



Report for South Ribble Borough Council into the leaking of confidential information

Introduction

- 1 The Monitoring Officer of South Ribble Borough Council (“the Council”) asked us to carry out an investigation into how a confidential interim report (“the interim report”) produced by Wilkin Chapman LLP was leaked to the press and to identify any recommendations in relation to its systems and processes for managing confidential information arising as a result.
- 2 The interim report was provided by Wilkin Chapman LLP to the Council in December 2015. It identified issues concerning the operation of the Council’s licensing service and made recommendations for further action.
- 3 The interim report was provided to a small number of members and officers within the Council. The members of the Council’s cabinet were provided with copies, as was the leader of the opposition. The circumstances in which the leader of the opposition received a copy are disputed and this is considered in detail below. The then Chief Executive and Monitoring Officer and the Head of HR also received copies. The Council does not hold a distribution list, so it is not possible to say definitively who received the interim report or when they did so.
- 4 The interim report was leaked to a journalist, Grace Macaskill. Ms Macaskill wrote an article about the report for the New Day on 17 April 2016. The information contained within the interim report was then repeated in other newspapers.
- 5 A copy of the interim report was also sent by post to an employee of Wilkin Chapman LLP.
- 6 In some of the reporting the mother of one of the children involved in one of the taxi licensing cases referred to in the report, **XXXXXX**, was named.
- 7 The then Chief Executive of the Council reported the leak to the police. The police concluded that there were insufficient grounds to take any action.
- 8 On 23 October 2016 the Council’s Legal Manager received an email from **XXXXXX** with an audio recording of a conversation between her and Councillor Claire Hamilton. In the course of the conversation Councillor Hamilton said:

It had to be leaked because otherwise people would never have known.

Yes, obviously me and Grace have great links, and everybody who has a brain cell can realise who leaked the report.

9 On 11 November 2016 Councillor Claire Hamilton tweeted:

In early April 2016, Labour Leader Paul Foster gave me the taxigate interim report and asked me to leak it to the media.

10 There have been significant changes within the Council since the interim report was leaked. There is a new leader of the council and Chief Executive. The final report produced by Wilkin Chapman has been considered by the Council. My remit has been purely to look at the circumstances surrounding the leaking of the confidential information and not to investigate or comment upon the licensing service or the Wilkin Chapman investigation or any actions arising from it.

Methodology

11 The investigation was carried out between February 2017 and May 2017. It consisted of a desktop review of the relevant documents provided to me by the Council's Monitoring Officer.

12 This was followed by a number of interviews with Council officers and elected members.

13 The Council's Monitoring Officer provided me with the following documents which were considered as part of the review:

- The interim report;
- The transcript of the telephone conversation between XXXXXX and Councillor Hamilton;
- Various emails and correspondence relating to the leak;
- Various tweets;
- The scrutiny review of licensing;
- The code of conduct for members; and
- The whistleblowing policy

14 A number of interviews were also carried out with and witness statements completed by the following relevant individuals:

- Steve Nugent, Head of HR (telephone interview) (Appendix 1);
- Councillor Paul Foster, Leader of the Labour Group on the Council (Appendix 2);
- Councillor Warren Bennett (telephone interview) (Appendix 3);
- Councillor Caroline Moon (telephone interview) (Appendix 4)

15 I sought to interview XXXXXX, whose name had also been leaked to the press. I emailed XXXXXX on 23 February 2017 and 6 and 15 March 2017 but I received no response to any of those emails.

16 I also attempted to interview Councillor Claire Hamilton. I contacted her by telephone on 31 March 2017. She agreed to attend an interview with me but very shortly after

she had done so she sent me an email (appendix 5) stating that she would not agree to meet with me unless I answered certain questions. I responded to Councillor Hamilton's email on 3 April 2017 (appendix 6). I responded to all of the questions which she had raised and asked her to confirm that she was still willing to be interviewed but received no response. I emailed Councillor Hamilton again on 10 and 18 April 2017 (appendix 7) seeking to arrange to meet with her but she did not respond to these emails. In my email of 18 April 2017 I advised Councillor Hamilton that:

If I do not hear from you I will proceed with my report which will make reference to the fact that you have been given the opportunity to contribute but have declined to do so.

17 I also tried to interview Councillor Michael Green. I wrote to him by email on 20 April 2017. However, I did not receive a response from him.

18 As there is a degree of dispute about the circumstances surrounding the distribution of the report and the reasons why it was leaked, I also considered carrying out the following further actions:

- Interview the other Cabinet members who were given a copy of the report
- Interview Mr Nuttall the former chief executive of the Council
- Interview Mr Parker, the former Monitoring Officer of the Council
- Interview Ms Macaskill
- Interview Wilkin Chapman employees
- Seek authority to interrogate the email accounts of the officers and members who received the report

19 I decided not to take these steps for the following reasons:

- Ms Macaskill is unlikely to reveal information about her source
- Mr Nuttall and Mr Parker have left the employment of the authority and are under no obligation to cooperate with an inquiry
- The investigation is already concluding over a year after the leak took place and taking further steps would delay my report further, possibly significantly
- The further steps would have increased the cost of the investigation, possibly significantly
- The basic facts of how the report came to be leaked are well known and accepted and any additional evidence would be likely to add very little to the understanding of those facts

20 Therefore, in my view it was not necessary or proportionate to carry out further inquiries.

Evidence Relating to Disclosure of Confidential Information

21 Councillor Hamilton declined to meet with me or answer any questions. However, she has admitted in a tweet that she leaked the report to the press.

Appendix 1

- 22 Mr Nugent told me that he had not had any direct involvement in the commissioning of the interim report. However, as a result of discussions which he had subsequently and other investigations carried out, he had a good idea of what had happened with the distribution of the interim report.
- 23 Mr Nugent stated he believed that the interim report had been produced in mid December 2015. He stated that it had been provided to Mr Parker. He stated that Mr Parker presented the interim report to an informal meeting of the Cabinet in December 2015. He stated that Councillors Margaret and Phillip Smith were not present at that meeting because they were on holiday. He stated that Councillors Margaret and Phillip Smith were provided with copies in January 2016 on their return from holiday. Mr Nugent stated that he had been provided with a copy of the interim report by Mr Parker. He stated that he believed that Mr Parker and Mr Nuttall also had copies. Mr Parker stated that he also believed that Brian Thompson, an investigator employed by the Council may have been given a copy of the report. Mr Nugent stated that he gave a copy of the report to a member of the HR Team at the Council Berni Markham. Mr Nugent stated that he gave Ms Markham a copy because he had sought her advice on the HR issues and that she had told him that she had deleted it after reading it.
- 24 Councillor Foster told me that he had been given a copy of the interim report by Ian Parker at a meeting in January 2016 with Mr Parker. He stated that the meeting was also attended by Councillors Bennett, Moon and Michael Green.
- 25 Councillor Foster stated that he was told by Mr Parker that as the interim report dealt with matters which were being dealt with through court processes he should not discuss it with anyone. He stated that he was sent emails by Mr Parker confirming this and updates on what was being done but that these updates contained very little information. Councillor Foster provided me with copies of the emails and updates (Appendix 8). In an email dated 26 January 2016 from Mr Parker to Councillor Foster, Mr Parker stated:

When we reviewed to interim draft report re Licensing, you later had a number of concerns/questions and sort (sic) my advice. I requested that any and all questions were deferred until the full investigation is over...

Your personal concerns about having knowledge about matters pertaining to licensing but unable to openly question hem (sic) are entirely understandable. However, you will have seen from my communication update (again confidential) last Friday, there are outstanding matters that look like they will end in Court. Consequently because (sic) of this, and to ensure any disciplinary proceedings are not in anyway compromised, I value your continued confidence in these matters.

- 26 Councillor Foster stated that he kept the hard copy of the report which he was given by Mr Parker in his car. He stated that he was troubled by the fact that he had been given the report and told about the issues in the Council's Licensing Service but had been told that he could not raise them with anyone.

Appendix 1

- 27 He stated that some time later he discussed the report with Councillor Hamilton. He stated that Councillor Hamilton told him that she had knowledge of such issues in Rochdale and Rotherham. He stated that she said that this was a huge cover up and that he would be accused of being involved in the cover up. He stated that Councillor Hamilton had told him that she could get advice on what to do as she knew people who knew about the issue of CSE and taxi drivers.
- 28 Councillor Foster stated that Councillor Hamilton did not specifically mention who she was going to speak to about the report. He stated that she simply said that she knew a lot of people who had investigated issues about CSE and taxi drivers, including journalists. Councillor Foster stated that Councillor Hamilton was well connected and he thought that she would know people who knew more about the issue than he did.
- 29 Councillor Foster stated that Councillor Hamilton's assertion in her tweet that he had asked her to leak the report were categorically not true. He stated that he had never asked her to do that. He stated that Councillor Hamilton had been suspended from the Labour Group but that was not for leaking the report, it was for her behaviour towards other members of the labour group subsequent to that.
- 30 Councillors Moon and Bennett both denied that they had been at any meeting with Councillor Foster in January 2016 at which he was given a copy of the interim report by Mr Parker. They both stated that they did attend a meeting with Councillor Foster in November 2016 at which he was shown a copy of a previous report into the licencing service which had been prepared by Mr Parker.
- 31 Councillor Moon stated that she still had her copy of the interim report which she kept in her home with her other confidential papers.
- 32 Councillors Moon and Bennett were both clear that everyone who received a copy of the report would have known that it was confidential.
- 33 Councillors Moon and Bennett both expressed concern that I should speak to everyone on the "distribution list" of the interim report. Councillor Bennett was particularly concerned that I should meet with Councillor Margaret Smith.
- 34 After I had spoken to Councillors Bennett and Moon, I put to Councillor Foster their denial that the meeting which he had referred to had taken place. Councillor Foster reiterated that it had and provided me with screenshots of text messages which he received from Warren Bennett on 13 January 2016 which stated, "Hi Paul can you ring Ian Parker as soon as you can please" (10.40am) and then, "Hope you're ok with the update, any concerns give me a call." (1.14 pm).
- 35 Councillor Foster also provided me with screenshots of messages from Ian Parker which he had received. One was dated 11 January 2016 at 8.47pm and stated, "Good evening Paul – Ian Parker here– sorry to bother you but can you take a 5 min call to update you on the external report and events that are planned tomorrow." There was a further message sent on 20 January 2016 at 8.39 am which stated, "Good morning Paul – Ian Parker here– I've sent you an email this morning. Happy to discuss (and we still have your concern 're the report to pick up on) Regards. ian"

- 36 I also queried with Councillor Foster a report in the Mail on Sunday on 14 May 2017 which had referred to an email which he had allegedly sent to Councillor Hamilton regarding a press release shortly before the interim report had been leaked to the press. Councillor Moon had made a similar suggestion to me. Councillor Foster stating that he knew nothing about any such email.
- 37 I contacted Lancashire Police regarding the complaint which had been made to it about the leak. I asked for details of any investigation which the police had carried out. I received a response which stated, " I can confirm that Lancashire Police were requested to undertake a scoping exercise to ascertain if there was any evidence of criminality with regard to a series of events that led to the media being informed of certain information.

"Following that scoping exercise we ascertained that no criminality was evident.

"As such, no police investigation was undertaken into this matter , and therefore we have no investigative outcomes to provide you."

Current Working Practices/Policies

Information Management/Security

- 38 None of the Council officers or members I spoke to were aware of any formal information management policy which the Council has in place. There appeared to be no clear safeguards in place for the management of the interim report. The Council cannot say for sure who was provided with a copy of the interim report, when they were given it, what format it was provided in, whether it was protectively marked, what advice/instructions they were given about safeguarding confidentiality and how version control was managed.

Code of Conduct for Members

- 39 It is a legal requirement that the Council has a Code of Conduct for its elected members. The Council's Code of Conduct states:

You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a 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 advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

□ reasonable and in the public interest; and

□ made in good faith and in compliance with the reasonable requirements of the authority;

Whistleblowing Policy

- 40 The Council has in place a whistleblowing policy which applies to all officers and elected members. It states:

The Policy applies to all employees, elected members and those contractors working for the Council on its premises, for example, volunteers, agency staff, builders, and drivers...

Elected Members who have a genuine concern about malpractice should raise the concern with the Monitoring Officer.

Findings

- 41 The interim report was leaked to a journalist by Councillor Claire Hamilton.
- 42 Councillor Hamilton was given a copy of the interim report by Councillor Foster.
- 43 Councillor Foster was given a copy of the interim report in around January 2016. He states that he was given a copy of a report by Mr Parker at a meeting attended by Councillors Bennett, Moon and Michael Green. Councillors Moon and Bennett deny this and suggest that they believe that Councillor Foster was given the report later. Councillor Bennett suggests that he believes that Councillor Foster was given a copy of the interim report at a meeting attended by Councillor Margaret Smith and Mr Nuttall. Councillor Bennett does not have any evidence to support this accusation other than statements from Councillor Foster that such a meeting took place and the alleged failure of Councillor Smith to be clear on if and when such a meeting took place. Councillor Foster provided me with an email from Mr Parker to him dated 26 January 2016 which supports Councillor Foster's evidence that he was given the interim report by Mr Parker in January 2016. The messages which passed between Councillor Foster and Councillor Bennett and Mr Parker, whilst they do not refer specifically to the report tend to support Councillor Foster's version of events. Therefore, on balance I prefer Councillor Foster's evidence on this point.
- 44 Councillor Foster knew that Councillor Hamilton was going to share the report with others outside of the Council and knew that some of the people she may talk to were journalists.
- 45 The only people who know exactly what was discussed between them regarding the interim report are Councillor Hamilton and Councillor Foster. Councillor Hamilton has chosen not to speak to me about this or answer any questions. Therefore, the only evidence I have of what took place is that provided by Councillor Foster. I accept his evidence that he did not instruct Councillor Hamilton to leak the report to the press. However, he clearly knew that there was a possibility that Councillor Hamilton would share the interim report with the press and he did nothing to stop her from doing so.
- 46 Whilst I have some sympathy with Councillor Foster's expression of frustration that he had been given the interim report but was being told that he could not discuss it with anyone he does not appear to have taken any steps to press the Monitoring Officer for a clear timetable on what action the Council would take and when. Nor did he seek to

take the issue up with other agencies such as the police or the County Council Safeguarding Team. He does not appear to have even considered taking such steps and nor apparently did Councillor Hamilton. When I made this point to Councillor Foster he stated that he had been assured by Mr Parker and cabinet members that the issues had been raised with the police and other appropriate agencies.

- 47 The fact that Councillor Hamilton went straight to the press and did not apparently make any effort to raise her concerns with anyone within the Council or any external agency suggests that she was motivated as much if not more by political or personal purposes than by public interest considerations. She has chosen not to co-operate with my investigation so I have not been able to ask her why she went immediately to the press without following the requirements of the Council's whistleblowing policy or code of conduct.
- 48 It appears that there may have been failures to comply with the code of conduct for members by Councillors Hamilton and/or Foster. I understand that no complaint has been made to the Monitoring Officer against either Councillor pursuant to the arrangements the Council has adopted for considering such complaints under the Localism Act 2011. It is possible that a complaint may be made against one or both of these councillors. If such a complaint is made it should be processed in accordance with the Council's arrangements.
- 49 There appear to have been no safeguards in place for the management of the interim report. Those I spoke to were not aware of the Council having in place any information management policy. Councillor Moon stated that she still had the report and kept it at home. Councillor Foster had kept his copy in his car and then gave it to Councillor Hamilton. Councillor Moon stated that another cabinet member had carried their copy about with other papers and she could see it in their papers at a meeting.
- 50 This suggests that either the Council does not have in place an appropriate information management/security policy or if it does awareness of it and compliance with it were poor in this case. Whichever is the case the Council should review the position regarding information management/security and ensure that it has in place an appropriate policy and that it is understood and complied with by staff and members.
- 51 Councillor Foster suggested that the leaking of the report by Councillor Hamilton was in the public interest. In the transcript of her conversation with ~~XXXXXX~~ Councillor Hamilton suggested that leaking to the press was needed to ensure that the issue was dealt with. It has been suggested in the press coverage that the interim report was leaked by a "whistleblower". There is no evidence to suggest that Councillor Hamilton used the Council's whistleblowing policy or sought to raise the matter with any appropriate authority prior to leaking the report to the press. The Council should consider whether the whistleblowing policy should be reviewed and awareness of it raised with officers and elected members so that it is utilised properly in the future.

Recommendations

52 In order to ensure that the Council has in place a robust framework to deal with confidential and personal information and that this is reinforced and improved the Council should consider the following actions:

- 1) To put in place an information management/security policy if one is not in place, if there is one review it and its operation;
- 2) provide for mandatory data protection training for elected members and officers as part of the annual training plan/appraisal process;
- 3) the Council's Internal Audit Team should carry out a review of information management practices within the Council as part of the annual audit and report the results to the Council's Audit Committee;
- 4) provide guidance to the Council's members on the storage, use and destruction of confidential hard copy reports;
- 5) put in place systems for the retrieval and/or confidential destruction of sensitive material distributed to Council members; and
- 6) review the whistleblowing policy and awareness of it.

Timescale for Implementation of Recommendations

49. The implementation of the recommendations is a matter for the Council. However, it is suggested that they be implemented from June 2017 and completed by December 2017. There will be a need to continually review on an annual basis the management of confidential information within the Council.

Simon Goacher, Partner
Weightmans LLP
7 June 2017