

STANDARDS COMMITTEE

20 MARCH 2024

REPORT OF THE MONITORING OFFICER

A.2 PRE-ELECTION GUIDANCE FOR TENDRING DISTRICT COUNCIL MEMBERS AND OFFICERS

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To note the Pre-Election Publicity Guidance produced for elections within the Tendring District ensuring that its contents are clear for Members and Officers in readiness for the May 2024 Police, Fire and Crime Commissioner elections.

EXECUTIVE SUMMARY

A Guidance Note concerning publicity and resources has been routinely issued, to all District Council Members and Officers, in the run up to the elections since 2014, in the format as shown in Appendix A to this report. In readiness for the May 2024 Police, Fire and Crime Commissioner election, the Standards Committee is requested to provide any comments or seek clarification on the content of the guidance to ensure that it is clear, concise and easily understood. The Standards Committee feedback will be considered by the Chief Executive (who is also the Local Returning Officer for the election in the District of Tendring) when issuing the revised guidance in March 2024.

In preparing the guidance now presented, due regard has been given to the LGA's published advice set out in the 'Use of Resources and Value for Money' Section below about the applicability of pre-election restrictions and the need for caution to avoid doing anything which offers undue influence or advantage that might affect the forthcoming election.

RECOMMENDATION(S)

It is recommended that the Standards Committee:

- a) notes the contents of this report, subject to any comments or recommendations that the Committee may wish to make following its consideration of the report;**
- b) endorses the Guidance being circulated to all Tendring District Councillors together with a reminder of paragraph 7 of the Members' Code of Conduct; and**
- c) supports the Guidance being circulated to all Town and Parish Councils in the District.**

REASON(S) FOR THE RECOMMENDATION(S)

To request any feedback on the Guidance to be issued by the Chief Executive in a timely manner in readiness for the 2024 May Election and the upcoming Pre-Election Period due to commence on 22nd March 2024.

ALTERNATIVE OPTIONS CONSIDERED

An alternative option could have been not to consult the Standards Committee on the content of the Pre-Election Guidance however, this would have gone against previous decisions to do so, without justification.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Guidance builds on the Council's good governance arrangements and reputation during pre-election periods and forms part of effective and positive governance.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Paragraph 7 of the Council's Members' Code of Conduct (LGA Model Code) refers to the use of local authority resources and facilities and states:

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a. act in accordance with the local authority's requirements; and
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.

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 (as amended) ("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, at all times, ensuring their publicity complies with all applicable requirements. The principle to ensure that special care is taken during periods of heightened sensitivity is of particular relevance during the period just before 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 of the Publicity Code offer some guidance for local authorities on the management of publicity, which may contain or have links to party political material.

Tendring District Council's Guidance follows best practice and assists the Council to fulfil its statutory duty to have regard to national guidance for pre-election periods. The Local Government Association's latest guide to publicity during the pre-election period and associated frequently asked questions and answers has been reviewed and its contents

have taken into account.

FINANCE AND OTHER RESOURCE IMPLICATIONS

There are no finance or resource implications associated with this report.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;

B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and

C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.

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. The Local Government Association's short guide to publicity during the pre-election period, re-issued on 26 January 2024, provides advice and guidance on the publicity restrictions that should be observed by local authorities during the pre-election period. The LGA Guide and its Frequently Asked Questions has been taken into account in the production of the Council's Guidance.

The FAQ includes: "*What happens when there are no elections to my council, but there are elections in the area to another body – for example, a police and crime commissioner?*"

- Your council is not subject to the pre-election period restrictions. However, you should be mindful when issuing any communications, or engaging in other activities, to avoid doing anything which offers undue influence or advantage that might affect the other election. An example would be a local issue your council is involved in, which is also a subject of debate in the other election.

The Council believes that due to the need to be cautious and mindful, guidance should still be issued to Officers and Members.

MILESTONES AND DELIVERY

The Local Returning Officer is due to publish the Notice of Election for the office of Police, Fire and Crime Commissioner for Essex Police Area on 22nd March 2024, which commences the formal Pre-Election Period for Tendring District Council.

ASSOCIATED RISKS AND MITIGATION

Not presenting this Guidance could have a detrimental impact on the Council's reputation and a risk of inadvertently attempting to use Council resources inappropriately.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The Standards Committee has been consulted with on the format of the Guidance for previous elections.	
EQUALITIES	
There are no equalities implications for the purposes of this report and guidance.	
SOCIAL VALUE CONSIDERATIONS	
There are no social value implications for the purposes of this report and guidance.	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
There are no implications for the Council aim to be net zero by 2030, all future correspondence and communication will be undertaken electronically.	
OTHER RELEVANT 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	None identified
Health Inequalities	None identified
Area or Ward affected	All Wards could be affected
ANY OTHER RELEVANT INFORMATION	
None	

PART 3 – SUPPORTING INFORMATION

BACKGROUND
<p>The period just before local elections when there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, is now known as the Pre-election Period, with the publication of notice of the election triggering the commencement of that period.</p> <p>At all times, local authorities should ensure that publicity complies with all applicable statutory provisions, including the Code of Recommended Practice on Local Authority Publicity 2011, and the principle to ensure that special care is taken during periods of heightened sensitivity is of particular relevance during the pre-election period. The Council 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.</p> <p>The Code of Practice makes reference 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:</p> <ul style="list-style-type: none"> • 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.

The Local Government Association's short guide to publicity during the pre-election period summarises the essential points from the Code as:

- In general you should not issue any publicity which seeks to influence voters (an exception being situations covered by legislation or regulations directing publication of information for explanatory purposes).
- Particular care should be taken between the time of publication of a notice of an election and polling day.
- Consider suspending the hosting of third party material or closing public forums if these are likely to breach the code of practice.
- Do not publish any publicity on controversial issues or report views on proposals in a way which identifies them with candidates or parties.
- Publicity relating to individuals involved directly in the election should not be published unless expressly authorised by statute.
- You are allowed to publish factual information which identifies the names, constituencies and parties of candidates at elections.

What this means in practice?

Publicity is defined as **'any communication, in whatever form, addressed to the public at large or to a section of the public'**.

The first question to ask is 'could a reasonable person conclude that you are spending public money to influence the outcome of the election?' In other words it must pass the 'is it reasonable' test. When making your decision, you should consider the following:

You should **not**:

- produce publicity on matters which are politically controversial
- make references to individual candidates or parties in press releases
- arrange proactive media or events involving candidates
- issue photographs which include candidates
- supply council photographs or other materials to political group staff unless you have verified that they will not be used for campaigning purposes
- continue hosting third party blogs or e-communications
- help with national political visits (as this would involve using public money to support a particular candidate or party). These should be organised by political parties with no cost or resource implications for the council.

You should also **think carefully** before you:

- Continue to run campaign material to support your own local campaigns. If the campaign is already running and is non-controversial (for example, on issues like recruitment, recycling or foster care) and would be a waste of public money to cancel or postpone them, then continue. However, you should always think carefully if a campaign could be deemed likely to influence the outcome of the election. In such cases you should stop or defer them. An example might be a campaign on an issue which has been subject of local political debate and/or disagreement
- Launch any new consultations. Unless it is a statutory duty or considered normal council business, such as budget consultations. Councils should consider carefully before starting any new consultations or publish report findings from consultation exercises, which could be politically sensitive.

You **are allowed** to:

- continue to discharge normal council business (including budget consultations or determining planning applications, even if they are controversial)
- publish factual information to counteract misleading, controversial or extreme (for example, racist/sexist) information.

If you are in any doubt, seek advice from your (Local) Returning Officer and/or Monitoring Officer, legal or communications colleagues.

Ultimately, you must always be guided by the principle of fairness. It is crucial that any decision you take would be seen as fair and reasonable by the public and those standing for office.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Standards Committee February 2023 – Minute 22

*“**RESOLVED**, that the Committee, notes the contents of the Monitoring Officer’s report; endorses the Pre-Election Guidance for Tendring District Council Members and Officers be circulated to all Tendring District Councillors, together with a reminder of paragraph 3.8(b) of the Members’ Code of Conduct; and supports the Guidance being circulated to all Town and Parish Councils in the District.”*

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

There are no background papers associated with this report.

APPENDICES

Appendix A: PRE-ELECTION GUIDANCE FOR TENDRING DISTRICT COUNCIL MEMBERS AND OFFICERS – to follow

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