

BUSINESS OVERVIEW AND SCRUTINY COMMITTEE

Wednesday, 27 July 2016

<u>Present:</u>	Councillor	M Sullivan (Chair)	
	Councillors	RL Abbey	W Ward
		D Realey	C Blakeley
		J Stapleton	G Ellis
		KJ Williams	D Mitchell
		S Williams	
<u>Deputies:</u>	Councillors	P Brightmore (In place of J McManus)	
		L Rennie (In place of T Pilgrim)	
		P Stuart (In place of C Spriggs)	
		T Anderson (In place of J Hale)	

15 APOLOGIES FOR ABSENCE

The Chair welcomed everybody to the meeting and noted that apologies had been received from Councillors John Hale, Anita Leech, Julie McManus, Tracey Pilgrim and Chris Spriggs.

16 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST / PARTY WHIP

Members were asked to consider whether they had any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

Members were reminded that they should also declare whether they were subject to a party whip in connection with any item(s) to be considered and, if so, to declare it and state the nature of the whipping arrangement.

No such declarations were made.

17 CALL-IN OF CABINET MINUTE 20 - KEEPING RESIDENTS INFORMED

In accordance with the procedure agreed by Council on 27 June, 2016, the Chair referred to the decision of Cabinet (minute 20 (27 June, 2016) refers) relating to a proposed monthly Council publication containing community and public service information.

The decision had been called in by Councillors Jeff Green, Ian Lewis, Tom Anderson, Bruce Berry, Chris Blakeley, Eddie Boulton, David Burgess-Joyce,

Wendy Clements, David Elderton, Gerry Ellis, John Hale, Paul Hayes, Andrew Hodson, Kathy Hodson, Tracey Pilgrim, Cherry Povall, Lesley Rennie, Les Rowlands, Adam Sykes, Geoffrey Watt and Steve Williams, on the following grounds –

‘To date the Secretary of State has issued Directions under section 4A of the Local Government Act 1986 to 11 Councils relating to Council publications. All 11 Directions have included references to the contravention of frequency of publication specifically: “where local authorities do commission or publish newsletters, newssheets or similar communications, they should not issue them more than quarterly.”

The Royal Borough of Greenwich has spent £48,000 in legal fees defending its publication ‘Greenwich Times’ which the Department of Communities and Local Government (DCLG) argued contravened the Recommended Code of Practice for Local Authority Publicity. The Greenwich Times was published for the last time by Greenwich Council on 28th June 2016 following an agreement with the DCLG to abide by the Code of Practice for Local Authority Publicity. We believe it is a costly miscalculation for the Labour Cabinet to believe it is somehow above Government guidance.

Within the Cabinet report and at the subsequent Cabinet meeting there was absolutely no consideration given to the variety of successful community publications that operate across Wirral. We believe this shows a complete disregard for the years of hard work that a great number of community activists have given to Wirral and jeopardises the invaluable goodwill that the Council relies upon to deliver its significant community engagement agenda.

We believe this is not the time for novices to the newspaper industry to be launching a new print title. Wirral has two established, free, independent newspaper titles the Wirral News - circulation 28,095 copies and Wirral Globe total circulation 97,368 copies (71% of households). The Labour Administration cannot control what these papers print and we are concerned that this may be the driving force behind the creation of this Town Hall Pravda.

The Government has shown it is committed to ensuring that the independent free press does not face unfair competition from municipal publications. We believe Cabinet’s disregard for the Recommended Code of Practice for Local Authority Publicity is tantamount to Labour playing fast and loose with Council Taxpayers money.’

The Chair then invited the lead signatory to address the Committee for up to five minutes

Explanation of Call-in by the Lead Signatory – Councillor Jeff Green

Councillor Green acknowledged that the Council should indeed be keeping residents informed and was delighted with the efforts made to do this through its website and social media. He expressed surprise that the local Messenger publications had only been consulted after Cabinet had made its decision. Ignoring specific guidance in the Government's Code of Practice on publicity would put the Council on the radar of the Department for Communities and Local Government. Democratic principles were at stake. The proposal would divert revenue away from independent local newspapers and a healthy free press was important to hold local authorities to account. The Council would ignore the Government guidance at its peril. It should not issue a news publication more than quarterly. Local journalists were needed more than ever now to hold local government to account. The proposal would cost £237,000 plus extra on potential legal fees. Quoting Albert Camus, Councillor Green said, 'A free press can be good or bad but most certainly without freedom, the press will never be anything but bad'. If politicians wanted good news they should make it not write it.

The Chair invited questions for the lead signatory to the call-in from the Committee but the Committee had no questions.

The Chair then invited the Cabinet Member to explain the Cabinet's decision for up to five minutes.

Explanation of the decision taken by the Cabinet – Councillor Matthew Patrick (Cabinet Member for Community Engagement and Communications)

Councillor Patrick stated that the country was now into its sixth year of national austerity policies with the Government systematically dismantling local government. The scale and pace of change in the public sector and Wirral was unprecedented and the Council now had less money than ever to provide services at a time when more people than ever needed the Council's support. There was a need to deliver the best possible value for all. £500,000 was currently being spent on getting information to residents. Many services needed to be promoted so they were sustainable and information provided on job vacancies, and on public and statutory notices. Six out of ten residents said they were not well informed about the services the Council provided. Members were asked to consider how they would react in their businesses and working lives if they found out a majority of their customers did not know what their companies provided. The Council had identified a need and had found an innovative, cost effective way of meeting it.

The Chair invited questions to the Cabinet Member from the Committee and his responses included the following:

- Legal guidance had been sought from a QC which had been reviewed by the Head of Legal and Member Services.

- He was well aware of the local Messenger publications, the Wirral West Constituency Committee having supported some of them. He said that they were doing a wonderful job and he would not want to put them out of business.
- The Senior Manager, Communications and Marketing, had met with people producing the Messenger to ensure they were fully included in the ongoing development of the publication.
- This proposal was an opportunity to spend less money on communications and marketing and reach more people.
- It was important to realise that the Council could advertise in every publication on Wirral and still not reach every household and those in the most deprived areas were the least likely to receive any publication.
- The QC's advice was subject to professional legal privilege as it contained commercially sensitive advice and so it was unable to be shared with the Committee.
- There would be a tendering process for the print and distribution of the proposed publication and it would be kept under review as to whether or not it was published during purdah.
- Just over 1,000 people had taken part in the MORI survey, which MORI had assured the Council, was a statistically significant number.
- All Members would know of residents who said they didn't know what was going on in the Council.
- Apart from in paragraph 3.4 of the report, no other constituencies were mentioned and those that were mentioned were to highlight the fact of areas with the highest deprivation.
- He did not have a figure for the percentage of monies spent on statutory notices.
- With the Conservative Government taking tens of millions of pounds from Wirral residents this was not an option he would have brought forward if it was going to cost more money.
- Bids would be requested for the proposed publication; his personal preference was to use environmentally friendly paper.
- With regard to advertising job vacancies, there was a need to obtain value for money but some vacancies would require advertising nationally.
- He did not believe the 66 advocates for the Council could reach all the people of Wirral.
- It was important to find a solution to reach those people in the most deprived areas.
- The proposal would not cost any more money, it had the potential to create savings.
- He did not see any duplication with what the Constituency Committees were doing.
- He was heartened by the positive feedback from residents on the Council's email database.

- The proposed publication would not be politically biased and would be reviewed by the Head of Legal and Member Services to ensure its impartiality.
- He was aware of the lack of distribution of some of the free newspapers within some wards, and this was the driving motive behind pursuing this initiative.
- The MORI survey's findings had been an eye opener and it was important to address residents' needs.
- He had confidence in the projected income figures detailed in the Cabinet report.
- He would be very keen to see local jobs being created and this would be down to the results of the tendering process.
- Services were provided across Wirral and people were trying to engage with residents but the poorest residents were not being kept informed.
- Producing the publication monthly would enable the positive community work being carried out across the borough being communicated effectively.
- This proposal had been adopted by Councils elsewhere, including Hackney and Lambeth Borough Councils and there were lessons to be learnt from other areas which were doing this.

The Chair then thanked Councillor Patrick for his time in answering questions from the Committee.

The Chair then invited the witnesses to the call-in to address the Committee for up to five minutes.

Evidence from Call-in witnesses – Simon Westrop and Hayley Smith

Simon Westrop, Head of Legal at Newsquest

Mr Westrop stated that the Council proposal would divert public monies to finance it. Local authorities needed to be held to account by a healthy free press and local newspapers were doing this. Councils should be publishing information where a gap had been identified and Council newsletters should not look like newspapers and should be published no more than quarterly. The Council would be acting in defiance of the Recommended Code of Practice and this was not the actions of a responsible authority. The impact on local newspapers would be real and damaging with the local market already saturated, there could be a £90,000 loss in revenue which would lead to a cut in jobs. He suggested that a better approach would be for the Council to work with local businesses to plug any gaps in provision.

The Chair then invited questions from the Committee and Mr Westrop's responses included the following:

- There was a lot of local media in Wirral with the Wirral Globe being just about the biggest free local newspaper in the whole of the country.
- The publicity code tried to strike a balance where a gap was identified and the need to preserve a healthy free press.
- Each free newspaper would have its own tight margins and this proposal would be unfair competition if it took advertisers away and failed to comply with the Government's guidance and be a quarterly publication.
- If the proposal went ahead the threat would be very serious and Newsquest would have to consider all options available.
- Greenwich Council had defended its position then withdrawn its proposal and he understood that Tower Hamlets Council had ceased its publication.
- The Secretary of State could apply for an injunction on the grounds that Councils had to have regard to the Code and the Council could then be enjoined from publishing and have to pay the Government's legal costs.
- He could not comment on the Council's legal advice but it was his view that the Council must comply with the Code and publish its proposed publication quarterly.

The Chair thanked Mr Westrop for attending the meeting and answering the questions.

Hayley Smith, Group Editor at Newsquest

Ms Smith stated that the Wirral Globe was a free weekly newspaper which could be delivered to to 95,000 households, more than any other free newspaper in the country, and relied on its position in the market to generate advertising income. The proposed monthly newsletter would challenge the Globe's position reducing advertising revenue with an impact on employees. She accepted that the Globe was not delivered to every household but more people year on year were accessing the website daily. A much more efficient solution would be to work together with the Council and she would relish the opportunity to discuss this with the Council.

The Chair then invited questions from the Committee and Ms Smith's responses included the following:

- There would still be a requirement for the Council to place public notices in the press at a cost of approximately £70,000 per annum.
- She outlined a situation in another area where Newsquest published a newspaper and that they had recently gone into partnership with the NHS where its newsletter was to be inserted into the one Newsquest produced and this approach could be adopted by the Council.
- The Managing Director of Newsquest had met with the Council to discuss the proposal and had expressed his concerns about its proposal. Newsquest was open to more discussions.
- The Globe had a good online presence and there were now so many ways to engage with people.

- There would be an effect on the Globe's distribution if the proposal was implemented as it was a commercial business.
- She could not say exactly how areas were picked for distribution but in some areas there was no distribution because of health and safety concerns; she would be able to provide a list of areas where the Globe was distributed as she didn't take the decision as to where it was distributed but it was the Distribution Manager.
- She could not tell how many job losses there might be as she could not quantify the impact on the reduction in advertising in the Wirral Globe if the proposal was implemented.

The Chair commented that the Council's proposal was to deliver its publication to all 147,000 Wirral households. Currently there were no deliveries of the Wirral Globe to Pensby Library despite repeated requests to have copies delivered. He suggested that the Globe was doing a disservice to its advertisers by not delivering to all households.

The Chair thanked Ms Smith for attending the meeting and answering questions.

The Chair then invited the witnesses for the Cabinet Member to address the Committee for up to five minutes.

Evidence from Cabinet Member's witnesses – Surjit Tour and Kevin MacCallum

Surjit Tour, Head of Legal and Member Services, Wirral Council

Mr Tour stated that the legal position was as set out in the Cabinet report and he was happy to answer questions from the Committee. His responses to questions included the following:

- The dispute at Greenwich Council had been a long standing one but there were a number of differences as the Greenwich publication had a weekly distribution. A directive had been issued by the Secretary of State which had been challenged by Greenwich Council by way of a judicial review. It appeared Greenwich Council agreed to stop the publication. However, Greenwich Council's Cabinet had subsequently made a decision to publish a fortnightly publication which was currently subject to call-in, there seemed to be some confusion over what was agreed in the Consent Order in the Judicial Review and Cabinet's current decision / position.
- There was a legal duty on the Council to have due regard to the Recommended Code of Practice for Local Authority Publicity, and as such any departure from it had to be justified as it should not be departed from lightly.
- The rationale and grounds for departing from the Code were articulated in the report.

- The position with regards Cabinet's decision was that it was legal, rational and met the 'Wednesbury reasonableness' test.
- It was acknowledged that there were differing opinions on the need for the publication and whether departure from the Code was justified. However, the legal judgment was that the decision was not perverse or without merit.
- The proposal would comply with the Code in every other respect, the sole departure being that it would be published monthly and the Secretary of State could test the rationale for this.
- He was not aware of direct discussion with the Department for Communities and Local Government but a communication had been received from the Secretary of State seeking clarity on the Council's decision to proceed with a monthly publication which would be responded to.
- It was a matter which divided opinion and the Secretary of State could come to a different view to the legal advice the Council had received or he could be content with the Council's rationale for going ahead with its proposal.
- If the Secretary of State was not supportive of the Council's approach and decision, then any direction issued together with reasons would need to be carefully considered and a determination made as to how the Council would respond.
- With regards to the contents of the publication, he would not have final sign off of the proposed publication, though he would ensure the content complied with the Code and during the purdah period he would ensure that the publication did not contain information which would breach the Code. The Senior Leadership Team (SLT) would also be involved in signing the publication off.
- The external legal advice received had cost £1,300 plus VAT.
- He explained his advice in respect of a previous proposal to produce a newsletter by the Birkenhead Constituency Committee and that these two proposals involved fundamentally different circumstances as this latest proposal was for a borough wide publication. His view was that each case had to be considered on its own merits.
- The Counsel's legal advice could not be disclosed in full though this was not unusual for such legal advice to be protected by legal professional privilege and it was not appropriate to share the detail publicly.
- The Leader of the Council's Policy adviser did not attend SLT meetings.
- The legal advice had been shared with the Leader of the Council, the Senior Manager, Communications and Marketing and the Cabinet Member for Community Engagement and Communications.
- There had been various approaches to the Wirral Globe to address the circulation gap over the years.
- He would argue that the Council had reached a lawful decision and there were rational and justifiable reasons for doing so. The Council had had due regard to the Code and had identified a reasonable rationale and reasonable grounds to warrant departure from the Code. The rationale and grounds were 'Wednesbury' reasonable. The fact that others had a

differing view on the justification for the publication did not mean the Council's decision was unlawful or without merit.

- The Secretary of State could have made compliance with the Code mandatory but he had chosen not to do so – the obligation was to have 'due regard' to it which the Council contends it had.
- The current arrangements relating to the Council's approach to purdah would be satisfactory for this publication's purposes.
- It would be incorrect not to highlight the litigation risks associated with the proposal as the Secretary of State could decide to take no further action or he could challenge the Council on the decision it had made.

The Chair then thanked Mr Tour and adjourned the meeting for 10 minutes at 6.20pm

The meeting resumed at 6.30pm.

Kevin MacCallum, Senior Manager, Communications and Marketing, Wirral Council

Mr MacCallum stated that he had held conversations with colleagues at Newsquest and also with other media colleagues and that he was keen to continue those publications, on the basis that a non-negotiable element was that every single household had to receive the proposed Council publication. There would be a tendering process for both printing and distribution which the free papers would be able to take part in. He referred to other Council's publications, including the Greenwich Times, over which there had been long protracted negotiations with the Department for Communities and Local Government,. The Greenwich Times publication was a weekly newspaper, which the Council had ceased publication of, and was now moving to producing a fortnightly residents publication. . Tower Hamlets Council published East End Life and Hackney Council published Hackney Today, both of which are Newspapers published on a weekly or fortnightly basis and therefore different to the Council's proposal.. The Council's proposed publication would not be a newspaper as it would contain information about public services and not news.

The Chair then invited questions from the Committee and Mr MacCallum's responses included the following:

- No final name had been decided on yet for the proposed publication.
- Advertising would generate some revenue but that would be a by-product of the publication and not the reason for it.
- The pricing structure for advertising had not yet been finalised but the Council would not be competing directly with other organisations as the publication would be aiming at a different space in the market.

- The proposed publication would provide information on services and activities available for Wirral residents including those from partner organisations such as health, fire and police.
- He would act as the editor deciding on content with collective responsibility of the SLT for the sign off of the proposed publication.
- Statutory and public notices would continue to be placed in local newspapers as that was a requirement and non-statutory advertising such as for Leisure Centres could appear in the proposed publication.
- He was entirely confident of reaching the income figures projected in the Cabinet report although income was not the priority or objective of the proposed publication.
- Extensive market research would be undertaken on the proposed publication after 6, 12 and 24 months.
- MORI, a professional market research company had provided the Council with feedback on the level of engagement and the Council was 20% below average in respect of keeping people informed.
- Approximately 50,000 people were on the Council's email database.
- The proposed publication would be printed on heavier stock paper 50 – 100g on a size bigger than A4 but smaller than A5.
- He was aware of the Council's previous publication, 'Wirral Now' and did not know if this new one would be better but he would make sure that it was of the highest quality and he would measure the impact.
- There would be a minimum of 28 to a maximum of 36 pages with 20% maximum amount of advertising.
- The proposed publication was not anybody's specific idea and was a decision taken by Cabinet.
- Evidence from an LGA survey had found that where Councils kept their residents well informed those residents were more likely to be satisfied with their Council and feel that it offered value for money.
- He had looked at about 50 different Councils and different partner organisations and all had the same problem of struggling to get information to the most deprived areas.
- He confirmed that he had seen the legal advice from Counsel and that it was to remain confidential.

The Chair then thanked Mr MacCallum for his attendance and for answering questions.

The Chair then invited the lead signatory to the call-in to summarise his key points.

Summary of the Lead Signatory – Councillor Jeff Green

Councillor Jeff Green commented that the Council had no expertise to run a newspaper and it was extraordinary that, at a time of austerity, the Council was choosing to spend £237,000 plus legal costs on this particular escapade. This would be a Council newspaper and would be seen as such. This showed

a lack of imagination, there was a significant gap with the most disadvantaged people in the Borough not receiving information, surely the Council should be thinking about achieving the outcome of reaching these people and the 50,000 who could not access the internet. The legal officer for the Council had talked about the risks of challenge from the Department of Communities and Local Government. The public would be rightly angry that advice had been given that there were risks involved and the Council was prepared to play fast and loose with Council Tax payer's money. It was a risk that the Committee would be making a decision without seeing the legal advice. He expressed concern at what this would do to the local media in holding the Council to account. The Secretary of State's decision in respect of Greenwich Council was that it should not commission or publish more than four times a year and it had accepted this decision.

The Chair then invited the Cabinet Member to summarise his key points.

Summary of the Cabinet Member – Councillor Matthew Patrick

Councillor Matthew Patrick commented that the core purpose of the proposed publication was to keep residents well informed of the services available to them, how to access them and where to access them. This was non-negotiable and was vital in meeting the Council's twenty pledges set out in the Wirral Plan. Numerous Councils had faced similar challenges, this decision was appropriate and lawful. The Council was not setting itself up as a media provider nor getting into the business of newspaper provider. Its first responsibility was to the residents of Wirral and this proposal stacked up as doing better for less through radical and innovative thinking.

Committee Debate

The Chair then opened the matter for general debate by the Committee.

A Member commented that the Committee had not had all the information it should have received because some of it had been restricted. The legal witnesses had stated that it was a risk and a departure from the Code. The Council would be challenged if it went ahead with its publication and would incur tremendous costs.

Another Member commented that the publication would go straight to people's bins and the money would be better spent on outreach work.

Other Members suggested that doing nothing about the issue was not an option as the Council would be ignoring the majority of its residents according to the MORI survey. The proposal was about trying to reach everybody and giving everyone the opportunity to receive information. If a business had received information that it was not engaging with its customers then it would do something to address the situation.

It was then moved by Councillor Blakeley and seconded by Councillor Rennie, that –

“1. This Committee asks Cabinet to write to the Department for Communities and Local Government seeking its view on the proposals for 'Keeping Residents Informed' as per the Cabinet report presented on the 27th June, 2016.

2. This Committee notes and welcomes the offer by Newsquest to work with the Council to fill the perceived gap in provision, and asks that this takes place with it, and other local Newspaper providers with immediate effect.

3. This Committee is concerned that should the Town Hall publication go ahead, the Government is likely to serve an injunction on Wirral Council, and the Committee is keen to avoid any unnecessary, protracted and expensive legal costs on the Council Taxpayers of Wirral, and also wishes to safeguard the Borough's independent and vibrant local free press.”

The motion was put and lost (6:7).

It was then moved by Councillor Brightmore, seconded by Councillor Jerry Williams, and –

Resolved (7:6) –

That in order to ensure that this Council uses its resources in the best possible way to keep all residents informed, improving communication, getting important information to more people while reducing what it currently spends, this Committee upholds the Cabinet's decision of 27 June that the best use of a proportion of the advertising budget should be used to facilitate a monthly publication containing community and public service information. This publication will be delivered to every household and business within the Borough on a monthly basis.