

**An Extraordinary meeting of the
West of England Combined Authority Committee**

will be held on

Date: Tuesday, 12 December 2023

Time: 7.30 pm

Place: 70 Redcliff Street

NB This meeting is the reconvening of the Extraordinary meeting adjourned on 1 December 2023.

Notice of this meeting is given to members of the West of England Combined Authority Committee as follows:

Metro Mayor Dan Norris, West of England Combined Authority
Cllr Kevin Guy, Bath & North East Somerset Council
Mayor Marvin Rees, Bristol City Council
Cllr Claire Young, South Gloucestershire Council

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The West of England Combined Authority Committee Agenda

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- Inspect agendas, reports and minutes of the Combined Authority and all the Combined Authority Committees and Sub-Committees for up to six years following a meeting.
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1. EVACUATION PROCEDURE

In the event of a fire, please await direction from staff members who will help assist with the evacuation. Please do not return to the building until instructed to do so by the fire warden(s).

2. APOLOGIES FOR ABSENCE

To receive apologies for absence from Members.

3. DECLARATIONS OF INTEREST UNDER THE LOCALISM ACT 2011

Members who consider that they have an interest to declare are asked to state:

- a) The item number in which they have an interest;
- b) The nature of the interest, and;
- c) Whether the interest is a disclosable pecuniary interest, non-disclosable pecuniary interest or non-pecuniary interest.

Any Member who is unsure about the above should seek advice from the Monitoring Officer prior to the meeting in order to expedite matters at the meeting itself.

4. UNLAWFUL EXPENDITURE REPORT

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To consider a report of the Interim Monitoring Officer and Section 73 Officer under the provisions of Section 5(2)(a) of the Local Government and Housing Act 1989 and Section 114(2)(a) of the Local Government Finance Act 1988 in relation to what is considered to be unlawful expenditure.

Next meeting: Friday, 26 January 2024



REPORT TO: WEST OF ENGLAND MAYORAL COMBINED AUTHORITY COMMITTEE

DATE: 1 DECEMBER 2023

REPORT TITLE: UNLAWFUL EXPENDITURE REPORT

RESPONSIBLE OFFICER: INTERIM MONITORING OFFICER AND SECTION 73 OFFICER

Purpose of Report

To report the unlawful expenditure of £10,000.

Recommendation

That Committee decide whether it agrees or disagrees with the views of the Interim Monitoring Officer and the Section 73 Officer contained in the report and what action (if any) it proposes to take in consequence of the report.

Reasons for recommendation

Section 5(2)(a) of the Local Government and Housing Act 1989 and Section 114(2)(a) of the Local Government Finance Act 1988 place a statutory duty on (respectively) the Interim Monitoring Officer and the Section 73 Officer to report this matter to the West of England Mayoral Combined Authority Committee.

Voting arrangements

In order to be carried, a decision on this matter requires a majority of the members present and voting. Such majority would ordinarily have to include the Metro Mayor. However, on this occasion, the Metro Mayor must declare a non-pecuniary interest and is required to leave the room for the duration of the debate and vote. Paragraph 4.1 of the Members Code of Conduct on page 131 of the Constitution relates. Each remaining member present may cast one vote. If a vote is tied the decision is not carried. There is no casting vote. Co-opted members are not entitled to vote.

Background

Statutory Duties

1. Section 5(2)(a) of the Local Government and Housing Act 1989 (“**the 1989 Act**”) says (emphasis supplied):-

*“...it shall be the duty of a relevant authority’s monitoring officer, if it at any time appears to him that any proposal, **decision** or omission by the authority [or]... **by any person holding any office or employment under the authority... has given rise to or is likely to or would give rise to-***

*(a) **a contravention ... of any enactment or rule of law or of any code of practice made or approved by or under any enactment...***

to prepare a report to the authority with respect to that proposal, decision or omission.”

2. For the avoidance of doubt, Section 5 of the 1989 Act is applied to the West of England Mayoral Combined Authority (“the Combined Authority”) by the West of England Combined Authority Order 2017 (S.I. 2017/126).
3. The Local Government Finance Act 1988 (“**the 1988 Act**”) says (emphasis supplied):-

*“114(2)(a)...the chief finance officer of a relevant authority shall make a report under this section if it appears to him that the authority [or]... **a person holding any office or employment under the authority...***

*(a) **has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful...***

115 Authority's duties as regards reports

(1) This section applies where copies of a report under section 114 above have been sent under section 114(4) above.

*(2) ... the authority shall consider the report at a meeting **where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it**”*

4. For the avoidance of doubt, the Section 73 Officer is the Combined Authority’s chief finance officer for the purposes of Section 114(2)(a) of the 1988 Act by

virtue of Section 114(1) of the 1988 Act and Section 73(2)(b) of the Local Government Act 1985.

5. This report is brought to the Committee because, for the purposes of s 5(2)(a) of the 1989 Act, it appears to the Interim Monitoring Officer that the West of England Combined Authority (“**the Combined Authority**”), or a person or persons holding office or employment under the Combined Authority made a decision or decisions on or around 24 April 2023 which gave rise to:-
 - a) a contravention of a rule of law; and,
 - b) a contravention of a code of practice made or approved under an enactment (i.e., a statutory code of practice).
6. Additionally, for the purposes of s 114(2)(a) of the 1988 Act, it appears to the Section 73 officer that Combined Authority or a person or persons holding office or employment under the Combined Authority made a decision or decisions on or around 24 April 2023 which involved the authority incurring unlawful expenditure.
7. As a result, the duties of both the Interim Monitoring Officer and the Section 73 Officer are engaged under (respectively) the 1989 and 1988 Acts. However, it is important for Members to be clear that whilst both duties are engaged, they are both engaged as a result of a single decision, taken on or around 24 April 2023.
8. Members may have previously heard of reports or notices being issued by local government chief finance officers under Section 114(3) of the 1988 Act in circumstances where the authority in question does not have access to sufficient resources to meet anticipated expenditure in any given financial year. It is important that Members are clear that this is not such a report. The Combined Authority has sufficient resources to meet its anticipated expenditure and there are no further budgetary implications arising from this report.
9. Insofar as the 1988 Act is concerned, this report is brought to committee under the duty contained subsection (2)(a) of section 114 and relates solely to a single, contained incident that resulted in unlawful expenditure of £10,000.
10. The 1988 Act requires that the external auditor is sent a copy of this report and is informed of the time, date, and place of the meeting at which the report will be considered. The external auditors also must be informed of the outcome of the meeting as soon as practicable.
11. The external auditor has been kept informed of the position in this matter as it

emerged and evolved. The external auditor has been provided with a copy of this report and the details of the 1 December 2023 meeting convened to consider the same.

Factual Context – Summary

12. The decision subject to this report was taken in the context of the launch of the Metro Mayor’s “Birthday Fares” initiative, which enables residents to enjoy free bus travel during the month of their birthday. The objective of the initiative being to achieve sustained increases in bus patronage.
13. The Birthday Fares initiative is a Department for Transport (DfT) approved “fares package” which is a component part of a circa £105.5m wider Bus Service Improvement Plan (BSIP) programme delivered jointly by the Combined Authority and North Somerset Council (NSC), funded by DfT under Section 31 of the Local government Act 2003.
14. Members should be clear that NSC are not in any way involved or implicated in any of the events which have triggered the need for this report.

Key Considerations

Circumstances Leading to Contraventions and Resultant Unlawful Expenditure

15. The decision giving rise to this report was a decision to issue a purchase order, to the value of £10,000, commencing a process whereby a third-party provider applied a cosmetic decal or livery (known as a “wrap”) to a double decker bus. That wrap featured a series of messages and images of the Metro Mayor and his dog. A copy of the design is appended to this report at **Appendix 1**.
16. The wrap showed on one side of the bus a large image of the Metro Mayor and his dog alongside a message: “Free Bus Travel In Your Birthday Month”, and on the other side the message “Be A Community Hero. Become A Bus Driver”, along with a large image of the Metro Mayor and his dog. On the back of the bus, there is a further image of the Metro Mayor. The wrapped bus was intended to be used as part of the launch event for the Birthday Fares initiative, although it should be noted that there is evidence of an intention for the wrapped bus to enter and remain in service for at least 52 weeks.
17. The wrapped bus was not ultimately used in the launch event, nor at any time was it made visible in public on account of swift corrective action ordered by the Interim Chief Executive immediately on him becoming aware of the issue. However, £10,000 of public funds were nevertheless unlawfully spent wrapping the bus.

Contravention of a Statutory Code

18. On 31 March 2011, Government (through the then Department for Communities and Local Government) published (and has subsequently updated) Circular 01/2011 entitled “*Code of Recommended Practice on Local Authority Publicity*” (“the Code”). The Code was issued pursuant to Section 4(1) of the Local Government Act 1986 (“**the 1986 Act**”) and remains in effect. It is therefore, for the purposes of Section 5(2)(a) of the 1989 Act, a “*code of practice made or approved by or under any enactment*”.
19. Section 4(1) of the 1986 Act says that “... *local authorities shall have regard to the provisions of [the] code in coming to any decisions on publicity*”.
20. For the avoidance of doubt, the Combined Authority is a “local authority” for the purposes of the 1986 Act and the Code by virtue of Section 6(2) of the 1986 Act which defines “local authority” and includes a combined authority established under Section 103 of the Local Democracy, Economic Development and Construction Act 2009.
21. The Code provides that publicity must be lawful, cost effective, objective, even-handed, appropriate, have regard to equality and diversity, and be issued with care during periods of heightened sensitivity. Under the heading of ‘even-handedness’, paragraph 24 of the Code states that (emphasis supplied):

*“It is acceptable for publicity produced or hosted by local authorities to include a **logo associated with** a particular member of the authority, such as a **directly elected mayor**, or leader of the authority. **Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.**”*
22. Whilst there is no objection, under the Code, to promoting and publicising aspects of the BSIP, nor to the Metro Mayor being associated with that promotion/publicity as one of his achievements or objectives, there is a legal objection to the way in which the promotion or publicity sought to be achieved by the bus wrap is, on any objectively reasonable basis, primarily and predominantly of the Metro Mayor himself.
23. In evaluating this matter for the purposes of this report, very careful consideration has been given to the design of the wrap in the context of the Code.
24. The wrap featured large images of the Metro Mayor and his dog on three sides of the bus. The largest of the images of the Metro Mayor being approximately

3 meters high, with the other two images measuring approximately 2 meters and 1 meter high respectively.

25. Imagery associated with the Metro Mayor should be merely 'incidental' to the main purpose of the spending, which is to promote the BSIP. Instead, the wrap appears to explicitly seek to affect public support of the Metro Mayor. It seems that the promotion of the BSIP is incidental to the promotion of the Metro Mayor himself. Those images could not reasonably be described as incidental to any other scheme-focused information, promotion, or messaging. The bus wrap is reminiscent of political campaign buses which exist to serve the explicit purpose of seeking to influence voters.
26. Images of the Metro Mayor with his dog appear to be used as a personal brand or motif, appearing prominently in several articles featuring the Metro Mayor but, importantly, in the context of political campaigning platforms such as "votedan.uk" and the X/Twitter profile "@votedannorris".
27. In light of these factors, it is difficult to come to any conclusion other than that the effect of the decision taken on or around 24 April 2023 was, in reality, to incur expenditure of £10,000 of public funds not just to launch the Birthday Fares BSIP fares package initiative, but to promote (or seek to affect public support for) the Metro Mayor personally, and this is the conclusion which both the Interim Monitoring Officer and the Section 73 officer have reached. In their view, this amounts to a breach of the Code.

Status of the Statutory Code and Contravention of Rules of Law

28. Members will note from paragraph 19 above that Section 4(1) of the 1986 Act says that (emphasis supplied) "... *local authorities shall **have regard** to the provisions of [the] code in coming to any decisions on publicity*".
29. If an authority is to depart lawfully from statutory guidance such as the Code, it must generally establish that it has cogent reasons to do so: see the decision of the House of Lords in *R v Ashworth Hospital Authority, ex parte Munjaz* [2005] UKHL 58.
30. That said, in *R (London Borough of Hackney) v Secretary of State for Housing Communities and Local Government* [2019] EWHC 1438 (Admin), a case dealing with the failure of two London Borough Councils to comply with the Code, a different approach was taken. In that case the judge held that it was sufficient if there was merely a "rational" basis (and not cogent reasons) to depart from it, which sets the bar for lawful departure lower than in *Munjaz*. There is, therefore, some legal uncertainty in the test to be applied for departing

from the Code (i.e. “rational” v “cogent”), but for reasons now set out, this is not believed to make any difference to the outcome here.

31. Whether or not a decision of a public authority was “rational” is subject to further, well established rules of law. See *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223*.
32. In essence, a decision will be irrational where “it is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.” as per Lord Diplock in *Council for the Civil Service Unions v Minister for the Civil Service [1985] AC 374*. Lord Cooke, in *R v Chief Constable of Sussex, Ex parte International Trader’s Ferry Limited [1999] 2 AC 418* formulated the test in less forceful terms, namely whether the decision was one which a reasonable authority could reach (at 452).
33. There is no evidence that Code was taken into account (properly or otherwise) in arriving at a decision to incur expenditure on the wrap. No rational basis has been articulated for departing from or disregarding the highlighted aspects of the Code, resulting in the expenditure of £10,000 of public money in direct contradiction with those aspects of the Code.
34. It also follows that if the more stringent test of departing from guidance is applied, requiring cogent reasons to do so, there were again no such reasons in this case.
35. Thus, the basis upon which a public authority can legitimately depart from the Code have been contravened.
36. In addition, it seems the bus wrap is likely to constitute a breach of the fiduciary duty owed to taxpayers. That is a separate duty to ensure that public money is used properly and judiciously and for the purposes of or in the interests of taxpayers. In *School Facility Management Ltd. v Governing Body of Christ the King College [2020] EWHC 1118 (Comm)* at [301], Foxton J. stated that:

“It has been established since Roberts v Hopwood [1925] AC 578 that a local authority owes a fiduciary duty to the ratepayers from whom it obtains moneys needed to carry out its statutory functions, and that this includes a duty not to expend those moneys thriftlessly but to deploy the full financial resources available to it to the best advantage”: Bromley LBC v Greater London Council [1983] AC 768 , 829 (Lord Diplock). A decision to expend money in breach of that duty will be void as a matter of public law... reflecting the fact that those approving expenditure by a public body are not dispensing their own funds, but public funds”.

37. It is likely that this duty was not satisfied in respect of the bus wrap expenditure.

External Review

38. There follows an outline chronology of events based on the findings of an external, independent fact-finding review which was commissioned on 15 June 2023 and which delivered its final report on 23 October 2023.
39. This chronology is not intended to take the form of an exhaustive audit report into the matter. The purpose of this report is to make the Committee aware of the contraventions, the general context and corrective actions taken. Its purpose is not to discuss performance or conduct issues relating to any person which are or may be for separate consideration as appropriate.
40. The reviewers interviewed 13 officers and had unfettered access to over 200 emails and documents through which they sought to corroborate what they were told in interview. The reviewers noted that the need to accommodate leaves of absence and other reasonable adjustments in the review process meant that some information could not be fully validated. The reviewers say that as a result a level of interpretation and judgement was necessary to complete their report. Nevertheless, they felt able to make findings and recommendations, which are discussed below.

Outline Chronology

41. The Birthday Bus initiative had been worked on jointly for many months prior to the 23 May 2023 launch. The Combined Authority and NSC agreed a Memorandum of Understanding (“**MoU**”) as to how the BSIP was to be implemented, setting out the detailed nature of the process and how decisions would be taken between the parties involved and communicated to the public. Communications & Marketing would clearly have been central to this initiative and the planned launch. Therefore, within the Combined Authority and NSC there was a high degree of joint working and involvement in the broader marketing proposals at this time.
42. It is clear that, behind the scenes, both parties were aware of the broader marketing proposals, (for example, the use of radio advertising, billboards and social media) but not the specific bus wrap proposal that is the subject of this report. In respect of a general proposal to wrap a bus, this was not seen as an issue or an area of concern for anyone in advance of the event. It was viewed as a detail which it was assumed would be resolved corporately and that imagery and design would follow Combined Authority, NSC, DfT and all other guidelines.

43. Whilst it is understood that the Metro Mayor favoured a launch before the end of May 2023, local elections were due to take place in May 2023, involving the Bath & North East Somerset, South Gloucestershire and North Somerset Councils. Elections can naturally lead to a hiatus where communication and progress slows on inter-authority matters. This appears to have led service-based officers to reach the view that a Metro Mayor proposed April or May 2023 launch would be postponed, to accommodate the election and post-election processes, and the various governance processes, contained in the agreements with the DfT and NSC, that would have to be completed in order to settle launch and marketing proposals. The elections did, ultimately, result in a change of leadership and executive portfolio holders at NSC.
44. The hiatus or reduction in pace appears to have caused what the reviewers have interpreted as frustration, by certain officers who identify as operating within the 'Mayoral Office' ("**the Mayoral Office**"), that the Metro Mayor's expectations of launching before the end of May 2023 would not be met. Those officers took steps to organise a 23 May 2023 launch, but service-based officers appear to have treated those steps with a diminished degree of alacrity, being firmly of the view that the launch would be cancelled or deferred to a later date. This apparent conflict in thought process and approach does not appear to have been escalated by service-based or Mayoral Office officers through senior management channels for visibility or resolution.
45. As part of the steps referred to, officers in the Communications & Marketing Team, working to instructions from the Mayoral Office, obtained a quote for the cost of wrapping a bus, but the Communications & Marketing Team could not obtain authority to proceed with the quote from project leads and so they took no further action.
46. However, the Mayoral Office continued to drive the detail of the launch and took full control of this, including the design of the bus wrap. An officer within the Mayoral Office asserted to the reviewers that officers from the Communications & Marketing Team were aware of the "evolved design" of the bus wrap, but this was challenged by several members of the Communications & Marketing team.
47. The reviewers say that they saw no documentary evidence to corroborate either way, but it is said in the review that the design was not shared with anyone outside of the Metro Mayor and those officers who identify as being within the Mayoral Office.
48. On 24 April 2023, by combination of actions in the Mayoral Office, a requisition and purchase order to the value of £10,000 was raised, authorised, and issued leading to the bus being wrapped as discussed above. The intention was to use

the wrapped bus at a “birthday fares” launch event on 23 May 2023. The reviewers conclude, based upon their interviews with officers who identify as being within the Mayoral Office, that the Metro Mayor issued a direct verbal instruction to procure the wrapping of the bus to an officer within the Mayoral Office.

49. On 19 May 2023 concerns were raised with the Combined Authority’s Interim Chief Executive by the Chief Executive of NSC in relation to the planned event and the intended use of the wrapped bus. It is understood that NSC’s Chief Executive became aware of the wrap by chance through a conversation between a NSC Officer and a representative of the bus company.
50. The Interim Chief Executive made his own enquiries and escalated the matter with the Metro Mayor. It is understood to be at this point that the detail in respect of the design of the wrap first became known to officers outside of the Mayoral Office. It is also believed to be at this point when a scheduled launch date of 23 May 2023 first came to the attention of any member of the Combined Authority’s Corporate Leadership Team.
51. On 22 May 2023, after his discussions with the Metro Mayor, the Interim Chief Executive issued an instruction to all relevant personnel to keep the wrapped bus out of public view. He also issued a written instruction to the Mayoral Office that the launch event was not to go ahead as planned and made it clear that officers in the Mayoral Office were to take instruction only from the Interim Chief Executive or the responsible Director. He also instructed the bus company not to take instructions from anyone other than the Interim Chief Executive or the responsible Director. Notwithstanding these instructions, a form of launch did take place on 23 May 2023, however the wrapped bus was kept from public view.

Summary Findings

52. In addition to the narrative accompanying the outline chronology above, the external reviewers made the following specific findings.
53. The internal control framework within the Combined Authority allowed the purchase order to be raised and authorised outside of expected protocols. Officers in the Mayoral Office should not have had financial authority to authorise purchase orders, yet there was an allocated £25,000 limit for the authorisation of purchase orders.
54. The expenditure did not appear to meet the Combined Authority’s brand guidelines, DfT or NSC MoU criteria.

55. The expenditure was coded, by officers within the Mayoral Office, to the Mayoral Office Operational Budget (intended for day-to-day disbursements linked to mayoral duties) with a coding entry describing the expenditure as “printing”. The officers in question explained to the reviewers their belief that the cost would subsequently be transferred to the BSIP budget.
56. The purchase order was raised/authorised in breach of the requirement in the Combined Authority’s Constitution to either obtain three quotes or to obtain a waiver of the requirement to obtain three quotes. The reviewers spoke to two officers within the Mayoral Office on this point. One said that they were unaware of this requirement. The other made no specific comment.
57. The matters referred to above had the effect of bypassing expected financial controls. In doing so, they removed opportunities to obtain proper oversight of the planned expenditure.
58. The purchase order was raised as a result of a direct instruction from the Metro Mayor to officers in the Mayoral Office to proceed, and all further work related to the order and the launch was also made under the same direct instruction. However, the officers in the Mayoral Office did not question or check this with the Metro Mayor. Those officers did not consider the need to check or discuss this with anyone within the Combined Authority, nor did they consider the need to follow the Combined Authority’s expected control processes.
59. The Interim Chief Executive’s direct and explicit instruction to stand down the 23 May 2023 launch event was not followed. The officer within the Mayoral Office that the reviewer spoke to on this point said that the view they took on the risks of proceeding with a launch event differed from the Interim Chief Executive’s view and that the officer proceeded with an altered launch event on the instructions of the Metro Mayor. That officer did so without further discussion with the Interim Chief Executive.

Review Recommendations

60. The recommendations made by the reviewers have been captured in the following actions, each of which has set against it the Statutory Officers’ responses.
 - a) To immediately review and improve budget responsibilities and internal control mechanisms around expenditure within the “Mayoral Office”.

Response:- Action complete. Immediately upon becoming aware of this matter, the current Interim Monitoring Officer instructed the finance team to change authorisation processes to put in place a two-stage authorisation

process requiring the approval of Mayoral Office spend by the Interim Monitoring Officer and one of his senior direct reports. He also implemented a process requiring advance notice and greater explanation and scrutiny of intended spend. The current Section 73 Officer, once apprised of the issues upon her arrival, then made these changes permanent through a reconfiguration of the relevant IT systems.

- b) To immediately review and improve mechanisms around the control and management of staff within the “Mayoral Office”. Line management responsibilities are not always clear, and officers were not supported in a consistent way. Officers in the “Mayoral Office” should be properly managed and controlled in a way that is no different to officers in the rest of the organisation.

Response:- Action complete. The Head of HR has written to the officers concerned to make clear the outcomes of the review and the implications for each individual officer concerned. The letter offers absolute clarity in respect of line management arrangements and the application of internal controls, policies and procedures to the officers concerned, in common with all other officers. The letter provides the necessary support in terms of awareness of and access to said internal controls, policies and procedures and the requirement to complete mandatory training and update training associated with the same.

- c) Immediate review of the organisational mechanisms to support the work of the Metro Mayor, including a review of the line management arrangements for the Political Advisor role, which should report to the Monitoring Officer. Whilst a “Mayoral Office” does not exist in the organisational structure, it exists in real terms as it has been allowed to be created culturally over time. The organisation must work corporately and support policy and delivery as ‘one’ on critical priorities and so the existence of a separate ‘Mayoral Office’ and the roles within it needs to be reviewed to ensure it is fit for purpose and aligns with the existing organisational structures, policies, processes, and objectives.

Response:- The Interim Director of Legal and Governance, Interim Chief Executive and the Head of HR have begun to consider the resource required to provide an effective support service to the Metro Mayor across matters such as the administrative, engagement and policy advice/formation needs of that role. This will be undertaken in consultation with the Metro Mayor and affected staff, cognisant of the approach taken in other comparable authorities and mindful of relevant statute and guidance. It is envisaged that the result will be a service grouping with clear line management responsibilities under the Assistant Chief Executive, working closely with the Legal and Governance Service. An implementation target of 1 April 2024, at the very latest, has been

set with earlier implementation expected.

- d) Ensure that all officers right across the Combined Authority are reminded of their responsibilities around the Code of Conduct and key governance processes. This can be best achieved through an annual refresher programme of training to ensure everyone understands their roles and responsibilities.

Response:- There are already systems and processes in place designed to achieve this, but the Head of HR has begun a review to carefully consider their effectiveness and reach, along with the way in which compliance is measured and assured. Any necessary adjustments will be identified and implemented. The Head of HR will take responsibility for this action and has set an implementation target of 1 April 2024.

Alternative Options Considered

61. Considering the statutory duties referred to, there was no option other than to report this matter to committee.

Consultation and Notification

62. In accordance with the requirements of the Statutory Duties referred to, consultation on the content of this report has taken place between the Interim Head of Paid Service, Interim Monitoring Officer and Section 73 Officer, all of whom are content with the content of the report, the actions taken by the Combined Authority in response to the issues raised and the timescales involved.
63. As set out in paragraph 11 above, the external auditor has been kept informed of the position in this matter as it emerged and evolved and has been provided with a copy of this report and the details of the 1 December 2023 meeting to consider the same.
64. The Chairs of the Combined Authority's Audit Committee and Scrutiny Committee have been notified and provided with a copy of this report.
65. The Metro Mayor has been notified and provided with a copy of this report. After considering the content of this report, and discussing the same with the Interim Chief Executive, the Metro Mayor has been clear with the Interim Chief Executive that whilst he did give instructions to the officers referred to in this report, he fully expected those officers to follow due process in carrying out his instructions.

66. It is reiterated that the purpose of this report is not to serve as an exhaustive audit style report into the matter to seek to make findings against or apportion blame amongst any individual officer or member. Its purpose is to make the Committee aware of the contraventions, the general context and corrective actions taken. Performance or conduct issues relating to any person are or may be for separate consideration as appropriate.

Key Risks

67. The key immediate risk was around a failure to take action to mitigating the impact of the contraventions described. This risk was managed by the Interim Chief Executive quickly and effectively by ensuring that the wrapped bus remained unused and away from public view.
68. The medium-term risks centred around the need to undertake a comprehensive fact-finding process to derive organisational learning from the issues arising. This was managed by the Interim Chief Executive, Interim Monitoring Officer, Section 73 Officer and Head of HR efficiently and effectively.
69. The ongoing risks are around lessons not being learned and not being embedded in culture and practice thereby presenting a much higher risk of matters of a similar nature arising again in future. This risk is ameliorated by the corrective actions taken and underway but requires ongoing support to implement and model expected behaviours from the Combined Authority's officer and political leadership, along with a culture of quick, proportionate and respectful corrective action when required.
70. Ventilating these issues publicly through this report and committing the same to organisational memory is also a risk mitigation measure.
71. There is a wider, ongoing risk that further statutory reports of this nature will attract Best Value intervention from central government and/or cause significant adverse reputation impacts. That will needlessly constrain the Authority's ability to attract and retain the officers and relationships that it needs with its stakeholders and partners to deliver the significant improvements to outcomes for the region that it is both capable of delivering, and statutorily required to deliver. That said, Best Value interventions are a matter for the Department of Levelling Up, Housing and Communities (DHLUC). Officers have kept DHLUC officials sighted and aware of the issues and this report.

Equality, Diversity and Inclusion Implications

72. Where any such issues might exist, they have been factored in appropriately throughout this matter and that will continue to be the case when considering

and deploying corrective actions.

Climate Change Implications

73. Not Applicable.

Finance Implications

74. The financial implications have been set out in the body of this report.

Legal Implications

75. The legal implications have been set out in the body of this report.

Human Resources Implications

76. Human resource implications have been addressed in the body of this report.

Land/property Implications

77. Not applicable.

Commercial Implications

78. Not applicable.

Appendices

Appendix 1 – The Bus Wrap Design

Background papers:

- Background to the BSIP programme generally and as it relates to the Combined Authority and NSC can be found on the internet and specifically on the websites of His Majesty's Government, the Combined Authority and NSC.
- Background and further reading on the legislation and caselaw discussed is available on the internet.
- There are a number of background documents comprising contemporaneous records and discussions of the events described, the fact-finding review and legal advice. All of these materials are exempt from disclosure/publication on the basis that they contain or would disclose personal information, are subject to legal

professional privilege, some other duty of confidence or because the disclosure of the same would otherwise prejudice the proper conduct or public affairs.

West of England Mayoral Combined Authority Contact:

Report Author: Daniel Dickinson – Interim Monitoring Officer
Rachel Musson – Section 73 Officer

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Appendix 1

Bus Wrap Design

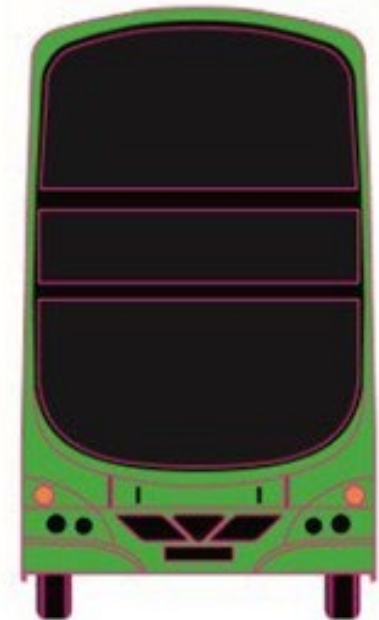
OVERALL LENGTH 10380mm



OVERALL HEIGHT 4145mm



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**REPORT TO: WEST OF ENGLAND MAYORAL COMBINED AUTHORITY
COMMITTEE**

DATE: 1 DECEMBER 2023

**REPORT UNLAWFUL EXPENDITURE REPORT
TITLE: PROPOSED AMENDED RECOMMENDATION**

**RESPONSIBLE INTERIM MONITORING OFFICER AND SECTION 73 OFFICER
OFFICER:**

Purpose of the Proposed Amended Recommendation

Having seen the substantive report upon publication on 23 November 2023, committee members have requested that the recommendation, as originally written, is split into two parts, with additional clarification in respect of the first part. The following is offered for consideration in line with that request.

Proposed Amended Recommendation

That Committee:-

- 1) decide whether it agrees or disagrees with the views of the Interim Monitoring Officer and the Section 73 Officer that the spend was unlawful, as set out in the report; and,
- 2) what action (if any) it proposes to take in consequence of the report.

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31 March 2011

CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

1. I am directed by the Secretary of State for Communities and Local Government to draw the attention of your authority to the annexed code of recommended practice on local authority publicity, which has been issued under section 4 of the Local Government Act 1986. It comes into force on 31 March 2011. On the same date the codes of practice issued on 15 August 1988 (Department of the Environment circular 20/88) and 2 April 2001 (Department of the Environment, Transport and the Regions circular 06/2001) are withdrawn in relation to local authorities in England.
2. The code has been prepared following consultation with such associations of local authorities as appeared to the Secretary of State to be concerned and such local authorities with whom consultation appeared to the Secretary of State to be desirable. A draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

Signed

Paul Rowsell

A senior civil servant in the Department for Communities and Local Government

The Chief Executive –
County Councils in England
District Councils in England
London Borough Councils
The Council of the Isles of Scilly
Parish Clerks of Parish Councils in
England
The Town Clerk, City of London

The Chief Officer of the –
Metropolitan Police Authority
Police authorities established under section 3 of the
Police Act 1996
The London Fire and Emergency Planning
Authority
The Broads Authority
National Parks Authorities
Joint authorities under Pt 4 of the Local
Government Act 1985
The Manchester Combined Authority

THE CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

Introduction

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.
2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties.
3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

Principles

4. Publicity by local authorities should:-
 - be lawful
 - be cost effective
 - be objective
 - be even-handed
 - be appropriate
 - have regard to equality and diversity
 - be issued with care during periods of heightened sensitivity

Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.

6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.
7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.
8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.
9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

Cost effectiveness

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.
11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.
12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.
13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.
14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

Objectivity

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.
16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.
17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.
18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

Even-handedness

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.
20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.
21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.

22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.
23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.
24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.
25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

Appropriate use of publicity

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.
27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.
28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.
29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.
30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newsheets or similar publications published by the local authority, should do this on the front page of the publication.

Equality and diversity etc

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.
34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any 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. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.
35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

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