

Report of the City Solicitor to the meeting of Governance and Audit Committee to be held on 10th October 2014

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Subject:

USE OF COUNCIL RESOURCES FOR ELECTION PURPOSES

Summary statement:

This report is prepared by the Monitoring Officer in accordance with the provisions of the Local Government and Housing Act 1989, Section 5(3) and is to inform all Members of Council where, in the opinion of the Monitoring Officer, the authority has acted in contravention of an enactment or rule of law.

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1. Summary

- 1.1 This report is prepared by the Monitoring Officer in accordance with the provisions of the Local Government and Housing Act 1989, Section 5(3) and is to inform all Members of Council where, in the opinion of the Monitoring Officer, the authority has acted in contravention of an enactment or rule of law.

2. Background

- 2.1 On 12 May 2014 managers were advised of an allegation that resources in the Conservative Group office were being used to produce election material.
- 2.2 On 14 May 2014 it was established that a number of envelopes containing letters were in the office seeking support for the Worth Valley Conservative candidate.
- 2.3 On Friday, 16 May 2014 the Chief Executive and the Monitoring Officer met with the Conservative Group Leader and raised with him the concerns that it appeared that Council resources, including officer time, had been used to produce election campaign material. The Conservative Group Leader confirmed at that meeting that this was what had occurred. The Conservative Group Leader was advised that the Chief Executive would instigate a management investigation to establish the facts.
- 2.4 On the same date, officers working within the Conservative Group office were advised of the issue that had been raised and that there would be a management investigation to establish the facts.
- 2.5 The management investigation has been concluded and issues relating to officer conduct have been addressed.
- 2.6 The Group Leader has accepted that there is an issue under the Code of Conduct and has referred himself to the Standards Committee for his conduct to be dealt with through the approved Complaints Procedure. It is anticipated that this procedure will be concluded shortly.
- 2.7 It is not disputed by officers or the Group Leader that election publicity material was produced in the Conservative Group Office using Council resources. For this reason the Monitoring Officer is required to consider the lawfulness of those activities and in particular whether, under Section 5 of the Local Government and Housing Act 1989, a report to Council is required.

3. Relevant Legislation

- 3.1 The Local Government Act 1989 Section 5 established the role of the Council's monitoring officer.

5 (1) It shall be the duty of every relevant Authority:–

- a) To designate one of their officers to be known as the 'monitoring officer' as the officer responsible for performing the duties imposed by this section.

The Monitoring Officer for City of Bradford Metropolitan District Council is the City Solicitor.

3.2 Section 5(2) states:

'It shall be the duty of a relevant authority's monitoring officer, if at any time it appears to him that any proposal, decision or omission by the authority, by any committee or sub-committee of the authority, by an person holding any office or employment under the authority, or by any joint committee on which the authority are represented constitutes, has given rise to or is likely or would give rise to -

- a) A contravention by the authority of any enactment or rule of law.....

to prepare a report to the authority with respect to that proposal, decision or omission.

3.3 Section 3 states:

It shall be the duty of a relevant authority's monitoring officer –

- a)
- b) As soon as practical after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the authority.

3.4 Section 5(5) states:

It shall be the duty of a relevant authority -

- (a) to consider any report under this section by a monitoring officer or his deputy at a meeting held not more than 21 days after copies of the report are first sent to members of the authority.

These are statutory duties and are a requirement of the monitoring officer role.

4. **Other Considerations**

4.1 The Local Government Act 1986 Section 2 sets out the prohibition of political publicity and states.

- 2 (1) A local authority shall not publish any material which in whole or in part, appears to be designed to affect public support for a political party.

This is a statutory prohibition and if an authority does produce such publicity, it is acting in contravention of this enactment.

4.2 The Monitoring Officer has considered the statutory position set out above and is of the view that the established facts disclose that the Authority as a corporate body has produced publicity material which was designed to affect public support for a candidate and a political party. It is clear that this is prohibited and as such these activities are a breach of Section 2 of the Local Government Act 1986. Having established that the Council has acted in breach of this legislation, the Monitoring Officer duties set out in Section 5 above are engaged and a report must be provided to all Members of Council and must be considered by all Members of Council to comply with their duties under this legislation.

4.3 Since the activities only came to light after they had already been undertaken, there is little the Council can do to remedy the situation. The Conservative Group Leader has indicated a willingness to reimburse the Council for any costs to the public purse. This is a matter that will be considered as part of the Standards procedures.

4.4 The management investigation established a need to raise the level of understanding of officers, Members and candidates of their obligations in respect of the provisions in the Local Government Act 1986. Additional guidance will be provided to both Members who are candidates or agents and to officers working directly to Members to ensure there is clarity about these requirements. This will be in addition to the advice that is already circulated to Members and senior officers by Marketing and Communications.

5. **Options**

5.1 Members are asked to consider the issues raised by this report and to approve the recommendations to ensure there is clarity around obligations under this legislation to minimise the risk of a further breach.

5.2 Members are asked to recommend that this report is considered at Full Council.

6. **Financial and Resource Appraisal**

6.1 There are no financial implications arising out of this report. The Council will seek to recover any cost to the public purse as a result of the unlawful activities.

7. **Risk Management**

7.1 This report highlights the potential risk of failure to comply with the requirements of Section 2 of the Local Government Act 1986 and suggests actions to manage the risk more effectively.

8. **Legal Appraisal**

The legal implications are set out in the body of this report.

9. **Equality and Diversity**

There are no equality and diversity, sustainability, green house gas, community safety, human rights, trade union or ward implications in relation to this report.

10. **Not for Publication Documents**

None.

11. Recommendations

- 11.1 That it is recommended to Full Council that Members of Council consider the issues raised in this report and acknowledge the actions taken to establish the facts and the risk identified as a result thereof.
- 11.2 That specific advice is provided to all Members who are candidates or agents in a local election to remind them that Council resources must not be used to produce election publicity material.
- 11.3 That the guidance provided to all senior managers and Members of Council is specifically circulated to all employees who have a direct working relationship with Members and their managers with an instruction to managers to discuss the specific obligations with individual members of staff.

12. Reason for Recommendations

- 12.1 To acknowledge the issue that has arisen, to comply with the duties set out in the Local Government and Housing Act 1989 Section 5 and to put in place measures to minimise the risk of any future breach of Section 2 of the Local Government Act 1986.