

Cheshire East Borough Council Local Guidance on publicity during the period of heightened sensitivity during the pre- election period: Council meeting-17 July

Introduction

The pre-election period is a time of heightened sensitivity. This requires the Council to act carefully in dealing with use of resources, publicity and communications during this period.

This document helps explain what, why and how this is considered important, but must be read in conjunction with the Local Government Association guidance, central government guidance, and civil service guidance.

This advice is provided as a background document to members to explain why it was not possible to take all of the reports which are on the agenda for 17 July Council meeting to committees, in advance, as would normally be the case.

Pre-election publicity restrictions, and the impact upon reports which would normally have been considered by committees in advance of Council

As explained in detail in the appendix to this document, great care must be taken by local authorities and government departments, to ensure that sensitive, controversial or potentially controversial matters, and some consultations, do not take place during pre-election periods of restrictions.

A number of reports which are on the agenda for Council had been intended to be considered by the Corporate Policy Committee in the weeks preceding the Council meeting. However, the Parliamentary General Election, which took place on 4 July, was announced unexpectedly and the consequent restrictions on pre-election publicity followed the announcement almost immediately.

Three of the Council reports have strict deadlines associated with them: the deadline for submission of the Corporate Peer Challenge Action Plan and the Transformation Action Plan (agenda Items 8 & 12) to the Ministry of Housing, Communities and Local Government is 27 August 2024; a deadline which was not relaxed when the Parliamentary General Election was announced.

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In addition, the Proposed Senior Management Structure has tight deadlines associated with it: the need for the Corporate Policy Committee to meet to make recommendations to Council in October in order to recruit in a timely manner, which must be preceded by a period of consultation etc.

Other key reports on the agenda for Council, which also were not considered by committees in advance, were linked to the above reports, and as a result, were subject to similar considerations.

The Parliamentary General Election was announced on 22 May, and formally called on 24 May. Whilst there is some legal debate upon exactly when the pre-election period of publicity restrictions formally commenced, any reports on sensitive/controversial matters which would have been required to be published thereafter, had to be withdrawn from publication.

Officers gave careful consideration to all reports which had been scheduled to be published during the pre-election period of publicity restrictions and determined that those reports which were due to be taken to committees, and which now comprise Items 8,9,11,12 &13 of the Council agenda, should not be reported to committees, but instead, should go direct to Council.

On 17 July, Council will effectively be acting as a “committee of the whole” exercising the functions of a committee in scrutinising and deliberating upon the matters in respect of which recommendations are made. All members will have full opportunity to take part in the debates upon these reports, which will be introduced by officers, and to whom questions may be put.

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What is the period of pre-election publicity restrictions?

The pre-election period of heightened sensitivity is a convention of British governance. It appears in guidance for Councils has limited legal basis around publicity (Section 2 of the Local Government Act 1986) but is otherwise unwritten, of uncertain status and enforceability, and of imprecise extent and effect. It therefore requires officers to exercise judgment based on experience and guidance, there is no rule book. It is the principle of government in all forms and civil servants avoiding active engagement on politically sensitive matters during the pre-election periods. It originates from treasury management and is designed to prevent last minute attempts to bind any future administration through financial commitments. Although we are local government, we hold significant resources and local political influence. Therefore, the pre-election period applies to us and helps us to preserve and maintain the impartiality of the Council and officers. We are often called upon to implement central government policy at a local level; which is sometimes controversial. Officers must continue with essential activity until some clarity is obtained to ascertain if there is a disagreement with the local policy or implementation.

It is important to note that pre-election rules restrict activity wider than just publicity.

Once the pre-election period of publicity commences, it continues up until close of polls on election day.

Council officers must be politically impartial. It does not apply to candidates for political office or other Councillors who may be supporting their party in the election.

The Council must be careful about the use of facilities and resources; in particular, developing new policies and holding of events including meetings and consultations. Each event should be carefully considered during this time.

The ordinary functions of councils continue, but some restrictions do apply. The Government published a Code of Recommended Practice on Local Authority Publicity in 2011 and the Local Government Association publishes election guidance.

- 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).
- Consider suspending the hosting of third party material or closing public forums if these are likely to breach the codes of practice.
- Do not publish any publicity on controversial issues or report views on proposals in a way which identifies them with individual councillors, groups of councillors or political group.

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- 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, wards and parties of candidates for the by election.
- Care should be taken during the pre-election period to have regard for the Code and guidance issued.

What it is not

This does not stop any **person** including any elected member, group or party from commenting, speaking to the press, going campaigning, holding public meetings, or running social media accounts.

This guidance stops the 'Council' its 'Officers' and the public resources being used for publicity.

This does not stop the council making decisions, but it strongly advises against taking controversial decisions which the public may think are decided on a basis of political expediency or for political gain.

WHY ?

The pre-election period has given rise to the convention involving a 'self-denying ordinance', where decisions will not be taken **or** policies announced if they are, **or** may be, significant in their effects and politically contentious. Therefore the peer challenge report, transformation and action plan for Ofsted and the DfE (who delayed the publication of their report during the police and crime commissioner election). For example the first possible date for the children's committee the Ofsted action plan was on the 8 July and the publication of papers was after the close of polls at 10 pm on the 4 July.

The Council is under a duty to have regard at all times to the Code of recommended Practice on Local Authority publicity issued under Section 2 of the Local Government Act 1986. The Council should "not publish any material which, in whole or in part, appears to be designed to affect public support for a political party."

What this means for us:

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

Although there is no statutory restriction on the council's decision-making during the election campaign the avoidance of controversial decisions help mitigate the risk to

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the Council. If a matter is controversial the public perception of the issues will be increased and will have more prominence than at other times. This may be seen to distort decision-making and create a risk, or a perception, that the decision will be made to gain favour rather than on its merits. This may make a decision challengeable.

The case of R (on the application of Lewis) v Persimmon Homes Teesside Ltd (2008). Although unsuccessful in the Court of Appeal, it indicates the enhanced scrutiny which potential claimants may give to decisions made during a pre-election period, and is an example of both the cost and reputational issues that can arise.

Where a court determines that actual advantage has been given to a candidate, this may amount to a breach of Section 2 of the Local Government Act 1986.

Is it reasonable?

The first question to ask is 'could a reasonable person conclude that you were spending public money to influence the outcome of the election?' It must pass the 'is it reasonable' test.

The Council will not:

- produce publicity on matters which are politically controversial
- make references to individual politicians or groups in press releases
- arrange proactive media or events involving candidates such as Councillors inviting candidates to open a new bus station. So the launch of the new facilities in Crewe has been delayed.
- issue photographs which include candidates or Councillors.
- supply council photographs or other materials to candidates, councillors or political group staff unless you have verified that they will not be used for campaigning purposes.
- continue hosting third party blogs or e-communications relating to the subject election.
- help with national political visits (as this would involve using public money to support a candidate or party). These should be organised by political parties with no cost or resource implications for the council. The proposed publicity event and significant visitors to Crewe on the Friday after the election was announced was cancelled.

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Officers will think carefully before they:

Continue to run campaign material to support any Council campaigns. If the campaign is already running and is non-controversial. However, there will be local issues that may be important or controversial or an issue raised that adds controversy where none was anticipated. For example, recycling would not normally be controversial but if it is linked to a campaign issue locally it may become relevant if it is linked to the area of the by election but it is unlikely to be relevant to a police and crime commissioner.

If a new consultation is suggested on a controversial issue this should be delayed. If you are concerned because of a statutory time limit, please speak to the Monitoring Officer. Any report dealing with the outcome of any consultation should be delayed until after December.

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.

Business as usual

The Council must continue to discharge normal council business (including determining planning applications, even if they are controversial).

The Council may publish information to counteract misleading, controversial or extreme (for example, racist/sexist information).

A reactive media release will use relevant lead officers rather than Members.

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 Mayor as they hold a politically neutral role and the information must still be factual and non political and the group leaders will be consulted if practicable.

Any information published must be fair and politically neutral and must be seen as fair and reasonable by the public and those standing for office.

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