

Public Document Pack

Southend-on-Sea Borough Council

Department for Corporate Services

John Williams - Head of Legal & Democratic Services

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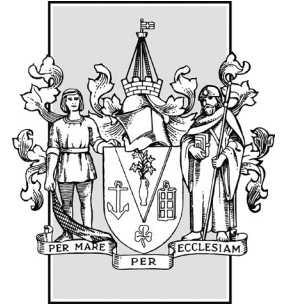
Fax: 01702 215994

Date: 20th April 2016

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Contact Name: Robert Harris

DX 2812 Southend



Dear Councillor,

THE COUNCIL - THURSDAY, 21ST APRIL, 2016

Please find enclosed, for consideration at the next meeting of the The Council taking place on Thursday, 21st April, 2016, the following report that was unavailable when the agenda was printed.

Agenda No Item

24. Southend Energy and Pre-election Purdah (Pages 1 - 12)

Report of Chief Executive & Town Clerk attached.

Yours faithfully

Robert Harris
Legal & Democratic Services

Southend-on-Sea Borough Council

Agenda
Item No.

24

Report of Chief Executive & Town Clerk

to
Council

on
21st April 2016

Report prepared by: Rob Tinlin

Southend Energy – Pre-Election Purdah

Part 1 Public Agenda Item

1. Purpose of Report

To report to Council on a breach of the pre-election purdah rules.

2. Recommendations

That the Council notes the circumstances which have resulted in the breach of the pre-election purdah rules, the steps which have been taken, and are proposed to be taken, to prevent it happening again, and the apology offered by me as Head of Paid Service for the breach.

3. Background

3.1 Southend Energy is a Council initiative in conjunction with OVO Energy Limited to provide local residents with the opportunity to switch utility supplier to obtain cheaper energy. The Council also benefits from a small referral fee for each customer who signs up.

3.2 The initiative was originally launched in May 2015 with extensive marketing over the following months.

In November / December 2015 a letter (“Letter 1”) was sent to some 50,000 residents in the Borough and a copy is attached at **Appendix 1**.

Letter 1 was signed by the Leader of the Council on the advice of officers in the Department of Place. These officers had obtained a clear recommendation from OVO that the Leader should sign Letter 1 in order to maximise the impact, based on their experience of working with other Councils.

The fact that the Council issued such a letter to publicise the Southend Energy initiative was quite lawful. Section 142 of the Local Government Act 1972 (in conjunction with section 111 of the same Act) and also section 1 of the Localism Act 2011 give local authorities wide powers to publish information about their activities.

Section 2 of the Local Government Act 1986 prohibits a local authority publishing or arranging publication of material designed to affect public support for a political party and a Code of Recommended Practice has been issued by the Secretary of State in Circular 01/2011 regulating the form and content of published material. The Code does allow local authorities to publish material featuring specific politicians, such as in the use of portfolio holders as spokesmen for particular functions of the Council.

Although signed by the Leader, Letter 1 was merely publicising a Council initiative. It was not a party political communication and it was not issued during a period of "heightened sensitivity" before an election. Consequently there was no contravention of either S.2 of the 1986 Act or the Code.

- 3.3 In January 2016, OVO suggested that a second direct mail campaign should be conducted to try and increase take up. OVO recommended this should take place in February 2016 to have maximum effect, but the letters should not land any later than mid-March to ensure maximum sales impact.

Initially officers were not in support in view of the costs involved. However OVO agreed to meet all of the costs and so in February 2016 officers agreed to proceed, provided the letters went out no later than mid-March to have maximum effect and also to avoid any possibility of letters being delivered in the pre-election purdah period in connection with the May local elections in Southend which commenced on **30th March 2016**.

- 3.4 As it was proposed to send out a letter in the same format as Letter 1 and OVO was again recommending that it should be signed by the Leader, Councillor Woodley was necessarily consulted and advised of OVO's recommendation.

On 16th February 2016 Councillor Woodley was sent an e-mail advising him of the proposal to send another letter to residents within the month and that delivery would be completed before the commencement of purdah. The Leader confirmed his agreement the same day saying "yes go for it".

On 23rd February 2016 Councillor Woodley was sent the draft letter (which was very similar to Letter 1 and already contained his electronic signature) seeking his agreement for it to be distributed: Councillor Woodley replied the same day "okay".

- 3.5 The second letter (“Letter 2”) was delivered to some 57,000 residents and a copy is attached at **Appendix 2**. The mailing list was obtained by OVO from an external source and it is understood included some people with SS postcodes who lived just outside the Borough.
- 3.6 Unfortunately the delivery of the 57,000 Letters did not take place in mid-March as planned, but on or after 4th April 2016. This was during the pre-election purdah period and is a clear breach of the Code of Practice in Circular 01/2011 as referred to above.

Paragraph 34 of the Code provides that “During the period between the notice of an election and the election itself, local authorities should not publish any material 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”.

Paragraph 35 of the Code states “That in general, local authorities should not issue any publicity which seeks to influence voters.”

Not surprisingly this breach of the Code has led to a number of complaints.

- 3.7 The Council’s Monitoring Officer conducted an immediate inquiry into what had happened and received a report from the Department of Place which had dealt with the matter – see **Appendix 3**.

The Monitoring Officer then reported his findings, conclusions and offered an apology to the complainants on 8th April 2016. He followed it up with a further communication once additional information had been received from third parties involved.

- 3.8 However this is such a significant matter that I thought it appropriate to submit a report to Council setting out the findings and conclusions of the Monitoring Officer for the benefit of all Members, together with my comments.

- 3.9 The Monitoring Officer confirmed in his first response to the complainants on 8th April that he was satisfied that:

- Officers were pursuing a legitimate objective in arranging for OVO to send reminder letters to residents explaining the benefits of Southend Energy, so that more residents could reduce their energy bills;
- Mid-March was an appropriate time to send such reminder letters given the general pattern of when users of energy are likely to switch suppliers;
- Officers took some steps to ensure that the letters were delivered by the mid-March date. At the same time they were mindful of the necessity to avoid any letters going out in the pre-election purdah period; and

- At the beginning of April, when it appeared that the letters had not been delivered, officers contacted OVO, not only to seek an explanation, but also to ensure that the letters would not be delivered, or no further letters would be delivered, as pre-election purdah had commenced. Unfortunately this instruction was not acted upon by OVO or its sub-contractors and we await an explanation for this (see further at 3.10 below).

Notwithstanding this assessment, the Monitoring Officer considered that the Officers should have understood the risk that all or some of the letters would not be delivered in mid-March and taken additional steps to avoid this happening: Officers were not in control of the despatch and delivery process and were reliant on more than one third party to meet the deadline. As it turned out the risk materialised and the letters were delivered on or after 4th April 2016.

The Monitoring Officer also confirmed that:

- guidance had already been issued to all staff on the pre-election purdah rules and that following this incident the Chief Executive has sent a reminder to all Directors and Heads of Service reinforcing the rules; and
- When we issue purdah guidance next year, we will include reference to avoiding the dangers of third parties sending out Council communications.

3.10 Following receipt of information from OVO and one of its sub-contractors (Whistl) about how they failed to arrange for the 57,000 letters to be delivered in mid-March as the Council had required, the Monitoring Officer wrote again to the complainants on 14th April 2016. He confirmed that the information supplied explains the failures of the systems of these third parties and also demonstrates that:

- OVO made the suggestion to have a second direct mail shot to residents and that this should take place in February 2016 to have maximum effect, but the letters should not land any later than mid-Mach to ensure maximum sales impact;
- OVO was clearly aware of the date that pre-election purdah started in Southend and that letters could not land during purdah; and
- When OVO realised the letters had not been delivered in mid-March (and prompted by queries from Council officers) efforts were made to stop the delivery, but due to various errors this failed.

Accordingly the Monitoring Officer confirmed that he had no reason to alter his assessment of the position and his conclusions as set out in 3.9 above.

3.11 I am satisfied with the findings and conclusions of the Monitoring Officer, but would draw attention to the following points:

- Officers in the Department of Place followed the advice of OVO and authorised the preparation of Letter 2 under the signature of the Leader and for it to be delivered.
- Officers gave clear instruction to OVO to ensure that Letter 2 was delivered by mid-March at the latest to ensure maximum sales impact.
- Officers also recognised that it was essential that Letter 2 was delivered before 30th March 2016 when pre-election purdah commenced and made this clear to OVO.
- Officers assumed that they had given OVO sufficient time to organise the delivery of Letter 2 by mid-March and that they had taken sufficient steps to ensure there was no breach of the pre-election purdah rules.
- Officers did identify a problem before Letter 2 was delivered and drew this to OVO's attention. Unfortunately due to further errors by third parties the opportunity to save the day was missed.
- The Council did not meet the cost of sending out Letter 2 either directly or indirectly, which would have made the breach of the pre-election purdah rules even more serious.

On the face of it the chances of Letter 2 being delivered on or after 30th March may well have seemed fairly remote to the Officers in the Department of Place, who no doubt thought they had put adequate steps in place to guard against this risk.

However, given the serious consequences of getting it wrong, I agree with the conclusion of the Monitoring Officer that the Officers should have understood the risk that all or some of the letters would not be delivered in mid-March and taken additional steps to avoid this happening: The risk assessment clearly did not factor in the length of the production chain. Officers were not in control of the despatch and delivery process and were reliant on more than one third party to meet the deadline. Unfortunately third parties failed to do what had been required of them, and had promised to deliver, and the pre-election purdah rules were breached.

3.12 As Chief Executive, and Head of the Paid Service, of the Council I place on record my apologies that this breach of the pre-election purdah rules has occurred and my commitment that the pre-election and risk procedures will be reviewed and reinforced as necessary.

I clearly cannot undo what has been done. However I hope that my apology, in conjunction with providing this full explanation of how the breach came about, a clear identification of weaknesses by Officers and confirmation of steps taken, and to be taken, to prevent a similar situation occurring again, will show just how seriously the matter has been taken and provide some reassurance.

4. Background Papers

S.2 Local Government Act 1986 and Circular 01/2011

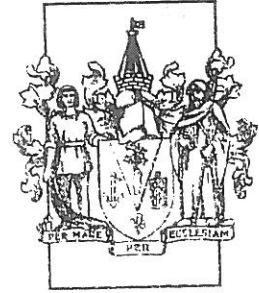
5. Appendices

Appendix 1 – Letter 1

Appendix 2 – Letter 2

Appendix 3 – Report of Department of Place

Southend-on-Sea Borough Council



**Southend Energy customers are saving £246 on their energy bills.
What could you spend that on this winter?**

Dear <Title> <Surname>,

Southend Energy is here to help you save money this winter.

With the nights drawing in and temperatures dropping, our thoughts can turn to how much we are spending on heating and lighting our homes.

Many residents are currently paying over the odds for their energy as they haven't switched supplier for years. We want to help you save money wherever possible – and this also extends to your energy bills.

Earlier this year Southend-on-Sea Borough Council launched **Southend Energy**, our own competitively priced energy plan that is exclusively for residents of Southend. We aim to offer one of the most competitive energy tariffs in the region, so we can pass the benefit on to you, our customers.

We have teamed up with award winning energy supplier OVO Energy to bring you **Southend Energy**. The council owns and manages the scheme, and OVO provides all the customer services, billing and support.

Since launching in May, dual fuel customers who pay monthly have saved an average of **£246** on their annual bills.¹ I have also personally switched to Southend Energy and will be saving £566 a year.

You could save too, and reap the rewards of a localised energy supply.

Why Southend Energy?

- Hassle free switching – it only takes a few minutes to get a quote and switch
- Award winning customer service from the OVO Energy team
- Choice of pay monthly and PAYG (Pay As You Go / pre-payment) tariffs
- 3% Interest Reward on all credit balances² – a thank you for staying in credit
- No exit fees³
- A free home energy display and Smart meter for all PAYG customers

**To switch go to: southendenergy.co.uk
or call: 0800 408 6711 (Pay monthly) 0800 408 6715 (Pay As You Go)**

Finding out how much you could save is easy. Simply go to southendenergy.co.uk and enter your postcode for a quote.

Or if you would prefer to speak to one of our friendly customer service agents, please call for free on **0800 408 6711** (Pay monthly) or **0800 408 6715** (Pay As You Go).

I look forward to welcoming you to **Southend Energy** soon.

Yours sincerely,



Councillor Ron Woodley
Leader of Southend-on-Sea Borough Council

Southend resident Mrs Thomas saved £437 a year by switching to Southend Energy.

"I had been with the same company for ages, so long I can't remember the last time I switched, as it must have been over 20 years. They had been all right but their bills were massive.

"But energy suppliers are always expensive. I thought, I don't have a computer, so can't go online to compare with other suppliers easily.

"Then a leaflet came through my door, and by chance my son had told me that OVO were very efficient. I think that was the one little nudge I needed to do something about it.

"I think it's very entrepreneurial of the council to do something like this. I would like to have my house painted and I can't really economise any more at the moment, so the amount I've saved will be a big help towards the upkeep of my house."

To switch go to
southendenergy.co.uk

or call:

0800 408 6711
(Pay monthly)

0800 408 6715
(Pay As You Go)

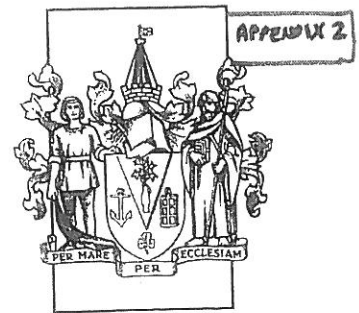


[1] £246 is the average saving of dual-fuel customers that have actually switched to Southend Energy between 29/05/15 and 30/09/15. Individual savings will vary according to current supplier, location, consumption and Southend Energy tariff options

[2] Calculated at 3% per year (paid monthly based on number of days in credit and the amount left in your account after you've paid your bill). OVO Interest Reward is capped at 12 times the amount of the current direct debit amount and is available to customers paying by advance direct debit. Terms apply www.ovoenery.com/core/terms2015

[3] Exit fees are not payable when you leave Southend Energy, but you may be charged a fee to switch between Southend Energy tariffs if within your fixed term contract

Southend-on-Sea Borough Council



Southend Energy customers are saving an average of £287 on their bills.
Why not see how much you could save?

Southend Energy is here to help you save money.

Many residents are currently paying over the odds for their energy as they haven't switched supplier for years. We want to help you save money wherever possible – this also extends to your energy bills. We aim to keep prices as competitive as we can, so you can feel the benefit.

Since launching last year, dual fuel customers who pay monthly have been saving an average of £287 on their annual energy bills with Southend Energy¹, which is exclusively available for residents of the Borough. I have also personally switched to Southend Energy and will be saving £566 a year.

There are many other great bonuses: 3% Interest Reward on all credit balances, hassle-free switching, a choice of pay monthly Fixed or Variable and pre-payment (Pay As You Go) tariffs, and more.

Southend Energy is a partnership between Southend-on-Sea Borough Council and award-winning supplier OVO Energy. Over 3,000 residents have already switched – why not see how much you could save too?

Simply go to southendenergy.co.uk and enter your postcode for a quote – it only takes a few minutes.

Or if you would prefer to speak to one of our friendly customer service agents, please call for free on:
0800 408 6711 (Pay monthly) or 0800 408 6715 (Pay As You Go).

I look forward to welcoming you to Southend Energy soon.

Yours sincerely,

Councillor Ron Woodley
Leader of Southend-on-Sea Borough Council

Why Southend Energy?

- Award winning customer service from the OVO Energy team
- 3% Interest Reward on all credit balances² – a thank you for staying in credit
- No exit fees³

To switch go to
southendenergy.co.uk

or call:

0800 408 6711
(Pay monthly)

0800 408 6715
(Pay As You Go)



[1] £287 is the average saving of dual-fuel customers who pay monthly that have actually switched to Southend Energy between 26/05/15 and 31/01/16. Individual savings will vary according to current supplier, location, consumption and Southend Energy tariff options.

[2] Calculated at 3% per year, paid monthly based on number of days in credit and the amount left in your account after you've paid your bill. OVO Interest Reward is capped at 12 times the amount of the current direct debit amount and is available to customers paying by advance direct debit. Terms apply www.ovenergy.com/core/terms2015.

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Southend Energy Direct Mail Interim Report

The Southend Energy scheme was launched in May 2015 with the express purpose to help residents to save money on their energy bills. Following a period of brand building and marketing through PR and trusted intermediaries, a direct mail campaign was used in late 2015 to accelerate sign up and to increase the savings for residents. The evaluation of this campaign suggested that an additional 1,278 residents were attracted to the scheme through the campaign saving £350,000 between them. Equally important, the evaluation showed that the campaign was the first marketing method to have reached pre-payment customers in any volume which was an important target of the original scheme.

In January 2016, a new campaign was proposed to maximise customer benefits before the traditional 'switching season' expired in March – more customers switch energy supplier in the period from October to March - and to maximise on the cumulative effect of campaigns where repeated campaigns in a short period of time tend to increase effectiveness. OVO Energy Ltd (OVO), who are the Council's partners in Southend Energy, agreed to pay for the campaign fully from their resources. As a result, there was no use of public money either directly or indirectly.

As the decision process had taken until mid-February, there was concern as to whether the mailing could be completed by mid-March. It was also recognised it was essential to get the letters delivered before the start of Purdah. This issue was discussed with OVO by telephone and text with the deadline for sign off of the letter established as 29 February to achieve a mailing to be sent out during w/c 14 March. On several subsequent occasions, the issue of Purdah was discussed with OVO to ensure that they understood that under no circumstances should any letters be delivered on or after 30 March 2016.

The address lists for the letters was purchased by OVO in conjunction with data for their core campaign nationally and a similar campaign being run for Peterborough Energy. OVO used their specialist agency, 'The Specialist Works', who sourced the data from public sources such as Acxiom, Experian and Active. The data was then cleansed but was not cross-referenced to Council data. The draft letter was agreed by the Council and confirmed to OVO on 23 February. A full report is being sought from OVO on the subsequent process but it is understood that The Specialist works printed the letters and delivered them to Whistl (formerly TNT Post). Whistl were then to deliver the mailing to local sorting offices for Royal Mail postmen to deliver the letters through resident's doors.

During w/c 21 March, sales figures were sought from OVO to assess the impact of the mailing but communications were hampered by the imminent Easter Period. When the end of March figures were available and it was clear that there had been no impact, a request for clarity was emailed to OVO on 1 April and a conference call was initiated on 4 April. In this call, OVO advised that the letters had not been sent, that they had been printed by The Specialist Works on time and had now been traced to the delivery agent, Whistl. OVO did not know why delivery had been delayed but confirmed that they had instructed that the letters should not be despatched. OVO have supplied a

copy of an email sent to The Specialist Works by Whistl on 1 April showing that the letters had been quarantined – copied below:

From: Paul Cox <paulcox@whistl.co.uk>
Date: Friday, 1 April 2016 18:11
To: TSW00067 <tsw00067@the-specialist-works.com>
Cc: Carla Kingston <carla.kingston@whistl.co.uk>, Jason Taylor <jason.taylor@whistl.co.uk>
Subject: RE: Whistl - Change of Head Office Address

Thanks Neil. Carla has already notified the depot not to send anything and to keep it in quarantine. If they would like the mailing securely destroyed please let me know.

I'm actually off next week, so if it needs to be resolved urgently you can escalate to my manager Jason Taylor whom I have made aware of the issue. Otherwise, if it can wait until the following week which I appreciate it may not then I will be back to deal with it.

Again my sincerest apologies for this Neil.

Best regards,

Paul Cox

Senior Account Manager

Whistl Ltd
1 GlobeSide Business Park, Fieldhouse Lane, Marlow, Buckinghamshire, SL7 1HY
Mobile: 07899 736667 Email: paulcox@whistl.co.uk

The quarantine process at Whistl was clearly ineffective as letters started to arrive with residents on or after 4 April. OVO and their agents have been unable to confirm yet why this happened but they are investigating. They have been able to confirm that all 57,000 letters that were planned were despatched.