

East Staffordshire Borough Council

Weightmans reference: SG/893911/1

**Report of an investigation into an allegation concerning the conduct of
Councillor Raymond Faulkner**

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Weightmans

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Executive Summary

1. Three complaints have been made that Councillor Raymond Faulkner failed to comply with the Council's Code of Conduct ("the Code") as a result of comments that he made at a meeting of the shadow board of Burton and South Derbyshire University Technical College ("the UTC") of 26 January 2016 and subsequently in an email of 10 February 2016 to the Vice-chair of the UTC.
2. The complainants are as follows:
 - Everton Burke, Chair of Corporation of Burton and South Derbyshire College ("BSDC")
 - John Beaty, Chair of the UTC and Vice-principal of BSDC
 - Dr Deborah Price, Burton Hospitals NHS Foundation Trust and Vice-chair of the UTC.
3. The complaints consist of the following allegations:
 - At the meeting of the shadow board of the UTC on 26 January 2016, Councillor Faulkner made comments about the likely outcome of the Stoke and Staffordshire review of further education (FE) possibly leading to there being one FE college in the Staffordshire and Stoke-on-Trent area (Allegation 1);
 - that Councillor Faulkner sent an email to Dr Deborah Price on 10 February 2016, which stated, "*Please be aware the Post 16 Area Review is now underway in Stoke/Staffs and although the UTC is not within the remit of the review team, Burton and South Derbyshire College most certainly is. Therefore, it is conceivable in the near future, the College may not exist in its present format, nor with its existing management team. As a consequence, the decisions within the UTC may come under intense scrutiny, hence my desire to protect you both from any criticism.*" (Allegation 2)

4. I spoke to all of the complainants. I also interviewed Councillor Faulkner and Sal Khan, a Head of Service and the section 151 officer for the Council.
5. I concluded that Councillor Faulkner failed to comply with the Code in respect of allegation 2 only.

Relevant Legislation

6. The Localism Act 2011 repealed and replaced the old legislation governing standards of conduct for elected members with effect from July 2012. Under the 2011 Act, the Council:
 - a. is under a duty to promote and maintain high standards of conduct; and
 - 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 has adopted a Code of Conduct ("the Code") under the Localism Act which applied at all material times (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:
 - 2.3 *Where a councillor acts as a representative of the council.*
 - 2.3.1 *On any other body, they must, when acting for that other body, comply with the Council's code of conduct except insofar as it*

conflicts with any other lawful obligations to which that other body may be subject.

- 3.1. *Councillors must treat others with respect.*
- 3.9. *Councillors must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.*
- 3.10. *Councillors must not use or attempt to use their position as a councillor improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.*

Member's official details

- 10. Councillor Faulkner has been a member of the Council since May 2015.

Summary of the Facts and Evidence gathered

Background

- 11. Councillor Faulkner was nominated in June 2015 by the Council to become a member of the shadow board of the UTC. In addition to this role and his role as a councillor, he was the Chair of the Board of South Staffordshire College ("SSC"), a role which he has held since 2009.
- 12. A review of FE in Stoke and South Staffordshire began in January 2016. As Chair of SSC, Councillor Faulkner sat on the review group which was made up of the Principals and Chairs of each of the FE colleges in Staffordshire and Stoke-on-Trent.
- 13. Councillor Faulkner sought some advice from the clerk to SSC when it was suggested that he might be nominated to the shadow board of the UTC. Councillor Faulkner was satisfied that there was no conflict of interest in his carrying out the roles of chair of SSC and council nominated shadow board member of the UTC.
- 14. SSC produced a document at an early stage of the FE review. This document was entitled, "A Proposition for a Sustainable FE

Infrastructure in Stoke-on-Trent and Staffordshire.” It set out a number of options but concluded, “Therefore, for reasons of long term financial stability and ability to best meet the areas academic and vocational needs on a sufficient scale, our preferred solution would be a unified Further Education College for Stoke-on-Trent and Staffordshire.”

15. On 26 January a meeting of the UTC shadow board took the place. A further “meeting” took place on 5 February 2016 via a conference call as not all members could attend a formal board meeting. At these meetings, issues concerning the proposals to prepare the UTC to open in the autumn of 2016 were discussed. It is not the purpose of this investigation to look at these issues or examine the preparations for the opening of the UTC. It is sufficient to say for the purposes of understanding the context of the complaints against Councillor Faulkner that things were not running entirely smoothly at that point and Councillor Faulkner had some concerns about the governance arrangements in place.
16. At the board meeting on 26 January 2016, Councillor Faulkner raised the FE area review which had begun. He stated that a possible outcome of the review could be that there would be one FE college for the Staffordshire and Stoke-on-Trent areas.
17. There was a further informal meeting of the UTC shadow board on 5 February 2016.
18. Councillor Faulkner had concerns about the lack of minutes for decisions made at shadow board meetings. He raised this with the Chair and Vice-chair of the shadow board. As a result of these concerns, he mailed Dr Price, in her capacity as Vice-chair, on 10 February 2016 and stated:

Please be aware the Post 16 Area Review is now underway in Stoke/Staffs and although the UTC is not within the remit of the review team, Burton and South Derbyshire College most certainly is. Therefore, it is conceivable in the near future, the College may not exist in its present format, nor with its existing management team. As

a consequence the decisions within the UTC may come under intense scrutiny, hence my desire to protect you both from any criticism.

The evidence obtained

19. The following witnesses were interviewed during the investigation:
 - Everton Burke (SG3)
 - John Beaty (SG4)
 - Dr Deborah Price (SG5)
 - Sal Khan (SG6)
 - Councillor Faulkner (SG7)
20. All have signed written records of their interviews.
21. The Council's monitoring officer, Angela Wakefield, described the process leading to my instructions and supplied me with relevant documentation, including the complaint forms (SG8).
22. I obtained the following documentation in the course of the review
 - Email from Councillor Faulkner to Dr Deborah Price date 10 February 2016 (SG9).
 - A proposition for the sustainable FE infrastructure in Stoke-on-Trent and Staffordshire (SG10).
 - Report produced by Sal Khan (SG11).
 - Emails sent by Councillor Faulkner provided by Sal Khan (SG12)
 - Members ICT protocol (SG13).
 - Extract from the minutes of the UTC shadow board meeting of 26 January 2016 (SG14).

Evidence of Everton Burke

23. Mr Burke made a complaint against Councillor Faulkner. I met with him on 6 April 2016. Mr Burke told me that he is the Chair of Corporation of BSDC. Mr Burke was not present at the UTC shadow board meetings and had no involvement in the UTC. He explained that he was made aware of the email which Councillor Faulkner sent to Dr Price on 10 February 2016 and took exception to the statement that it was,

“conceivable in the near future, the College may not exist in its present format, nor with its existing management team.”

24. Mr Burke told me that he believed that SSC was more at risk than any of the other colleges in the review, save for possibly one other. He stated that Councillor Faulkner could have simply brought the fact that the area review was taking place to the attention of the UTC Board. He stated that to make specific reference to the possibility that the college and its management may not exist in the future was unnecessary mischief making.
25. Mr Burke told me that he believed that Councillor Faulkner was seeking to influence others and promote SSC's position by making these comments. He stated that, by raising these suspicions with partners, it creates a ripple effect as partners talk to others and this could undermine the college to the benefit of SSC.
26. Mr Burke explained that BSDC was just one of five or six partners in the UTC. He stated that he did not believe that the college had any greater weight on the UTC than the other stakeholders.

Evidence of John Beaty

27. Mr Beaty made a complaint against Councillor Faulkner. I met with Mr Beaty on 1 April 2016. He told me that he is the chair of the shadow board of the UTC and also Vice-principal of BSDC. He explained the FE area review process. He told me that at the meeting of the shadow board of the UTC on 26 January 2016, Councillor Faulkner began talking about the area review and stated that the outcome could be one FE college for the whole of Staffordshire and Stoke-on-Trent, at most two.
28. Mr Beaty stated that he took issue with Councillor Faulkner's comments at the meeting because they were irrelevant to the business being discussed at the meeting which was about the UTC and they pre-empted the outcome of the FE review which had only just begun.

29. Mr Beaty told me that not everyone on the shadow board had a background in education and so they would not necessarily have appreciated the implications of Councillor Faulkner's comments.
30. Mr Beaty told me that his complaint also related to the contents of an email which Councillor Faulkner had sent to Dr Price on 10 February 2016. He told me that Councillor Faulkner had expressed concerns about the minutes of the shadow board meetings. Mr Beaty stated that Dr Price had been a company secretary and confirmed that she was happy with the way in which meetings were minuted. Mr Beaty expressed his concern that the comments made by Councillor Faulkner in the email did not seem to relate to his role as a member of the shadow board, but seemed more related to his role as Chair of the board of SSC.

Evidence of Dr Deborah Price

31. Dr Price made a complaint about Councillor Faulkner. I met with her on 6 April 2016. She explained to me that she is employed by the Burton Hospitals NHS Foundation Trust which is a partner in the UTC. She told me that she is the Vice-chair of the shadow board of the UTC as a result.
32. Dr Price told me that the UTC had been facing a number of issues and as a result there had been a number of informal emergency meetings of the shadow board to discuss these issues. She stated that on occasions, there was a conscious decision not to produce minutes of meetings because of the highly confidential nature of some of the issues discussed.
33. Dr Price stated that Councillor Faulkner raised his concerns about the fact that not all meetings were minuted. She told me that in itself that was not an issue but that he had raised issues about the FE review and the future of BSDC which were inappropriate and out of context. She stated that the comments which Councillor Faulkner made in his email of 10 February 2016 to her were speculative and effectively criticising John Beaty. She also stated that the email was suggesting that the UTC was reliant on the management of BSDC but there were a number of partners involved in the UTC.

Evidence of Sal Khan

34. Sal Khan is a Head of Service employed by the Council and its section 151 officer. I met with him on 27 April 2016. I met with him because he had carried out an investigation into Councillor Faulkner's use of the Council's email system. I had been provided with a copy of the report before the meeting (SG11).
35. Mr Khan confirmed that he had investigated Councillor Faulkner's use of the email system as a result of the complaints which had been made by Mr Burke, Mr Beaty and Dr Price. He explained that as a result of the fact these complaints expressed concern about emails sent by Councillor Faulkner from his council email account, he looked into the use of that account.
36. Mr Khan told me that he found that Councillor Faulkner had sent two emails which he had received from the UTC to SSC. These emails included attachments which were a skills audit form and a register of interest form.
37. Mr Khan also told me that he had identified an email which contained references to the UTC Board and its actions which Councillor Faulkner sent to his personal email address (an fmail address) on 24 February 2016 at 12:53. Mr Khan told me that there was no reason why Councillor Faulkner would need to send an email about Council business to his personal email address and that, in doing so, he had sent information into a non-secure environment. Mr Khan told me that Councillor Faulkner had later forwarded this email from his council email address to Councillors Ackroyd and Grosvenor.
38. Mr Khan also supplied me with the emails referred to in his report. This included an email which Councillor Faulkner had sent to other conservative councillors on 3 December 2015 about the UTC.

Evidence of Councillor Faulkner

39. Councillor Faulkner is the member who is the subject of the complaint. I met with him twice. He confirmed that he received induction training

when he became a councillor which included training on the Code. He confirmed that he was aware of the requirement that he must comply with the Code at all times whilst acting as a councillor.

40. Councillor Faulkner explained that he is very passionate about education and improving the life chances of young people. He stated that he saw the UTC as a great opportunity to assist the learners within the Borough and he thought he had the skills to assist with that.
41. He told me that he was concerned about proposals in relation to the sponsorship of the UTC which were being discussed at the meetings of 26 January and 5 February. He felt that appropriate due diligence was not being carried out. He expressed his concern about that fact that the curriculum had not been prepared and would not be ready for when the UTC was due to open in September 2016. He also expressed concern about the fact that the principal designate was no longer employed by the UTC but no official comment had been made about this.
42. Councillor Faulkner told me that he was concerned about the fact that there were no official minutes of the meeting of 26 January 2016 and no note of those attending the meeting of 5 February.
43. Councillor Faulkner told me that he felt exposed by the fact that the Chair and Vice-chair of the UTC were acting on decisions taken at board meetings but which had not been minuted. He stated that in his email he had said that the management of Burton and South Derbyshire College "may" change as a result of the review, not that it would. He stated that he referred to this to emphasise the need to ensure that records were kept as the decisions were likely to come under scrutiny.
44. I met with Councillor Faulkner a second time to discuss the findings of Mr Khan's report. He told me that he had sent the skills audit and register of interest forms to SSC because they were largely requesting the same information which he had supplied to SSC and it would be more efficient to ask SSC to complete the forms using the information which it held about him rather than starting from scratch.

45. In relation to the email that he had sent to his personal email address on 24 February 2016, Councillor Faulkner told me that he had been typing the email for over two and a half hours and he was intending to send it to Councillor Ackroyd because she was taking over from Councillor Faulkner as the nominated representative of the Council on the UTC shadow board and Councillor Grosvenor as the leader of the Council. Councillor Faulkner explained that he was unable to complete this and because he did not want to lose all his work he sent it to his home email address so that he could finish it later. Councillor Faulkner explained that he did not think about sending it to himself at his work email address.
46. Councillor Faulkner strongly denied that in sending his email to Dr Price of 10 February 2016, he was seeking to exert any improper influence over the FE review process. He stated it was sent only to Dr Price and not to anyone else. He stated that the comments were factually accurate and he was merely trying to make Dr Price and John Beaty aware of the position they were putting themselves in by undertaking work which had not been formally minuted as being approved by the shadow board.
47. Following the meeting with Councillor Faulkner, he emailed me on 20 June 2016. In his email he stated:

With regard to the email sent to my personal email address I stand by my statement:- The email was sent to my personal email address as I didn't want to lose a lot of work and I was unable to finish the report prior to leaving home for a meeting. I did not know how to save to a draft (I still don't) and sending it to my council email address never occurred to me until you mentioned it. I sent it to my personal email address and finished the report later and forwarded it to two named individuals on a server I have found to be secure for over 5 years. I have up to date and comprehensive security systems on my machine.

I would also like to place on record and added to my statements that in regard to the South Staffordshire College submission to the FE Area Review, this was a document agreed by South Staffordshire Board and as Chair it was my duty to present to the Area Review. To believe the document would have any greater impact upon the review than any

other college submission is a mistake and a complete misrepresentation of the facts. In fact no original submission to the first steering group was actioned without significant amendments as directed by the FE Commissioner, Sir David Collins.

To indicate my comments to the UTC Board and in my emails to the Chair and Deputy Chair of the UTC could have any bearing upon the outcome of the FE Area Review is not credible. The Chair (John Beaty) attended one meeting of the review in place of the Principal of B&SDC (Dawn Ward) and no mention of my comments were made. For them to affect the review process my comments would have to be made public and I deliberately made them privately, I would therefore ask how it would be possible for my comments to effect the review? To suggest I made them to effect the review is in my view, mischief making as it can be shown to be demonstrably not the case.

48. Councillor Faulkner emailed me again on 22 June 2016. In that email he stated:

With regard to the DLL Councillors email (I am sorry I had not picked this up earlier), I was asked to update Conservative Councillors upon the latest news within my remit, without disclosing confidentialities. It was my impression that members on outside bodies were periodically expected to update members with the latest information. I had also been requested to update the group upon my thoughts on the pending review. This was an honest appraisal of the direction of travel from my involvement with the colleges participating in the pre review meetings. There is a comment regarding the SCC contemplating reviewing schools sixth forms across Staffordshire within the review, this is included for two reasons: – First this information had been relayed to me by Councillor Adams and the Leader of SCC Councillor Atkins. Second, ESBC Conservative Councillors had asked me if schools in the area may be affected. As it transpires the schools review did not take place alongside the FE review and colleges in Staffordshire and Stoke-on-Trent did not see a one college solution as the best for the area.

Findings of fact

49. There is no significant dispute about the comments which were made by Councillor Faulkner at the meeting of 26 January 2016 or in his email of 10 February 2016.
50. Councillor Faulkner made reference to the FE area review at the meeting of the UTC shadow board on 26 January 2016 and made reference to a potential outcome being a single FE college for the Staffordshire and Stoke-on-Trent area.
51. Councillor Faulkner sent an email to Dr Price on 10 February 2016 which stated:

Please be aware the Post 16 Area Review is now underway in Stoke/Staffs and although the UTC is not within the remit of the review team, Burton and South Derbyshire College most certainly is. Therefore, it is conceivable in the near future, the College may not exist in its present format, nor with its existing management team. As a consequence the decisions within the UTC may come under intense scrutiny, hence my desire to protect you both from any criticism.

Reasoning as to whether there have been breaches of the Code.

52. The relevant paragraphs of the Code which I have considered during my investigation are paragraphs 2.3, 3.2, 3.9 and 3.10.
53. 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?
54. The code of conduct only applies to the conduct of a member acting in an official capacity and not at any other time. This means when a member is:-
 - a. conducting the business of their authority (which includes the business of the office to which they are elected or appointed);
or

- b. acting, claiming to act or giving the impression that they are acting as a representative of their authority.

55. I have considered whether Councillor Faulkner was acting in an official capacity at the relevant times. I consider that he was acting in an official capacity at all times in relation to the matters under investigation. He was acting as a member of the shadow board of the UTC. This was a role which he was only carrying out because he had been nominated to it by the Council. Paragraph 2.3 of the Code makes it clear that the Code applies where a councillor acts as a Council representative on another body (save in limited circumstances which do not apply here).
56. I have considered whether Councillor Faulkner's comments in relation to allegations 1 and 2 amount to a failure to comply with paragraphs 3.1, 3.9 and 3.10 of the Code.
57. In my view in respect of allegation 1 they do not. I fully accept the observations of Mr Beaty that the comments Councillor Faulkner made at the meeting were irrelevant to the issues being discussed and in the context of the FE review were incredibly premature. However, I do not think that the comments went so far as to demonstrate a lack of respect on the part of Councillor Faulkner for others in the meeting, particularly Mr Beaty.
58. The term respect is defined as to hold in esteem or honour or to show regard or consideration for. In relation to the comments Councillor Faulkner made at the meeting I do not believe that they could be said to have failed to show regard or consideration for the others present even if they were irrelevant and unnecessary.
59. Whilst Councillor Faulkner does appear to have been promoting an SSC agenda in the UTC shadow board meeting, I do not think that this is sufficient to say that he was seeking to use his position to secure an improper advantage for the college. It seems unlikely that the other members present (who were not particularly embroiled in the political considerations of the FE sector in Staffordshire and Stoke-on-Trent) would be in a position to influence the outcome of the review. This is supported by the evidence of Mr Beaty himself that Councillor

Faulkner's comments went largely unnoticed by others present at the meeting except him.

60. I do not think that in saying what he did, Councillor Faulkner can be said to have brought himself or his office in to disrepute. In order to do so would require what he said to have led to people to think less of his office or the Council as a whole. Whilst those present may well have questioned the wisdom or appropriateness of raising this issue, I do not believe that, objectively, it could be said that the effect of it would have been to bring the council or Councillor Faulkner's office into disrepute.
61. In my view, in respect of allegation 2, the comments made by Councillor Faulkner in his email of 10 February 2016 **do amount to a failure to comply with the Code.**
62. I have reached this conclusion because I believe that it was totally unnecessary for Councillor Faulkner to have raised the possibility of the outcome of the FE review potentially being BSDC not existing and in doing so, he personalised the comments to Mr Beaty and failed to show him respect.
63. Councillor Faulkner was well within his rights to raise concerns about the process being followed by the Board, but he could have quite easily made his point without making this unnecessary reference and one which he would have known from the response when he raised it (in a slightly less incendiary way) at the earlier Board meeting on 26 January 2016.
64. The fact that he raised this issue in this way and that it seemed very much aligned to the agenda which was being promoted by SSC in the document it produced was bound to lead to concerns that Councillor Faulkner was blurring the boundaries between his respective roles as chair of SSC and a council nominated member of the UTC shadow board.
65. Though, in my view, the comments made in the email and the way in which they were made failed to show respect to Mr Beaty and the management team of BSDC, I do not believe that he was seeking to use his position to obtain an advantage for SSC. As he pointed out, the

email was sent only to Dr Price and was very unlikely to have any impact on the outcome of the FE review.

66. I also do not believe that the email could have been said to have brought Councillor Faulkner or his office into disrepute. The email was sent only to Dr Price and it is unlikely that its contents, even if they were circulated more widely, would lead people to think less of the Council.
67. In considering whether there has been a failure to comply with 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,*
68. 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.
69. 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.

70. 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 to a breach of Article 10? And thirdly if so, was the restriction involved in the finding justified 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.
71. In relation to the first stage, I have already concluded that the comments made by Councillor Faulkner in his email to Dr Price (allegation 2) do amount to a failure to comply with the Code.
72. I do believe that a finding of failure of Councillor Faulkner to comply with the Code would, amount to an interference with his rights under Article 10.
73. Therefore, it is necessary to consider whether or not concluding that there has been a failure to comply with the Code would impair Councillor Faulkner's right to freedom of expression more than is necessary to accomplish the legislative objective of the Code.
74. In my view it would not. As a councillor, Councillor Faulkner has a responsibility to the public, partners and to the Council to demonstrate high standards of conduct and behaviour. The comments which Councillor Faulkner made were not intended to be comments about political issues, they were sent to a partner organisation and were clearly disrespectful to the current management of BSDC in general and Mr Beaty in particular. The public interest in maintaining confidence in the behaviour of councillors outweighs Councillor Faulkner's rights under Article 10 and the limited sanctions applied for any failure to comply with code are justified and proportionate.
75. In the course of the investigation certain additional matters arose which did not form part of the original complaint. These related to Councillor Faulkner's use of his council email account which were the subject of Mr Khan's investigation. In short the issues are:

- Sending emails containing confidential information to his personal email address;
- sending confidential information sent to him by BSDC as a UTC shadow board member to SSC; and
- sending confidential information to other members.

76. I have carefully considered these issues and the explanations that Councillor Faulkner has given. I do not believe that Councillor Faulkner's actions amount to any further failure to comply with the Code for the reasons set out below.

77. I accept Councillor Faulkner's evidence about why he forwarded an email with confidential information to his home email address. He should not have done this because confidential information should not be sent out of the Council's secure system to a less secure environment. However, Councillor Faulkner clearly has limited knowledge of IT and was unaware of how to save the information he had typed as a word document so as not to lose it and was unaware that he could have saved the email as a draft or sent it to his council email address, so retaining the information. In my view in acting as he did Councillor Faulkner did not fail to comply with the relevant paragraphs of the Code. However, the Council may consider whether it should;

- Take steps to remind councillors about the requirements to keep information secure;
- strengthen the members ICT protocol to make it clear that council information should not be sent to Councillors personal email addresses; and
- review the IT skills and training of members.

78. I also accept Councillor Faulkner's evidence about why he forwarded the skills audit and register of interests form. Although the emails to him attaching those documents contained standard confidentiality clauses, they were not documents which contained any confidential information and for that reason, whilst it would have been preferable if Councillor Faulkner had sought consent from BDSC to send the

documents to SSC I do not believe that his failure to do so amounts to a failure to comply with the Code.

79. I also accept Councillor Faulkner's evidence about sending information to his fellow councillor to keep them advised of progress on issues relating to the UTC.

Finding

80. My finding is that there has been a failure to comply with the Council's Code of Conduct by Councillor Faulkner in respect of **allegation 2 only**.
81. I am sending a copy of this report to Angela Wakefield, the Monitoring Officer of the Council.

Comments on the Draft Report

82. I sent the draft report to the complainants and Councillor Faulkner for their comments.
83. Mr Beaty and Dr Price both responded stating that they felt that paragraph 15 suggested a criticism of the shadow board of the UTC as it states that things were not running entirely smoothly. Mr Beaty also felt that the statement in that paragraph that Councillor Faulkner had some concerns about the governance in place also suggested a criticism.
84. I have carefully considered these comments but have decided that no amendment to the report is necessary. The purpose of my investigation is not to look at the activities of the shadow board of the UTC. In stating that things were not going entirely smoothly that is not casting any blame on the shadow board or anyone else. It is clear that Councillor Faulkner had and still has concerns over governance and his comments on the draft report express the view that I have not given those sufficient prominence. In referring to them I am not suggesting that they were valid concerns or indeed that they were not, it has not been necessary for me to form a view on that point in order to reach the findings which I have.

85. Councillor Faulkner sent me detailed comments on the draft report (SG15). Councillor Faulkner accepts my findings in relation to allegations 1 and 3 where I found no failure to comply with the Code. In respect of allegation 2 where I did find a failure to comply with the Code he states that statements which he made have been ignored misstated or misrepresented.

86. The summary of Councillor Faulkner's evidence is intended to be a summary not a verbatim recital of his evidence. Copies of the records of the interviews held with Councillor Faulkner are appended to the report.

87. Many of his points are points of detail which have no relevance to my findings. In relation to paragraph 15 he states that the shadow board meeting was not held by conference call but some people who could not attend were updated later by the chair by telephone. The reference in that paragraph was taken from the evidence of Dr Price who was the secretary of the Shadow Board. There does seem some confusion between the witnesses about exactly the sequence of events at these meetings but that does not have any impact on my findings as it is not materially relevant to the question of whether or not there has been a failure by Councillor Faulkner to comply with the Code.

88. Councillor Faulkner states that his concerns about governance were "major". I do not think that the report needs to be amended to reflect this. His comments are included as an attachment and the issue which led me to find as I did was the way in which he expressed his concerns. In my view this was not warranted and it does not matter how major those concerns the way in which they were expressed was not justified.

89. Councillor Faulkner states that the quote taken from his email is used out of context. The full email is attached to my report (SG9). In my view it is perfectly reasonable to quote the part of the report which the complainant's found offensive and which in my view is the part which gave rise to the failure to comply with the Code. The other parts of the email in my view do not in any way justify the comments made by Councillor Faulkner for the reasons set out in my report.

90. Councillor Faulkner queried the production of the extract of the minutes of the meeting of the shadow board of 26 January 2016. This was provided to me by Mr Beaty. Dr Price stated to me that the minutes of the shadow board are approved at the next formal meeting. This is a standard process for approving minutes. She told me that the meeting of 5 February 2016 was not a formal meeting and as a result no minutes were taken and the minutes of the meeting of 26 January 2016 were not produced for approval. This seems perfectly normal in terms of practice of such a board and even if it were not, as Councillor Faulkner contends to be the case, he should not have raised this issue in the way that he did using the words that he did.
91. Councillor Faulkner then goes on to make comments about the links between the UTC and BSDC. There are clearly links between the two as BSDC is a sponsor of the UTC and its vice-principal is the chair of the Shadow Board of the UTC. However, the UTC is legally distinct from BSDC and there is representation on the Shadow Board from a range of other stakeholders and partners. The fact that Councillor Faulkner makes this comments appears to reinforce the concern that he is personalising his approach to the UTC to his views on BSDC and this is affected by his role as chair of SSC.
92. Councillor Faulkner states that he was acting in his role as Outside Body Representative for the Council when emailing Dr Price. However, no one is saying that he could not and should not challenge, if he felt that there were issues which should be challenged. The issue is the way he did it and the reasons why he chose to use the language which he did. He could easily have highlighted the uncertainties caused by the FE review (along with many other uncertainties which appear to have applied at the time) without personalising it to the chair and the management of BSDC. If anything his comments on the draft report reinforce the concerns which have been raised in the complaints and in my investigation.
93. Councillor Faulkner raises a number of other points in relation to the issues he was concerned about and my failure to report them in full or in some cases at all. This is because I do not believe that it was necessary or appropriate for me to ascertain the validity or otherwise of Councillor Faulkner's concerns in order to reach a

conclusion on whether he had failed to comply with the Code. Even if I were to accept that all of the concerns were valid and justified I do not believe that the wording which he used in his email was the appropriate way to make such a challenge.

94. It is clear from his comments he has made on the draft report that Councillor Faulkner does not respect Mr Beaty and again this reinforces my view that he failed to show respect to Mr Beaty in the email to Dr Price. The matters he alleges in his comments are all matters that he could raise but the failure to comply with the Code arises as a result of the way in which he chose to do so.

95. Councillor Faulkner makes a comment about the principal of BSDC not making a complaint. It is up to an individual whether they wish to complain and it is not relevant to my findings that no separate complaint was made by the principal.

Simon Goacher, Partner
Weightmans LLP
1 August 2016

Schedule of evidence

- SG1 East Staffordshire Borough Council Code of Conduct
- SG2 East Staffordshire Borough Council arrangements for dealing with complaints about members
- SG3 Record of interview of Everton Burke
- SG4 Record of interview of John Beaty
- SG5 Record of interview of Dr Deborah Price
- SG6 Record of interview of Sal Khan
- SG7 Record of interview of Councillor Faulkner
- SG8 Complaint forms
- SG9 Email from Councillor Faulkner to Dr Deborah Price dated 10 February 2016
- SG10 A proposition for the sustainable FE infrastructure in Stoke-on-Trent and Staffordshire
- SG 11 Report produced by Sal Khan
- SG12 Emails sent by Councillor Faulkner provided by Sal Khan
- SG13 Members ICT protocol
- SG14 Extracts from minutes of meeting of UTC shadow board on 26 January 2016
- SG15 Councillor Faulkner's response to the draft report