

# **Election Time 2015: issues for local authorities**

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## **Summary**

This election briefing covers some essential issues for local authorities during the pre-election period: the implications of the publicity code, the position of elected members, use of premises by candidates, and maximising voter registration. It draws attention to guidance from the Equalities & Human Rights Commission and Electoral Commission that will be useful for corporate officers and elected members, and publicises a statement by Race Equality Matters that suggests standards for adoption by candidates and public bodies.

LGiU election briefings revise and draw on our past work with the EHRC (and before that with the CRE), and research on council publicity conducted in collaboration with INLOGOV.

This briefing is intended for all English councils, and will be of interest to elected members, and officers with responsibilities for elections, equalities, and community relations.

## **Briefing in full**

### **Election timetable**

Not only will there be the largest number of local and General Election ballots held together since 1979 on May 7; for first time these are combined with elections in parish & town councils, and a small number of local referendums.

The key dates are:

Monday 30 March: the pre-election period begins with the dissolution of parliament

Monday 20 April: voter registration deadline

Tuesday 21 April: deadline for applying for a postal vote

Tuesday 28 April: deadline for proxy vote applications.

## The pre-election period

Local authorities follow a similar convention to that of central government, in not making significant or controversial decisions during the pre-election period. One reason for this self-imposed convention is that it avoids committing a post-election regime to a policy or project with which it would disagree. If it has not been possible to reach a significant decision before the pre-election period begins, decisions will be postponed until after the election, unless there are reasons which make going ahead unavoidable.

The role of the ward councillor continues throughout the pre-election period, though councillors must avoid any use of council resources in their campaign activities.

The rules on council publicity must be carefully observed during the pre-election period.

## Publicity during the pre-election period

Under the 1986 Local Government Act, nothing can be published at any time which 'in whole or in part appears designed to affect public support for a political party'.

A council's communications are governed by the government-issued publicity code, which covers 'any communication in whatever form, addressed to the public at large or a section of the public'. It applies to all decisions at all times by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties – and use of social media.

Under the publicity code, councils are required to pay particular attention to their publicity during periods of heightened sensitivity, such as before elections. It may also be necessary to suspend the hosting of material produced by third parties, or to close public forums during the election period to avoid breaching the restrictions.

## Code of Recommended Practice on Local Authority Publicity

The [publicity code](#) makes it clear that councils

- cannot publish any publicity on controversial issues between the notice of the election and the election itself, and
- must not report views or proposals in such a way that identifies them with any individual members or groups of members.

Publicity relating to individuals involved in the election should not be published during the pre-election period unless there is specific statutory authority to do so. Local authorities can publish factual information which identifies the names, wards and parties of candidates at election time: essentially straightforward provision of public information about the forthcoming election.

The principles that underpin the Code require that publicity by local authorities should be lawful, cost effective, objective, even-handed, and appropriate, have regard to equality and diversity, and be issued with care during periods of heightened sensitivity.

The publicity code does allow a local authority to 'correct erroneous material' which has been published by others. This is despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. 'Such publicity should seek to explain the facts in an objective manner.'

### **Implications for councils – community relations and the publicity code**

Councils can correct or rebut misinformation published by third parties during the pre-election period in relation to matters that include equality, diversity and community issues.

The Code also provides that:

- 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, crime prevention, race relations, equality, diversity, and community issues.
- Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Indeed, should there be harassing disinformation in circulation the council would be obliged to consider making a factual statement. Any intervention of this kind would always be made by a leading member or chief officer.

Questions about the scope of councils to issue rebuttal information following the revision of the publicity code in 2011 were clarified during the passage of the Local Audit Bill. In a [ministerial statement](#), Baroness Hanham made clear the government's view that councils do have the capacity to publish corrections to false information circulated by candidates and non-party campaigners during an election period.

### **Being alert to possible risks**

Councils should prepare for the controversies that may surround elections, and be alert to any risks that may arise in their areas. It would be wise to consider in advance what might be involved in monitoring local media and electoral materials, through partnerships with community groups and the police, and to have lines of contact in place.

Councils should also aim to be ready, in terms of legal and strategic advice, to counter any false or misleading information relevant to their responsibilities.

## Role of councillors during pre-election period

The role of the ward councillor continues throughout the pre-election period and they need to balance these responsibilities with their campaigning activities. In particular:

- Councillors must avoid any use of council resources in their campaign activities: this means council email, phone, laptop and pager, as well as the members' room photocopier and other facilities.
- And while for councillors and candidates, elections are all about publicity – the local news, leaflets, speaking at meetings, and increasingly, councillors' blogs and Twitter accounts – it is essential to be aware of the publicity rules.

Normally, publicity about council policies and the work done by individual members of the authority and their views on local issues is allowed. A councillor can be the 'face' of a local campaign at other times, but not during an election period.

The definition of 'communications' used in the publicity code is comprehensive. The council will not publish photographs, articles or quotes connected with any individual councillor or group during the election period. Note too, that it will not be possible to use photographs or other materials from previous council publicity in campaign newsletters and leaflets.

Elected members are free to speak to the media on their own behalf, and to promote their own views and policies, provided they do not appear to be speaking on behalf of the council. Many councils host a blog authored by elected members, and public discussion forums: these will be suspended during the election period.

In addition, councils will avoid holding events and open days that feature elected members as speakers, or focus on particular council policies. Candidates may be invited to speak at events run by community organisations: where there is no connection with the council they are free to attend, and follow their own judgement over whether candidates from other parties are invited too. Visits to council owned facilities and to schools will be refused.

Councillors need to be alert to any risks that may arise in their wards, and report to the council any instances of false or misleading information circulating in their area which they consider could be harmful to good race relations. Nothing in the Code prevents local authorities addressing issues of discrimination or harassment and tackling them head on during an election campaign, provided they act objectively.

## Use of Council premises

The Representation of the People Act 1983 requires local authorities to make premises available to candidates in elections, so that they can hold public meetings to further their candidature.

The rooms, in schools or other public buildings, must be provided free of charge, subject to the following conditions:

- The meeting must be open to all members of the public, and not restricted to ticket holders or members.
- The purpose of the meeting is to advance the prospects of a candidate's victory in an election.
- 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.
- Candidates must pay for the costs of heating and lighting, and cleaning the room in preparation for the meeting and restoring it to its usual condition after the meeting.
- Candidates must pay for any damage to the premises.

Guidance from the EHRC makes it clear that, since the RPA imposes a statutory duty subject to conditions, the general equality duty is not relevant.

### **Can councils refuse candidates permission to use rooms in schools and elsewhere for public meetings during an election?**

No. Councils have no discretion to refuse a candidate a room provided the conditions mentioned above are met.

### **Would a room ever be 'suitable' for use by a candidate advocating policies and views that are harmful to equality, diversity, or good relations?**

In law 'suitability' is limited to the nature of the room as a facility for the general purpose of holding public meetings and not on the basis of who applies to use the room. 'Suitability' must be addressed when the list of rooms is drawn up, not when an application is received.

If a school is in an area where there have been racial tensions between communities, or racist incidents, the council or education authority may have reasonable grounds to believe that holding the meeting could cause disruption or offence, but cannot decide on this basis that the room is unsuitable. They should consult the police, who may decide that the meeting poses a risk to public order.

Similarly, members of the public and/or community representatives who fear for their safety should the meeting take place, should report their concerns formally to the police.

### **What if it appears that the meeting could be a private rally of supporters and party activists?**

In past years, election meetings held by some political parties have been open only to their members and sympathisers; members of the public were excluded.

It is the candidate who has the right to use rooms and not the party.

- The council is under no duty to provide a room if there is no candidate or the candidature is not lawful.
- Meetings of political parties that only allow selected members to attend and otherwise exclude members of the public are not public meetings, and the council is under no obligation to provide a room.

Members of the public should be able to attend a public meeting, listen to the candidate, ask questions and draw their own conclusions on the arguments they have heard.

### **Can permission to use a meeting room include terms and conditions for its use?**

Yes. Councils can include terms and conditions in their agreements with candidates and political parties. If they have any concerns about the true purpose of the meeting or its possible implications for public order, councils may wish to ask for:

- Candidates or the political party to provide proof of a valid insurance policy for damage to the premises. Alternatively, they must put down a (refundable) deposit for the room
- Observers – to check for compliance with conditions or to monitor speeches. Speech which incites racial hatred may be included in evidence to justify a refusal or a restriction by the Police under the Public Order Act in the future.

The Council's concerns about the true purpose of the meeting may be based on evidence of:

- the candidate's or party's past conduct at election meetings (and meetings held outside election periods)
- the ethnic and racial composition of the local population
- if an elected member, the candidate's acts, decisions and conduct while in office
- hate crimes in the area
- relations between different sections of the local community
- experiences that teachers, pupils, parents and community organisations might have had of the candidate or party
- advice from the local police force
- evidence, based on close work with community groups and the police, that the meeting is likely to incite racial hatred or result in other criminal acts - this is most likely to be done through local partnerships.

Councils should ask applicants to let them know how they intend to publicise the meeting, and who is expected to attend. Other useful information obtained more widely might include:

- the kind of messages they are putting out in leaflets, through the local press, or social media
- the issues they are campaigning on, and the effect this is having on relations between communities.

Councils may have observers at meetings, to make sure that the terms and conditions of the hire of the room are observed. If the terms are not observed, this could be a reason for imposing further conditions, refusing accommodation, or for consulting with the police on fears for public order in future.

### **Do the same considerations apply outside an election period?**

Councils only have a duty to provide free accommodation during an election period. At other times, different councils have different policies: some hire premises out to political parties for public meetings, others do not.

A blanket ban on the use of premises by a particular party or candidate is likely to be unlawful. Councils should consider each application on its merits, and balance their responsibilities under public law, the Equality and Human Rights Acts, and the criminal law.

Whenever a council considers setting aside a right under the Human Rights Act, it should be able to show, on each occasion, that:

- it has reached its decision after careful consideration
- that the decision is based on evidence
- that the decision is necessary to prevent crime and disorder or otherwise to protect the rights and freedoms of others
- the decision is proportionate.

### **Maximising registration**

Following the introduction of Individual Electoral Registration [IER], the key issues for councils and other public bodies locally have been addressing under-registration and encouraging registration. According to the Electoral Commission, two million applications to register have been made since December 2014, although data are currently unavailable on how far this may have had an impact on wide variations in under-registration. Plainly, driving registration at local level has to be the focus for 7 May.

At a recent Local Government Lawyers conference, speakers including a senior ERO and representatives of the Cabinet Office and Electoral Commission identified

those moving home, new homeowners, students, those in care homes and attainers as being most clearly under-represented on the register.

A Household Notification Letter [[HNL](#)] is being sent to all households in the hope this will pick up people including attainers who were missed in the December canvass. Students, who are no longer automatically registered by their university, are being addressed through NUS and Electoral Commission campaigns, in addition to local activities generated by EROs.

The HNL letter is intended to prompt those who have not registered yet to do so, to pick up those who have recently moved within or into the registration area, and give residents an opportunity to check their details on the register are accurate.

### Key facts about IER

1. As this is a transitional phase, the register being used for the 2015 elections is made up of three groups: those already registered whose names have been confirmed in a data-matching exercise; those registered who have not been confirmed; and those who have newly registered as individuals.
2. To avoid people losing their vote in the General Election, the names of those who remain unconfirmed have been carried forward, *provided they were included in replies to the household canvas forms*. These people will still need to register as individuals if they want to retain postal and proxy votes in the General election. In any event, they must register individually by the end of 2015.
3. Those who were not confirmed, or who are new to the register, must provide personal information including name, address, and date of birth and National Insurance Number to verify their application. Those without an NIN will be able to provide alternative evidence of identity. It is possible to register online.

More information about the implementation of IER is available in this [LGiU briefing](#).

### Practical measures

Methods to promote early registration need to be tailored to the needs of particular groups, but councils are urged to include social media in their plans.

The run-up to 7 May will be challenging. IER means that there is risk of large numbers of people wanting to be registered to vote over coming weeks, building up towards the deadline on 20 April, and possibly arriving at the polling station to find that their registration hasn't been processed within the time available due to a 'virtual queue'.

The senior ERO at LGG conference advised promoting registration now, and ensuring sufficient staff, to deal with a potential bubble of registrations. The Cabinet Office are promising additional data support from the IER Digital Service during March - April, and following the closing date for registration on April 20.

## The ballot paper and the count

Polling station staff can now issue ballot papers to those people in the queue at 10.00pm. To manage what could be a tricky situation, a senior ERO has suggested people in the queue at that time be given a simple ticket to exchange for a ballot paper on admission.

The ballot paper has been revised for both [general election](#), and [local elections](#), in particular by bringing to an end the numbering of candidates. As a result, for voters, and for those counting and observing the count, the candidates' symbols will have increased significance.

## Guidance and Codes of Conduct

The Equality & Human Rights Commission has issued [new guidance](#) that covers

- Freedom of expression and free and fair elections
- Guidance for political parties and candidates
- Guidance for local authorities
- Restrictions on freedom of expression prescribed by law
- How to complain and the role of regulators

The guidance recognises that political campaigns are open and vigorous, and that candidates may speak and write freely on any subject: campaign material may be offensive, shocking or disturbing. It helpfully includes a chapter on how the law may intervene when a person reaches the limits of their right to freedom of expression, including a section on Incitement to Racial Hatred.

Race Equality Matters, a highly respected network of race relations and equality experts, has produced '[Electing Without Prejudice](#)', calling on local authorities, candidates and their supporters to adopt a set of principles that will encourage free and fair electoral debate. The principles for local authorities take the same positive and proactive view of the publicity code as set out in this briefing. Its election statement has already been endorsed by the TUC, the Runnymede Trust, Operation Black Vote, Jewish Council for Racial Equality and the Discrimination Law Association and other local and national equality organisations and by Lord Ouseley, Lord Dholakia and Lord Adebawale.

The Electoral Commission [Code of Conduct](#) covers electoral registration, postal voting, proxy voting, and polling stations. The Electoral Commission will publish guidance on the use of social media for 7 May.

## Look out for...

The Electoral Commission must report to the government in June, advising on whether to bring forward to December 2015 final transition to IER from December 2016. Problems with data mean that it is unlikely that the Commission will recommend a 2015 cut-off. On the other hand, information from Cabinet speakers at a recent event implied that plans are already in hand to implement a final transition to IER at the end of this year. This would mean that the new system was in place for the multiple elections taking place in May 2016.

The Law Commission is consulting on a major reform of Electoral Law, intended to bring coherence in place of its current complexity. The consultation, which closes on 31 March, will be followed by an interim report in autumn 2015 and a draft parliamentary Bill in 2017. The passage of the Bill and secondary legislation will take time, so that the reforms would be in place for the General Election, if it takes place according to current law and expectations, in 2020.

## Comment

The period for transition to IER was shortened by the coalition government, and the consequences will be felt by Electoral Registration Officers and voters alike over the coming weeks. EROs need the resources to maximise registration to 20 April, and to deal with the intricacies of confirmation after that date, so that the electoral register is as representative as it can be, given the difficulties within which all are working.

Councils have a unique role to play in ensuring that we have a fair election campaign: it is hoped that this briefing assists in making that role effective.

### Related briefing

[The Revolution in Electoral Registration](#)

**For more information about this, or any other LGiU member briefing, please contact Janet Sillett, Briefings Manager, on [janet.sillett@lgiu.org.uk](mailto:janet.sillett@lgiu.org.uk)**