



SCRUTINY SUB-COMMITTEE C

MINUTES of the meeting of SCRUTINY SUB-COMMITTEE C held on MONDAY 17th NOVEMBER 2008 at 7.00 P.M. at the Town Hall, Peckham Road, London SE5 8UB

PRESENT: Cllr Toby Eckersley – Chair
Cllr Anood Al-Samerai – Vice Chair
Cllr Mackie Sheik
Cllr Richard Livingstone
Cllr Jane Salmon
Cllr Dora Dixon-Fyle

OTHER MEMBERS PRESENT

**OFFICER
SUPPORT:** Doreen Forester Brown – legal services
Deborah Collins - Strategic Director of Legal and
Democratic Services
Neil Weeks – legal services
Sally Masson – Scrutiny project manager

APOLOGIES There were none

NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMED URGENT

There were none

DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none

That the Minutes of the Freedom Pass meeting held on October 28th 2008.
be agreed as a correct record.

1 PURDAH GUIDANCE IN SOUTHWARK

- 1.2 This item was brought to the sub-committee to consider how purdah guidance works in Southwark and respond to the CLG's imminent consultation on the code of recommended practice on local government publicity, from which councils' local purdah guidance is devised by the Monitoring Officer.

- 1.3 The Chair opened the discussion by stating that good governance needs to be employed to ensure that the business of the council continues in such an instance. He raised the possibility that theoretically, business could be postponed indefinitely if there were a series of deaths or resignations by serving members.
- 1.4 The Chair then invited the Strategic Director of Legal and Democratic Services (Southwark Council's Monitoring Officer and the person who is responsible for applying purdah guidance) to give her views on the decisions taken in relation to the recent by-election.
- 1.5 The sub-committee were referred to paragraph 41 of the Secretary of State's Code of Recommended Practice.
- 1.6 The paragraph states that: *"The period between the notice of an 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 enquiries provided that their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the authority's control. Proactive events arranged in this period should not involve members likely to be standing for election"*.
- 1.7 The Strategic Director of Legal and Democratic Services, Deborah Collins, said that employing limitations on potentially politically contentious issues is difficult. The Code is very open textured with broad principles, which means that a lot is left to judgement rather than applying clearly defined rules.
- 1.8 It was important to remember the high level statutory requirements in regard to publicity and the principle of Officer neutrality. The need to carry on council business should not compromise these considerations.
- 1.9 Deborah Collins then drew attention to the 'first instance decision' and 'court of appeal decision' documents contained in the supplementary agenda. These documents were included to illustrate to the sub-committee how the courts are working out what are controversial issues. Going through the court decisions highlighted the difficulties of applying purdah guidance.
- 1.10 Deborah Collins welcomed the opportunity to obtain the sub – committee's views on purdah and the implementation of the guidance . She said that it was important for us, as a Council to find consensus which will contribute to effective governance and a smooth running process.
- 1.11 With regard to the Codes of recommended practice regarding publicity – *"Publicity, publish and publication refer to any communication, in whatever form, addressed to the public at large or to a section of the public."* It was debated as to whether the issuing of an agenda and indeed a summons, could constitute an act of publicity.

- 1.12 Ms. Collins said that although the application of the guidance for this last by-election in Rotherhithe, had been perceived by some as extreme, the Officers reported that the aim of purdah was to stop the Council spending money on anything which could be seen as, or turned into, a political campaign instead of the Council's usual business. That although a meeting's summons or agenda was publicity of sorts, it was unlikely in most cases that it would be controversial. Publicity was, however, a very wide concept, which could extend to something as seemingly innocuous as the colours used in a floral display.
- 1.13 Officers stated that they did not apply the guidance in a "one size fits all" manner but attempted to tailor purdah to the different types of election. For instance, in relation to the GLA elections the main focus had been on what kind of publicity the candidates were afforded around that time.
- 1.14 Likewise the by-election in Rotherhithe prompted Officers to be aware of any potentially political material which affected that ward. Mostly it was business as usual, for instance the Camberwell Leisure Centre item went ahead because it was thought unlikely that Members could/would use this issue as a political platform in Rotherhithe.
- 1.15 Officers said that there has been considerable care when applying purdah rules, not least because of the political makeup of the borough which could so easily change on a single by-election. Officers felt that there is a strong case to suggest that it is right that for this reason, Southwark is stricter on the application of the guidance, than other boroughs.
- 1.16 The guidance is an important part of ensuring that officers are not compromised during the by-election periods. For instance they may be called on to represent the Executive's position at meetings, which could put them in the position of appearing to breach officer neutrality.
- 1.17 Officers mentioned that in other boroughs politics don't necessarily play such a significant role. What is politically controversial in Southwark would not be deemed so elsewhere. It would be constructive if Members challenged officers about the decisions they take with purdah judgements, making the whole process more consultative. It was largely felt that judgements could be more robust if there were more consultation.
- 1.18 Having to make judgements when looking at the detail of publicity material can be very challenging with endless potential for issues to become politicised. It will always be a fine balancing act making a practical application of the rules, taking into consideration the differing opinions of Members.
- 1.19 The Vice-Chair wanted to draw attention to how the cancelling of a meeting might look to the public. That it might be seen as the Council's attempt to cover up or operate in a less than transparent way.
- 1.20 Officers said that the potential problem with any kind of publicity information is that it can end up on someone's campaign leaflet or in the press, putting in peoples minds a bias or doubt. It's difficult to foresee if material is pure in that respect.

- 1.22 A Member made the point that if all political parties were in agreement as to what constituted political material, it could assist in the application of the guidance.
- 1.23 Officers agreed that if all Members were in agreement, it certainly would make the decision to apply the guidance easier and it was a matter to explore further. However, there would still be issues regarding Officer neutrality with some Officers being put in difficult positions, such as having to represent Members of the executive at meetings.
- 1.24 It was also thought that having a discussion about something like whether a meeting goes ahead, is a subject that in itself becomes political. For instance; one party may not wish a meeting to take place and another may make a point out of that. They may call into question the accountability and integrity of those who wish not to proceed.
- 1.25 The Strategic Director Of Legal and Democratic Services acknowledged that this sub-committee (sub-committee C) had directly been affected on the 8th September and justified the decision to pull this one item meeting because she thought that officers would be compromised.
- 1.26 The Chair said however, that he couldn't see what was wrong with Members putting forward their arguments. They do it at Council Assembly which was part of the accountability and legitimacy of the democratic process.
- 1.27 Officers disagreed and said that Southwark wouldn't want to be in a position where it was using council resources to (potentially) provide political support. Whilst scrutiny is part of a robust debate, attention to the use (or misuse) of resources and officer impartiality must be of the utmost concern.
- 1.28 The Chair said that Officers always had the option of stating that they felt as if they were being drawn into a political debate and leave the meeting if they felt it necessary.
- 1.29 Officers responded by saying that it could be difficult for officers to find an opportunity to say that they felt compromised. If they left the meeting then it could be that the quality of the scrutiny could be compromised. It was understandable that Members felt their hands were tied but after the purdah period had ended, constraints were lifted and the scrutiny process was free to take its course without restrictions.
- 1.30 The Chair thought that it would be useful for the sub-committee to hear from all the whips and the Chairs of Community Councils to find out if their meetings had been affected by purdah or if they had made any observations during this time.
- 1.31 Officers said that they saw their role similar to that of a referee and were quite prepared to be creative in the way they enabled business to continue during such times.

- 1.32 In regard to written reports, it was thought that the timing of submissions can be open to negotiation with officers. Again there was some debate as to whether a report which did not seem controversial outside the purdah period might become controversial if it was included in a meeting in which an opposition Member may object. Officers said that Southwark cannot shut its eyes to the political balance of the borough and that issues had to be handled with sensitivity.
- 1.33 With regard to questions from Members about how the purdah period was started before the by-election was called, Ms Collins said that although she did not know when the election was going to take place she had a rough idea. There seemed to be little point in not acting to ensure that Council Officers were aware of the time frames involved and she wanted to make sure that where meetings were affected there was as much notice as possible so they were able to the necessary arrangements.
- 1.34 The Chair expressed some concern that the monitoring officer had the power to extend the purdah period over and above the time period specified in the regulations. He thought that this may be something that the sub-committee could investigate further, especially if it is covered in the revised guidance when it is published. [Sally - you ask: Is this clear? – my revisions (in clear text) shd help]
- 1.35 Ms. Collins said that the statutory time period is not more than 35 days. Again it was a judgement call as to how far the purdah period leaks backwards when it is known when a by-election is due to take place. It seems to be correct that Officers get increasingly careful as to what is publicised the nearer it gets to the election period.
- 1.36 There was some recognition among Members that it was right to deal with matters early.
- 1.37 Officers said that they had made sure that they were fully informed by all the teams in the departments and had asked managers to make known to them any potentially political items to be included in agendas. Ms. Collins said that she had looked very carefully at all aspects of the material with the purpose of keeping Council business moving.
- 1.38 Councillor Livingstone said that to have a list of the meetings that were cancelled and items pulled would be very useful. He wondered if something could have been decided on at officer level (Non- senior Officers applying the guidance) which senior officers may not be aware of.
- 1.39 It was noted by all Members that they had not received copies of the 'Guidance Note for Members and Officers' during the by – election. That apparently the whips had received copies but the document had not been passed on to them.
- 1.40 It was thought that it may be helpful if Officers and Members worked on putting together a guidance note after the by-election period, detailing any lessons learned from the process and highlighting the good practice which may come about as a result. This could be amended/updated from by-election to by-election.

- 1.41 The point was made that during the GLA elections there had been a Council Assembly. The Monitoring Officers said that she took the view that although motions can have political language, she had carefully considered the motions to ensure that these did not require the Council to take action to publicise candidates.
- 1.42 The sub-committee heard that it was important that where appropriate, Officers apply purdah where they feel it necessary. However, without undermining those officers, the ultimate decision must rest with the monitoring officer.
- 1.43 Officers mentioned that there had been few areas of council business which had been affected during the Rotherhithe election period. There had been an IDM which couldn't go ahead, a scrutiny item on the community care eligibility criteria (adult care) and this sub-committee's own meeting which was dealing with the sole issue of Freedom Passes.
- 1.44 The Chair mentioned that in the case of planning, the applicant may be able to appeal on the grounds of non-determination. Officers agreed that it was also part of the balance of decisions. One of the things to come out in the case of Persimmons Homes (see agenda) was not to be too sensitive about judgements and to give Members the benefit of the doubt. In particular, if there was a risk of breaching a statutory time limit that would be something that would carry a lot of weight in balancing whether a meeting should go ahead.
- 1.45 The Chair went through the main points of the meeting:
- 1) It was desirable to have more detailed internal guidance
 - 2) That all welcomed a more consultative approach to the application guidance by the monitoring officer with the possibility that all parties may agree with what can/can't proceed.
 - 3) That the political whips could also be consulted and used as a 'sounding board' for issues. They may also be able to assist if there are any challenges further down the line.
- 1.46 The actions for next time around included:
- 1) Any official communication should be sent to all Members and not solely to the whips (internal guidance on purdah)
 - 2) Clarification as to when the purdha period officially starts. - To be revisited when the new guidance is published

2. PLANNING ENFORCEMENT

- 2.1 The sub-committee discussed what the general concerns might be in relation to this topic. It was thought that the sub-committee should ask Cllr Nardell to summarise his concerns and give the sub-committee advice on what he would like the sub-committee to deal with.
- 2.2 It was also thought that contacting Community Council chairs, asking if they had anything to add may be useful.
- 2.3 It is possible that the sub-committee may have to go into closed session if this particular scrutiny review is based on individual cases.

3 **WORK PROGRAMME**

3.1 The agenda for the next meeting due to be held on the 26th January 2008 will include:

1) Purdah Guidance: Review Conclusion. (Hopefully taking into consideration the newly published consultation guidance).

2) Planning: Sub-Committee to consider information provided by Cllr Nardell and other Community Council Chairs.

3) Population and Migration: Review Scoping exercise. Looking at how Southwark's population is counted; why our calculations differ so much from the government's figures; to examine the effect on our finances and policies of differing population estimates.

Meeting closed at 9.20pm

CHAIR:

DATED: