

## FORM A (ii)

### Subject member's response to the evidence set out in the investigation report

Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative.

Paragraph number from the investigation report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read
7.14	Whilst accept that the Council, on behalf of the city's citizens, hold the copyright of the webcast recordings, it is an intellectual leap to suggest they are a financial resource of the council. No evidence or case studies are provided to suggest that there is financial value in these recordings – would people pay to view them? It seems unlikely.	The final sentence should read: "Whilst it could be considered a financial resource of the council, there is no proven basis to do so for council meeting webcasts."

Although not documented in the investigation report, there is good authority for the proposition that intellectual property, as a non-tangible asset, has financial and commercial value:

*"Intellectual property is a valuable asset which may be exploited in a number of ways. It may be assigned, whereby the ownership in the whole or part of it is transferred, or licences may be granted in respect of it."* – 'Intellectual Property' (Sixth edition) by David Bainbridge, Professor of Business Law, Aston Business School, at page 21

*“Innovative ideas create value, whether they are improved products, new brands or creative expressions. As a result, IP rights – the means by which these assets are owned – have become a cornerstone of economic activity” – The Gowers Review of Intellectual Property on behalf of HM Treasury (November 2006), at page 3.*

*“In today’s knowledge economy, IP has never been more important for securing Britain’s prosperity and has never been more challenged by the changing context of innovation: it is estimated that 70% of a typical company’s value lies in its intangible assets, up from around 40% in the early 1980’s.” Ibid, at page 34*

Councillor Kitcat contends there is no evidence of the financial value in the webcast recordings themselves, even though they form part of the council’s intellectual property.

As holder of the copyright in the sound and images of webcast recordings, the council can and does charge for the supply of CDs featuring specific webcast meetings. At £35 per CD, the facility does generate income and our copyright does amount to a financial resource in that respect.

As noted above, we could choose to exploit our copyright by licensing or assigning the recordings at full commercial value.

7.16	I don't accept the leap to financial resource without any backing or evidence, it's a hypothetical argument. I just viewed the webcast as any other Member, officer or resident does. In watching some portions of interest I rewound the video and captured the video locally off my own computer, no additional resource (in any sense of the word) was used from the Council. Furthermore if Public-I had provided the long overdue functionality of linking to specific sections of a meeting this entire section would not be necessary as a link could have been created without the need to go via YouTube.	Delete (ii) and amend so it reads "Having reasoned that Cllr Kitcat did use a resource of the council, a question arises:" Include (i) as currently shown – if still applicable considering a financial resource was not used. As a result subsequent paragraphs relating to 7.16(ii) should be deleted or amended accordingly. 8.3 should be deleted.
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See comments above as to why the webcast recordings do amount to a financial resource.

Even if the council's copyright in the recordings do not amount to a financial resource, which is not accepted, the webcasting hardware and software, being part of the council's IT faculties, do meet the accepted definition of an authority's resources – see paragraph 7.9 of my report.

7.13	As per above, I did not access the Public-I facilities contracted by the Council to create the clips. I accessed them to view the meetings and then chose to take grabs of them. This did not incur any further use of the 'facilities' beyond normal viewing.	Replace the word 'create' with 'view'.
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Councillor Kitcat's source of data for the clips featured on YouTube was the council's webcast material. Without these council-owned sounds and images, he would have been unable to copy and paste ("grab") them onto his chosen medium. To that extent, by taking a copy of a clip, he did use the authority's resources.

He submits that viewing the recordings and taking grabs of them constituted his only "use" of them. He claims this only amounted to "normal viewing", but in reality he went beyond mere viewing by taking the images and copying them onto an external website. On any reading, this must be deemed a "use" of council facilities.

On this basis, it is appropriate for the report to address the other element of paragraph 6(b)(ii) of the Code, namely whether Cllr Kitcat did use council resources *improperly for political purposes (including party political purposes)*.

For these reasons, paragraph 7.16(ii) of the report should stand, as indeed should the finding at 8.3, based on the reasoning at 7.22-7.27.