

GUIDANCE NOTE FOR MEMBERS AND OFFICERS DURING THE BY- ELECTION

INTRODUCTION

A by-election is to be held in the Rotherhithe Ward. This guidance note has been produced to give advice to members and officers in respect of publicity and other related matters during, and leading up to the by-election.

All elections have a number of implications for the work of the council, its members and its officers. These arise from the character of local government business during an election campaign and from the special need to maintain and be seen to maintain the impartiality of all officers and the council, regardless of the type of election. However, the types of issues raised will be different for each election. It is therefore important not to assume that the approach taken in the recent GLA election will apply to this by-election.

During this by-election the council will retain responsibility to undertake its functions. To a large extent therefore it will be "business as usual". This equally applies to Rotherhithe community council but consideration may need to be given to individual items appearing on the agenda.

The principles governing the conduct of elected members and officers during this time are set out in the Local Government Act 1986, the Code of Practice issued under section 4 of this Act, the member's code of conduct, the member officer protocol and the council's disciplinary procedures for officers.

Officers who fail to comply with the rules of impartiality could be in breach of their duties to the council and would run the risk of management action. If you are unsure what this could mean please refer to section 3 of the [Officer code of conduct](#) on the source. Equally, members would run the risk of action for breach of the Member's Code of Conduct if they fail to observe the council's rules and procedures during this by-election.

It is believed that the majority of breaches are genuine mistakes and this note contains guidance to help avoid the pitfalls.

PURDAH PERIOD

This is the period between the notice of election and the election itself. The statutory rules relating to local authority publicity are more strictly applied during this period and the council must take care that it is not seen to be promoting individual candidates or the views of a political party. At the time of issuing this guidance purdah has not yet started. We will advise when it does, but as this could occur at any time the best advice is to be vigilant about any events, meetings and communications in the coming weeks. Purdah will end at the close of polls on polling day, which is likely to be in early to mid October. Again, the precise date will be notified when we know it.

SOME COMMON QUESTIONS ASKED DURING THE ELECTION PERIOD

PUBLICITY

What is Publicity?

Publicity is defined very widely in section 6 of the Local Government Act 1986 as "any communication, in whatever form, addressed to the public at large or to a section of the public". As well as the obvious forms of publicity such as speeches, leaflets, newspaper articles issued by or on behalf of the Council, it can also cover sponsorships and even the colour of floral displays.

Restrictions on Local Authority Publicity

Publicity produced or funded by the Council is restricted **at all times** by the Local Government Act 1986, the Code of Recommended Practice and the general powers of the Council.

Section 2 of the Local Government Act 1986 prohibits any publicity, which appears to be designed to affect public support for a political party. The factors to be taken into account when deciding whether or not this prohibition applies include:

- the content and style of the material
- the time and circumstances of the publication
- the likely effect of the material on those to whom it is directed
- whether the material promotes or opposes a point of view on a question of political controversy which is specifically identifiable as the view of one political party but not the other
- references to any political party or to persons identified with a political party; and
- Where the material is part of a campaign, the effect that the campaign appears to be designed to achieve.

Is there any advice I can follow?

The Government advice on publicity is the Code of Recommended Practice on local authority publicity. You can access the full code <http://www.communities.gov.uk/publications/localgovernment/coderecommended>. You should also refer to the [member officer protocol](#) and the [council's communication protocol](#).

What is different in the election period?

The guideline specific to the elections is paragraph 41 of the Code, which states "*the period between the notice of election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election.*"

Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members or groups of members.

However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquires provided that their views are factual and not party political."

Can the Council ever comment on misleading campaign material?

In some circumstances it may be acceptable to "put the record straight" if damaging misinformation has been circulated as part of a campaign or for any other reason. This will be an exceptional case and typically may arise for example where the inaccurate statements

relate to race and may damage community relations. The Council is always under a duty to eliminate unlawful racial discrimination, promote equality of opportunity, and promote good relations between people of different racial groups.

What does this restriction mean in practice?

Any candidate who is directly involved in the election should not be provided with any publicity except in an emergency or exceptional circumstances prompted by events outside the council's control.

If I need to publicise a council service, what should the content be?

Any publicity should be objective, factual, not deal with controversial political issues in the by-election and avoid personalisation of the issues or inappropriate personal image making.

What effect does this have on meetings?

The rules on decision-making meetings are set out at the end of this guidance. For council meetings that are not decision-making meetings, the publicity rules still apply. Agendas should not be set in order to create political advantage for one party or another in the context of the by election, and officers should not be put in the position of appearing to endorse one candidate and their policies above another.

What can I say in a motion?

It is permissible to use political language in a motion. However, it should not require the council to act in a way that is inconsistent with the code on publicity. For example it should not seek to raise the profile of or provide publicity for any of the candidates in the by-election.

What about events?

Any events arranged in this period should not involve candidates who are standing or likely to be standing for election. Most Council planned events will probably be able to go ahead but the event must not be used or planned in such a way so as to generate publicity for the election campaign. It is acceptable for events to involve other councillors but those organising such events need to be vigilant to prevent publicity being generated that can be used in the election campaign. Depending on the type of event it may be appropriate to ensure that no photographs are taken and no media invited, and/or that councillors either do not make speeches or have those speeches cleared in advance, and/or that councillors of all parties are represented or even that the event is limited to officers or is postponed. Advice should be taken from the Interim Communications Consultant or the Monitoring Officer as the approach to take will depend on the type of event in question.

Non-political events can involve candidates and, of course, councillors provided that they are not used to generate publicity for the candidate which can be used in the election campaign.

What about community events arranged by groups outside the Council?

If the group or event is not financed or run by the council directly or indirectly this is not a problem. However many local groups are supported by the council and their events will be caught by the rules. In that case careful consideration needs to be given as to whether a candidate should be invited, and the same care needs to be taken around publicity.

Some community groups (e.g. Tenants and Residents Associations), which council officers attend or service, may invite candidates to speak at their meetings. It is important that officer attendance at these meetings does not imply a preference for a particular candidate or their party – it is therefore best to avoid these situations except where all political parties are represented. If this is not possible then officers are requested not to share the same platform with the candidates, thus avoiding the inference that the officer is endorsing the candidate.

Alternatively the officer should request that all council related issues are dealt with first and then politely leave before any political debate takes place.

What about press releases, newsletters or photos?

Press releases should not be used to explain party political differences or to promote a party whose candidate is standing in the by-election. Council funded photo opportunities that give publicity to political parties should be avoided. In addition, be wary of, for example using photos taken for one purpose or taken previously and then re-using them in a different context and the consequences or inferences that may be drawn.

Newsletters and other regular publicity may continue during purdah, but extra care should be taken to avoid giving publicity to or criticising political parties or their record.

Can parties undertake their own publicity?

Candidates and parties are free to issue their own publicity provided there is no officer involvement or assistance and no council facilities such as computers, printers, stationery, and notice boards are used.

Will the member bulletin be published during Purdah?

The member bulletin will be published as usual, advising members of important information that is not party political. However any request to include statements that contravene the rule on publicity will be declined.

Is any of this different for lead members such as members of the Executive?

The statutory guidance says that Members holding key political or civic positions should be able to make comments in an emergency or where there is a genuine need for a member level response to an important event outside the authority's control. Apart from those occasions, Executive members should not provide quotes on behalf of the Council during purdah. It will usually be appropriate for Chief Officers or the Chief Executive to take this role instead.

Are there any other restrictions on staff?

To maintain the appearance of political neutrality, those members of staff whose work is confined to a very specific geographical area (e.g. Housing Neighbourhoods) where the public knows them in their official capacity should not canvass or act in any visible manner in that area in support of a political party. They may, of course, do all of these things in other parts of the borough where the public does not know them provided that they are not in a politically restricted post.

Staff should not wear any political badges or stickers whilst carrying out their work, or have political stickers etc. on work items such as clipboards.

Staff should not express their personal political opinions to the general public, tenants and residents (and their representatives), elected ward councillors, or prospective members of parliament.

Are there any special rules that staff in political restricted posts have to abide by?

Those staff in posts that have been identified as "politically restricted" are subject to further legal constraints. These include:

- holding office in a political party,
- acting as an election agent,
- canvassing on behalf of a political party or as candidate for election,
- speaking in public in favour of a political party,

- giving interviews or
- publishing any written work
- with the intention of affecting public support for a political party.

What about my place of work?

All council buildings must be kept entirely free of election campaign materials and fly posting must be removed. Old material publicising a candidates standing in the election should be removed.

Can I hold my regular ward surgeries during Purdah?

Yes, provided that they were previously scheduled and not are used to create publicity or for political party purposes.

CONCLUSIONS

The council must always be careful in producing publicity, and this is of particular importance when elections are planned. There is an internal checking procedure involving the press / public relations unit and the Monitoring Officer in any case where there may be a doubt as to whether the provisions of the Act or the Code are being followed.

Therefore, the first point of contact on PR issues is always the Interim Communications Consultant (Paul Masterman x 57380) and his team in the council. He will seek the Monitoring Officer's advice and input as necessary.

By keeping in mind the wide definition of publicity, by putting in place checks, (including a robust referral process for advice) and balances and by reminding members and officers about the high standards of conduct and practice required at election times, hopefully problems will be kept to a minimum.

DECISION MAKING AND OTHER BUSINESS OF THE COUNCIL

There is no statutory restriction on the Council's decision-making, meetings, or political debate during the election campaign. It is "business as normal". However, taking account of the restrictions in publicity set out in the previous section, it will be appreciated that there are some constraints limiting the Council's decision-making.

Chief Officers should consider whether it is wise to bring forward matters for decision during an election campaign that could be politically contentious, not because there is a prohibition but because if the matter becomes an issue in the election this may distort the decision-making and create a risk that the decision will be made on party political grounds rather than on its merits, and, therefore, challengeable.

Having said this, officers should be aware that they only need to be concerned about distortion of decision-making arising from issues which feature in the by election: matters which are limited geographically to other areas of the borough even if controversial will not therefore be caught. However any issues which are politically controversial across the borough will need to be considered carefully. In practice, many committees and council meetings should be able to continue without their agenda requiring any change.

Where it is felt that there is a real possibility of a decision giving rise to publicity which will fall foul of the publicity rules advice from the monitoring officer should be sought before such a decision is made.

What right to information do elected members have during the Purdah Period?

Broadly speaking they have the same rights as at any other time. However, Rotherhithe ward members' rights may be limited. Some service departments receive far more queries than usual from councillors especially about individuals. The department may suspect that the information will be used for campaigning.

If this is the case the usual 'deemed consent' that ward councillors have to act for their constituents may not apply. To be safe you should either ask for actual agreement from the individual concerned or tell the councillor that you will send the reply directly to the constituent.

However, care should be taken when writing to the public on behalf of members and at the council's expense, and in particular multiple mailings will rarely be appropriate.

The use of school buildings

Candidates for election, their agents or a person authorised on their behalf are entitled to use any suitable room in schools free of charge for the purpose of holding election meetings, which are open to the public. School for this purpose means community, foundation or voluntary school

The LEA should have a list of rooms suitable for holding such meetings. The contact point for booking a room in a school is the LEA for a community school and the Governing Body in respect of voluntary aided or foundations schools.

Sufficient notice must be given and the use of the room must not interfere with the use of the room for an educational purpose or where there is a prior agreement for letting the room.

Are the candidates permitted to visit council premises during this period?

These visits will only be permitted if they were prearranged before the by-election was announced. Where these visits are permitted, extra care should be taken by staff not to allow themselves to be photographed with any of the candidates. This is because if such photos are re-printed in a party political leaflet, it could be seen as an endorsement of the candidate by the officer or the council itself especially if the photo is of a senior officer of the council.

CONTACT LIST FOR FURTHER INFORMATION

On specific **legal issues or on the interpretation of this guidance** please contact the Strategic Director of Legal and Democratic Services – preferably by email – quoting the reference 'election advice'. In that way we can arrange for someone to get back to you quickly. **Deborah Collins, Strategic Director of Legal and Democratic Services (020 7525 7630)**

Data Protection, Freedom of Information and information management queries generally should be addressed in the first instance to your department's knowledge management officer.

MEDIA AND PUBLICITY ENQUIRIES

[Paul Masterman](#) Interim Communications Consultant (020 7525 7380)

If you are preparing an **event or publicity materials**, either internal or external, about the work of your service, you should consult [Lorraine Hutchings](#) Head of Marketing and Communications on ext **57517**.