

North Tyneside Council Report to Council Date: 24 January 2013

ITEM 7

Title: Response to Motion
on Distribution of
Widening Horizons
Magazine

Portfolio(s): Elected Mayor

Cabinet Member(s): Mrs Linda Arkley

Report from Directorate: Chief Executive's Office

Report Authors: Vivienne Geary, Monitoring Officer (Tel: 643 5339)

Wards affected: All

PART 1

1.1 Purpose:

At the meeting of Council on 29 November 2012 the following Motion was agreed:

"This Council requests that the Council's Monitoring Officer looks to determine whether the distribution of "the Widening Horizons December Issue" during an election period in November, across the borough was in accord with the Council's protocols and guidance on the use of council resources during any election period. A report on the conclusions be presented to a future Council Meeting."

This report is produced in response to the agreed Motion.

1.2 Recommendation(s):

It is recommended that Council note the content of this report and endorse the actions identified in paragraph 1.5.8 of the report.

1.3 Forward Plan:

This report appears on the Forward Plan for the period 1 June 2012 to 30 September 2012.

1.4 Council Plan and Policy Framework

This report does not relate to any requirement in the Council Strategic Plan or Sustainable Community Strategy.

1.5 Information:

1.5.1 Background

The Council produces a magazine called Widening Horizons, for residents on four occasions each year. The magazine has been previously produced on more occasions annually but the current number of issues is in accordance with the Code of Recommended Practice on Local Authority Publicity issued in March 2011. The magazines are scheduled for publication to enable the circulation of key, primarily Council, information for the public thus ensuring additional marketing costs are not incurred and providing value for money for the Council.

The Council now produces the magazine in

- March: to provide information generally on Spring events, forthcoming local or other elections to encourage voter turnout and Council tax and budget decisions
- June/July: promoting events generally over the school holiday periods, the Mouth of the Tyne Festival and providing information about the outcome of the local elections held in May,
- September: to provide information generally about the Council's Age Takes Centre Stage Festival programme, North Tyneside in Bloom, Green Flags, Examination success, Remembrance Sunday arrangements, the Schools admission process; and
- December: to provide information about the switching on of Christmas lights and other Christmas events and usually providing information about engagement about the Council's budget planning process.

The date of publication and circulation of each magazine generally coincides with the date printed on the magazine however a practice has been in place for some years that the December magazine is printed and published in early November to ensure that information about the Christmas events and particularly the switching on of the Christmas lights is provided to residents so that they may make arrangements to attend. For the past three years the December magazine has been published on 8 November 2010, 7 November 2011 and 5 November 2012. Annexe 1 to this report identifies the date of the publication of each Widening Horizons magazine and for the past three years and the date applied to the published magazine on the front page. The practice of such advance dating of the magazine is in accordance with the approach taken in relation to numerous national publications. It is thought to assist a reader's understanding that the magazine includes information relating to a future time period, in this instance December, and should therefore be retained.

1.5.2 The Legal Context for Council Publicity

Section 142 of the Local Government Act 1972 empowers authorities to "provide information relating to matters affecting local government" including:

- Provision or publication (within their area) of 'information' concerning the services available within the area of the authority provided either by the authority, or by other local authorities or by government departments
- Publication within their area of information relating to the functions of the authority, and
- Lectures, discussions, pictures, film and exhibitions.

In addition under section 111 of the Local Government Act 1972 the authority is empowered to do anything which is conducive or incidental to, or calculated to facilitate, the discharge of its functions. Further under the Localism Act 2011 the authority now has the general power of competence available to be relied upon.

The authority is however constrained by provisions in the Local Government Act 1986. In section 2 of that Act an authority is not permitted to “publish material which, in whole or in part, appears to be designed to affect public support for a political party”. In addition authorities are required to “have regard to [the Code of Recommended Practice on Local Authority Publicity] in coming to any decision on publicity” (the “Code”). This Code was issued in 2011 and supersedes all earlier statutory Guidance on the topic. The Code reiterates the previous advice on restricting local authority publicity during the lead up to elections and referenda, and making sure that it is balanced and does not appear to advantage a particular candidate or party.

In addition, it is clear from cases decided in the Court of Appeal that the authority is expected to ensure that the ordinary functions of the authority continue to be fulfilled such as budget engagement processes, the delivery of information about authority and, where relevant, partner agency services and the determination of planning and other applications.

The Authority does not have the power to apply its resources for party political purposes.

1.5.3 The Authority’s Protocols and Guidance

Prior to each election or referendum guidance is issued by the Authority’s Monitoring Officer regarding the Authority’s publicity in the pre election period and is issued to the Mayor, all Members, the Chief Executive and all Heads of Service for distribution to all relevant officers. A copy of the Guidance issued on 20 September 2012 is annexed for information (Annexe 2).

The Council also has an agreed Protocol on Press, Publicity and Publications, however this protocol is subject to an ongoing review. There is no specific guidance in the protocol relevant to this matter.

At the present time the Council has an agreed protocol on Support for Members but again this is subject on an ongoing review. No other guidance has been issued specifically in relation to use of the Authority’s resources during a pre-election period. However the general principle that the Authority does not have the power to apply public resources for party political purposes is applicable.

1.5.4 Elections in November 2012

On 15 November 2012 the first elections were held in 41 police force areas in England and Wales for the new role of Police and Crime Commissioner (PCC). The Northumbria Police area extends across 7 local authority areas, taking in the Counties of Northumberland, Tyne and Wear and Durham. The election was organised on a regional basis therefore the Police Area Returning Officer (PARO) role was undertaken by the Chief Executive of Sunderland, Dr Dave Smith for the region. Local Area Returning Officers, that is the Returning Officer for each local authority area, supported each PARO.

In the future the elections for the PCC will take place in May 2016 and thereafter every 4 years. Future elections are therefore planned to take place combined with a local election.

In addition to the PCC election a local authority by-election was held on 15 November to fill a vacancy for a Ward Councillor in the Wallsend Ward. The resignation of the former Ward Councillor and request for a by-election were received on 24 September 2012.

The Notice of Election for the PCC Election was published on 8 October 2012 and the Notice of Election for the by-election was published on 11 October 2012. The date of the Notice of Election is recognised as the time triggering a period of heightened sensitivity when publicity by public bodies, in this instance particularly the Police Forces but also including local authorities and central Government, will be subject to greater scrutiny. As a result it is a time when even greater care must be taken to ensure that publicity issued by such bodies does not seek or appear to seek to influence public support for a political party or candidate.

The Election Statements for the PCC candidates, unlike elections for Elected Mayors, were only published on the choosemypcc.org.uk website and not provided to voters in hard copy by PAROs. The nominations for PCC candidates were finalised on 19 October and the Election Statements provided by the candidates were publicly available on that website from 26 October. By the time the manifestos were available the Authority's Widening Horizons December issue was being printed. The successful PCC candidate, Vera Baird Q.C., included in her Election Statement a commitment to "take further steps to combat violence against women".

1.5.5 Widening Horizons issue December 2012

The December 2012 edition of Widening Horizons was published on 5 November, in accordance with normal practice. The lead in for the publication is lengthy and commenced in effect with the determination of the dates of publication in the previous January 2012 which enables relevant bookings to be made with distribution companies to fit in with the Council's required schedule at competitive rates. The planned dates for publication of each edition of the magazine are also posted on the Council's intranet in January. However the detailed production work on the December issue only commenced in mid September some 7 weeks prior to publication and commencement of delivery.

During the intervening weeks the detailed content is settled and the pages planned together with relevant artwork. Advertising is included in the magazine and this is planned, space sold and finalised some 5 weeks prior to publication. One week prior to publication draft proofs containing the vast majority of the proposed content of the magazine, are submitted to the Mayor's office, the Chief Executive and Legal Services for review. Legal Services consider the content primarily in the context of the requirements of the Local Government Act 1986 referred to above. The magazine was submitted for printing on 23 October, delivered to the distribution company on 30 October and delivery to residents commenced on 5 November. The magazine was placed on the Council's website on 5 November 2012.

Two issues identified in relation to the content of the magazine merit specific comment, namely the article on domestic abuse, and the article on the shopping centre in Wallsend. These are addressed below.

The content of the magazine finally published did not include any material from Northumbria Police, none had been submitted in view of the proximity to the PCC election in November. The magazine did however include a factual article concerning domestic abuse including examples of the varying signs of such abuse, and providing contact details of agencies, including the Council, providing support for victims. In addition there is reference in successes identified in the Mayor's Message to the "continue[d] .. reduct[ion] in crime and disorder working with the police and other partners".

Specific reference is also made to Wallsend in the magazine in an article relating to the grant of planning permission for improvements to the Forum Shopping Centre and promotion of the centre to potential traders from a new Wallsend Market in the former InShops area.

1.5.6 The Authority's Compliance with the Legal Framework

The publication of the Council's magazine during a pre election period is not unlawful provided the content does not contravene the requirements of the Local Government Act 1986. The Act requires that:

- the Authority does not "publish material which, in whole or in part, appears to be designed to affect public support for a political party". The content of the Widening Horizons Magazine complies with this requirement.
- the Code is considered by authorities contemplating the issue of publicity. This is undertaken on behalf of the Authority by those involved in the production of the Authority's publicity, particularly the Authority's Communications team and other senior Officers, including the Chief Executive and Monitoring Officer for corporate publicity and Strategic Directors and Heads of Service where publicity is issued by service areas. This was undertaken in the publication of the December edition of the Widening Horizons magazine.

The Code does identify a period of heightened sensitivity prior to local and national elections when even greater care is required to avoid influencing voters in relation to particular candidates or parties. The Code does not prohibit the publication of Council publicity during this period but it is the case that, particularly during this time, even greater care is taken in relation to publicity issued. Where timing is particularly important and provided the content is politically neutral the Code is not contravened. The content of the December issue of the Widening Horizons magazine was politically neutral and was also required to be published in a timely way to ensure that information regarding Christmas activities, which commence in the latter part of November was available to those who may have wished to participate and needed to plan for this. Although additional advertising material could be produced to promote such events this would have incurred additional costs.

The Authority did however include information regarding domestic abuse in the magazine. Vera Baird also identified in her Election Statement a commitment to take steps to combat violence against women. However this statement was published after the proofs for the Widening Horizons magazine had been reviewed and sent for printing to external printers and no particular sensitivity was identified or specific opportunity taken to consider whether there were implications in including the Widening Horizon article on a similar topic. In the event the article, being of a factual nature without political comment, ensured that no breach of the Code actually occurred.

In relation to the by-election, information concerning Wallsend in the magazine did not contain material of a party political nature and was in essence informative. In the event the distribution in the Wallsend Ward is not material as it occurred after the by-election had taken place.

1.5.8 Lessons Learned

There are lessons to be learned as a result of the Council's approach to the elections in November 2012.

- The Briefing Note issued by the Monitoring Officer concerning publicity during the pre election period ostensibly to all relevant officers, was not received by the Communications team. When the Guidance has previously been issued the team has received copies but in the future a copy of the Guidance issued will be sent specifically to the Communications Team members.
- It is possible that the reference to a specific month on the Widening Horizons magazine indicating a date of publication may be confusing. The magazine at issue was published in November but is dated December 2012. To avoid confusion in the future it would be appropriate to consider reference to seasons to distinguish each edition rather than a specific month.
- The review of relevant Protocols providing general guidance is nearing completion and should now be progressed expeditiously.

1.6 **Decision options:**

The following decision options are available for consideration by Council:

Option 1

Approve the recommendation as set out in Section 1.2 of the report.

Option 2

Not to approve the recommendation as set out in the report and refer the matter back to the Monitoring Officer for consideration of additional matters identified by Council.

Option 3

Not to approve the recommendation as set out in the report and refer the matter to the authority's External Auditor for consideration whether the expenditure on the publication and distribution of the December 2012 issue of Widening Horizons magazine was lawful.

Option 1 is the recommended option.

1.7 **Reasons for recommended option:**

Option 1 is recommended as the review of the legislative framework concerning Local authority publicity and information relating to the December 2012 issue of Widening Horizons magazine does not produce information that suggests that the authority has

published the magazine improperly. However the review has identified where the authority may wish to adjust current practice improve transparency surrounding dates of publication and to minimise the risk that the improper or unlawful publication of the Widening Horizons magazine may occur in the future.

1.8 Appendices:

Annexe 1: Dates of Widening Horizons magazines

Annexe 2: Monitoring Officer Guidance issued 20 September 2012

1.9 Contact officers:

The names, titles and contact numbers of the key officer who has contributed to the report and other relevant officers should be set out here in the following format:

Vivienne Geary, Monitoring Officer	(0191) 643 5339
Alison Campbell, Finance Business Manager	(0191) 643 7038

1.10 Background information:

The following background papers/information has been used in the compilation of this report and are available at the office of the author:

Code of recommended Practice on Local Authority Publicity 2011

Widening Horizons edition December 2012

Authority Press releases issued 8 October- 15 November 2012

Protocol on Press, Publicity and Publications

Protocol on Support for Members

Local Government Act 1972

Local Government Act 1986

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There are no direct financial implications arising from this report.

2.2 Legal

The main legal considerations are contained within the main body of the report.

The Local Government Act 1986 prohibits authorities from publishing material which, in whole or in part, appears to be designed to affect public support for a political party, and from giving financial or other assistance to a person for the publication of material which the authority is prohibited from publishing. If the authority breaches the requirements of this legislation this action would be unlawful and the Council's Monitoring Officer would report on the matter to full Council under their duties arising under the Local Government and Housing Act 1989. An interested person would be able to seek an injunction to prevent such a publication, or the Council's External Auditor may be approached to question whether the expenditure on the publicity is lawful. The external auditor has the ability to seek a declaration of illegality from the High Court at the authority's expense.

The Council is also required to “have regard” to the provisions of the Code of Recommended Good Practice on Local Authority Publicity. This means that provided the requirements of the Code are considered it is not necessary to apply them. Thus provided the Code is considered if an authority departs from the requirements of the Code there is no means of enforcement unless the authority failed to even consider the Code or set out to defy the Code. In such a case the authority’s External Auditor may explore the issue.

2.3 Consultation/community engagement

No consultation has taken place in relation to this report as the Authority’s Monitoring Officer has been requested by the Council to consider and report back on whether the residents’ magazine, Widening Horizons, was properly distributed in November 2012 during the pre-election period for the PCC election and the Wallsend by-election.

2.4 Human rights

There are no Human Rights issues arising from this report.

2.5 Equalities and diversity

There are no equality and diversity issues arising from this report.

2.6 Risk management

There are no risk management issues arising from this report.

2.7 Crime and disorder

There are no crime and disorder issues arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability issues arising from this report.

PART 3 - SIGN OFF

- Chief Executive x
- Mayor/Cabinet Member(s) x
- Chief Finance Officer X
- Monitoring Officer X
- Strategic Manager, Policy and Partnerships x

Annexe 1

Dates of Widening Horizons magazines:

Year of Publication	Date of Publication	Date on published magazine
2010	February 8	February 2010
	March 29	<u>April 2010</u>
	June 14	<u>July 2010</u>
	September 13	<u>October 2010</u>
2011	March 14	March 2011
	June 27	<u>July 2011</u>
	September 12	<u>October 2011</u>
	November 7	<u>December 2011</u>
2012	March 12	March 2012
	June 18	June 2012
	September 10	September 2012
	November 5	<u>December 2012</u>

Underlined dates indicate the date of publication differing from the date on the printed magazine.