

Report of the City Solicitor to the meeting of Governance and Audit Committee to be held on 21st November 2014

X

Subject:

USE OF COUNCIL RESOURCES FOR ELECTION PURPOSES

Summary statement:

At its meeting on 21 October 2014 Council resolved that:

That the Governance and Audit Committee's resolution of 10 October 2014 be agreed to require the submission of a further report to their meeting in November 2014 for the Committee to consider if there are further matters that need to be considered by Council at its meeting on 9 December 2014.

This report provides the further information sought by Committee at its meeting on 10 October 2014.

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1. Summary

- 1.1 On 10 October 2014 the Monitoring Officer brought a statutory report under section 5 of the Local Government and Housing Act 1989 to the meeting of this Committee. This report sets out the further information sought by Committee at that meeting in accordance with the resolution of Council on 21 October 2014. This will enable Committee to consider whether there are any further matters which need to be considered by Council at its meeting on 9 December 2014.

2. Background

- 2.1 At its meeting on 10 October 2014 the Committee received a report from the Monitoring Officer on the use of Council resources for election purposes and resolved:

That a further report be submitted to this Committee on 21 November 2014 which addresses the issues raised at this meeting and that the revised report be recommended to Council at its meeting on 9 December 2014.

- 2.2 At its meeting on 21 October 2014 Council resolved:

(1) 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.

(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.

(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.

(4) That the Governance and Audit Committee's resolution of 10 October 2014 be agreed to require the submission of a further report to their meeting in November 2014 for the Committee to consider if there are further matters that need to be considered by Council at its meeting on 9 December 2014.

- 2.3 The Committee's comments on the report submitted to its meeting on 10 October 2014 were that further information was required on the role of Council officers, the details of the Council resources used, a breakdown of the cost and the outcome of the Standards Committee investigation.

Committee also took the view that Recommendation 3 of the Monitoring Officer's report which stated:

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.

was not sufficient and needed to show that guidance provided to all senior managers, employees who had a direct relationship with Members and their Managers and Members of Council had been circulated.

3. The Further Information Requested

3.1 The Role of Officers and the Council Resources Used

On 6 May 2014 three sets of 458 pages were printed on the printer/copier in the Conservative Group Office by officers. These pages consisted of personalised letters to constituents in the Worth Valley promoting the member as a candidate in the local election. A further 21 pages were printed, which consisted of the names and addresses to which the letters were to be sent, which were for farmers in the Worth Valley. One of the three sets of printing had to be discarded and about 900 letters were placed in envelopes and postage stamps put on the envelopes by one or more Council officers. Council paper was used for all the printing and Council envelopes were used for the letters. The postage stamps were provided by the member or his election agent.

Officers in the Group Office are subject to matrix management and work to the direction of the member as Group Leader but also have line managers. Concerns were raised with the line managers about the involvement of officers in preparing election material and as a result the Chief Executive and City Solicitor spoke with the member on 16 May 2014 and he confirmed that the officers in the Group Office had been assisting him in his election campaign and that Council resources had been used to produce election material.

The member was charged for 2000 sheets of A4 paper at a cost of 5p a sheet, being £100 plus VAT. This was an estimate agreed with the member for the purposes of his election expenses return.

The officer time spent on putting 900 letters in envelopes can be roughly estimated at 30 seconds per envelope. This gives a total amount of 7 hours work. Given that the work was split between two officers whose charge out rates were £11 p/h and £15.50 p/h respectively this gives costs for the officer time as follows:

3.5 Hours at £11 p/h - £38.50
 3.5 hours at £15.50 p/h - £54.25

Total – £92.75

However the officers concerned work to the direction of the Group Leader and had they not been engaged in that task they would have been working to assist the Group rather than the Council.

A management investigation into the conduct of officers took place in accordance with Council procedures and no disciplinary action was considered necessary.

3.2 Issues arising from the Role of Officers

At the request of the Chair of this committee the documents which set out the rules on the use of Council resources have been reviewed and are summarised below.

The relationships between officers and are governed by “The Protocol on Member-Officer Relations” which forms part 4C of the Constitution of the Council. The key rules set out in the Protocol are:

- *Members and officers shall establish sound and effective working relations that seek to engender mutual respect and put aside any personal differences.*
- *Members and officers will adopt reasonable standards of behaviour and courtesy towards each other and will not take or attempt to take unfair advantage of their position.*
- *Advice and information given by officers to political groups will only relate to Council business. Officers will not advise on political business.*
- *Members will, except where arrangements are otherwise approved, use support services and resources provided by the Council only for Council business. Support services shall not be used for political or campaigning activity, or for private purposes.*
- *Members and officers will not allow a working relationship to become so close or appear to be so close as to bring into question the officer's ability to deal impartially with other members and political groups.*
- *Members must not use or seek to use council money or resources including officer time, office facilities and I.T. equipment for the production or issue of any material that may contravene [the prohibition on the Council publishing in whole or in part, material which appears to be designed to affect public support for a political party]*

The protocol does not deal directly with circumstances where officers are subject to matrix management, namely where officers work to the direction of a member but are also line-managed by a more senior officer.

The use of Council resources by members is governed by "The Protocol on Members' Use of Council Resources including use of e-mail and the internet" which forms part 4E of the Constitution of the Council. The Protocol refers to the publication of material designed to affect support for a political party, sets out the prohibition at section 2 of the Local Government Act 1986 and confirms that the law applies to the use by members of Council equipment.

At the end of March 2014 the Council's communications officers circulated "Guidance for dealing with publicity during the period of an election or referendum; Local and European Elections: Thursday 22 May 2014". This guidance was sent to Group Leaders and the Council's Strategic Directors and Assistant Directors for cascade. The guidance was also sent to Public Affairs and Communications staff and other officers who had requested it or who had been identified as having a communications or marketing role. The guidelines form the Appendix to this report and paragraph 4.7 of the guidance includes the following:

"At no time should officers be involved in producing or reproducing election campaign material."

3.3 The Outcome of the Standards Process

The Chair of Standards Committee in consultation with the Monitoring Officer has determined that the member should be given 28 days in which to provide an apology to all members of the Council. No further action will be taken once the member has done so.]

3.4 Issues arising from the Standards Regime

The Members' Code of conduct requires members to have regard to, and act in accordance with, the following standards of conduct:

1. Selflessness

You should serve only in the public interest, and should never improperly confer an advantage or disadvantage on any person, organisation or group, or any other third party.

2. Honesty and Integrity

You should not place yourself in situations where your honesty and integrity may reasonably be questioned, you should not behave improperly and should avoid the appearance of such behaviour.

3. Objectivity

You must make decisions based on the information before you, having had regard to any professional advice provided to you and in accordance with your view of the public interest.

You should make decisions on merit, this includes when making appointments, awarding contracts, or recommending individuals for awards or other recognition.

4. Accountability

You are accountable to the public for your decisions and actions and the manner in which you carry out your duties. You must co-operate fully and honestly with any scrutiny appropriate to your office.

You should not undertake any action which would bring the Council, your position, or the position of Members generally, into disrepute.

5. Openness

You must be as open as possible about your actions and those of the authority, and should be prepared to give reasons for those actions.

6. Leadership

You must promote and maintain high standards of conduct by supporting these principles by leadership and by example, and should act in a way that secures or preserves the confidence of others.

You must have due regard to the impartiality and integrity of the authority's statutory officers and its other employees.

The principle of Leadership specifically requires members to have due regard to the impartiality and integrity of the Council's employees.

The Localism Act 2011 abolished the national standards system, including the model code of conduct for councils in England, statutory standards committees for English councils, the Standards Board for England, the jurisdiction of the First Tier Tribunal and the statutory sanctions for non-compliance with the code of conduct. The sanctions included disqualification, suspension and partial suspension.

The new regime in the Localism Act required English councils to adopt a code of conduct consistent with the principles set out above and which sets out the rules on the register of pecuniary and non-pecuniary interests and to put in place arrangements under which they can investigate allegations of breaches of a code of conduct. There are no statutory sanctions in the new regime and the options available to councils where a member is found to be in breach of a code of conduct are effectively limited to:

- A formal letter to the subject Member from the Chair of the Standards Committee;
- Formal censure by a motion of full Council; or

- Removal by the authority of the Member from a relevant Committee(s) subject to statutory and constitutional requirements.

Unless the member's role on a committee is relevant to their breach of the code of conduct the third option is not available. In this case the member's conduct did not relate to any role on a committee.

The procedure for dealing with complaints that a member has failed to comply with the code of conduct are set out in the "Procedure for considering complaints alleging a failure to comply with the Members' Code of Conduct within the area of City of Bradford Metropolitan District Council", which was updated by Standards Committee at its meeting on 11 September 2014. The procedure consists of 3 stages:

- Stage 1 – An initial assessment by the Monitoring Officer to determine whether the complaint is valid. If the complaint is valid it will proceed to Stage 2.
- Stage 2 – The member is invited to respond in writing to the complaint and the complainant is invited to comment on the member's response. The member is invited to consider whether they wish to propose an informal resolution of the complaint, for example by offering an apology. The Monitoring Officer and the Chair of Standards will then consider whether the member has appropriately addressed the matters raised and if so no further action will be taken. They will also consider whether the complaint is malicious, vexatious, politically motivated, tit-for-tat or not sufficiently serious to warrant further action. If they consider that is the case then no further action will be taken. If it is not possible to appropriately address the matters raised then the matter will proceed to Stage 3.
- Stage 3 – The matter will be referred to a sub-committee of the Standards Committee to decide:
 - Whether the member has failed to comply with the Members' Code of Conduct;
 - Whether further action is warranted; and
 - What form of action might be appropriate.

The limited options available if the sub-committee find that there has been a breach of the code and they decide that further action is warranted are set out above.

There is no provision in the procedure for complaints to automatically be referred to Standards Committee or a sub-committee if they relate to a senior member, for example a member in receipt of a Special Responsibility Allowance.

4. Financial and Resource Appraisal

- 4.1 The Council has recovered £100 plus VAT from the member by way of agreed payment for the Council resources used.

5. Risk Management

- 5.1 This report highlights the potential risk of failure to comply with the requirements of Section 2 of the Local Government Act 1986 and is part of the process of managing the risk more effectively in the future.

7. **Legal Appraisal**

- 7.1 The Monitoring Officer took the view that the Council was in breach of Section 2 of the Local Government Act 1986 because it had produced publicity material which was designed to affect public support for a candidate and a political party. She took a statutory report under section 5 of the Local Government and Housing Act 1989 to the meeting of full Council on 21 October 2014. This report provides further information to Committee in order to enable Committee to consider whether there are any further matters which need to be considered by Council at its meeting on 9 December 2014 to ensure that there are no further breaches of Section 2.

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. **Recommendation**

That the Committee consider the further information provided in this report and decide whether there are any further matters which need to be considered by Council at its meeting on 9 December 2014.

11. **Background Documents**

- 11.1 The Constitution of the Council at

<http://www.bradford.gov.uk/NR/rdonlyres/1AC7A905-A2C8-47A9-847F-69B0AE65B4B9/0/CBMDCConstitution.pdf>

The Constitution includes:

- The Protocol on Members' Use of Council Resources including use of e-mail and the internet
- The Protocol on Member-Officer Relations
- Members' Code of Conduct

- 11.2 Procedure for considering complaints alleging a failure to comply with the Members' Code of Conduct within the area of City of Bradford Metropolitan District Council [updated by Standards Committee September 2014]

APPENDIX

April 2014

City of Bradford Metropolitan District Council

Guidelines for dealing with publicity during the period of an election or referendum

Local and European Elections: Thursday 22 May 2014

1 Scope of the guidance

1.1 This guidance applies to all publicity issued or produced by council officers or councillors, using the resources of City of Bradford Metropolitan District Council. "Publicity" means any communication in whatever form intended for the public at large or a section of the public. This includes: press releases, social media posts and tweets, brochures, leaflets, adverts, newsletters, BradNet, the council's website and the staging of events that provide a platform for media publicity.

"Resources" means council funds, premises, notice boards, equipment or stationery and the paid time of council officers.

Councillors' surgeries may and do continue during the election period.

1.2 The guidance also applies to any material issued by organisations that are either partially or wholly separate from the council but which are using council grants or other public funds to produce the publicity.

1.3 The guidance does NOT apply to publicity funded or otherwise obtained by individual councillors or political groups using their own resources.

2 Statement of intent

City of Bradford Metropolitan District Council will aim at all times to ensure that any publicity it issues or funds complies with legal requirements and has regard to all national guidance on local authority publicity.

3 The legal framework

3.1 The fundamental test whether publicity is prohibited is enshrined in section 2 of the 1986 Local Government Act.

This prohibits authorities from issuing material that "*in whole or in part, appears to be designed to affect public support for a political party*" **The rule applies at all times and not just before an election.**

An objective test is applied so that the intention behind publicity is irrelevant.

"Publicity" is widely defined to include any communication to the general public, or any section of the public. The definition of publicity is wide enough to include the staging of events and the organisation of photocalls.

3.2 In issuing publicity, councils are required to 'have regard to' the Code of Recommended Practice on Local Authority Publicity, which came into force on 31st March

2011. The code provides guidance on issuing publicity that has passed the fundamental legal test outlined above and includes sections on:

- Lawfulness
- Cost effectiveness
- Objectivity
- Even-handedness
- Appropriate use of publicity
- Equality and diversity
- Care during periods of heightened sensitivity (the periods before elections and referendums).

3.3 The code states that “any publicity describing the council’s policies should be as objective as possible, concentrating on the facts or explanation or both,” (paragraph16). Also that “where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in a question in a fair manner,” (paragraph19). **This applies at all times and not just before an election.**

3.4 Factual information about councillors, which simply lists their contact and surgery details or their council responsibilities clearly, presents no problem. **This applies at all times and not just before an election.**

3.5 These guidelines are intended to provide local guidance in conjunction with the national code of practice, relating to issues that are frequently raised in a local context. It is not intended to replicate or replace the code. Anyone producing publicity materials using council funds must familiarise themselves with the provisions of the code of practice (copies can be accessed from BradNet.)

4 Care during periods of heightened sensitivity – the period before elections and referendums

4.1 Paragraphs 33-35 of the code deal with publicity during the run up to an election or referendum. They state, in summary:

“Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums.”

“During the period between the notice of election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with individual members or groups of members.”

“Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.”

“In general, local authorities should not issue any publicity which seeks to influence voters.”

The notice of election for the European and Local Elections will be published on Monday 14 April 2014

What does this mean?

4.2 The code makes it clear that not only candidates and agents but also any politician directly involved in an election should not be given publicity save in an emergency or in exceptional circumstances prompted by important events outside the council's control. In practice, most councillors are involved in elections and should not be afforded publicity, even if they are not personally standing or acting as an agent.

4.3 The regulations apply to officers of the council and publicity which is issued in the name of the council. Members of the council are obviously free to issue their own political publicity under the usual electoral rules so long as there is no officer involvement or assistance and no council facilities such as computers, printers, stationery, notice boards etc are used.

What council staff cannot do.

4.4 During the period between the notice of election and the elections themselves, no council officer may attribute quotes to any councillor in news releases other than in the exceptional circumstances set out above in 4.2. No council officer may attribute views, proposals or recommendations to any particular councillor or political group. No council officer may issue publicity on any controversial issue unless it can be handled in a way that avoids a personal or party political dimension.

4.5 Publications and leaflets addressed to the general public or a section of the public must observe the same restrictions, including postings on websites or on social media networks.

4.6 Council staff and resources must not be used to arrange proactive events, such as photocalls, if they would provide politicians with a platform to communicate with the public that would not otherwise be available to them. However, there is no reason why councillors of any party, MPs, or candidates should be refused access to the public parts of council premises even if they intend to use it as a photo opportunity, so long as it is not organised or funded from council resources and council equipment and employees are not involved.

4.7 At no time should any party political election material be put on display in council offices, libraries, leisure centres or other council buildings or facilities owned or provided by the council. At no time should officers be involved in producing or reproducing election campaign material.

5 What do I do if I think the rules have been broken?

Any councillor or member of the public may refer the matter initially to the City Solicitor / Monitoring Officer or the Assistant City Solicitor / Deputy Monitoring Officer if they feel that the council has issued publicity that is not legal or which fails to have regard to the code of practice.

6 Where can I get help?

Any queries about this guidance should be referred to:

City Solicitor / Monitoring Officer, Suzan Hemingway, 432496

Assistant City Solicitor / Deputy Monitoring Officer, Dermot Pearson, 431941

Assistant Director of Communications, Alison Milner, 432131

Guidelines for council officers dealing with publicity during an election period Summary Checklist 2014

Please make sure you ask for additional advice and guidance on specific issues when using this summary checklist.

Please contact:

Alison Milner, Assistant Director, Communications - 432131

The election period for the European and Local Elections is from Monday 14 April to Thursday 22 May 2014

Contact with the media, use of social media and issuing electronic and hard copy publications

✓ **Do not issue electronic or hard copy publications for citizens, for example, newsletters, leaflets, etc.**

✓ **Do not post or tweet on social media unless it is about scheduled council business or activity that is time-limited.**

The key question to ask is, can the information contained in the social media post / tweet be issued after the election period?

✓ **Do not post promotional images on social media.**

✓ **Do not issue any news releases yourself.**

All news releases must be sent to the press office to clear and issue. This is standard practice throughout the year, not just during the election period.

✓ **Do not draft news releases unless they contain information about scheduled council business or activity that is time-limited.** The key question to ask is, can the information contained in the media release be issued after the election period?

✓ **A chief officer quote can and should normally be used in a news release instead of quoting councillors during an election period.** Do make sure that if you quote an Executive Member in exceptional circumstances on a media release you also quote the appropriate Opposition Spokespeople.

✓ **Do not issue statements in response to media enquiries yourself.**

All statements in response to media enquiries must be sent to the press office to clear and issue. This is standard practice throughout the year, not just during the election period.

✓ **A chief officer statement can be used instead of a councillor statement during an election period.** Do make sure that any draft statements in response to media enquiries that quote an Executive Member in exceptional circumstances also quote the appropriate Opposition Spokespeople.

The key question to ask is, can the information contained in the statement be issued after the election period?

Events, photocalls and launches

✓ **Do not organise or hold photocalls, launches or events involving MPs, candidates or councillors during the election period.**

✓ **Do not organise media contact (filming, broadcasting, or interviewing) with council services or activities during the election period. This includes joint events with partner organisations.**

Media requests to visit a council service or activity during the election period are generally granted. If the media wish to interview individual service users they have to gain their personal permission first.

Council officers should only offer practical assistance to the media, for example showing them round the physical layout of the building or giving directions on how to get to a specific location. Council officers should not allow themselves to be interviewed about their job, or the service they deliver, whilst at work or on council premises.

Council officers should make sure that partner organisations they are working with are aware of this checklist and that they adhere to it.

Use of council or public buildings and facilities.

✓ **Do make sure that no party political election material is on display in council buildings, for example, libraries, leisure centres, and offices.**

This needs to be enforced at all times, not just during the election period.

✓ **Do make sure that no equipment or materials owned by the council, for example paper or photocopiers, are used for party political purposes or to promote MPs, candidates, or individual councillors.**

This needs to be enforced at all times, not just during the election period.

✓ **Do not organise visits from MPs, candidates or councillors to council buildings, services or activity during the election period.**

However, MPs, councillors or candidates can have access to council or public buildings, even if they intend to use them for media photocalls or political meetings/debates. These activities cannot be organised by council officers or funded from council resources.

Council officers should only offer practical assistance during visits from MPs, candidates, or councillors, for example, opening up a building, showing the physical layout of the building or giving health and safety information. Council officers should not allow themselves to be questioned or interviewed about their job, or the service they deliver, whilst at work or on council premises.

✓ **Do make sure that access for MPs, candidates or councillors to council or public buildings during the election period is given equally to all political parties/ political groups.**