

LGcommunications and Bevan Brittan LLP:

Cracking the Code

The new code of recommended practice on local government publicity

Introduction

The government published the new Code on Recommended Practice for Local Government publicity on 31st March 2011. The Code itself has generated much publicity mainly concerning the perceived competition between local newspapers and council publications and the use of lobbyists. In this robust atmosphere of public debate some could be forgiven for thinking that local government publicity itself is under attack and that government would like nothing better than to curtail what we do – nothing could be further from the truth.

This pamphlet sets out what the Code means for us as local government communicators, dispels some of the myths surrounding its clauses and shows that what we do is recognised as essential by central government in the promotion of local democracy especially in these tough economic times.

I hope colleagues will recognise that the Code is not designed to stop us doing our jobs and that this pamphlet will give some confidence to continue the essential communications role for our authorities.

I would like to thank Peter Keith-Lucas of Bevan Brittan LLP and Ian Farrow for their expert insight and help in drafting this publication.

David Holdstock, Chairman LGcommunications



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Five key issues

1. What can I communicate during election periods?

The Code re-iterates the previous advice on restricting local authority publicity during the run-in to elections and referenda, and making sure that it is balanced and does not appear to advantage a particular candidate or party. Local government sometimes view the period of heightened sensitivity before an election as a time when communications has to shut down completely – this is not the case. In fact recent Court of Appeal judgements recognised that authorities should continue to discharge their ordinary functions including determining planning applications.

However, care must still be taken. A good test is to ask yourself: “Could a reasonable person conclude that you were spending public money to influence the outcome of the election?”

LGcomms approach:

This guidance refers to elections which impact directly on the local authority.

- No publicity should be given to matters which are politically controversial in the sense that they are party political – the authority expressing a view which is clearly identifiable with a political party, opposed to that of another party and publicised without any balancing comment.
- The general presumption should be that no references will be made to individual politicians in press releases, particularly when they are standing for election.
- Great caution should be exercised before undertaking any significant media exercise unless it can be demonstrated that this was included in the forward diary before the election was called.
- No photographs including candidates at the election should be issued to the media or to councillors.
- Before any request for Council photographs and other materials are acceded to enquiries should be made as to the use to which they are to be put and an appropriate restriction on use imposed if the request is acceded to.
- The position of a Civic Mayor as the figure-head of the authority is different and we can be more relaxed about issuing material relating to him/her provided that it is apolitical.

Other elections issues:

Can I...	Answer
Use public meeting rooms for communications	Yes
Continue to host blogs and e-communications	No. Suspend them.
Continue to deliver campaign material	Yes, if it has been planned in advance of election, would be a waste of money to cancel it and is not controversial eg recycling or foster care material. No if it can be deemed to be likely to influence the outcome of the election.
Fulfil Members requests	Yes but you must verify why they need your help. If it is for electoral purposes then NO. 'Trust but verify'.
Help with national political visits	No, as this would involve using public resources in support of candidates in the election.
Sanction the use of schools for political purposes	This depends on local rules, but generally public meetings can be hosted in schools and other public buildings as long as equal access is granted to candidates and open access for the public is allowed.
Carry out consultations	You must use your judgement. Is it likely to influence the outcome of the elections? Has it been planned before the election period? Is it necessary to be conducted during this period?

What does the Code say?

Care during periods of heightened sensitivity (Paragraphs 33 – 35)

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.

34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for

local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.

35. In general, local authorities should not issue any publicity which seeks to influence voters. However, this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

2. Can I publish more than four council publications a year?

Most local authorities which publish their own newspapers do so because they can ensure direct delivery to nearly all households, where commercial local newspapers may reach less than one in four households. So local authority newspapers are an effective means of providing timely public information on services, such as reduced collection times at bank holidays, recognising that a significant minority of households do not have the ability to access the authority's website.

Advertising in commercial newspapers is expensive. So the ability to put (some) statutory notices, job vacancies and other authority publicity in the authority's own newspaper can represent sensible value for money.

The Code offers no justification for its disapproval of more than quarterly publication. In practice, authorities will consider that, to be effective, publicity must be timely. A consultation advertisement is no good if the time for objections has passed before it is published. The Code is Guidance. It does not have the force of law. Just like the Highway Code, you can depart from it if you have good reasons for doing so, and departure is not automatically unlawful. Many authorities, after due consideration, may consider that more frequent publication is justified, and will continue to publish more than quarterly, and be perfectly lawful in doing so (see case studies below).

3. Can I hire lobbyists or have a stand at party conferences?

Recent abuse of official position by MPs and peers, to earn money from lobbying activities, has damaged the reputation of lobbyists. But the majority of publicity experts add value by ensuring that publicity is targeted to meet the needs of the recipient, and thereby provides cost-effective communication, and Paragraph 14 of the Code positively encourages authorities to take such expert advice before issuing expensive publicity.

If this Government objects to presentations by anyone who can be described as a lobbyist, its most effective answer is simply to refuse to receive such presentations, rather than to try to impose an unsupported prohibition in statutory guidance.

The end result is that, if local authorities think they get value from lobbyists they will continue to use them unless and until Government is no longer prepared to meet them.

The Government is clear in the Explanatory Memorandum that goes with the Code that "It is, of course, acceptable for local authorities to retain expert help to give professional advice on technical issues". This means that local authorities can retain consultants for research and specialist purposes, though the Government appears to be saying that it would prefer to meet with councillors, rather than lobbyists when it comes to face to face meetings.

Local authorities may have important messages which they want to get across to ministers or shadow ministers, on issues such as transport links, regional policy or child poverty. Party conferences are occasions when ministers or shadow ministers are gathered conveniently in one place. That is why local authorities, and many commercial organisations from consultancy firms through banks and construction firms, and groups or organisations campaigning for a wide range of commercial interests, find them convenient occasions at which to try to get their messages across. If ministers

don't want to receive the message, then their simple answer is to instruct their conference organisers not to sell stands to certain bodies.

4. Should you publicise the work of all councillors or just the Executive?

The Publicity Code does not stipulate who you should or should not provide public relations support to within the council. However, it is important that the council has the ability to justify and explain the decisions it is taking and it would therefore be reasonable to expect that the work of the cabinet would naturally be prominent in council publicity.

Earlier drafts of the Code were confusing in regard to providing equal publicity to all councillors and not just the members taking executive decisions. However, CLG realised this may prevent councils effectively explaining and justifying the decisions they make and removed parts of the clause relating to this as explained in the Explanatory Memorandum:

The Department acknowledges that the Publicity Code proposed in the consultation paper could have been perceived as a disincentive to councils communicating their policies and the reasons for their actions to the public. This is an important function of local authority publicity; the public should be informed not only about what action their authority is taking, but why the authority is taking that action.

Our communications functions therefore should prioritise not who to publicise but how we can best inform, explain and justify the actions and decisions of the local authority to our residents and stakeholders.

The Code does give guidance that councils can promote the work of individual councillors where for example a particular councillor has been 'the face' of a campaign. In a changing communications environment that demands more personal public engagement, two-way conversations and inclusion in decision making we need to embrace this and promote the work of councillors as the bridge between our residents and the corporate body.

5. How and when should we run campaigns to change public behaviour?

The Code and the Explanatory Memorandum recognise the relevance of Social Marketing or change of behaviour campaigns. This reflects the importance that the Cabinet Office gives to behavioural economics. The Code states:

Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.

Overall this guidance that councils should "seek to influence .. the attitudes of local people or public behaviour" is a powerful incentive for local authorities to run high profile and effective campaigns in key areas, from fostering and adoption through recycling to community issues like development.

What should we be doing?

- Don't down tools! The Code is not designed to curtail local authority communications.
- Plan events and publicity around the likely dates of elections.
- Provide briefings on your issues to candidates and national spokesmen before election periods – an election guidelines model can be found at www.lgcomms.org.uk.
- Make sure you understand the Code and update your senior management teams and Cabinet – a Cabinet report template can be found at www.lgcomms.org.uk.
- Make sure you work in the seven principles of the Code into your communications plans and strategies to show you have considered it fully.
- Consider holding a Scrutiny review of Value for Money to show you have taken consideration of this important part of the Code.
- If you wish to depart from the Code make sure you have a good evidenced based case for doing so.

Background to the Code

During the 1980s central government expressed grave concern that public money was being used to publicise overtly party political opinion. A stinging illustration of this was displayed daily through banners hung on the then Greater London Council building in full view of the Houses of Parliament terrace attacking the incumbent Conservative government's record and its plans to abolish the London authority.

As a result the government introduced new legislation to prevent the use of public money being spent on party politics. Section 2 of the Local Government Act 1986 states: "2(i) A local authority shall not publish material which, in whole or in part, appears to be designed to affect public support for a political party". Section 4 Local Government Act 1986 states "4(i) local authorities shall have regard to [the Code of Recommended Practice on Local Authority Publicity] in coming to any decision on publicity".

The Code of Conduct on local authority publicity was then introduced in 1988 in order to provide guidance to local government on the restrictions contained within the legislation. It was further amended in 2001 to help clarify its effects on County Councils, District Councils and London Boroughs reflecting constitutional changes.

The Code remained largely unchanged, apart from relaxations to clarify the ability of authorities to respond to external events during the pre-election period in the wake of BSE, until it was subjected

to an aborted consultation by the previous government in 2009 – 10 which sought to update the guidance in light of significant changes in the communications landscape and legislation.

The Local Government Act 2000, formalised the role of the Executive, and gave local authorities powers to promote "well being" and recognised the role of the authority as a community leader. This increased the scope for public communications activity. It was strengthened by the Local Government Act 2008 giving an authority powers to act for the "social and economic well being" of the area and the Local Democracy Act 2009 which placed a new duty on local councils to promote democracy. It was obvious that these new legislative responsibilities and powers were out of step with a code designed almost 20 years previously.

Over the same period, local authorities' role in relation to publicity for controversial local issues was changed by Section 116 of the Local Government Act 2003 which gave authorities formal powers to conduct local non-binding referenda on

issues affecting their area (now proposed to be extended by the Localism Bill to enable a 5% petition of local electors to require such a local referendum), and the Local Democracy, Economic Development and Construction Act 2009 provided that local petitions could require a matter to be debated in full Council.

Change in terms of the localism agenda may again mean councils need to view their communications differently. For example the general power of competence in the Localism Bill could extend our powers to market services and promote the area and will replace some of the powers in the 2000 Act.

The legislative basis for local government publicity is clear. The basis for publicity work is the Local Government Act 1972. Section 142 of the Act empowers authorities in the: "provision of information relating to matters affecting local government" including:

- Provision or publication (within their area) of "information" concerning the services available within the area of authority provided either by the authority, or by other local authorities, or by government departments....."
- Publication within their area of information relating to the functions of the authority

- Lectures, discussions, pictures, film, exhibitions etc
- Further, Section 111 of the Local Government Act 1972 empowers an authority to do anything which is "conducive or incidental to, or calculated to facilitate, the discharge of its functions", covering publicity which supports the discharge of an authority's functions. So, there is a very clear legislative basis for comprehensive communications with residents, visitors and the public to promote personal wellbeing, the work of the council and the reputation of the local authority and area.

The underlying theme of the new Government's approach to revising the Code has been a desire to cut back on guidance and allow authorities to take local responsibility for their own actions. But the Code still contains some pretty self-evident advice which adds very little value to the underlying legislation. The removal of much of the qualifying wording of the old Code makes the new, shorter Code appear more proscriptive in tone, and this impression is reinforced by the inclusion of specific prohibitions in respect of council publications, party conferences and the use of lobbyists. However, it is only guidance and so does not alter the underlying legislation.

The importance of public communication

The Code is not designed to curtail council communications or to undermine them. This is made abundantly clear in the Explanatory Memorandum published by CLG alongside the Code:

For a community to be a healthy local democracy, local understanding of the operation of the democratic process is important, and effective communication is key to developing that understanding. Local authority publicity is important to transparency and to localism, as the public need to know what their local authority is doing if they are to hold it

to account ... In order to hold their local authority to account, the public need to have information about what their council is doing and why it is doing it.

The high profile public debate concerning council publications and lobbyists should not deflect local authority communication functions from their responsibilities.

The importance of council publications

Local government reputation is facing an environment of forensic scrutiny. The most significant financial challenges we have faced in a lifetime coupled with government commitment to transparency and localism means the reputations of our councils are under significant scrutiny and challenge.

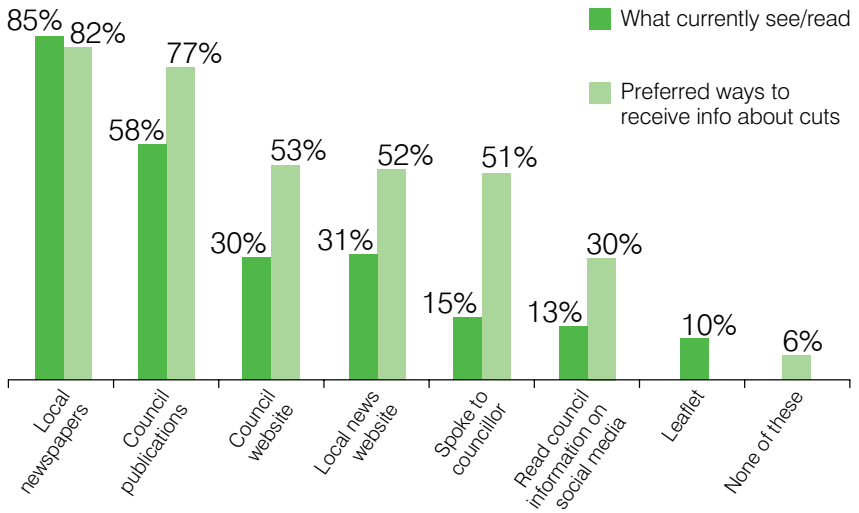
It is those councils that understand the importance of reputation, what drives public satisfaction, understand the changing nature of marketing and have the communications capabilities to defend and enhance reputation that will meet these challenges best. These challenges are substantial and we will need all of the tools and tactics available to us in order to meet them and should therefore recognise that the Code is there not to prevent us from delivering effective communications and reputation management.

We know that in terms of public satisfaction those residents that feel informed are more likely to be satisfied with the local authority. In the Place Survey results from 2008 almost six in ten (59%) of the top 100 councils at informing residents were in the top 100 councils for council satisfaction. In the top 50 councils for council satisfaction only three had below-average informed ratings.

However, good communication remains a challenge – on the whole people still don't understand what we do. The informed ratings even for the best authorities is still very low.

And things are getting harder. There has been a noticeable shift in the public mood over the last year. Residents across the country are now less likely than a year ago to feel informed about services and benefits; less likely to feel councils provide value for money and less likely to feel their council takes their views into consideration. According to the LGinsight/Populus national poll in January 2011 council satisfaction was down eight points to 61% (from October 2010), and perceptions of value for money, were down eight points to 42%.

Preferred ways to receive information



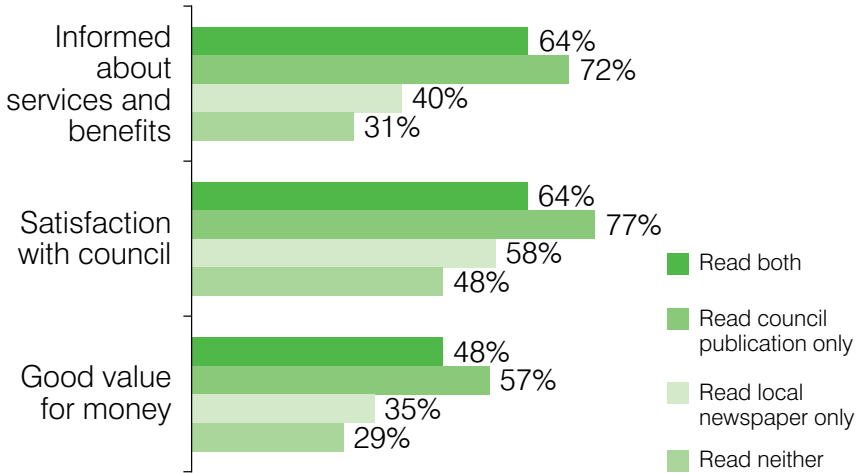
Seen in last 2-3 months / overall preferred ways to receive information specifically about budget cuts

Source: LGinsight/Populus 28-30 January 2011. 1,002 GB adults 18+ interviewed by telephone.

Ensuring councils target the right media is therefore crucial to keeping people informed. Between October 2010 and January 2011 there was an increase in the proportion of residents who reported having seen a local newspaper in the last two to three months (up five points to 85%). The proportion who said they

had seen a council publication dropped slightly (down two points to 58%). The chart above shows how residents prefer to receive information, particularly about any proposed changes to council budgets. This is shown against how they currently found out about local information.

Local Media consumption

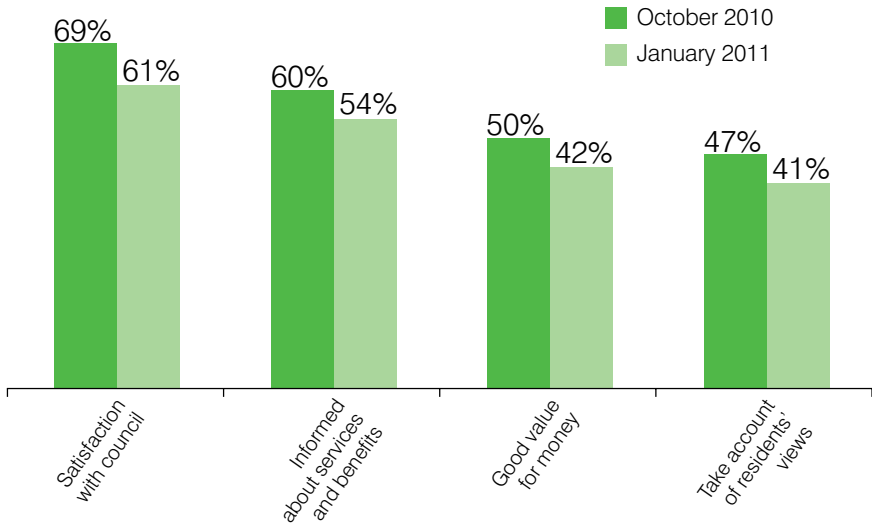


Source: LGinsight/Populus 28-30 January 2011. 1,002 GB adults 18+ interviewed by telephone.

We also know that communications tools such as publications work. Council publications play a key role in keeping residents informed. Reading a local newspaper on its own keeps you as well informed about the services and benefits provided by the local council (46%) as if no newspaper was read at all (42%).

When someone has read either a council publication on its own (72%), or in conjunction with a local newspaper (70%), that they feel much more informed about the council. Council publications are vitally important in keeping the public informed.

The National mood



Council rating/benchmark

Source: LGinsight/Populus 28-30 January 2011. 1,002 GB adults 18+ interviewed by telephone, compared to 1,003 GB adults 18+ on 1-3 October 2010.

As important in difficult financial times is the finding that among those who only read the local newspaper 40% trust the council to make the right spending decisions, compared to 66% of those

who read the local newspaper in conjunction with a council publication. Council publications are essential in helping to explain and justify council decisions.

What does the current Code say?

The new Code is structured around seven topics, as follows:

a. be lawful

This section simply lists five legislative restrictions, in terms of the Advertising Standards Codes, and the various restrictions on political advertising in the run-in to elections and referenda.

b. be cost-effective

If the powers for publicity are in order to support the discharge of functions, it follows that authorities should consider whether they will get value for particular publicity. The Guidance adds little to this basic proposition, recognising that value can also be non-monetary; that there is little point in duplicating national publicity unless there is an important local angle; that publicity should not be used for an ulterior purpose such as providing a hidden subsidy for an organisation; and that authorities may derive value from taking expert advice before incurring substantial expenditure on publicity.

c. be objective

The key messages of this section are that local authority publicity should be factual and balanced, and should add value rather than being conducted at slogan-level. Advertising should be clearly identified as such, and staff

recruitment advertisements should remain politically neutral, not being directed to journals owned or controlled by a political party, and not referring to political activities or affiliations of candidates.

d. be even-handed

This section has been substantially re-written to acknowledge that publicity may recognise the role of individual members in piloting the authority's programmes, and to take account of the rise of social media, acknowledging that it is acceptable for authorities to provide website and blog facilities for councillors, and for such sites to provide links to external sites which may have clear political affiliations. This section carries forward the advice that, where authorities fund other organisations to provide publicity, they should require those organisations to comply with the Code in the same manner as for the authority's own publicity.

e. be appropriate

This section contains sensible advice to ensure that publicity identifies the local authority responsible for its production, and that such publicity should be made freely available to anyone who requests it.

It then contains three paragraphs which appear to be inappropriate in this context, with prohibitions on –

- i. employing lobbyists to persuade Government on any issue,
- ii. taking stands at party conferences, and
- iii. publishing newspapers more than quarterly

We provide greater commentary on these points below.

f. have regard to equality and diversity

The Code recognises the positive role of publicity in influencing public attitudes on a range of issues, such as health, equalities and community safety

g. be issued with care during periods of heightened sensitivity

This section reiterates the previous advice on restricting local authority publicity during the run-in to elections and referenda, and making sure that it is balanced and does not appear to advantage a particular candidate or party. Perhaps unfortunately, it omits the previous advice to avoid proactive events during such periods which might directly or indirectly provide such publicity, and it fails to follow recent Court of Appeal judgments in recognising that authorities must continue to discharge their ordinary functions, including determining planning applications, some of which may be controversial, during this period.

“The Department’s view is that there is no power in the 1986 Act to provide for any enforcement mechanism in response to any purported breach of the Publicity Code. If members of the public consider that an authority has failed to have regard to the Publicity Code, they should raise their concern with the local authority directly, or contact the authority’s auditor.”

Explanatory Memorandum CLG. 11/02/11.

Enforcement of the Code

Section 2 of the Local Government Act 1986 prohibits authorities from publishing material which, in whole or in part, appears to be designed to affect public support for a political party, and from giving financial or other assistance to a person for the publication of material which the authority itself is prohibited from publishing.

These are express statutory prohibitions. If an authority breached either provision, its actions would be unlawful and any interested person could go to the High Court and seek an injunction to prevent the publication of such material or the giving of such assistance. In practice, rather than incur the considerable costs of judicial review, an interested person might prefer to approach the authority's external auditor, and prompt the auditor to question whether the expenditure or proposed expenditure on the publicity as lawful. The external auditor has the ability to seek a declaration of illegality from the High Court at the authority's expense.

Section 4 of the 1986 Act requires authorities, in coming to any decision on publicity, to have regard to the provisions of the Code of Recommended Good Practice on Local Authority Publicity. "Have regard" is different from "follow slavishly". It means that the authority must consider the relevant provisions in the Code, and give due weight to that guidance in coming to its decision, but if it has good reason it may take a decision which is contrary to the guidance in the Code. As set out above, there

may be good reasons for coming to a decision which is contrary to the guidance in the Code. By including in the Code unsupported prohibitions on lobbyists, conference stands and monthly newspapers, the Government not only ensures that such purported prohibitions will be accorded the minimal weight which they deserve, but also devalues the rest of the Code, as authorities see it as being politically-motivated rather than providing sensible, constructive advice.

Where an authority does depart from the Code, there is really no means of enforcement. The strictures of the Code have no legal force and, provided that the authority has at least considered the Code before it took its decision, no injunction will lie. It is only if the authority has either failed even to consider the Code, or set out to defy the Code, that an interested person might get a court of law or the authority's external auditor interested in the issue. But even then a Court would not intervene unless there were a clear public interest in doing so, not because of a value difference between the authority and the Secretary of State.

Case Studies

Case study one: London Borough of Hillingdon

The London Borough of Hillingdon has recommended to its Cabinet that the council continue to publish six issues per year of the council magazine Hillingdon People. The council has shown it has taken regard of the Code in its decision and has provided evidence of why it believes in this case it is valid to depart from the statutory guidance. The following is an extract from its cabinet report:

Hillingdon People

The results of a media consumption ('who reads what') survey in November 2010 shows that Hillingdon People is the most popular source of finding out about council services with 63% of residents finding it useful (the figure was 43% for local newspapers). This is consistent with previous residents' surveys. In 2008, Hillingdon People was the source of information about the council which residents were most likely to say they found useful, which was rated as 'helpful' in 2009 by three quarters (75%) of residents. In the 2009 survey, Hillingdon People was also the channel through which the highest proportion of residents said they prefer to receive information about the council (55%).

Value for money

When asked, residents have consistently told us they would prefer information about council services to be contained within Hillingdon People rather than through leaflets and flyers.

As a result of work undertaken to reduce the amount of printed material, it is projected that the council will save £237,000 this year (when compared to the same period last year) on printed materials.

Public notices

The Code directs councils that 'the purchase of advertising space should not be used as a disguised method of subsidising voluntary, public or commercial organisations.'

We agree but believe that the government should also immediately lift the obligation on councils to advertise public planning, licensing and transport notices in local newspapers. This could be viewed as a 'disguised method of subsidising the local newspaper industry'.

Recent Local Government Association (LGA)² research shows that an average council will have to pay its local newspaper £105,000 a year (around £140,000 in Hillingdon) to print public notices which are routinely published online. It is estimated that existing outdated laws which require councils to advertise planning notices in local newspapers will cost £200m over the next five years. For the same money councils could fund the construction of 2,180 new council homes, pay the annual salaries of another 3,000 care workers or employ an extra 2,000 refuse collectors.

As local and central government are making extremely tough decisions about the service levels it can commit to it seems indefensible that councils remain obligated to advertise planning notices in this way when councils can identify more cost effective advertising channels.

Summary

Hillingdon People does not seek to emulate a local newspaper and the feedback from residents is that this is the most appropriate and cost-effective way to communicate with our residents. On that basis, it is recommended to continue to publish six editions a year.

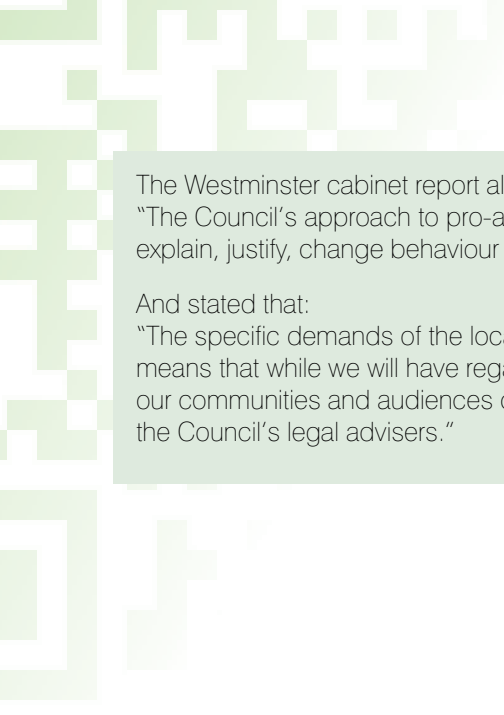
Cabinet is also asked to endorse the council's continued lobbying of the Government to lift the requirement to publish public notices in local newspapers. This information could be provided on the council's website, saving in the region of £140,000 a year.

Case study two: Westminster City Council

Westminster City Council publishes its residents' magazine quarterly but has recommended to its Cabinet that it reserve the right to publish up to eight issues per year should there be a demonstrable need to do so. The following is an extract from its cabinet report:

"The appropriate use of publicity is also about the frequency, content and appearance of council newsletters in order to prevent unfair competition with local newspapers. It sets out that generally the frequency of council newsletters should be no more than quarterly, with parish councils being able to issue newsletters on a monthly basis.

As the council does not produce a newspaper that is in competition or seeks to emulate commercial newspapers it is using public resources appropriately. As such we may, whilst having regard to the Code, issue up to eight editions of the council publication, as circumstances, local need and budget dictate."



The Westminster cabinet report also asserted the right of the authority to “The Council’s approach to pro-active communications in order to inform, explain, justify, change behaviour for the public good and help deliver services.

And stated that:

“The specific demands of the local population and duties under other legislation means that while we will have regard to the Code, we will act as the diversity of our communities and audiences demand, in line with legislation and advice of the Council’s legal advisers.”

FAQs

When does the election period start?

This normally runs during the period between the announcement of an election, or at local level the invitation of nominations, and the date the election is held. This period must be at least 17 working days or three and a half weeks between the date that Parliament is dissolved and polling day.

There is a slight area on uncertainty in this timeframe related to what is known as the 'wash up period'. This will be after the date when the election is announced, leaving a short period during which time the government will seek agreement to bills going through the House of Commons.

However, the period of heightened political tension often starts long before the formal announcement of the election. During this extended period, authorities should exercise caution on publicity, as decisions on publicity are more likely to be seen as party-political and so challenged, even where such decisions are open and even-handed.

Can you use council facilities for election events?

The real restriction here is not so much an express prohibition as a limit on and a requirement for complete disclosure of all contributions to a candidate's election expenses. So, sections 95 and 96 of the Representation of the People Act 1983 give candidates in parliamentary and local elections a right to free use of rooms at schools and public meeting rooms for election meetings. But where a local authority allows a candidate to use the authority's telephone, mail, email or printing facilities for electoral purposes, the costs of that facility has to be scrupulously recorded and declared. Any authority which permitted such use would have to do so even-handedly, but cannot do so in practice as the benefit would accrue only to sitting members, not to other candidates who were not, or not yet, members of the authority.

In practice, authorities tell members that they are not to use the authority's facilities for electoral purposes, and that any such use will be recorded and charged. But it is recognised that a certain amount of low-level usage is very difficult to avoid.

What is the difference between the previous Code and the 2011 Code of Conduct?

Briefly, the 2011 Code is rather shorter, losing much of qualifying language of the earlier Code, which had itself been revised to allow for “business as usual” in responding to emergencies during the pre-election period, such as BSE. The result is that some of the force of the earlier Code has been lost, particularly in respect of the pre-election period. In addition, the 2011 Code contains three unsupported strictures, in paragraphs 26 to 28, against the use of lobbyists, against taking stands at party conferences and against publishing newspapers more than quarterly, which are simply matters of prejudice on the part of the Government and which do not belong in the Code.

Does the general power of competence make a difference?

One interesting consequence of the proposed general power of competence in the Localism Bill will be to give authorities the right to sue in defamation in their own name. The Times Newspapers and Derbyshire County Council judgment, to the effect that public expenditure on defamation actions was contrary to public policy, is seen as increasingly at odds with the commercial world in which authorities operate, where their reputation is critical to their ability to borrow, attract beneficial tenders, recruit high quality staff and candidates for election as Councillors.

Now, with social media and the pressure of 24-hour news services enabling critical stories to gain wings without critical editorial checks, the possibility of a defamation action might cause some at least to pause for thought before printing or re-printing such critical publicity. The Bill proposes that an authority should have all the powers of a natural person of full capacity, subject only to statutory restrictions. As natural persons can sue in defamation, it would appear that this provision will give authorities similar rights.

The other key provision of the Localism Bill relates to the right of citizens on a 5% petition of local electors, to require the authority to hold a local referendum on any relevant issue of local concern. Many such referenda will be on issues of local service cuts, or planning matters, and may be highly contentious between political parties.

This provision, and the need for authorities to ensure that voters are provided with an adequate basis of reliable information, in competition with protagonists who may not be subject to the restrictions of the Code and may have ready access to local media, are likely to test the limits of the Code.

What is the basis and extent of our power to communicate?

Section 142 of the Local Government Act 1972 empowers authorities to provide “information relating to matters affecting local government” including:

- Provision or publication (within their area) of “information” concerning the services available within the area of authority provided either by the authority, or by other local authorities, or by government departments...”
- Publication within their area of information relating to the functions of the authority
- Lectures, discussions, pictures, film, exhibitions etc “

Further, Section 111 of the Local Government Act 1972 empowers authorities to do anything which is “conducive or incidental to, or calculated to facilitate, the discharge of its functions”, so covering publicity which supports the discharge of an authority’s functions.

In addition, there are a number of specific requirements for publicity ranging from site notices for planning applications through advertisement of proposed traffic orders, and for making information on such issues as members’ allowances available for anyone who wishes to inspect it.

In practice, public expectations and media and pressure group demands for transparency and the availability of public information have been much more effective in driving this debate than any changes in local authorities’ powers. So the Secretary of State’s demand that authorities publish all items of expenditure over £500 may accord with public expectations of transparency, but there is as yet no statutory basis for such a demand.



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