If the comments amount to political expression then enhanced protection will apply.

82. The correct approach to considering the issue of freedom of expression in the context of a complaint of failure to comply with the Code was recently considered by the Administrative Court in the case of *Patrick Heesom v The Public Services Ombudsman for Wales and The Welsh Ministers* [2014] EWHC 1504 (Admin) ("the Heesom case"). This case related to the member conduct regime in Wales which is different from that in England. However, the analysis of the Court of the approach to dealing with Article 10 applies equally to the regime in England.

83. In the Heesom case the court confirmed that the correct approach to adopt is to assess the issue in three stages, firstly, leaving aside Article 10 and any similar common law considerations, was there a failure to comply with of the Code of Conduct? Secondly, if so, would such a finding on the face of it amount a breach of Article 10? And thirdly if so, was the restriction involved in the finding justified

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under Article 10 (2) as “necessary in a democratic society” responding to a “pressing social need” and proportionate to a legitimate aim pursued by the state? If the enhanced protection applies, the threshold for the justification will be significantly higher.

84. In relation to the first stage, I have already concluded that the comments made by Cllr Hayes amount to a failure to comply with the Code as he has failed to show respect to Dr Atkinson.
85. There can be no doubt that a finding of failure of Cllr Hayes to comply with the Code would, on the face of it, amount to a breach of his rights under Article 10. Therefore, it is necessary to consider whether or not concluding that there has been a failure to comply with the Code would impair Cllr Hayes’s right to freedom of expression more than is necessary to accomplish the legislative objective of the Code.
86. In the Heesom case, the court recognised the fact that there must be a mutual bond of trust between officers and members. Although Dr Atkinson is independent of the Council, as an important partner with statutory responsibilities it is crucial for the proper performance of partnership safeguarding obligations across all agencies in Wirral that there is a constructive relationship based on mutual trust between the partners.
87. The Court in the Heesom case also recognised that the term ‘political expression’ has a broad application and that comments by politicians about the conduct of officers can amount to political expression. However, the Court also recognised that “civil servants” or officers of public authorities, whilst open to criticism, do not lay themselves open to criticism to the same extent as politicians. The Court recognised the need to balance the interests of freedom of discussion of matters in the public interest against the requirement to protect public servants from unjustifiable abuse and criticism.
88. In the current case it must be recognised that Dr Atkinson is a senior and very experienced public figure. It is legitimate for politicians, the press and the public to hold her to account for what she does.

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The comments which Cllr Hayes made were, in my opinion, political comments and benefit from the enhanced protection.

89. However, in my view, this needs to be balanced against the right of Dr Atkinson and others to be protected from unjustified public comments. It is one thing for Cllr Hayes to criticise the decision not to publish the CSR and to challenge that decision but in saying what he did about a "cover up" he was in my view excessive and entirely unjustified, this is particular so given that he knew that the decision had been subject to a review by an independent national body.

### Finding

90. My finding is that;

- a. there has been a failure to comply with the Code by Cllr Hayes in respect of his comments reported in the press (as set out in paragraph 2 v above)
- b. that there has been no failure to comply with the Code by Cllr Hayes in respect of the other allegations in the complaint; and
- c. that there has been no failure to comply with the Code by Cllrs Anderson or Lewis.

91. I am sending a copy of this report to Vicki Shaw, the Deputy Monitoring Officer of the Council.

### Comments on the Draft Report

92. I sent the draft report to the Cllrs Anderson, Hayes and Lewis and to Dr Atkinson for their comments.

93. I received no response from Cllr Anderson.

94. Dr Atkinson made comments on 1 June 2018. She stated that the report was "finely judged and balanced." She made a comment on paragraph 14. She stated that the paragraph was not sufficiently contextualised as it did not refer to the fact that she made her decision not to publish was based on legal advice and backed up by the Department for Education. I have not amended the report as a

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result of this comment. Paragraph 14 is setting out the background to the matter and I believe that it is clear from the report as a whole on what basis the decision not to publish was made and that it was accepted by the independent panel. Dr Atkinson also pointed out a typo in paragraph 75 which has been corrected.

95. Cllr Hayes contacted me on 1 June 2018 requesting copies of all the supporting evidence referred to in the draft report to enable him to respond. I advised him that the purpose of sending a draft report is to enable the parties to comment on any factual errors in the report and that I never provide all of the supporting evidence to the parties at that stage. Cllr Hayes did not accept that response but did make comments by email on 14 June 2016. His comments and my responses are set out below:

Comment – You have in my opinion correctly summarised Dr Atkinson’s complaint insofar as it refers to my conduct at a public meeting. It is noted that your report is not limited to this and I therefore contend that I have not been given a full opportunity to speak to the alleged breach of the code which you have construed in your report, i.e. my factual comments to the press. You are aware that at the interview stage I felt there was an unfairness in the process as Dr Atkinson’s complaint was so wide ranging (although limited to what occurred during the meeting) and not in any way particularised, that I was unable to adequately prepare to defend myself against them. I contend that this unfairness has been compounded by your report which finds a breach to have occurred which was not sufficiently identified by the complainant.

Response – it was perfectly clear from Dr Atkinson’s complaint that she was complaining amongst other things about the comments made in the press. The complaint which was summarised in a letter which the Council’s monitoring officer sent to each of the members complained about stated, “Because the meeting was in public these 2 Members subsequently decided that approaching the press to allege a cover up and “secrecy” on my part was appropriate and justified....” Therefore, it was clear to Cllr Hayes at the outset that this formed part of the complaint against him and he had every opportunity to address this in the investigation. He did not provide



any evidence to support the suggestion that there would be accusations of a cover up, other than the suggestion that this first came from Dr Atkinson herself. Therefore, I do not see any reason to amend my report as a result of this comment.

Comment– Following my decision not to seek election as my group's spokesperson on Children's Services at our AGM in May I no longer hold this post.

Response – I have amended the report accordingly.

Comment – You have noted members of the CSMTF but have not noted Cllr Usher nor the then acting Director of Children's Services who was present and also the Head of Social Services who I believe was in attendance.

Response – the attendees have been taken from details provided by the Council from the invitation, I understand that no formal minutes of the meeting were taken. I have not listed every single person I contacted as that seemed unnecessary. Cllr Usher was contacted as were all the officers that the Council indicated were present.

Response – you correctly note that contrary to your summary of Dr Atkinson's evidence I did not ask questions of her on her decision not to publish the report at the meeting, I did not 'take up the sword.' Her recollection of the meeting – the basis of her complaint is, in this regard, inaccurate.

Comment – this is, in part, why I have found no failure to comply with the code arising from Cllr Hayes's behaviour at the meeting.

Comment – very peculiarly Dr Atkinson seems to have provided you with an election leaflet. I cannot comment much on this as you have chosen not to disclose the same to me but I reserve the right to pose further questions around the source of this material and how it may have come into the complainant's custody.

Response – I am not sure why this is very peculiar, presumably election leaflets are intended to be read widely and are not secret. I

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have not made any findings in relation to the leaflet as it does not repeat the allegations made in the press so it does not form the basis of any finding of failure to comply with the code. This is why I did not share it with Cllr Hayes.

Comment – at 43 there is a typographical error insofar as you have written ‘tated’ rather than ‘stated’.

Response – this has been corrected.

Comment – in terms of my evidence I note that in its summary you have omitted to state that I did mention to you at interview that I was perplexed by Dr Atkinson’s referring to the feelings of the former cabinet member and the former Director in her complaint. I note that the report seems to suggest that no questions were put to the complainant about this and reserve the right to raise this further in the process.

Response – given that no finding of failure to comply with the code was made in respect of this it has no relevance to the outcome. I did put questions to Dr Atkinson on this point which she responded to. However, as it had no impact on my findings I did not make specific reference to it in my report.

Comment – I fully and unequivocally maintain that Dr Atkinson made the comments she did at the CSMTF around the likelihood of accusations of a cover up. I note you have asked other people present at the meeting for their view but you have failed to provide me with the relevant correspondence so that I may be satisfied of the report’s accuracy in this regard. You will note that in the report you seem to fail to acknowledge the presence of a further two (perhaps three) people at the meeting. You will recall that at interview I suggested that the complainant mentioned Kevin MacCallum during her comments which she denies making. I note that Mr MacCallum does not feature in your report.

Response – I contacted everyone that the Council’s records show were at the meeting and believe that constitutes everyone who was present. It does not appear to be being suggested that Mr MacCallum

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was at the meeting so he would not have any evidence of what was or was not said at the meeting.

Comment – I note the evidence of Cllr Mooney and am shocked by the language she uses, in my opinion describing the actions of others as 'sickening' and 'immoral' is an aberration from the duty to show respect. It stands in sharp contrast with the language I have used. I acknowledge my comments here may stray from what is appropriate at this stage but I reserve the right to make a counter complaint resulting from the aforementioned intemperate and insulting language.

Response – it is a matter for Cllr Hayes whether he wishes to make a complaint about Cllr Mooney or not. Her expression of opinion did not influence the outcome of my report as I found that there was no breach of the code in relation to Cllrs Hayes and Anderson's conduct at the OSC meeting.

Comment – I note that nowhere in your report do you mention the letter from the Minister to my colleague Cllr Lewis, which I provided upon your request. I feel this is crucial as it fails to 'endorse' the complainant's decision. I also note that the national panel fails to endorse the decision but 'accepts' it.

Response – I did not refer to this letter because I did not feel it added anything to the evidence. The letter merely states that the DfE is not involved in the decision making and does not intervene in local matters. It certainly could not be said to in any way support Cllr Hayes assertion that people were likely to conclude that there was a cover up. If anything the letter marginally undermines Cllr Hayes case it certainly does not assist it. For the sake of completeness I append it as SG17.

96. Cllr Lewis responded on 14 June 2016. His comments and my responses are set out below:

Comment – Pt 43, p11: 'stated' not 'tated'

Response – amended.

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Comment – Pt 44, p11: in view of the words used in p58, p14 (... 'she did have a word'...), I would request that my description of the encounter when we spoke specifically refers to her aggressive and verbally abusive conduct. This was referred to in my email to Cllr. Mooney the day after the encounter which has never been challenged by her.

Response – I do not see any need to amend my report in relation to this comment.

Comment – Pt 68 (e): While Cllr. Hayes and I may have an interest in referring to her comments – not least because she did make the comment– the inference is that we have lied in order to support our case. I could equally argue that Mrs Atkinson and those who feel her complaint is justified also have an interest in seeking to deny her comments re 'cover up'.

Response – there are conflicting reports of what was said. I have set out in my report my reasons why I have reached the conclusion I have and there is nothing in Cllr Lewis's comments which causes me to alter my findings which were made on the balance of probabilities.

Comment – Pt 90 (c): as previously mentioned – Anderson and Lewis not Anderson and Hayes.

Response – this relates to an incorrect reference which I had already advised the parties I would amend and has been amended in the final report.

Comment – I would also appreciate copies of the supporting evidence – not least the item referred to in pt 26 (p8) 'copy of a leaflet issued by Wirral Conservatives'

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Response – I have advised Cllr Lewis that my final report together with all of the supporting evidence will be provided to the Council who will then decide how the matter should proceed.

**Simon Goacher, Partner  
Weightmans LLP  
18 June 2018**

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### Schedule of evidence

SG1	Wirral Borough Council Code of Conduct
SG2	Wirral Borough Council arrangements for dealing with complaints about members
SG3	Record of Interview of Dr Atkinson
SG4	Record of Interview of Cllr Anderson
SG5	Record of Interview of Cllr Lewis
SG6	Record of Interview of Cllr Hayes
SG7	Record of Interview of Cllr Mooney
SG8	Record of Interview of Cllr Usher
SG9	Letter of Complaint
SG10	Letter from Complainant to Cllr Hayes of 03/10/17
SG11	Letter from Cllr Anderson in response to the complaint
SG12	Leaflet issued by Wallasey Conservatives
SG13	Press coverage
SG14	Email from Dr Atkinson
SG15	Email from Cllr Lewis
SG16	Table of responses
SG 17	Letter from DfE to Cllr Lewis dated 6 December 2017

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