

GUIDANCE ON PUBLICITY DURING THE PRE-ELECTION PERIOD

Introduction

Prohibition of political publicity

This document provides the opportunity to give a timely reminder of the absolute prohibition on any local authority (including town and parish councils) directly or indirectly publishing (or arranging for the publication of) any material which, in whole or in part, appears designed to affect public support for a political party. This ban under section 2 of the Local Government Act 1986 applies at all times, irrespective of any elections.

Restrictions on local authority publicity

However, the specific focus of this document is to give advice on the publicity restrictions that should be especially observed during the pre-election period. It covers the period between the publication of the notice of election and close of polling on election day, when specific restrictions on communications activity are in place.

The date when the pre-election period will start for the Police and Crime Commissioner; Isle of Wight Council and Town and Parish Council elections is **22 March 2021**. It will end at the close of polling on 6 May 2021.

It is important to note that the pre-election rules restrict activity wider than just publicity. Use of council facilities and resources; the members' code of conduct, developing new policies and holding of events (including some meetings) featuring elected officials should all be carefully considered during the period between publication of the notice of election and the close of the poll.

However, this is not a time when communication has to shut down completely. The ordinary functions of the council should continue as normal, but some restrictions do apply by law to all councillors and officers.

The Code

Local authorities are under a duty to have regard at all times to the [Code of Recommended Practice on Local Authority](#) publicity issued under [section 4 of the Local Government Act 1986](#) as amended by [section 27 of the Local Government Act 1988](#). Please read the Code in full. The Code is based around seven principles to ensure that all communications activity:

- is lawful
- is cost effective
- is objective
- is even-handed
- is appropriate
- has regard to equality and diversity
- is issued with care during periods of heightened sensitivity.

The last principle is of particular relevance during the pre-election period.

In essence, the council should:

- feel free to publish factual information that identifies the names, divisions and parties of candidates at elections, but
- not publish material relating to individuals involved directly in the election

- not report views on proposals that makes reference to individual politicians or groups in press releases
- not arrange proactive media or events involving candidates
- not issue photographs which include candidates
- not publish anything that appears designed to affect public support for a political party
- not publish anything on politically controversial issues
- not issue any publicity that seeks to influence voters (except information for explanatory purposes)
- ensure that publicity relating to policies and proposals from central government is balanced and factually accurate
- not allow the use of council facilities or resources to help an election candidate or political party. This includes publication or distribution of materials, telephones, internet access, e-mail, photocopying, printing, fax, stationery or supplies.
- consider suspending the hosting of third party material or closing public forums if these are likely to breach the Code of Practice
- not supply council photographs or other materials to councillors or political group staff unless they will not be used for campaigning purposes
- not 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.

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 were spending public money to influence the outcome of the election?” In other words, it must pass the reasonableness test.

You should also think carefully before you:

- Continue to publish material to support local campaigns. If the campaign is already running and is non-controversial and would be a waste of public money to cancel or postpone them, then continue.

However, always think carefully if a campaign could be deemed likely to influence the outcome of the election. In such cases, 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, don't start any new consultations or publish report findings from consultation exercises, which could be politically sensitive. However, if a consultation is on-going when the pre-election period commences, it should continue and staff may continue to receive and analyse consultation and survey results.

You are allowed to:

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

- Use relevant lead officers rather than members for reactive media releases.
- Use a politician who is involved in an election when the council is required to respond in particular circumstances, such as in an emergency situation or where there is a genuine need for a member-level response to an important event beyond the council's control. Normally, this would be the Chairman rather than the Leader, i.e. someone holding a politically neutral role. If the issue is so serious, it is worth considering asking the council's group leaders to agree to a response which would involve all of them.
- Provide factual information in response to a request from a candidate. You must not provide any written or oral view, opinion or interpretation of the information, which might be seen to support the view of a particular candidate or political party.

It is illegal to make or publish a false statement of fact about the personal character or conduct of a candidate standing for election, unless the person making the statement had reasonable grounds for believing the statement to be true. False statements that are not about another candidate's personal character or conduct are not illegal under electoral law but could be considered as libel or slander and candidates may have personal remedies available to them.

Any political signs or posters on the public highway are illegal and the council will remove them when it becomes aware of their presence. The offending political party may be charged for their removal.

It is not acceptable for any council events to be held in political party premises at any time.

If you are in any doubt, seek advice from the Monitoring Officer.

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.

The Returning Officer

The Returning Officer is appointed by Full Council to conduct the elections in a local authority area. There are a series of powers and duties set out in legislation, which are the personal responsibility of the Returning Officer. The Returning Officer may appoint deputies who may act on their behalf.

For the purposes of the Police and Crime Commissioner election, the Returning Officer is designated as the Local Returning Officer and works under the direction of the Police Area Returning Officer.

The Returning Officer is not a local government employee for the purposes of conducting the election and is not accountable to the council or its members in carrying out the statutory functions of the Returning Officer.

The Returning Officer is required to conduct the election entirely in accordance with the law and implicitly with total impartiality. Any action the Returning Officer does take is not to the benefit of any political party or individual contesting the election.

For further advice on this guidance on local authority publicity please contact:

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Frequently Asked Questions	
Does this guidance only apply to councils?	No. The Code of Recommended Practice on Local Authority Publicity covers the full range of authorities.
Do these rules apply to councillors who are not running for re-election?	Council business continues so all sitting councillors, whether seeking re-election or not, should have regard for the Publicity Code.
Can council officers get involved in campaigning in their own time?	Officers who hold politically restricted posts, or who are likely to be involved or employed in connection with the elections, should not take part in a political campaign or canvass on behalf of a political party or candidate.
Do the restrictions apply to officers who are members of a trade union?	Trade unions are not bound by the Code, but individual officers are, and must have regard to the Code.
Can council press offices still put out press releases ahead of the election?	Yes, but with limitations. Official, factual press statements about council decisions for public information purposes may still be issued. However, no publicity should deal with controversial issues or report views or proposals in a way which identifies them with individual councillors or groups of councillors.
Can a council put out a consultation, for example about changes to library provision, during the pre-election period?	Consultations should be considered very carefully during the pre-election period as it is a period of heightened sensitivity and should not be put out if they contravene pre-election rules.
Can we use the chairman of a council-commissioned review, who is up for re-election, as spokesperson for the report?	The best approach could be to delay publication of the review until after the election. However, if there is an imperative to publish you should use another, non-political spokesperson.
Can we host a photo call for the council leader or other leading councillor to open a new council facility (such as a play park) during the pre-election period?	Generally not; however if the timing of the event is unavoidable and postponing it would adversely affect local residents (for example the opening of the facility has been delayed by long-running work and postponing the opening will cause the council to lose income), you might choose to have the event hosted by a non-political spokesperson.
Do the restrictions apply to council notice boards?	Councils are required to publish details of the election and how to register to vote. Material relating to wider political issues should not be posted on official notice boards, which may be seen by members of the public. This includes publicity issued by, or on behalf of, a trade union.
Can councillors issue their own press releases or talk to the media?	Councillors are free to talk to the media and issue press releases, but must not use council resources to do so.

Can councillors write letters 'for publication' to their local newspaper?	Yes, as long as they don't use council resources (such as staff) to help them do it.
Can councillors still tweet or blog?	Councillors can continue, but must not use council resources (such as council twitter accounts, email accounts, telephones etc.) to do so.
Can councillors who are up for re-election refer to themselves as councillors in their public statements?	A person remains as a 'councillor' and can refer to themselves as such until they retire on the fourth day after the ordinary day of election.
Can councillors request to visit council establishments?	During the current COVID-19 pandemic, requests by current members who are also candidates at the election to visit council establishments in the course of their council functions will not normally be approved due to the regulations restricting attendance
Can the council still publish its newsletter/social media during the pre-election period?	Yes, if it is done in the ordinary course of business and meets all other pre-election period requirements