

# Southend-on-Sea Borough Council

Agenda  
Item No.

**24**

Report of Chief Executive & Town Clerk

to  
Council  
on  
21<sup>st</sup> April 2016

Report prepared by: Rob Tinlin

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## Southend Energy – Pre-Election Purdah

### Part 1 Public Agenda Item

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#### 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 **30<sup>th</sup> 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 16<sup>th</sup> 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 23<sup>rd</sup> 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 4<sup>th</sup> 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 8<sup>th</sup> 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 8<sup>th</sup> 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 4<sup>th</sup> 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 14<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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**