

**Manchester City Council
Report for Resolution**

Report to: Resources and Governance Scrutiny Committee – 5 January 2017

Subject: Restrictions on Local Authority Publicity ahead of Elections and Referenda

Report of: The City Solicitor

Summary

To brief the Resources and Governance Scrutiny Committee on the restrictions applying to local authority publicity ahead of elections and referenda.

Recommendation

That the Committee note the report.

Wards Affected: All.

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1. Background

- 1.1 During a specified period ahead of an election (commonly known as the ‘**pre-election period**’ or as ‘purdah’) certain restrictions on local authority publicity apply (in addition to the restrictions that apply to local authority publicity generally). In this pre-election period local authorities are required to take particular care in respect of publicity to ensure that communications are balanced and without bias, and that there is no appearance of support for any particular party or individual seeking election. Similar restrictions apply in the run up to a referendum (known as the ‘**pre-referendum period**’).
- 1.2 The restrictions are a combination of legislative requirements, a statutory publicity code and accepted local authority good practice. This report will examine these elements as they are applied in Manchester.
- 1.3 The policy rationale behind the publicity restrictions that apply during pre-election and pre-referendum periods is that local authorities should not be able to use their position as a public authorities or the public funds they control to produce publicity that could affect the outcome of elections or referenda. If they were permitted to produce such publicity it could undermine the fairness of these exercises in democracy.

2. What is defined as ‘publicity’ for the purposes of pre-election and pre-referendum periods?

- 2.1 Section 6(4) of the Local Government Act 1986 defines publicity as “any communication, in whatever form, addressed to the public at large or to a section of the public”. It is this definition that is generally taken to apply for the purposes of the pre-election period. A similar definition is found in legislation applying to publicity restrictions ahead of referenda.
- 2.2 As can be seen ‘publicity’ is broadly defined. It includes, but is not limited to, forms of communication such as public meetings, speeches, leaflets, newsletters, press releases, posters, websites, social media, radio/television interviews, published photographs, events (such as exhibitions and conferences), sponsorship and branded promotional materials.

3. When does the pre-election or pre-referendum period begin?

- 3.1 The pre-election period begins when the Notice of Election for the election concerned is published and ends once the election is over. The precise time when the Notice of Election is published can vary between different types of election. At local elections the notice must be published by no later than 25 working days before the day of the poll.
- 3.2 In respect of referenda certain restrictions on publicity only apply during a 28 calendar day period ending on the day of the poll. However, so as to take account of the fact that other restrictions apply to local authority publicity during periods of heightened sensitivity and to be consistent with the position applying ahead of elections, the pre-referendum period for the purposes of

local authority publicity restrictions is taken by the Council (and other GM authorities) to begin upon the publication of the Notice of Referendum, where this is earlier than the start of the 28 calendar day period referred to above.

4. Part 2 of the Local Government Act 1986 and the Publicity Code

4.1 Part II of the Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity made under it ('the Publicity Code') applies to all local authority publicity at any time. However, during a pre-election or pre-referendum period the heightened political sensitivities will mean that there is potential for Council publicity that would not be problematic at other times to become so in an election or referendum context and amount to restricted publicity under the 1986 Act.

4.2 Section 2(1) of the Local Government Act 1986 states that:

“A local authority shall not publish, or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party.”

4.3 When considering whether or not a particular piece of Council publicity would contravene this prohibition various factors need to be taken into account, including:

- the content and style of the material;
- the timing and other circumstances of the publication;
- the likely effect of the material on those to whom it is directed;
- whether the material refers to a political party or to persons identified with a political party;
- whether the material promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another; and
- where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

4.4 Additionally, the Publicity Code states that local authority publicity must be lawful, cost effective, objective, even-handed, appropriate, have regard to equality and diversity, and issued with care during periods of heightened sensitivity. It also provides that during the pre-election period:

“...local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members.”

4.5 The Council is prohibited from giving financial or other assistance to a person for the publication of material which the Council is prohibited from publishing itself. Any Council controlled or influenced company is also prohibited from publishing material which if it was published by the Council would contravene section 2 of the Local Government Act 1986. The Council is under a duty to ensure, so far as is practicable, that any company under its control complies with this prohibition.

5. Section 125 of the Political Parties, Elections and Referendums Act 2000

5.1 At national referenda, under section 125 of the Political Parties, Elections and Referendums Act 2000, certain statutory restrictions on publicity apply to local authorities as well as to government ministers, government departments and to any other person or body (with limited exceptions, such as the BBC) whose expenses are defrayed wholly or mainly out of public funds or by any local authority. The effect of section 125 at a national referendum is that during the period of 28 calendar days ending with the day of the poll the Council is prohibited from publishing any material that is to be made available to the public or a section of the public, in any form and by whatever means, which:

- provides general information about the referendum;
- deals with any of the issues raised by the referendum question;
- puts any arguments for or against a particular referendum outcome; or
- is designed to encourage people to vote at the referendum.

5.2 Section 125 provides for certain exceptions to the above publicity prohibition. This includes where material is made available to persons in response to specific requests for information or to persons specifically seeking access to it.

5.3 While the section 125 restrictions only apply to national referenda, similar restrictions are also imposed under legislation applying to local authority referenda concerning proposals for a change in governance arrangements (e.g. a referendum to introduce a mayor and cabinet model of local authority executive). One key difference is that there is no restriction on publicity that is solely designed to encourage participation in (rather than a particular outcome of) a referendum on local authority governance arrangements.

6. How do the pre-election and pre-referendum restrictions apply in practice?

6.1 There are a number of areas that are impacted by the pre-election publicity restrictions. The following paragraphs contain a non-exhaustive list of these along with details of the approach taken by the Council during the pre-election period (paragraphs 6.2 to 6.13 below are reflective of the guidance most recently issued by the City Solicitor).

- 6.2 **Council Business:** The pre-election restrictions are not intended to prevent necessary Council business and decision making. Meetings and decisions can, in principle, continue as normal. However, regard needs to be given to any publicity that will arise from business as usual and the Council should not schedule decisions on any controversial issues unless to do so is essential for legal, contractual or financial reasons, or to urgently address a serious issue concerning public safety.
- 6.3 **Council Communications:** Standard practice during the pre-election period is that there should be no proactive publicity of any sort relating to issues of political controversy, particularly any publicity that would require the involvement of individual Members. Press releases and publicity can be issued on routine Council business, though care needs to be taken to ensure that the information communicated is factual, makes no reference to individual Members or political groups and is not controversial. Publicity should portray Council decisions as made by the Council as a whole and not by a particular Member or political group.
- 6.4 Occasionally, it may be necessary for the Council to publicly respond to significant events outside of its control. In these instances, Members holding relevant Executive portfolios can comment via Council-issued publicity provided that the information is factual and not party political. Where officers are asked to comment, it should not be in such a way that it identifies officers with individual Members or groups of Members.
- 6.5 As at any time, publicity materials of a political nature will not be permitted on any Council website or any social media accounts maintained by the Council. This includes the hosting of material which is created by third parties and links to other websites containing political material. Election notices and information published by the Returning Officer can however be published on the website.
- 6.6 Care should be taken concerning published photographs during the pre-election period. Photo opportunities which could be seen as giving an unfair advantage to any candidate or party should not be organised or promoted by officers. The context in which photos are used is important. Photos taken previously may be deemed unsuitable for use in the context of the pre-election period.
- 6.7 Care should also be taken to avoid holding public consultations on politically controversial matters during the pre-election period. Unless there is a statutory obligation requiring the Council to consult during the pre-election period, any such consultations should be rescheduled if possible.
- 6.8 **Council Events:** Pre-election restrictions apply to events organised by the Council that are open to the public or a section of the public, or where the media may be present. Officers should not be involved in public events, whether organised by the Council or by others, that may be attended by candidates (including Members who are standing as candidates or acting as election agents). Such events should not be used to publicise candidates, their

parties or the policies or candidates they support and should, if possible, be postponed.

- 6.9 **Council Venues:** No political posters or leaflets are permitted to be displayed on any Council premises or vehicles at any time. Filming or photography within Council premises may be prohibited where it appears to be undertaken for the purposes of party political publicity (subject to compliance with regulations under the Local Audit and Accountability Act 2014 that permit the filming of Council meetings).
- 6.10 Other than where the statutory right of candidates to use certain publicly funded rooms for public meetings in furtherance of their candidature is engaged, requests by candidates or other political figures to visit Council premises should be refused where there is any potential for Council premises or facilities to be utilised for political publicity (such as the carrying out of a campaigning 'walkabout' for example).
- 6.11 **Council Members:** Individual Members can generate their own publicity during the pre-election period subject to their own party's protocols. The pre-election restrictions only apply to Council organised publicity or publicity otherwise utilising Council resources. The Council's Use of Resources Guidance for Members states that Members should not use Council resources for political purposes.
- 6.12 **Council Staff:** Council staff should not while acting in the course of their duties assist any Member, candidate or agent, or any other person, in preparing or publishing any political publicity material. Officers who hold politically restricted posts, or who are likely to be involved in or employed in connection with the administration of the election, should not take part in the political campaign or canvass on behalf of a political party or candidate, even when acting in a personal capacity outside of their working hours.
- 6.13 **The application of the above at referenda:** During the pre-referendum period ahead of a referendum similar practices to those described at paragraphs 6.2 to 6.12 above apply with some adjustment made to take account of the differences between elections and referenda (e.g. the absence of candidates in the latter). Account also needs to be taken of the additional restrictions that will apply as a result of section 125 of the Political Parties, Elections and Referendums Act 2000, which as can be seen from paragraph 5.1 above greatly restrict local authority publicity relating to national referenda.
7. **How is compliance with the pre-election and pre-referenda restrictions ensured?**
- 7.1 The City Solicitor issues a guidance note on publicity (usually with a separate document containing some illustrative scenarios) to Chief Officers and Heads of Service ahead of each election or referendum. It is for these senior officers to decide how to disseminate the information contained in the guidance to staff, although the guidance is also made freely available on the Council's Intranet.

- 7.2 The publicity guidance provides similar information to that contained in this report in respect of the statutory restrictions on local authority publicity and the Council's practices in relation to publicity during the pre-election or pre-referendum period. The guidance also sets out the process for raising any concerns over publicity-related matters.
- 7.3 In the first instance any concerns as to whether proposed publicity would be in breach of the pre-election or pre-referendum restrictions should be addressed to the relevant Chief Officer, as they will be individually responsible for ensuring that any publicity issued in relation to their service area is compliant with the publicity restrictions. Any unresolved concerns can be directed to the Democratic Services Legal Team, who can provide legal advice on pre-election and pre-referenda publicity matters and, where appropriate, may refer any matter to the City Solicitor for her consideration.

8. Recommendations

- 8.1 Recommendations to the Committee are set out at the start of this report.