

Report to Overview and Scrutiny Committee

Date of meeting: 29 January 2009

Subject: Code of recommended practice on local authority publicity – consultation



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Committee Secretary: A Hendry

Recommendation:

1. That the views of Overview and Scrutiny Committee on the consultation paper 'Communities in Control: Real people, real power – Code of recommended practice on local authority publicity – A consultation', be submitted to the Department for Communities and Local Government by the consultation deadline of 12 March 2009.

Report:

1. The Code of Recommended Practice for Local Authority Publicity is incorporated within the Constitution of Epping Forest District Council. It is based largely on guidance annexed to the Local Government Act 1988. Subsequent amendments reflecting further changes in Local Government law were introduced in 2001 for local authorities in England only.

2. Members will be familiar with some of the restrictions of the current Code. It was framed at a time when local government operated largely within the committee system. The purpose of the Code is to prohibit the issue of any publicity by a local authority which could in whole or part appear to be designed to affect support for a political party. Members will be familiar with the particularly strict provisions during the 'Purdah' period leading up to elections. During this period, local authorities should try to refrain from issuing any publicity linked to anyone standing for or participating in the election.

3. At other times, local authorities remain constrained in the type of publicity they can issue. Detailed direct reference to Members is limited largely to their capacity as representatives of the whole Council, for example as the chairman of a committee or member of the Cabinet. Promotion of the role of individual councillors in their ward capacity is limited largely to basic information such as contact details published online or in newsletters.

4. A stated objective of the Code is to ensure proper use of public funds. The Code goes beyond the commonly perceived types of publicity such as media releases, statements to the media and local authority publications. It includes web content, marketing, consultation and governs the use of both general and recruitment advertising. As well as the 'political impartiality' test, a council must also be able to show that it has authority and can justify expenditure on publicity. For example, it may be inappropriate to incur expenditure in duplicating publicity separately available. It should also never use publicity in the form of advertising as a means of subsidising another organisation.

Review of the Code:

5. The Government signalled its intention to review the Code at the beginning of 2007 when it issued an initial consultation paper, 'Consultation on Amendments to the Model Code of Conduct for Local Authority Members'. Among the questions asked was whether the Publicity Code still served a useful purpose. Reporting on that consultation, the Department for Communities and Local Government says that support for a Code remains and is seen as a helpful source of advice on the use of resources for publicity.

6. However, CLG also notes that since the introduction of the Code twenty years ago, important changes have been made to the structure of local government. In particular, there are now many other ways of monitoring appropriate use of publicity including Overview and Scrutiny, Standards Committees and the Audit Commission via Comprehensive Area Assessment and Use of Resources Assessment.

7. CLG notes that since 2001 and the publication of the Quality Public Services White Paper, central government has been seeking to devolve greater power and responsibility to local authorities on the use of resources. It says "Part of this process involved reinvigorating and rehabilitating politics at the local level. One aspect of this is acknowledging the political nature of local government; councils are political bodies, led by democratically elected politicians making decisions about local priorities. They are not simply neutral bodies for service delivery. We consider that it is important for the health of local democracy that citizens are aware of how decisions are made at the local level, and who is making them. To aid this, we consider that councils should be able to publicise the role and activities of the authority and the activities of individual councillors to help promote democracy in the community."

8. The implication seems to be a potential relaxation of the current restrictions upon local authorities in promoting local democracy and the work of individual councillors.

9. The full text of the Consultation Paper is attached to the Members Bulletin and invites responses to specific questions. These are also set out in Appendix 1 to this report with comments Members may wish to support or amend. Should CLG determine to amend the Code, revisions to the text should be published towards the end of 2009.

Appendix 1 Consultation Questions and Draft Responses

<p>Question 1</p>	<p>Is there other guidance, (additional to the Publicity Code), that councils consider creates a barrier to the provision of publicity or support, or that needs clarifying?</p>
	<p>See Dissemination – Question 10.</p>
<p>Question 2</p>	<p>Is there a requirement for different codes to apply to different types of authority?</p>
	<p>A single unified code covering all democratically accountable bodies would ensure no potential conflict in terms of joint publicity, for example, information issued jointly by a council and police or primary care trust.</p>
<p>Question 3</p>	<p>Should the Publicity Code specifically address the presentation of publicity on an authority’s website?</p>
	<p>Websites are one of the most important new tools available to councils in raising public awareness and stimulating local democracy. However, websites are one of a group of media that did not exist when the original Code was drafted.</p> <p>Issues are raised by new media, especially in the 'Purdah' period up to elections where it is impractical and undesirable to withdraw archived member information held on websites in text, audio and video format.</p> <p>As well as recognising the undesirability of withdrawing web-content during the 'Purdah', any revisions to the Code should also clarify the position regarding webcasts of Council, Cabinet and Committee meetings to ensure these can continue throughout.</p> <p>Further clarification would also be helpful regarding information published by or on behalf of individual councillors in their ward capacities. The current provision of basic Information such as contact details, ward representation, membership of committees and expenses should be relaxed. Members should have the freedom to utilise the council website to publicise ward activities and issues of interest and concern to their local residents.</p>
<p>Question 4</p>	<p>Does anything need to be added to or removed from the list of matters an authority should consider in determining whether or not to issue publicity on a certain subject?</p>
	<p>Local authorities in common with other statutory bodies are required to issue publicity on a range of issues. Beyond these, councils have a measure of discretion within parameters set down in the Code. It could be argued that most of the issues a local authority would assess when considering publicity are matters of good local governance on which it would be judged via CPA, CAA and other monitoring regimes.</p> <p>Local authorities have been given greater responsibilities for community cohesion and engagement which necessarily involve greater exchange of information. Onus has been placed on councils to stimulate and encourage local democracy.</p> <p>Local authorities are best placed to judge whether issues of local concern are also appropriate subjects of council publicity. In particular, the role of Overview and Scrutiny should be supported in revisions to the Code, encouraging councils to maximise their community leadership role whether or not they are directly responsible for an issue or service.</p>
<p>Question 5</p>	<p>Should the Publicity Code specify the different criteria local authorities should use to determine whether or not publicity can be judged to be</p>

	cost effective?
	Cost effective use of publicity is another matter of good governance. However, any assessment may have a degree of subjectivity based on individual perspective and priority. A tension can therefore arise where national and local priorities do not co-incide. Criteria set out for judging cost effectiveness of publicity are useful but should be for guidance and not constitute an exhaustive list of considerations a council may wish to take into account.
Question 6	Is there any aspect of the cost section that is not required or anything which should be added?
	See question 5 above.
Question 7	Should the Publicity Code contain advice about ethical standards, or should this be left to local authorities to judge for themselves?
	<p>An ethical standards framework may assist local authorities if the Publicity Code is to be revised in line with a general relaxation on the rules governing publicising the work of individual ward councillors. This might arise in support of a range of circumstances. For example, using the Council website to make comments concerning a planning application without fettering the councillor or compromising the integrity of any future decision.</p> <p>Given the desire to enhance the democratic process and public awareness, the Code may also allow Councils to facilitate open debate and disagreement between Councillors of different views or political groups. An ethical standards framework could assist members in debating issues without allowing the passions of debate to stray into disrepute. Clear guidelines would leave Members in no doubt as to where the boundaries of debate lie.</p>
Question 8	Is there any aspect of the content section that is not required or anything which should be added?
	See question 7 above.
Question 9	Should the Publicity Code be modified to specifically address the issue of privacy and the dissemination of unsolicited material?
	Current code adequate in this respect.
Question 10	Is there any aspect of the dissemination section that is not required or anything which should be added?
	<p>The manner and extent of local authority obligations to provide publicity material in different languages requires clarification. While the Disability Discrimination Act has offered better guidelines in terms of making information available in large type, Braille and other formats, translation into languages other than English remains a matter of discretion and judgement.</p> <p>Clarification of these matters within the Code would be welcomed.</p>
Question 11	Is there any aspect of the advertising section that is not required or anything which should be added?
	Current code OK.
Question 12	Should adverts for local authority political assistants appear in political publications and websites?
	<p>Use of political publications potentially excludes applicants and does not sit comfortably within the traditional role of support officers as politically impartial appointments. It should be treated with extreme caution.</p> <p>The placement of recruitment advertising in political publications and websites opens local authorities up to potential accusations of financial support to political organisations and discrimination.</p> <p>Current code OK.</p>

Question 13	Is there any aspect of the recruitment advertising section that is not required or anything which should be added?
	Current code OK.
Question 14	Given the emphasis given to supporting and raising awareness of the role of the councillor in the White Paper, is there any aspect of the section on councillors that is not required, or anything which should be added?
	<p>The current Code effectively prevents the representation of the personal views and activities of Members in their ward capacity. Any reference to Members is usually in their capacity as representatives of the whole Council (ie, Chairman of Council, Portfolio Holder, Chairman of Committee).</p> <p>One of the aims of the government is to reinvigorate local democracy by making the work of councillors more transparent and accountable to the public. The government also recognises that councils are not politically neutral organisations and healthy democracy depends on free and open debate. Publicising the role of the individual councillor on behalf of his or her residents at a local level should therefore be encouraged.</p> <p>While it may be necessary to create boundaries (see reference to ethical framework above), any revisions to the Code should allow councillors to make use of the council to publicise issues and views of local concern to their residents. This may be in the form of blogs or other information posted to the Council website or using publicity to raise awareness of a local issue.</p>
Question 15	Is there any aspect of the timing of publicity section that is not required, or anything which should be added?
	<p>The 'Purdah' period leading up to elections is designed to reduce the risk of local authority publicity affecting public opinion and the outcome of the poll. However, the 'Purdah' has a number of negative effects.</p> <p>Individual Councillors in positions of responsibility such as Elected Mayor, Leader or Portfolio Holder are held accountable to the public for their actions to a significant extent by publicity. While the Code makes some provision for such Members to be quoted in response to issues arising during the Purdah period, the general approach is to discourage publicity wherever possible.</p> <p>Discouraging direct reference to Members or their activities during the Purdah also undermines the aspiration of promoting and invigorating local democracy at the very moment when the general public is most likely to become engaged.</p> <p>Paragraph 42 of the Code also undermines the ability of a local authority in stimulating or debating issues surrounding referendums and petitions.</p> <p>So long as the different strands of opinion within a local authority are given comparable space, local authorities should not be discouraged within the Code from utilising the work of members in the period leading up to Elections, Referendums and Petitions.</p>
Question 16	Is there any aspect of the assistance to others for publicity section that is not required, or anything which should be added?
	Current code OK.