

Pre-Election Period Guidance for Councillors and Officers **(Borough Elections 2023)**

The Pre-Election Period (period of heightened sensitivity) applies from Monday 27th March 2023 up to and including Thursday 4th May 2023 (Polling Day)

Set out in this note is Guidance around the Pre-Election Period. This is the period between the publication of the Notice of Election and the date of the Election itself which will commence on Monday 27th March and conclude after Thursday 4th May 2023 Polling Day. During this period, extra care needs to be taken with regard to local authority publicity.

Introduction

This guidance sets out the Pre-Election Period restrictions which are governed by the Relevant Provisions of The Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity. Essentially Councils should “**not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.**” This period is also known as the period of heightened sensitivity.

There is a duty to have regard to The Code of Recommended Practice on Local Authority Publicity at all times.

Councillors and Officers must ensure that they do not breach or give the impression of breaching these restrictions. To do so could have electoral and reputational implications for any Member standing for election and for the Council itself.

The Council should not issue any publicity which seeks to influence voters.

During an election campaign, the Council must continue operating and providing services and the Councillors whether they are standing for election or not remain in charge of the Council. Essential business of the Council should continue.

However, there are some restrictions that apply during the Pre-Election Period which have an impact on the carrying on with business, the issuing publicity and the use of premises by candidates.

What this means in Practice

- The primary restriction is on proactive publicity by the Council which particularly relates to candidates and other politicians involved directly in the election.
- Councillors cannot at any time use Council resources for party political purposes.
- All Councillors whether seeking re-election or not should have regard to the Code of Practice on Local Authority Publicity and the restrictions during the Pre-Election Period.
- The Council must carefully consider any publicity that it sends out and what the impact of that publicity might be in accordance with the Code of Practice on Publicity.

- The Council can still issue media releases on factual matters provided these do not identify individual councillors or groups of councillors.
- Councillors are still free to respond to enquiries received from the media in a personal capacity.
- Individual Councillors can issue their own statements, write letters to the local newspaper(s) for publication, contact the media directly or say what they like in a **personal capacity**, but must not use Council resources to do so.
- Councillors can continue to tweet or blog but must not use Council resources (Council twitter accounts, email accounts, Council IT equipment, telephones, etc.) to do so

The principles underlying the behaviour of Councillors and Officers during this time are simply an extension of those that always apply. These are set out in the [Code of Conduct for Councillors, Officers' Code of Conduct](#) and [Protocol on Councillor/Officer Relations](#).

This note provides advice on what can and cannot be done during the Pre-Election Period. Councillors and Officers can seek guidance from:-

Siraj Choudhury, Head of Governance, People & Performance (Monitoring Officer) on 01293 438292 or email to: siraj.choudhury@ Crawley.gov.uk

OR

Natalie Brahma-Pearl, Chief Executive, Returning Officer and Head of the Paid Service on 01293 438626 or email to: natalie.brahma-pearl@ Crawley.gov.uk

On publicity and communication matters speak to the Communications Manager Allan Hambly – 01293 438781 or email to: allan.hambly@ Crawley.gov.uk

Councillors should generally discuss these issues with their Group Leader where there are issues / concerns and / or with the Agent for their party handling the Election Campaign.

The latest guide on the Pre-Election Period issued from the LGA can be found using the link below: <https://www.local.gov.uk/our-support/guidance-and-resources/pre-election-period>

Publicity – What is publicity?

The Council cannot publish or assist others to “**publish any material which, in whole or in part, appears to be designed to affect public support for a political party” or an individual**. The intention behind the publication does not matter, what is important is whether it “appears to be designed to affect support.” Publicity is defined very widely “**as any communication in whatever form, addressed to the public at large or to a section of the public.**”

The first question to ask is ‘Could a reasonable person conclude that you were spending public money to influence the outcome of an election?’ In other words, it must pass the reasonableness test. All Council publicity is potentially sensitive in the run up to the election. This includes:

- All social media
- Speeches
- Leaflets
- Press releases

- Sponsorship
- Meetings
- Events and posters
- Photos
- Even floral displays!

Publicity produced by the Local Authority is restricted at all times by the Local Government Act 1986 (as amended) and by the Code of Recommended Practice published in 2011 on Local Authority Publicity issued under the Act, as well as by the general limits on the powers of the Local Authority. However, in the run up to an election, the general guidelines and restrictions should be given more scrutiny than usual.

The Local Government Act 1986

The pre-election restrictions are governed by Section 2 of the Local Government Act 1986, which makes it clear that a Local Authority should not publish any material which appears to be designed to affect public support for a political party. This includes the content and style of the material, the time and circumstances of the publication, the likely effect of publicity on people, whether the material promotes or opposes a point of view which is identifiable as the view of one political party to another, and references to a political party to people identified with a political party.

The Council is also forbidden to give financial or other assistance to other bodies to enable them to publish material that the authority may not publish.

Code of Recommended Practice on Local Authority Publicity (2011)

The Act makes it clear that Councils need to have regard to the Code of Practice that supports the Act.

The Publicity Code is grouped into 7 principles that publicity by Local Authorities should follow.

Publicity by Local Authorities should:

- be lawful
- be cost effective
- be objective
- be even-handed
- be appropriate
- have regard to equality and diversity
- be issued with care during periods of heightened sensitivity before elections and referendums

Much of the Code which applies at all times increases in importance before an election. The guidelines on content and style highlight the importance of publicity that is objectively balanced, informative and accurate, concentrating on facts and/or explanations.

The Code states that 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.”

Guidance

It is permissible for Councils to publish factual information which identifies the names, wards and parties of candidates at Elections.

What should be considered?

- The content and style of the material.
- The time and circumstances of publication.
- The likely effect of the material on those to whom it is directed.
- Whether the material promotes or opposes an identifiable point of view on a question of political controversy and
- Where the material is part of a campaign, the designed effect of the campaign.

The Council should NOT:

- Produce publicity on politically controversial matters.
- Refer to individual politicians or groups in press releases.
- Arrange proactive media or events involving candidates.
- Issue photographs which include candidates.
- Supply Council photographs or other materials to Councillors or political groups.
- Continue hosting third party blogs or e-communications.

Think carefully before:

- Continuing to run “sensitive” local campaigns.
- Launching any new consultations.

The Council is allowed to:

- Continue to discharge normal Council business – including determining planning applications.
- Publish factual information to counteract misleading, controversial or extreme information.
- Use relevant lead officers, rather than Councillors for reactive media releases.
- Use a politician to respond in particular circumstances, such as in an emergency situation or where there is a genuine need for a member-level response to an important event beyond the Council’s control.

Ultimately, any decision you take must be seen as fair and reasonable.

It is acceptable for the Council to respond in appropriate circumstances to events and legitimate service enquiries provided that their answers are factual and not party political. In general, Councils should not issue any publicity which seeks to influence voters.

Councillors and Officers should apply the following principles subject to the merits of each individual case:

1. The Council may issue press releases on behalf a Lead Councillor, if it relates to important events or in emergency situations which are outside the Council's control and where the particular circumstances can be shown to justify a member response
2. Lead Councillors may also take part by invitation in events relating to their portfolio which are arranged by another organisation and as a result may receive publicity independently of the Council
3. The Code does not prevent individual Councillors who are candidates from responding to media enquires made directly to them about Council business or issues which affect the borough or its residents providing they do not use Council resources to do so
4. The Code does not prevent Councillors who are candidates from dealing with their everyday Ward work including correspondence from constituents as long as this is not used as a means of canvassing
5. Councillors are free to respond to enquiries received from the media in a personal capacity
6. Individual Councillors can issue their own statements, write letters to the local newspapers for publication contact the media directly or say what they like in a private capacity, but cannot use Council resources to do so.

Particularly sensitive or controversial matters will therefore need careful handling around any election period as they may have an impact on public opinion for or against a candidate or political party. The Chief Executive as Head of the Paid Service and the Returning Officer and the Council's Monitoring Officer should be consulted over such matters.

Code of Conduct for Councillors

Under the [Code of Conduct for Councillors](#):

A Councillor must when using or authorising the use by others of the resources of the Council:

- (i) act in accordance with the Council's reasonable requirements and
- (ii) ensure that such resources are not used improperly for political purposes including party political purposes.

It is therefore important that Councillors are aware of this, particularly as the use by a member of any Council resources for purely political purposes including designing and redistributing party political material produced for publicity purposes and support of any political party or group activity, elections and campaigning, is likely to amount to a breach of the Code of Conduct for Councillors.

Council facilities and resources cannot be used in connection with any party political or campaigning activity. For example, it would be contrary to the Code of Conduct:

- Quoting a Crawley Borough Council email address in party political material.
- Printing political information/emails/attachments on paper supplied by Crawley Borough Council.
- Making photocopies of party-political literature using paper or photocopiers supplied by Crawley Borough Council.
- Using a Crawley Borough Council fax machine to transmit party political material.
- Using Crawley Borough Council provided IT equipment including computers, telephones or mobile devices to conduct party political business.

Councillors may continue to use those resources which relate to their day-to-day business as local Councillors including their Crawley Borough Council email address.

Decision Making

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, given the restrictions on publicity it may be that while the Council's decision making can continue other factors may well limit it.

Officers should therefore consider very carefully whether it is wise to bring forward any matters for decision during an election campaign that could be politically contentious. The profile of issues will be increased in this period and could have more prominence than at other times. This may distort decision making and create a risk that the decision will be made on party political grounds rather than on its merits and therefore it is challengeable.

Consultations

As a general rule consultations should be avoided. Officers should also consider deferring consultations until after the Pre-Election Period. This is particularly so if a consultation exercise could be interpreted as engendering support for a particular group, or campaign or if its timing could result in a political advantage for one party or an individual. If a consultation has already started and runs through the election period, it may be appropriate to extend the consultation period and put out extra publicity for the consultation after the election. Officers should take account of the circumstances of each consultation.

Use of Premises

No candidate at local or national elections can use Council premises in an election campaign by visiting them for electioneering purposes. This is especially relevant to photo opportunities. However, there are provisions in the Representation of People Act 1983 (Section 96) for candidates at a Local Government Election to use certain public rooms free of charge to hold public meetings at reasonable times between 27th March and 4th May 2023.

The following conditions apply:

- The meeting must be open to all Councillors and members of the public and not restricted to ticket holders or Councillors only
- The purpose of the meeting must be to advance the candidate's prospects of victory at the election e.g. Hustings
- The room must be suitable
- The room must be used at reasonable times, not causing any disruption to the activities it is normally used for, and the candidate must give reasonable notice of wishing to use it. Equally any prior letting of a meeting room must take precedence
- Candidates must pay for the costs of heating, lighting and cleaning the room, in preparation for the meeting and for restoring it to its usual condition after the meeting
- Candidates must pay for any damage done to the premises.

Pre-Election Checklist
Applies Monday 27th March to Thursday 4th May 2023

1. Councillors cannot be quoted in press releases or publicity issued by the Council.
2. All publicity must be non-political. This includes Council organised events, leaflets, press releases, social media, speeches, it can also include sponsorship events, posters, photos and even the colour of floral displays.
3. No political posters or leaflets can be displayed on Council premises including streetlights etc. or Council vehicles.
4. Officers must be politically neutral when acting in a professional capacity as a Council officer i.e. At work (and at all times for politically restricted posts).
5. There must be no pro-active publicity that can be seen to support a political party or candidate.
6. Council resources cannot be used in connection with any party political or campaigning activity.
7. Council business must continue as normal. However, the Council should avoid launching new projects, initiatives and consultations during this period.
8. No candidates can use Council premises in an election campaign by visiting them for electioneering purposes. This is especially relevant to photo purposes.
9. Councillors holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a Member response to an important event outside the Authority's control.
10. During the Election Period, Councillors must not use their Council email address in any Ward Newsletters and other material which contain election or campaigning material.