

TO: The Mayor and All Members,
The Chief Executive and All Officers

8 December 2009

FROM: Richard Long

As is customary around this time of the year, I have set out below – as a reminder – the relevant provisions of the Local Government Act 1986, dealing with the rules which apply particularly during the period leading up to an election known as Purdah.

The Local Government Act 1986 imposes:-

- a. A prohibition on local authorities publishing any material which, in whole or in part, appears to be designed to affect public support for a political party;
- b. A Code of Practice (issued by the Secretary of State under the Act) to which local authorities must have regard to in coming to any decision on publicity.

“Publicity” is defined by the 1986 Act as being “any communication, in whatever form, addressed to the public at large or to a section of the public”.

In determining whether any material contravenes the prohibition mentioned in a. above, the Act provides that regard shall be had to a number of matters including “the time and other circumstances of publication”. It is possible, therefore, that material published by the Council could fall foul of the prohibition and be unlawful – especially on account of its timing “ie in the run up to an election”. An extract from the Code of Practice is set out below. Councillors are specifically required under the Member’s Code of Conduct to have regard to the Code of Practice when acting as a Councillor.

The key guiding principle, therefore, must be that, if anyone is unsure what publicity can be issued, they should ask advice from me or from my senior staff.

What is also clear and paramount from the law, is that no elected Member – whether a Member of the Executive, Chair of a Committee or any Backbench Member – or Officer is permitted to use any Council resources for private or party political purposes. To do so would be in breach of the Code of Conduct for Members and a reference to the Standards Committee will be made if there is sufficient evidence. In terms of Officers, appropriate disciplinary action will be taken if there is sufficient evidence of a breach of the law.

Council business has, of course, to continue and must continue during the pre-election period. This may include dealing with controversial

local issues. This particular point has recently been considered by the court in respect of Redcar and Cleveland Borough Council. Publicity around normal Council business/events must also continue, but it must be thoroughly thought through so as to ensure the Council machinery is not used or allowed to be used/manipulated by anyone for private or party political purposes.

It is also worth noting, for the avoidance of doubt, that Councillors who hold positions of special responsibility within the Council (eg Cabinet Members) and who would normally be expected to make some public comment (on the Council's behalf and with the use of Council resources) on "issues of the day", will be permitted to do so. However, such occasions should sensibly be kept to a minimum during a pre-election period which this year is from ***** to *****. In particular there should be no proactive publicity involving candidates in the election. The extract from the Code of Practice set out below.

Publicity in relation to particularly sensitive or controversial matters will, therefore, need careful handling as it may have an impact on public opinion, for or against any candidate or political party. Officers should certainly ensure that they are aware of and consulted where necessary on such matters and may, in appropriate cases have to intervene. Hopefully, if prior consultation takes place well in advance of any such Council business/events, then such interventions can be minimised and/or avoided.

Finally, the normal rules as to bias and predetermination apply during a pre-election period. Members must decide matters on their own merits and must not show any apparent bias or predetermination.

If there are any questions about publicity, or the dispatch of Council business during the pre-election period please contact me or if I am not available then please contact Chris Davies, Bryn Roberts or Michael Caveney.

Richard Long
Director of Legal and Democratic Services