



Report To:	COUNCIL
Date:	14 June 2022
Reporting Officer:	Statutory Report of Monitoring Officer
Subject:	REPORT UNDER SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989
Report Summary:	Breach of the Local Government and Housing Act 1989 and section 2 of Local Government Act 1986 - Prohibition of political publicity together with the statutory Code of recommended practice on local authority publicity triggers a report to Council.
Recommendations:	To note with no further action required.
Financial Implications: (Authorised by the Borough Treasurer)	There are no significant financial implications arising from this report.
Legal Implications: (Authorised by the Borough Solicitor)	Section 5 of the Local Government & Housing Act 1989 requires the Council to appoint an Officer to act as the Council's Monitoring Officer. The Act provides that it is the personal duty of the Monitoring Officer to report formally to the Council on any proposal, decision or omission by the Council, which has given rise to, or is likely to, or would, give rise to, the contravention of any enactment, rule of law or statutory code of practice. In preparing a Statutory Report the Monitoring Officer must formally consult with the Chief Executive, as Head of the Paid Service, and the Finance Director. As soon as practicable after completion of the report a copy must be sent to each Member of the Council. Members are required by the Act to formally consider the report at a meeting of the Full Council, which must be held not more than 21 days after copies of the report have been first sent to them. Both the breach of the law and the contravention of the Code by an officer trigger the MO's duty to make a Report under Section 5 of LGHA 1989. No further or other action on her part is required, at any rate at this stage, but a factual Report to the Council is required.
Risk Management:	Organisations that have good governance use clear decision-making processes, behave openly by reporting on their activities, actively engage with their stakeholders, effectively manage the risks they face, and take responsibility for controlling and protecting their assets, including their reputation. The Council provides annual advice to senior officers including on the 28 February 2022 together with a link to A short guide to publicity during the pre-election period Local Government Association
Access to Information:	Further information can be obtained by contacting Sandra Stewart, Director of Governance & Pensions (Monitoring Officer)
	 Telephone: 0161 342 3028
	 e-mail: sandra.stewart@tameside.gov.uk

The Background

On Friday evening of the 25 March 2022, the Chief Executive, used his official chief executive social media Twitter account to respond to comments made by a Conservative voter on BBC's Question Time to a clip from the TV programme showed an audience member who voted for the Tories telling minister Damian Hinds his government is a 'disappointment'. In a post that he subsequently deleted shortly after posting, the Chief Executive replied on Twitter saying: "*She was good. Tory voter with compassion and empathy for others. Who knew !!*"

Later that same evening at 20.25hrs, a complaint was received by the Council from a Conservative Councillor followed by concerns and complaints from all of the Conservative Opposition Group. On Monday the 28 March 2022, the Chief Executive responded with an apology to the Leader of the Opposition Group, which was accepted.

The matter has been published by various press and media.

The Breach

The Chief Executive is dual hatted with the following roles:

- (i) The Head of its Paid Service, to whom Section 4 of Local Government and Housing Act 1989 and the Standing Orders Regulations are applicable; and
- (ii) It's Returning Officer pursuant to the Council's statutory Constitution.

The starting point is that the Chief Executive and Head of Paid Service, occupies a politically restricted post under Local Government and Housing Act 1989 and the Local Government Officers (Political Restrictions) Regulations 1990, S.I. 1990/85. In Part 2 of the Schedule to the Regulations paragraphs 6-8 inclusive are directly in point:

6. The appointee shall not speak to the public at large or to a section of the public with the apparent intention of affecting public support for a political party.

7.—(1) The appointee shall not—

- (a) publish any written or artistic work of which he is the author (or one of the authors) or any written work or collection of artistic works in relation to which he has acted in an editorial capacity; or*
- (b) cause, authorise or permit any other person to publish such a work or collection, if the work appears to be intended to affect public support for a political party.*

8. Nothing in paragraph 6 or 7 shall be construed as precluding the appointee from engaging in the activities there mentioned to such extent as is necessary for the proper performance of his official duties.

A politically restricted officer, such as pre-eminently a statutory officer, must not express themselves publicly in a way that appears to have the intention of affecting public support for a political party.

In addition, there has been a breach of section 2 of Local Government Act 1986 - Prohibition of political publicity:

(1) A local authority shall not publish, or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party.

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

(a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;

(b) where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

and the statutory Code of recommended practice on local authority publicity. This was aggravated by the proximity of the breach to the elections.

The Chief Executive was the Returning Officer for the Local Elections 2022, which took place on the 5 May 2022. Sections 35 and 48 of the Representation of the People Act 1983 and the decision of the Court of Appeal in R (Begum) v Tower Hamlets LBC, (2006) EWCA Civ 733, (2006) LGR 674, especially at paragraphs 13 and 21/22 make it clear that a breach of duty, including a breach of the duty of political impartiality, could not be dealt with during the elections nor at the Annual Council meeting, and hence the timing of this report.