

STANDARDS COMMITTEE

17 DECEMBER 2014

REPORT OF THE CORPORATE DIRECTOR (CORPORATE SERVICES)

A.1 PRE-ELECTION PUBLICITY GUIDANCE

(Report prepared by Martyn Knappett)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To comment on the Pre-Election Publicity Guidance Note previously produced for the Clacton Parliamentary Constituency By Election and Essex County Council Brightlingsea Division By-Election to ensure that its contents are clear for Members' in readiness for the 2015 elections.

EXECUTIVE SUMMARY

A Guidance Note concerning publicity and resources was issued to all District Council Members and Officers in the run up to the October elections. In readiness for the 2015 local and general elections the Standards Committee is requested to provide any comments or seek clarification on the content of the previous guidance to ensure that it is clear, concise and easily understood. The Standards Committee feedback will be considered by the Returning Officer when issuing the revised guidance in February/March 2015.

The October Guidance has been reproduced as Appendix A, with some of the content highlighted in italics, which will require updating with the relevant election details, however the principles remain the same for each election.

RECOMMENDATION(S)

It is recommended that:

The comments made by the Committee through discussion of the Pre-Election Publicity Guidance Note are taken into consideration when the Guidance for the 2015 elections is prepared.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Guidance builds on the Council's good governance arrangements and reputation during pre-election periods.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any guidance issued to Councillors and Officers is up to date with current policy, legislation, good practice and national guidance. It is also important to ensure that the contents are clear and concise and easily understood.

LEGAL

The Secretary of State for Communities and Local Government issued the Code of Recommended Practice on Local Authority Publicity, under the Local Government Act 1986 ("the Act") which came into force on 31 March 2011. The Code is recognised as the statutory guidance for local authorities to have regard to, about publicity during the purdah period just before local elections.

Local authorities are required by section 4(1) of the Act to have regard to the contents of the 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.

Nothing in the 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.

This Guidance follows best practice and assists the Council to fulfil its statutory duty to have regard to national guidance about pre-election publicity.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Area or Ward affected/Consultation/Public Engagement.

Wards Affected: All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The period just before local elections when there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, the so-called 'purdah' period, is defined as beginning with the last date for publication of notice of the election.

'Purdah' is a political convention, which formally applies to government ministers and civil

servants in central government during the period immediately before a general election.

During a period of purdah, ministers and civil servants will refrain from taking decisions or making policy announcements which are significant and may be politically contentious.

As with central government, 'business as usual' will always continue, but on certain issues a local authority may act cautiously and delay decision-making until after the election has concluded.

The Code of Practice does not specifically refer to the 'Purdah' however reference is made to the period before elections in paragraphs 33-35 (see below).

Each local authority is able to adopt their own version of the convention in the period leading up to local elections. Paragraph 4 of the Code sets out the principles, which local authorities should follow:-

- 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

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.

CURRENT POSITION

At its Committee in September and shortly after the Pre-Election Guidance Note was issued for the October By-Elections, Members considered it would be useful to look at the Guidance Note, as part of its work programme before the 2015 Elections to ensure the contents were easily understood by both Members and Officers.

BACKGROUND PAPERS FOR THE DECISION

The Recommended Code of Practice issued by the Secretary of State for Communities and Local Government on Local Authority Publicity

APPENDICES

Appendix A – Pre-election Publicity Guidance Note

PRE-ELECTION PUBLICITY GUIDANCE

FOR

TENDRING DISTRICT COUNCIL MEMBERS AND OFFICERS

- ***CLACTON PARLIAMENTARY CONSTITUENCY BY ELECTION***
- ***ESSEX COUNTY COUNCIL BRIGHTLINGSEA DIVISION BY ELECTION***

9th OCTOBER 2014

INTRODUCTION

This guidance is intended for both Members and Officers of TDC.

It covers a number of issues which arise as a result of elections being held while the Council needs to continue with its normal business.

SUMMARY OF KEY POINTS

- The “Purdah” period applies from the date the Notice of Election was published (*9 September 2014 for the Parliamentary By Election and 5 September 2014 for the Brightlingsea By Election*) until the date of the Poll – *9 October 2014*.
- The Council is prohibited at all times from undertaking activities or providing publicity “designed to affect support for a political party” and during the purdah period the obligation to ensure that no candidate or party is favoured is heightened.
- The key test for local government communications or other activities during purdah is “could a reasonable person conclude that you were spending public money to influence the outcome of the election?”
- So the general rule is that during the purdah period for these elections the Council’s press releases which relate to the *Clacton Constituency area or the Brightlingsea Division area* (including any which relate to the whole of the District) will not include the names, photographs or quotations from any politicians.

- The Council's day to day work will continue on a "business as usual" basis with decisions being made and services provided but we will seek to avoid consideration of, or publicity for, politically contentious issues during the purdah period.
- The basic principle for all officers is not to undertake any activity which would call into question their political impartiality, or could give rise to the criticism that public resources are being used for party political purposes.
- No elected member or officer is permitted to use any Council resources for private or party political purposes.

DUTIES OF THE RETURNING OFFICER

- The roles and responsibilities of a Returning Officer are set by law. They are a series of powers and duties which are the personal responsibility of the person appointed as Returning Officer.
- Ian Davidson is the Acting Returning Officer for the Parliamentary *By Election* – and has personal responsibility for conducting the *By Election*. For the *Brightlingsea Division By Election* he is the Deputy Returning Officer (with full powers to deliver the By Election). Martyn Knappett is the Deputy for both elections with full powers.
- Returning Officers are not local government employees for the purposes of conducting elections and are not accountable to the Council or its members in carrying out their statutory functions.
- The Returning Officer is required to conduct all elections entirely in accordance with the law.

DECISION MAKING

- "Business as usual" will continue for services with decisions being made and services delivered.
- However, decisions, meetings, public consultation exercises and publicity campaigns on issues which it is considered have the potential to be politically contentious may be re-scheduled until after the election. This will avoid the risk of the decision making process being skewed or otherwise affected.

- Management Team members and Service Managers should familiarise themselves with the Council’s approach to purdah as set out in this guidance and should not permit any issue to be brought forward during the purdah period which is likely to create political advantage.

PUBLICITY

- The law says the Council must never publish “any material which, in whole or in part, appears to be designed to affect public support for a political party”. In this context “publicity” is defined as “any communication, in whatever form, addressed to the public at large or to a section of the public”.
- The above applies to events and spoken communications as well as written communications.
- All TDC press releases during the purdah period will require the approval of the Chief Executive or Corporate Director (Corporate Services) before publication.
- During the purdah period for these elections the Council’s press releases which relate to the *Clacton Constituency area or the Brightlingsea Division area (and that includes any which relate to the whole of the District)* will not include the names, photographs or quotations from any politicians.

USE OF RESOURCES

- No elected member – whether a member of the Cabinet, Chairman of a Committee or any backbench member – or officer is permitted to use any Council resources for private or party political purposes.
- Requests for information by candidates and political parties should be responded to in accordance with legal requirements and normal policies and in an even handed way.

SECURITY

- The Acting / Deputy Returning Officer will receive detailed and restricted advice from the appropriate bodies in relation to any security issues directly during the election period.

- Based on past experience Tendring has not been vulnerable or prone to any significant or particular security concerns. *However the 9th October elections are likely to have a heightened risk status.*
- Members and Officers should expect to see and be subject to more rigorous security requirements than for previous elections in the days leading up to Polling day and on the day itself.
- Access to the Parliamentary Count will be rigorously controlled and limited. It will be by invitation only.
- There will be close liaison with Essex Police to prepare operational policing plans to deal with the day to day policing of polling stations and the Count venue and also to respond to any incidents which may arise.

QUESTIONS AND QUERIES

- Officers should seek general guidance on the issues in this document from their Manager or Director or from Ian Davidson, Martyn Knappett or Lisa Hastings.
- All publicity matters should be referred to Nigel Brown, Communications Manager.
- Members should raise electoral issues with the Returning Officer via their candidate's Agents.
- Members should raise issues relating to the business of the Council as they are affected by the elections and purdah with the above officers.

GENERAL

All of the above is general guidance which should cover the majority of circumstances. There may however be legitimate exceptions to the guidance – where for example there is a major event outside the control of the Council, an emergency or a statutory requirement to act within the timeframe of the election. Judgements about those issues will be made on a case by case basis in light of the legal requirements and the need to maintain balance and impartiality.

Ian Davidson

Chief Executive