



**HEREFORDSHIRE
COUNCIL**

**GUIDANCE FOR MEMBERS
AND OFFICERS ON THE
PRE-ELECTION PERIOD**

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GUIDANCE FOR MEMBERS AND OFFICERS
IN THE RUN UP TO THE EUROPEAN ELECTIONS
ON THE 4TH JUNE 2009

1. INTRODUCTION

On 4th June 2009 elections will be held for the European Parliament. This guidance is a collation of the existing rules, regulations and administrative practices which apply to the proper use of the Council's powers and resources. Any problems or request for advice should be referred to the Assistant Chief Executive - Legal and Democratic. (Tel: 01432 260200)

As a public authority, the Council's powers, facilities and resources for example its officers, funds, building, equipment and supplies cannot be used for electoral campaigning or political purposes. The basic legal rule applies the whole time in different guises, irrespective of the electoral cycle. However, public bodies have developed special rules for the period immediately before any election.

The period immediately before the election is called the "Pre-Election Period" and special rules apply ("the purdah rules").

The Council's business can continue in the normal way up to the point that the Pre-Election Period starts. This includes the implementation and scrutiny of the Council's Policies and decisions.

This guidance seeks to assist members and officers during the Pre-Election Period and is intended to ensure the proper use of the Council's resources/facilities. This includes the implementation of Council's policies and the scrutiny of those policies.

The Standards Board for England can enforce these rules if they involve a member. If officers break these rules then they may be subject to normal disciplinary procedures. Depending on the circumstances, action could also be taken by the auditor, the Ombudsman, the Electoral Commission and the courts.

2. THE PURDAH RULES

The following special rules apply during the Pre-Election Period.

The Pre-Election Period is 25 working days before polling day i.e. the period from the day the election is formally called.

The Pre-Election Period for the European Elections starts on 28th April 2009. As this date approaches greater care and sensitivity is needed. The Council's generated or funded publicity must be, and must be seen to be, politically

neutral. Anything that could reasonably be regarded as giving a political candidate or their supporters/party an advantage in the election is not politically neutral. During the Pre-Election Period publicity (including campaigns) is only acceptable if it cannot be perceived as giving support to a candidate or their supporters, no matter what the other justifications for it are. The use of the Council's resources for the purposes of a candidate's election, as well as being unlawful in itself, may also amount to an unlawful donation which must be repaid.

3. THE PRE-ELECTION PERIOD

The Pre-Election Period lasts for 25 working days before the day of the poll, excluding public and bank holidays. This is the formal start of the election process under election law, when formal notices about the election are published. The date of the election has been fixed for Thursday 4th June 2009. The Pre-Election Period will therefore start on 28th April 2009. Although this is a fixed date, inevitably greater care and sensitivity will be required prior to the Pre-Election Period.

4. PUBLICITY AND EVENTS

The Secretary of State issued a "Code of Recommended Practice" in 1998 which was amended in 2001. This provides statutory guidance on local authority publicity during the Pre-Election Period. Of particular significance is paragraph 4.1 which states:

"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 elections. 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".

As a result any Council publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual politicians or their party groups.

Particular care should be taken over official support and use of public resources, including publicity, for announcements concerning decisions by the Council on matters relevant to the Council. In some cases it may be necessary to defer announcements until after the election, although this will need to be carefully balanced against any implication that deferral could itself influence the outcome of the election. Each case will need to be considered on its merits. There is a general presumption as a result of the Code of Recommended Practice against undertaking

new campaigns during the Pre-Election Period in any area that might be considered controversial in relation to the election.

Special care should be taken in relation to current or ongoing publicity campaigns prior to and during the Pre-Election Period. These should not be open to the criticism that they are being undertaken for political purposes. Campaigns that are liable to be misrepresented as being party political should be stopped until after the election.

During the Pre-Election Period officers may properly be called upon to provide support for any official or statutory function the members perform, factual briefings and policy advice that is necessary to resolve issues that cannot be deferred until after the election. Officers may not however be asked to provide briefings for use in election campaign debates/literature.

Requests for information from candidates from officers must be met in an even-handed manner.

Throughout the Pre-Election Period the Council's Code of Conduct remains in force in relation to all members of the Council. If they break the code they can be reported in writing to the Standards Committee. Anyone can make a written complaint to the Committee. The Committee may pursue an investigation, to suspend the person concerned from office for up to six months in extreme cases.

Officers also need to know what their obligations are, so as to inform the advice they give, and to avoid them being placed in a position where they are asked to do something that might breach the Code of Conduct or the Employees Code of Conduct.

5. THE CODE OF CONDUCT OBLIGATIONS

Councillors must comply with the following whenever they act in an official capacity they must:

- Promote equality by not discriminating unlawfully against any person
- Treat others with respect
- When using or authorising use by others of the Council's resources, ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to the discharge of the Council's functions or of the office to which they have been elected or appointed
- When using or authorising the use by others of the Council's resources act in accordance with the Council's requirements
- When reaching decisions have regard to any relevant advice provided by the Director of Resources and the Monitoring Officer acting in pursuance of their duties under the relevant legislation.

Councillors must not do any of the following in their official capacity:

- Anything which compromises, or which is likely to compromise, the impartiality of those who work for, or act on behalf of the Council.

- Disclose information given to them in confidence by anyone, or information acquired which they believe is of a confidential nature, without the consent of a person authorised to give it, unless they are required by law to do so.
- Prevent another person from gaining access to information to which that person is entitled by law.

Both in their official capacity and in any other circumstance, Councillors must not:-

- Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute; or
- Use their position as a member of the Council to improperly confer on, or secure for, themselves or any other person an advantage or disadvantage

6. RULES FOR OFFICERS

- All Officers of the Council must follow the rules set out in the Employees Code of Conduct when performing the official duties of their post in work related time. These rules seek to ensure political impartiality when officers do related Council work or use Council resources – usually in work time.
- Normally officers are free to do what they like in their own private time. Officers who do not hold “politically restricted posts” can do what they like in their own private time without interference from the Council (although they have to comply with their other employment obligations, e.g. not doing anything that brings the Council into disrepute).
- However, the law imposes restrictions on the activities of Employees in politically restricted posts. Such officers cannot in their private time do anything that the law regards as a restricted activity. These activities are defined by statutory regulations
- If an officer is asked to do something that they think may breach the Employees Code of Conduct or the rules in this Guidance then they should first tell the person concerned that they are uncomfortable doing what is requested. If that person persists, then the matter should be reported to a manager or Head of Service. Officers should not comply with the request if they know or suspect it to be wrong. The Council has an approved whistle-blowing policy to provide protection. The Assistant Chief Executive – Legal and Democratic and/or the Director of Resources are available to advise Officers further if necessary.
- All officers have a responsibility:
 - (a) To uphold the political impartiality of the Council, not to use public resources for political purposes and not to act in any way which would conflict with the Employee Code of Conduct;
 - (b) To give members and the public fair, considered and impartial advice;
 - (c) To conduct themselves with integrity impartiality and honesty, avoiding any kind of impropriety;

- (d) To give honest and impartial advice to Councillors without fear or favour, and make all information relevant to a decision available to them, whilst upholding the confidentiality of any advice given in private.

In addition all officers should avoid any action or behaviour which breaches, or could be construed as breaching, the principle of political neutrality

7. RULES FOR POLITICALLY RESTRICTED STAFF

- There is nothing to prevent politically restricted officers from being a member of a political party and acting privately in support of such a party. There are however some restrictions set out in the Local Government Officers (Political Restrictions) Regulations 1990 (SI 1990 No 851), as amended. The law implies a term into the contracts of employment of every politically restricted employee that they will not engage in any of the restricted activities. Breaching this is not a criminal offence, but could give rise to disciplinary action.
- The restricted activities apply to independent politicians and their supporters/supporting organisations in exactly the same way as they apply to political parties, and members/candidates. Politically restricted officers who engage in restricted activities for an independent politician will equally be in breach of their contract of employment.

8. USE OF COUNCIL RESOURCES AND FACILITIES

The resources and facilities of the Council may be used only in connection with or in support of Council business and the function of members in relation to Council business. Party political activity and electoral campaigning are not part of the Council's duties. Councillors are reminded that the Council's headed stationery, logos and designs must not be used or replicated in any stationery or information imparted by Councillors to the public during the election period.

If you have any queries regarding this guidance please do not hesitate to contact the Assistant Chief Executive - Legal and Democratic.

