

ITEM NO: 6

REPORT TO: STANDARDS COMMITTEE

DATE: 17 March 2015

REPORT OF: Borough Solicitor (Monitoring Officer)

SUBJECT MATTER: **MAINTAINING HIGH STANDARDS OF CONDUCT DURING THE ELECTIONS - 2015 Code of Conduct for political parties, candidates and canvassers**

REPORT: The Chief Executive as Returning Officer and Electoral Registration Officer has been assessed by the Electoral Commission as achieving the highest standards in respect of all areas of performance. This compares very favourably with other Returning Officers within the Northwest region. The Council wishes to maintain its reputation for high standards and it is important, therefore, that whilst the Returning Officers continues to comply with legislation that the ethical governance relating to the process is also maintained in order that the public can have confidence in the integrity of elections. With that end in mind all candidates and agents will be asked to (1) sign up to the 2015 Code of Conduct for political parties, candidates and canvassers on the handling of postal vote applications and postal ballot papers which has been agreed by the main political parties and set out in **Appendix 1**; (2) note and comply with the Guidance on Social Media set out in **Appendix 2**; and (3) note the approach to complaints to be adopted by the Returning Officer.

RECOMMENDATION(S) The Committee are advised to note the position adopted by the Returning Officer and the advice to be given to all candidates for the Local Council elections that this Committee expects to be complied with to maintain the high standards of Electoral conduct.

FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer) There are no significant financial issues arising from this Report.

LEGAL IMPLICATIONS: (Authorised by Borough Solicitor) These are set out in the report.

RISK MANAGEMENT: Standards Committees should be aware of the Legal framework and advice being given by the national regulatory body for elections in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.

LINKS TO COMMUNITY PLAN: Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public.

REFERENCE DOCUMENTS:

Appendix 1 – 2015 Code of Conduct for political parties, candidates and canvassers on the handling of postal vote applications and postal ballot papers

Appendix 2 – Guidance on Social media

Further information can be obtained from the Council's Borough Solicitor and statutory Monitoring Officer by contacting 0161-342-3028 or by e-mail Sandra.Stewart@tameside.gov.uk

1. CODE OF CONDUCT

- 1.1 Attached is a copy of the Code of Conduct for Campaigners: Postal Voting and Polling Stations which covers all those actively involved in the 2015 Local and Parliamentary Elections. All the major parties represented in Parliament have signed up to the Code on behalf of their campaigners. The Code will be included in the packs that candidates receive with nomination papers and candidates and agents will be asked to sign a commitment to abide by the Code. The Code covers the following areas a number of which are re-iterated in other communications from the Returning Officer.

Postal and Proxy Vote Applications

- 1.2 Campaigners should not encourage electors to have their postal ballot paper pack re-directed to anywhere other than the address where the elector is registered to vote. In addition campaigners should ensure that the Electoral Registration Officer's address is provided as the address for the return of absent vote application forms. Campaigners should forward unaltered any completed application forms given to them to the Electoral Registration Officer within two working days of receipt. It is clearly essential that postal vote applications are received in a timely way to ensure that the deadline for registration is not missed and the elections team are able to process what could be a large number of applications.
- 1.3 With regard to proxy vote applications electors should be encourage to explore other options for people to act as a proxy, including relatives or neighbours for example, before a campaigner agrees to be a proxy.

Postal Voting Ballot Papers

- 1.4 Campaigners should never touch or handle anyone else's ballot paper. If an elector asks for assistant they should be referred to the Elections Office who may be able to arrange a home visit. Campaigners should never observe voters completing their ballot paper.
- 1.5 Campaigners should not ask or encourage voters to give them any completed ballot paper or ballot paper envelope. If asked by a voter to take a completed postal ballot pack on their behalf, campaigners should immediately post it or take it directly to the Elections Office.

Campaigning Outside Polling Stations

- 1.6 Campaigners should be allowed to put their messages to voters on polling day, including in public spaces outside polling places as long as they are not within or impeding access to the grounds of the polling place. Campaigners should also recognise that groups of supporters outside polling stations may be seen as intimidating by voters.

Complaints and Allegations about Electoral fraud.

- 1.7 Campaigners should be prepared to give the police a statement and substantiate any allegations of electoral fraud they make. Campaigners should ensure that they are confident that evidence can be provided to the police before considering whether it is appropriate to publicise any specific allegation.
- 1.8 Campaigners who are concerned or think that electoral fraud may have taken place should raise the matter with their election agent or local party, or with the Returning Officer. They may be able to explain whether or not an election-related crime has been committed.
- 1.9 Concerns about breaches of the political finance rules should be raised directly with the Electoral Commission.
- 1.10 To ensure fairness and transparency in respect of complaints, the Returning Officer will require that any complaints are recorded on a form upon which the action taken will be stated. This may include situations where it is necessary for the Returning Officer or staff

to sign post a complainant to another regulatory body to investigate as the Returning Officer has no jurisdiction to do so.

Draft Guidance on the use of Social media

- 1.11 A draft Guidance on the use of Social media document has been produced at Appendix 2 covering both considerations for (A)ROs and their staff in terms of social media as well as a suggested guidance specifically for candidates and agents.
- 1.12 It is intended that this guidance is issued to both staff and Candidates and Agents.

Duty to maintain secrecy

- 1.13 Anyone attending a postal vote opening session, including your staff, must be provided with a copy of the UK Parliamentary and/or local government secrecy requirements as appropriate. There may be occasions when the front of a ballot paper becomes visible. However, it is an offence for anyone to attempt to ascertain the candidate(s) for whom any vote is given on any particular ballot paper or communicate any such information obtained at those proceedings. Anyone attending an opening session must not attempt to see how individual ballot papers have been marked. Anyone attending the opening of postal votes, which include staff working at the opening session, must maintain the secrecy of voting.
- 1.14 In addition, anyone attending a postal vote opening must not attempt to look at identifying marks or numbers on ballot papers, disclose how any particular ballot paper has been marked or pass on any such information gained from the session. Anyone found guilty of breaching these requirements can face a fine of up to £5,000, or may be imprisoned for up to six months in England and Wales.
- 1.15 It is very important that the electorate can have confidence that they can vote without anyone being able to identify how they as an individual have voted.
- 1.16 The Tameside Returning Officer maintains this secrecy by:
- a) Ensuring all staff and candidates and their agents are fully aware of the secrecy requirements by providing them with a copy; and
 - b) By ensuring the opening of ballot papers are separated from the process of checking and scanning the Postal Vote Statement which provides the verification data of the signature and date of birth that enables an envelope containing the secret vote to remain secret and go into the ballot.
- 1.17 It is intended this year as an additional precaution that counting agents will not be able to attend the opening of postal votes until such time as they have met with one of the Deputy Returning Officers, who are the Borough Solicitor and Head of Democratic Services and signed a copy of the secrecy requirements set out below confirming they understand their obligations.

Notification of secrecy requirements – postal voting

Section 66 of the Representation of the People Act 1983 (as amended)

(4) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of the voting and shall not –

(a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or

(b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number or other unique identifying mark on the back of the ballot paper sent to any person; or

(c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number or other unique identifying mark on the back of any ballot paper; or
(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtain at those proceedings.

[...]

(6) If a person acts in contravention of this section he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months.

Notification of secrecy requirements – the count

Section 66 of the Representation of the People Act 1983 (as amended)

[...]

(2) Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not –

- (a) ascertain or attempt to ascertain at the counting of the votes the number or other unique identifying mark on the back of any ballot paper;*
- (b) communicate any information obtained at the counting of the votes as to the candidate for whom any vote is given on any particular ballot paper.*

[...]

(6) If a person acts in contravention of this section he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months.

2. RECOMMENDATIONS

- 2.1 The Committee are advised to note the position adopted by the Returning Officer and the advice to be given to all candidates for the Local Council elections that this Committee expects to be complied with to maintain the high standards of Electoral conduct

Code of conduct for campaigners: electoral registration, postal voting, proxy voting and polling stations

Campaigners are an essential element of a healthy democracy, and their right to put their arguments to voters should be supported and protected. It is equally important, however, to ensure that the activities of campaigners do not bring into question the integrity of the electoral process.

This Code provides a guide for campaigners, electoral administrators and police forces to what is, and is not, considered acceptable behaviour at polling stations and in the community during the lead-up to polling day.

As a guiding principle, if there is any doubt about a particular activity, campaigners should ask themselves “What would a reasonable observer think?”

More detailed guidance about electoral offences can be found in the guidance for candidates and agents, which is available at:

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0013/173020/UKP-GE-Part-4-The-campaign.pdf

The Code has been sent to all registered political parties in Great Britain, and Returning Officers will draw it to the attention of all candidates and parties contesting elections.

Some Returning Officers may identify the need to develop and seek agreement to specific local provisions which supplement the terms of this Code, in order to address identified local risks. Returning Officers must consult with local campaigners and the relevant national Nominating Officers as well as police forces to secure appropriate local agreement to such provisions, and should ensure that they are communicated and well-understood by campaigners locally.

Scope of this code

This code covers all those actively involved in campaigning in elections or referendums in Great Britain. All references to campaigners in this code include:

- Candidates standing at an election, their agents and their staff and supporters
- Political party officers, members and supporters campaigning at an election
- Other people and organisations campaigning for or against a candidate, a group of candidates or a party at an election
- People and organisations campaigning for or against a particular outcome at a referendum

Compliance with this code

Any concerns that this code has been breached should be raised first with the candidate, political party or campaigner in question.

Any further concerns should be drawn to the attention of the Electoral Commission. The Commission will raise them with the relevant party or campaigner if appropriate, and will agree appropriate actions to remedy or prevent a reoccurrence of any breach.

1 Electoral registration and absent vote applications

1.1 Campaigners should be free to encourage voters to register to vote and apply to vote by post or appoint a proxy to vote on their behalf, if that is the most convenient way for them to vote.

Campaigners can help to inform voters about how to participate in elections, and Electoral Registration Officers should support you by providing you with a reasonable number of registration and absent vote application forms on request. Voters can also register online at:

www.gov.uk/register-to-vote

1.2 Campaigners should ensure that any electoral registration forms and postal or proxy voting application forms conform fully to the requirements of electoral law, including all the necessary questions and the options open to electors.

You can download electoral registration forms from www.gov.uk/register-to-vote and absent vote application forms from www.aboutmyvote.co.uk

1.3 Campaigners should ensure that the local Electoral Registration Officer's address is clearly provided as the preferred address for the return of registration and absent vote application forms.

To ensure voters can make their own choice about how to return registration or absent vote application forms, you should always clearly provide the relevant Electoral Registration Officer's address as the preferred return address, even if an alternative address is also given. This will also minimise the risk of suspicion that completed applications could be altered or inadvertently lost or destroyed.

1.4 Campaigners should send on unaltered any completed registration or absent vote application forms given to them to the relevant Electoral Registration Officer's address within two working days of receipt.

To minimise the risk of absent vote applications being refused because completed forms arrive with the Electoral Registration Officer after the statutory deadline before a poll, you must ensure that there is no unnecessary delay in forwarding on application forms which you receive directly.

1.5 Campaigners should always explain to electors the implications of applying to vote by post or appointing a proxy.

It is important that electors understand that they will not be able to vote in person on polling day if they or their proxy apply for and are granted a postal vote, and will not be able to vote in person if their appointed proxy has already voted on their behalf. To avoid duplication and unnecessary administrative pressures for Electoral Registration Officers, campaigners should try to ensure that electors who are included in current postal or proxy voter lists, or have already applied for a postal or proxy vote for a particular poll, do not submit an additional application.

Postal vote applications

1.6 Campaigners should never encourage electors to have their postal ballot pack redirected to anywhere other than the address where they are registered to vote.

Electors should take care to protect their ballot paper and postal ballot pack, and they will be best able to do so at their home address unless there are compelling reasons why receiving the postal ballot pack at the address where they are registered to vote would be impractical. Electors must state on the application form the reason why they need their postal ballot pack sent to another address.

Proxy vote applications

1.7 Electors should be encouraged to explore other options for people to act as a proxy – including relatives or neighbours, for example – before a campaigner agrees to be appointed as a proxy.

To minimise the risk of suspicions that campaigners may be seeking to place undue pressure on electors, electors should not be encouraged to appoint a campaigner as their proxy.

2 Postal voting ballot papers

2.1 Campaigners should never touch or handle anyone else's ballot paper.

If you are asked for assistance in completing a ballot paper, you should always refer the voter to the Returning Officer's staff at the elections office who may be able to arrange a home visit if necessary. Assistance will also be available for electors at polling stations.

2.2 Campaigners should never observe voters completing their ballot paper. If you are with a voter when they complete their ballot paper, remember they should always complete it in secret.

You should ensure that the voter seals both envelopes personally and immediately after completing their ballot paper and postal voting statement. If you are asked to give advice, it is acceptable and often helpful to explain the voting process, but do not offer to help anyone to complete their ballot paper.

2.3 Campaigners should never handle or take any completed ballot paper or postal ballot packs from voters.

Wherever practical, you should encourage voters to post or deliver the completed postal ballot pack themselves. If you are approached or asked for help by a voter who is unable to post their completed postal ballot pack or make any other arrangements for it to be returned in time, you should contact the Returning Officer to ask them to arrange for it to be collected. The Returning Officer may agree that it would be in the voter's best interest for you to deliver the completed postal ballot pack to the relevant office or polling station, if there are no feasible alternative options.

3 Campaigning outside polling places

3.1 Campaigners should be allowed to put their messages to voters on polling day, including in public spaces outside polling places.

Polling station staff and police officers should not seek to discourage or remove campaigners who are otherwise peacefully communicating with voters, as long as they are not within or impeding access to the grounds of the polling place. You should be careful, however, to ensure that your approach is proportionate and should recognise that groups of supporters may be perceived as intimidating by voters.

3.2 Campaigners should keep access to polling places and the pavements around polling places clear to allow voters to enter.

The Presiding Officer is responsible for maintaining order in the polling place, and you may be asked to move by polling station staff or police officers if you are impeding access by voters to a polling place.

4 Complaints and allegations about electoral fraud

4.1 Campaigners should be prepared to give the police a statement and substantiate any allegations of electoral fraud they make.

The police will investigate allegations where someone is prepared to provide evidence or a statement in support of the complaint, but unsubstantiated claims about electoral fraud have the potential to damage confidence in the integrity of the electoral process. You should ensure you are confident that evidence can be provided to the police before considering whether it is appropriate to publicise any specific allegation.

4.2 Campaigners who are concerned or think that electoral fraud may have taken place should raise the matter with their election agent or local party, or with the relevant Electoral Registration Officer or Returning Officer for the area.

They may be able to explain whether or not an election-related crime has been committed, and refer it to the police if appropriate or provide details of the police contact for the relevant area so that campaigners can report their allegation. Concerns about breaches of the political finance rules should be raised directly with the Electoral Commission.

4.3 Any campaigner who has actual evidence that an electoral offence has been committed should report it directly and without delay to the police.

If appropriate, the police will investigate the matter. Every police force has designated a Single Point of Contact (known as a SPOC) to lead on election matters and who will deal directly with the matter or give advice to local police officers. The Electoral Commission can help provide contact details for local police force SPOCs.

Agreed and effective from [December 2014]

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|-------------------------|----------|-------------------------------------|
| ELECTIONS | Title | Guidance on the use of Social Media |
| COORDINATION AND | Version: | V 0.5 |
| SUPPORT TEAM | Issued: | 17 February 2015 |

1. Purpose of Note

1.1 This guidance note sets out considerations for Returning Officers¹ and their staff in the use of and response to social media in the build up and delivery of the 7 May 2015 polls. Guidance which can be issued to candidates and agents, specifically on their use of social media while campaigning and in attendance at electoral events, can be found in the appendix to this document.

2. Background

2.1 Social media is a powerful tool for encouraging voter participation and communicating quickly and directly with electors by both Returning Officers and campaigners. Social media messages have been included in the Greater Manchester Communication and Engagement Strategy to ensure these channels are effectively utilised.

2.2 The use of social media has increased significantly since the last UK Parliamentary General Election in 2010. There has been a channel shift by Local Authorities who encourage more electors and residents to communicate with them electronically while an increasing number of residents have access to social media and choose this as their preferred method of communication. Social media presents both opportunities and challenges, and Returning Officers will need to ensure that their election planning arrangements take into account social media for all aspects of the election. Social media enables issues to be raised by residents directly with Returning Officers and for specific local issues to be identified and rectified quickly. More generally, monitoring of social media trending around elections enables Returning Officers to be aware of any broader issues relating to public perceptions of the administration of elections.

2.3 Feedback from the 2014 Scottish Independence Referendum indicated that a deeper level of intelligence could be gained through the use of social media to monitor and respond to issues that were raised and myths that were being propagated online. The Chief Counting Officer was alerted to several accusations made about the integrity of the poll via social media in the lead up to polling day with

¹ The term "Returning Officer" is used in this note to refer to an Acting Returning Officer for UK parliamentary elections and/or a Returning Officer for local government elections, as the particular context may require.

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some social media groups still actively debating a variety of subjects about the poll online. Lessons learned from the use of social media at the referendum are included in the planning for the UK Parliamentary General Election in Scotland such was its impact.

- 2.4 Returning Officers will therefore need to have a clear plan for how to respond to social media enquiries and issues during the election period.

3. Legal Position

- 3.1 Maintaining the secrecy of the ballot, and the overall integrity of the poll, is paramount and the law supports this in a number of ways, including:

- The Statutory Secrecy Requirements

The secrecy requirements applying at local government or UK parliamentary elections are contained within Section 66 of the Representation of the People Act 1983 (variations of which are applied in respect of other elections and referenda). The requirements are designed to prevent information on the way an elector has voted, and certain other specified information (e.g. ballot paper numbers or other unique identifying marks), from being improperly obtained or communicated. Certain aspects of the secrecy requirements are addressed at particular stages of the electoral process (voting in polling stations; the count; issue and receipt of ballot papers) and/or at particular persons (e.g. candidates, agents and polling agents attending a polling station). The detail of the secrecy requirements can be found here:

<http://www.legislation.gov.uk/ukpga/1983/2/section/66>

Breach of the secrecy requirements can result, on summary conviction, in a fine of up to £5000 or imprisonment for up to 6 months.

- Restrictions on Exit Polling

Under Section 66A of the Representation of the People Act 1983 any person (including, but not limited to, candidates and agents) is prohibited before the close of poll from publishing in respect of local government and UK parliamentary elections (similar provisions apply in respect of other elections):

a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted; or

b) any forecast (including an estimate) as to the result of the election which is (or might reasonably be taken to be) based on information so given.

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Breach of the prohibition on publication of exit polls can result, on summary conviction, in a fine of up to £5000 or imprisonment for up to 6 months.

- 3.2 General observations or opinions on the poll or commentary on perceived turnout are not prohibited by law. As exit poll restrictions are only in force until the close of poll, it cannot be considered unlawful to tweet or communicate information as to a possible result or any part of it after this point, even before an official declaration is made by the Returning Officer. There is however clear need for electors and the general public to be provided with accurate information on the result as included in the Returning Officer declaration and this message around responsibility is included in the guidance for candidates and agents in Appendix 1.
- 3.3 The current law around secrecy and exit polls was obviously drafted at a time before the advent of social media. Although there are no express provisions pertaining to its use, social media could nonetheless be used, whether inadvertently or intentionally, in a manner which breaches the existing provisions, either to communicate the way an elector has voted (or other information protected by the secrecy requirements) or as an device for publishing an 'exit poll' before the close of poll.
- 3.4 There is therefore a requirement to ensure that the Returning Officer and their staff, candidates and agents, campaigners and electors use social media responsibly and to ensure the secrecy of the ballot is maintained at all times while supporting the effective delivery of the election.

4. Responding to Social Media During the Election Period

- 4.1.1 As agreed and set out in the Greater Manchester Communication and Public Awareness Strategy, the Returning Officer will use social media channels to communicate key messages to electors including important information about the deadline to register to vote.
- 4.1.2 Returning Officers should consider allocating staff to monitor Council social media accounts for messages sent by electors asking for information about the election or raising issues with the administration of the poll. Monitoring of social media channels would also be required to identify references made by residents to the authority and the elections.
- 4.1.3 As part of the monitoring procedure Returning Officers should consider the resources required to undertake this and how the various requests for information or allegations which could be received via social media will be assessed, allocated, responded to and escalated as necessary.
- 4.1.4 Candidates and agents will be asked to communicate with the Returning Officer and their staff using the communication channels provided rather than social media to ensure their enquiries can be prioritised and allocated efficiently to the necessary officer.

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4.1.5 As part of the Guidance on Social Media which may be provided by the Returning Officer to candidates and agents (as per the template provided in Appendix 1), it will be asked that all those involved in any campaign activity adhere to general principles around the use of social media.

4.2 Polling Day

4.2.1 The Returning Officer will need to have systems in place to respond in a timely manner to social media messages, with the level of demand likely to peak on polling day itself.

4.2.2 It is likely electors will use social media channels to raise registration queries or ask about the location of their polling station while these same channels could be used to report issues at polling stations or make allegations around the conduct of the poll. As part of the planning process, consideration should be therefore be given to how messages received on polling day will be managed.

4.3 Post Election

4.3.1 Although elector contact with the Returning Officer will reduce or stop completely after the close of poll, some messages may still be sent using social media about the election which the Returning Officer may wish to monitor or respond to.

5. Electoral Fraud and Irregularity

5.1 As part of wider Returning Officer plans to monitor social media channels, a process for dealing with accusations of electoral fraud or where the integrity of the poll is otherwise called into question should be included. Assessment, allocation and response to messages of this type can follow the same process as agreed to responding to social media messages in general. However, depending on the nature of the allegation, such matters may require escalation directly to the Returning Officer for a decision on how best to proceed.

5.2 Any electors who send social media messages to the Returning Officer making allegations of fraud should be informed to report these to Greater Manchester Police (GMP) if they believe a crime has been committed. Where such an allegation is made via a public posting, personal messaging can still be used to provide the police Single Point of Contact (SPOC) details, although consideration should be given to responding to the public thread to inform any followers of the steps undertaken.

6. Postal Vote Opening

6.1 The Returning Officer should ensure postal vote opening processes allow for full and proper scrutiny of proceedings whilst also maintaining the secrecy of the ballot. The

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secrecy requirements under Section 66 of the Representation of the People Act 1983, insofar as they relate to the issue and receipt of ballot papers for those voting by post, provide that every person attending those proceedings shall maintain and aid in maintaining the secrecy of the voting and shall not:

(a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or

(b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number or other unique identifying mark on the back of the ballot paper sent to any person; or

(c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number or other unique identifying mark on the back of any ballot paper; or

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

6.2 Returning Officers should ensure that during postal vote opening:

- Ballot papers are kept face downwards; and
- Proper precautions are taken to prevent any person from seeing the votes made on the ballot papers, including:
 - ensuring that ballot papers are of an adequate thickness so that the way electors have voted cannot be established through the paper; and
 - designing the venue layout to allow proper scrutiny of proceedings, while preventing candidates and agents from being close enough to postal votes to ascertain how electors have voted.

6.3 Returning Officers should ensure that attendees are unable to carry out “postal vote sampling”. This is the practice whereby candidates, their election agents, or their postal vote agents attempt, by trying to see how individual ballot papers have been marked, to gain an indication of how candidates are performing in respect of postal votes that have been returned. It should be noted that because “postal vote sampling” involves attempting to ascertain the candidate for whom any vote is given on particular ballot papers it would appear to be a clear breach of the secrecy

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provision. Alleged “postal vote sampling” at the 2014 Scottish Independence Referendum has been the subject of police investigation.

- 6.4 Filming or photographing of the proceedings at postal vote opening sessions should be strictly prohibited and the Returning Officer’s staff should be alert to any attempt being made to record postal vote opening. If a candidate or agent is found to have taken a picture or filmed an element of postal vote opening, they should be asked to delete it immediately.

7. Polling Stations

- 7.1 The Returning Officer and their staff shall ensure secrecy requirements at polling stations are enforced throughout the day of poll. This includes the requirement that **no person** shall:

- (a) interfere with or attempt to interfere with a voter when recording his or her vote;
- (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted;
- (c) communicate (whether by social media or any other means) at any time to any person any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given to a voter at that station; or
- (d) directly or indirectly induce a voter to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for whom he has or has not voted.

- 7.2 In addition to the above general restrictions applying to all persons, there are additional restrictions imposed on specified persons who may attend the polling station. The Returning Officer, presiding officers and polling clerks, candidates, election agents, polling agents, and accredited observers who attend a polling station are under an obligation to maintain and aid in maintaining the secrecy of voting and must not, except for a purpose permitted by law, communicate (whether by social media or any other means) to any person before the close of poll:

- a) the name of any voter or proxy who has or has not applied for a ballot paper or voted;
- b) the elector number of the voter in respect of whom such an application or vote is made; or
- c) the official mark.

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The persons to whom the restrictions in this paragraph applies should be provided with a copy of the secrecy requirements.

- 7.3 A specific restriction is also addressed to any person who has undertaken to assist a blind voter to vote. They are prohibited from communicating (whether by social media or any other means) at any time to any person any information as to the candidate for whom the voter they assisted intends to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given for the use of that voter.
- 7.4 Photography and filming by any person should not be allowed within polling stations without previous express permission from the Returning Officer. It is suggested that no such permission should be granted during polling hours and that the use of cameras or other devices, including mobile phones, with ability to take pictures or video footage should be strictly prohibited inside polling stations. Such a prohibition is consistent with the Electoral Commission guidance² on the matter.
- 7.5 This restriction on photography and filming should help prevent the recent practice of ‘velfies’ (voting selfies) where electors post pictures of themselves with their ballot papers from within the polling station on social media. The statutory secrecy requirements applying at the poll make this practice an offence where it would reveal how the elector has voted (or where it would reveal the number or other unique identifying mark on the back of the ballot paper) and polling station staff should be vigilant of attempts to use cameras or filming equipment for this or any other purpose.
- 7.6 Polling station staff should be trained in the legal requirements and Returning Officer policy relating to secrecy, filming and photography in and about polling stations and how to respond to any such incidents as they arise. Consideration should be given to, as suggested by the Electoral Commission³, supplying polling station staff with signage for display setting out the prohibitions relating to photography.
- 7.7 While maintaining restrictions on the use of photography, filming and social media should be relatively straightforward within the polling station⁴ itself (due to the specific application of a number of the elements of the secrecy requirements to that environment and the existence of duties and powers of the Presiding Officer in

²UK Parliamentary general election and local government elections in England on 7 May 2015: guidance for (Acting) Returning Officers, Part C – Administering the poll, paragraph 7.6 (http://www.electoralcommission.org.uk/__data/assets/pdf_file/0011/175376/Part-C-Administering-the-poll-UKPGE-LGEW.pdf).

³ UK Parliamentary general election and local government elections in England on 7 May 2015: guidance for (Acting) Returning Officers, Part C – Administering the poll, paragraph 7.6 (http://www.electoralcommission.org.uk/__data/assets/pdf_file/0011/175376/Part-C-Administering-the-poll-UKPGE-LGEW.pdf)

⁴ The specific area (e.g. a room) in which polling is taking place.

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respect of maintaining order therein) exercising control over such activities in the broader polling place⁵ and its environs may present more of a challenge. While there is less potential for breach of the secrecy requirements by activity outside of the polling station, there is a real possibility that photography, filming or use of social media in the area surrounding the polling station could act as an impediment to voters reaching the polling station and casting their votes without being subject to activity that they might consider intrusive and/or intimidating.

- 7.8 The extent to which unwanted activity outside of the polling station can be effectively controlled will vary between premises. For example, it may be easier to prevent activity where the premise in which the polling station is located is local authority controlled than one that is not (particularly if the premise is also being used by the public for activities other than the poll). It is therefore important that Returning Officers consider ahead of the poll how they will manage photography, filming or use of social media in the area surrounding each polling station.

8. Exit Polls

- 8.1 Under Section 66A of the Representation of the People Act 1983, the publication of exit polls using social media (or by any other means) before the close of poll is a criminal offence and carries a fine of up to £5000 or prison term of up to six months. Candidates and agents may not publish, before the close of poll, any statement relating to the way in which voters have voted at the election, where this statement is, or might reasonably be taken to be, based on information given by voters (for example to “tellers”) after they have voted.
- 8.2 Any forecast (or estimate) as to the result of the election, published before the close of poll, which is, or might reasonably be taken to be, based on information collected from electors who have voted at the poll is similarly prohibited.
- 8.3 The restriction on exit polling under Section 66A includes both exit polls conducted to focus on voting in a particular constituency or ward and those examining voting patterns nationally.
- 8.4 The rationale for prohibiting the use of exit polls is that if this data were in the public domain it could affect electors who were yet to cast their vote who may even alter their voting intention based on how others had previously voted.

⁵ The geographic area (e.g. a particular building) designated by the local authority, within which the Returning Officer must locate the polling station(s) for the polling district to which the polling place corresponds.

9. Verification and the Count

9.1 No person attending the counting of votes may use social media (or any other method) to:

a) ascertain or attempt to ascertain the number or other unique mark on the back of any ballot paper; or

b) to communicate any information as to the candidate for whom any vote is given on any particular ballot paper,

as doing so would be a breach of the statutory secrecy provisions.

The Returning Officer and their staff must remain vigilant to any attempts to use social media in this way.

9.2 As previously stated, there is no express legal prohibition on communicating the possible outcome of an election from the count, as long as polls have closed. Therefore, Returning Officers may wish to consider how they respond to this matter locally. It is clearly in the public interest to ensure that the final result, as declared by the Returning Officer, is relayed publicly to those interested in the outcome from a reliable source, such as the Council's twitter feed. The Returning Officer may therefore wish to advise candidates and agents that the result will be published on the Council's twitter feed and encourage them to use this source to share the result.

9.3 The Returning Officer should provide copies of the secrecy requirements to all those in attendance at the count.

9.4 Local policy and practice relating to filming, photography and the use of mobile phones at the verification and count varies across Greater Manchester and is not expressly covered by the law. It is therefore problematic in this guidance to set out a consistent position with regard to the use of electronic devices and social media.

9.5 Factors that Returning Officers may wish to consider as part of their planning for the verification and counting of votes include:

- Should Mobile Phones and Cameras be barred from the venue or from the vicinity of the count tables?
- Will Press and Media staff be available to respond to media queries at the verification and count?
- Will the media be allowed to film near count tables and will a member of the Press and Media Team accompany them and oversee this?

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- Will a count booklet or media information pack be provided to all those at the count which covers the secrecy requirements and other general principles around the use of social media? (AGMA templates to be provided)
- Will the Returning Officer request that candidates and agents refrain from using social media to communicate the result of the election before the official declaration has been made?
- Has the count process been designed to limit the time between consultation and declaration in order to reduce the opportunity to do so?
- Will similar requirements apply to representatives of the media attending the count?

Appendix 1

Candidates and Agents – Guidance on the use of Social Media at Elections

This guidance outlines relevant legal provisions and suggested good practice around the use of social media by candidates, agents and campaigners at the 7 May polls.

1. General Principles

- 1.1 Messages sent via social media can be seen by a wide audience and can be reproduced for any purpose once posted, even if they are subsequently deleted. Therefore, you are advised to use social media responsibly, think carefully about the possible implications of material you post and to ensure that your use of social media is in accordance with the law.
- 1.2 In particular, care should be taken when using social media to post, tweet or otherwise communicate information that the requirements of electoral law are met. This includes ensuring that the statutory secrecy requirements and restrictions on exit polling (both of which are detailed more fully below) are complied with, and that care is taken that any statements posted about candidates do not amount to an offence under Section 106 of the Representation of the People Act 1983 (“False statements as to candidates”).
- 1.3 Account should also be taken of the need to also comply with law more generally. Before using social media consideration should be given to whether the communication of the information concerned could breach the law relating to, for example, defamation, privacy, discrimination, harassment and copyright.

2. During the Election Period

- 2.1 The Returning Officer will use social media channels to communicate key messages to electors including important information about the deadline to register to vote. Campaigners are welcome to inform residents of this and signpost them to these social media channels using the following information:
 - Council website address [insert details]
 - Council facebook account [insert details]
 - Council twitter account [insert details]
 - [any other social media channels used]
- 2.2 Candidates and agents are asked to use the standard phone number and email address provided to communicate with the Returning Officer rather than use social

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media. This will ensure any requests or queries are directed to the necessary officer to answer them in a timely manner.

3. Electoral Fraud and Irregularity

- 3.1 Any elector who sends social media messages to the Returning Officer making allegations of fraud will be informed to report these to Greater Manchester Police if they believe a crime has been committed. The details of the GMP Single Point of Contact (SPOC) for the election will be sent by personal message to the elector to assist them in doing so.

4. Postal Voting

- 4.1 The Returning Officer has designed postal vote opening to allow for full and proper scrutiny of proceedings in order for candidates to satisfy themselves as to the accuracy of the process.

However, the secrecy requirements contained in Section 66 of the Representation of the People Act 1983 require anyone in attendance at postal vote opening to maintain and aid in maintaining the secrecy of the voting and to not:

(a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or

(b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number or other unique identifying mark on the back of the ballot paper sent to any person; or

(c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number or other unique identifying mark on the back of any ballot paper; or

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

- 4.2 Those entitled to attend the postal vote opening must ensure that any messages they communicate from the proceedings using social media (or any other method) do not contravene the above secrecy requirements. Breach of the secrecy requirements is an offence that punishable by up to a £5000 fine or six months imprisonment.

- 4.3 The Returning Officer has taken into account the statutory secrecy requirements when planning the venue layout and proximity to ballot papers in order to restrict the

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possibility that those attending postal vote opening could, inadvertently or intentionally, establish which candidates have been voted for on particular ballots papers.

- 4.4 Filming or photographing proceedings at postal vote opening sessions is strictly prohibited and Returning Officer's staff will ensure that this restriction is enforced.

5. Polling Stations

- 5.1 Under the statutory secrecy requirements, **no person** shall:

- (a) interfere with or attempt to interfere with a voter when recording his or her vote;
- (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted;
- (c) communicate (whether by social media or any other means) at any time to any person any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given to a voter at that station; or
- (d) directly or indirectly induce a voter to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for whom he has or has not voted.

- 5.2 In addition to the above restrictions, any candidates, agents or polling agents who attend a polling station are under an obligation to maintain and aid in maintaining the secrecy of voting and must not, except for a purpose permitted by law, communicate (whether by social media or any other means) to any person before the close of poll:

- a) the name of any voter or proxy who has or has not applied for a ballot paper or voted;
- b) the elector number of the voter in respect of whom such an application or vote is made; or
- c) the official mark.

- 5.3 It should also be noted that any person who has undertaken to assist a blind voter to vote is prohibited from communicating (whether by social media or any other means) at any time to any person any information as to the candidate for whom the voter they assisted intends to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given for the use of that voter.

- 5.4 Photography and filming by any person is not allowed within polling stations without previous express permission from the Returning Officer. The use of cameras or

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devices including mobile phones with ability to take pictures or video footage is also strictly prohibited in polling stations.

- 5.5 This restriction includes the recent practice of 'velfies' (vote selfies) where electors post pictures of themselves with their ballot papers from within the polling station on social media. The statutory secrecy requirements of the poll forbid this where it would reveal how the elector has voted (or where it would reveal the number or other unique identifying mark on the back of the ballot paper) and polling station staff will be vigilant of attempts to use cameras or filming equipment for this or any other purpose.
- 5.6 Voters have a right to enter and exit the grounds of the premises in which their polling station is situated without harassment or obstruction. Therefore candidates, agents and campaigners should not attempt to photograph or film electors without their permission (or, if they have such permission, obstruct any other electors while doing so) as they enter or exit the grounds of the premises. Regard should be given to the Electoral Commission's guidance to candidates and agents on campaigning and its supplementary guidance for "tellers", which describe the appropriate behaviour for campaigners on polling day.
- 5.7 The publication of exit polls formulated using information collected (for example by "tellers") from voters at polling stations (see 6. Exit Polls) is prohibited before the close of poll.

6. Exit Polls

- 6.1 The publication, before the close of poll, of exit polls using social media (or any other means) is a criminal offence under section 66A of the Representation of the People Act 1983. Candidates and agents may not publish, before the close of poll, any statement about the way in which voters have voted in that election, where this statement is, or might reasonably be taken to be, based on information given by voters after they have voted.
- 6.2 This restriction also applies to the publication, before the close of poll, of any forecast (or estimate) of election results that is (or might reasonably be taken to be) based on information given by voters after they have voted.
- 6.3 The restriction includes exit polls conducted to focus on voting in a particular constituency or ward and those examining voting patterns nationally.
- 6.4 The rationale for prohibiting the use of exit polls is that if this data were in the public domain it could influence electors who were yet to cast their vote who may even alter their voting intention based on how others had previously voted.

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6.5 Anyone who publishes (by means of social media or otherwise) an exit poll before the close of poll could be fined up to £5,000 or face up to six months in prison.

7. Verification and the Count

7.1 There is a clear need to ensure electors receive accurate and consistent information on the result of the poll. This should come directly from the Returning Officer and their official declaration. Candidates and agents are therefore asked to carefully consider what information they post about possible results before the formal declaration of result is made and to only post information from verified channels.

The Returning Officer will provide copies of the relevant secrecy requirements to all those attending the verification and counting of votes. Secrecy requirements in force at the counting of votes prohibit attendees using social media (or any other method) to:

- a) ascertain or attempt to ascertain the number or other unique mark on the back of any ballot paper; or
- b) to communicate any information as to the candidate for whom any vote is given on any particular ballot paper.

7.2 The Returning Officer does not allow the use of mobile phones, cameras or any devices capable of taking photographs or filming in the count venue by any person attending proceedings.

OR

7.3 The use of cameras or any devices capable of taking photographs or filming is not permitted near the count tables or ballot papers at anytime. Accredited members of the media are only permitted to film or photograph near the count tables under supervision of a member of the Returning Officer's Press and Media Team to ensure the secrecy requirements of the ballot are maintained. [Candidates, agents and guest will be allowed to take pictures during the declaration of the result by the Returning Officer and during speeches made by the winning candidate if they wish to do so.]