

<b>7 January 2016</b>		<b>ITEM: 7</b>
<b>Corporate Overview and Scrutiny Committee</b>		
<b>Review of Pre-Election Period Guidance</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> N/A	
<b>Report of:</b> David Lawson, Monitoring Officer		
<b>Accountable Head of Service:</b> Fiona Taylor, Head of Legal Services		
<b>Accountable Director:</b> Lyn Carpenter, Chief Executive		
<b>This report is public.</b>		

### **Executive Summary**

The period just before local elections when there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, the so-called 'pre-election' or 'purdah' period, is defined as beginning with the last date for publication of notice of the election.

'Purdah' is a political convention, which formally applies to government ministers and civil servants in central government during the period immediately before a general election.

During a pre-election period, ministers and civil servants will refrain from taking decisions or making policy announcements which are significant and may be politically contentious.

As with central government, 'business as usual' will always continue, but on certain issues a local authority may act cautiously and delay decision-making until after the election has concluded.

Government published a new Code of Recommended Practice on Local Authority Publicity in 2011. The Code is based around seven principles to ensure that all communications activity:

- is lawful
- is cost effective
- is objective
- is even-handed
- is appropriate
- has regard to equality and diversity
- is issued with care during periods of heightened sensitivity.

This last principle, to ensure special care is taken during periods of heightened sensitivity is of particular relevance during the pre-election period.

## 1. Recommendation(s)

- 1.1 That comments made by the Committee through the discussion of the current Pre-Election Period guidance are taken into consideration when the guidance for the 2016 elections is prepared, and reported to the Standards & Audit Committee as appropriate.

## 2. Introduction and Background

- 2.1 As indicated the pre-election period or 'purdah' is a political convention, which is designed to prevent actions being taken by government or local authorities in the run up to an election being used (or perceived to be used) to influence the outcome of an election. It has been the position of the Council that during this time the Council (staff and councillors) should, unless circumstances dictate otherwise, refrain from taking decisions or making policy announcements which are significant and may be viewed as politically contentious.
- 2.2 Councils will sometimes clarify this in the case of by-elections that the Council will not take significant decisions *relating to the ward where an election is taking place* during a pre-election period. While the business of the Council must continue, decisions on matters of policy and other issues such as large and/or key procurement contracts specifically relating to the ward where an election is taking place, are generally postponed until after the election, provided that the postponement is not materially detrimental to the Council's interests, an individual, the public purse or detrimental commercial interests.
- 2.3 However it should be remembered that this restriction on decision making is largely a political convention and that as confirmed in the Local Government Association' 2015 guidance. "Purdah: A short guide to publicity during the pre-election period" councils can, "continue to discharge normal council business (including determining planning applications, even if they are controversial)."
- 2.4 A Pre-Election Period Guidance note from prior to the May 2015 elections for Members and Officers is attached at **Appendix 1**.
- 2.5 This guidance note has been prepared in line with statutory obligations, which are referenced in the Local Government Association document entitled "Purdah: A short guide to publicity during the pre-election period" – published March 2015, which is attached at **Appendix 2**.

### **3. Issues, Options and Analysis of Options**

3.1 The Committee requested to review the application of the Pre-Election Period Guidance in Thurrock, which is explained in more detail below:

#### **3.2 Advice and guidance in relation to Press Releases**

- that all press releases will be signed off by legal and the Chief Executive during a pre-election,
- that in the vast majority of such releases a lead officer should be used instead of a Member;
- that where a Member is used for civic announcements or where there is a genuine need for a Member level response - such as an emergency situation or an important event beyond the Authority's control - in such special cases the Mayor can be used in line with the flexibility acknowledged in the code;

#### **Advice in relation to reports being referred to a Committee for decision-making**

3.3 The Council's day to day work will continue on a "business as usual" basis with decisions being made and services provided but the Council will seek to avoid consideration of, or publicity for, politically contentious issues during the pre-election period.

3.4 The basic principle for all officers is not to undertake any activity which would call into question their political impartiality, or could give rise to the criticism that public resources are being used for party political purposes.

3.5 Although local authorities are not under any legal restrictions on activity in the pre-election period, they should act with caution to reduce the risk of a challenge that a decision has been made on party political grounds rather than on its merits. They should also note that for publicity, pursuant to Section 2 of the Local Government Act 1986 as amended in 1988 councils, should "not publish any material which, in whole or in part, appears to be designed to affect public support for a political party" and that Section 43 of the Act makes clear that councils need to have regard for the code of recommended practice that supports the Act. As stated a new code of practice was published in 2011.

3.6 Generally there are some actions that the Council should make to avoid such claims, which include:

- to review all up and coming Key Decisions and re-schedule any particularly sensitive ones to a date outside the pre-election period;
- to make sure that no major consultations start or finish during this period;
- check that major procurement contracts are signed by the end of March;

- to ensure that members and officers are aware of the guidance on what they can and can't publicise, as outlined in **Appendix 1**.

### **How Thurrock's application of the Pre-Election Period Guidance compares with other local authorities**

- 3.7 Since purdah is a 'self-denying ordinance', it is within the power of local authorities to adopt their own version of the convention in the period leading up to local elections.
- 3.8 However, the application of purdah in local government can be more unpredictable than in central government. Southwark Borough Council indicates that:

*"Purdah can end up being treated very differently by different authorities. This can sometimes be justifiable because of local conditions, but clearer guidance would be welcome."*

- 3.9 As with central government, 'business as usual' will always continue, but on certain issues a local authority may act cautiously and delay decision-making until after the election has concluded.
- 3.10 There is an indication that some local authorities are concerned that decisions made during a pre-election period may be subject to an increased risk of challenge. Surrey County Council states:

*"There is no statutory restriction on the council's decision-making during the election campaign. [...] However...it may be that while the councils' decision-making can carry on other factors may well limit it...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."*

- 3.11 A challenge on this basis was made in the case of *R (on the application of Lewis) v Persimmon Homes Teesside Ltd (2008)*. The case was unsuccessful in the Court of Appeal, but it indicates the enhanced scrutiny which potential claimants may give to decisions made during a pre-election period, and may well provoke greater conservatism on the part of local authorities.
- 3.12 Although the application of the pre-election period guidance can vary between local authorities, Thurrock's guidance (attached at **Appendix 1**) is in line with other Essex local authorities – links to which have been provided in under the 'Background Papers' section of this report.

## **4. Reasons for Recommendation**

- 4.1 The Committee requested to review the application of the Pre-Election Period Guidance at Thurrock in order to ensure that any guidance issued to

Councillors and Officers is up to date with current policy, legislation, good practice and national guidance

- 4.2 The Committee are asked to review and comment upon the current Pre-Election Period Guidance, following which comments will be taken into consideration by the Standards & Audit Committee and Monitoring Officer when the guidance for the 2016 elections is prepared.

## **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 There has been no consultation undertaken in respect of this report.
- 5.2 Should the Committee decide to make a recommendation to amend the Pre-Election Period Guidance the comments will be fed back to Group Leaders and the Standards & Audit Committee.

## **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 The Guidance builds on the Council's good governance arrangements and reputation during pre-election periods.

## **7. Implications**

### **7.1 Financial**

Implications verified by: **Jonathan Wilson**  
**Chief Accountant**

There are no specific financial implications arising from the contents of this report.

### **7.2 Legal**

Implications verified by: **Paul Field**  
**Senior Corporate Governance Lawyer**

The Secretary of State for Communities and Local Government issued the Code of Recommended Practice on Local Authority Publicity, under the Local Government Act 1986 ("the Act") which came into force on 31 March 2011. The Code is recognised as the statutory guidance for local authorities to have regard to, about publicity during the purdah period just before local elections.

Local authorities are required by section 4(1) of the Act to have regard to the contents of the Code in coming to any decision on publicity. Section 6 of the Act defines publicity as "any communication in whatever form, addressed to the public at large or a section of the public". The Code therefore applies in relation to all decisions by local authorities relating to paid advertising and

leaflet campaigns, publication of free newspapers and newssheets and maintenance of websites – including the hosting of material which is created by third parties.

Nothing in the Code overrides the prohibition by Section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

This Guidance follows best practice and assists the Council to fulfil its statutory duty to have regard to national guidance about pre-election publicity.

### 7.3 **Diversity and Equality**

Implications verified by: **Rebecca Price**  
**Community Development Officer**

There are no specific diversity and equality implications arising from this report in so far that the Council must ensure that any guidance issued to Councillors and Officers is up to date with current policy, legislation, good practice and national guidance. It is also important to ensure that the contents are clear and concise and easily understood.

### 7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None.

### 8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Bevan Brittan, Going into "Purdah" – decision making in the pre-election period <http://www.bevanbrittan.com/articles/Pages/Purdah-pre-electionperiod.aspx>
- Tendring District Council, Pre-Election Period Publicity Guidance <http://democracy.tendringdc.gov.uk/akstendring/images/att2338.pdf>
- Southend Borough Council – Guidance in the Pre-Election Period <http://www.southendcdrp.co.uk/documents/Publicityinthepre-electionperiod.pdf>
- Herefordshire, [https://www.herefordshire.gov.uk/media/7924055/pre\\_election\\_guidance\\_2015.pdf](https://www.herefordshire.gov.uk/media/7924055/pre_election_guidance_2015.pdf)

## **9. Appendices to the report**

- Appendix 1 – Thurrock Pre-Election Period Guidance for Members and Officers (updated February 2015).
- Appendix 2 – Local Government Association, Purdah: A Short Guide to Publicity during the Pre-Election Period.

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