



Association of Council  
Secretaries and Solicitors

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By email  
To [publicitycode@communities.gsi.gov.uk](mailto:publicitycode@communities.gsi.gov.uk)  
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Dear Rosalind Kendler

Response to Publicity Code Consultation

I am responding on behalf of the Association of Council Secretaries and Solicitors to the above consultation. The Association (ACSeS) represents most directors/chief legal officers and monitoring officers in English local authorities, who are personally responsible for advising their authorities and councillors on the law applicable to local authority publicity and the application of the current Code of Recommended Practice on Local Authority Publicity.

ACSeS welcomes the approach of the Government in the revised draft towards simplification of the principles and content of the Code, and also towards giving recognition to the changes in communication methods due mainly to new technology.

Subject to specific points below, we accept the seven principles as representing the main relevant considerations for decisions relating to publicity.

**Lawfulness**

Whilst Section 2 of the Act is referred to in the introduction, it would bear repetition within the paragraphs of this principle, as it is the primary legal constraint applying to local authority publicity decisions.

**Cost effectiveness**

It would be more appropriate for the principle to refer to the cost being reasonable. Cost effectiveness implies measuring the cost with the outcome. The outcome of advertising cannot often be readily measured in a non commercial environment. The only practicable measurement is relating cost to the intended outcome. By way of example, the placing of statutory adverts (as frequently required by law) in local newspapers is often at exorbitant cost that cannot possibly be said to be cost effective. However, it would be seen as being reasonable as a means of meeting a statutory obligation.

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We would urge the wording of this principle be modified in order to ensure it can be of practical effect and to reduce the potential for conflict with the other principles. In paragraph 13 the inclusion of the word ‘disguised’ would seem to be unnecessary. Its inclusion implies that an overt method of subsidy would be permissible.

#### Objectivity

It is difficult to see what is being added in paragraph 15 by the words ‘but should avoid being perceived by readers as constituting a political statement.’ Provided the publicity complies with Section 2, these words are unnecessary and are likely to give rise to added difficulty, particularly as the words ‘political statement’ are not defined and probably cannot be defined with any simple clarity.

The first sentence of paragraph 16 is unworkable. Any information about a local authority’s own policies is likely to influence public opinion, however expressed. A national park authority may well promote the need for affordable housing. For it to explain why, in whatever language it uses, is likely to be in breach of this wording. The wording of the current code expresses the intention of this principle in unambiguous terms. *‘Any publicity describing the council’s policies and aims should be as objective as possible, concentrating on facts or explanation or both. ‘Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy,*

#### Even-handedness

It is not entirely clear in relation to paragraph 21, for example, that not only the party logo may be used by a member, but also the name of the political party to which the member belongs.

It would seem to be reasonable and sensible for any publicity referring to a councillor individually, to identify the political party of which they are a member, and for the Code to state this expressly.

Paragraph 25 would seem to be expressed in such wide terms as to be impracticable. For example, grants to many organisations may be used indirectly to issue publicity. The word ‘specifically’ might be included after ‘authorities’.

#### Appropriate use of publicity

Paragraph 26 may be drafted in too wide terms. Local authorities have no control over their contractors who might be disposed to lobby using their profits incurred from public contracts. The word ‘direct’ might be included before ‘expenditure’.

In paragraph 28, the quarterly limitation to newssheets does not appear to specifically exclude information provided in newssheet form for specific purposes, for example, to a community affected by flooding (when such newssheets might be provided daily or weekly.). A reasonable approach would be that such activity is not seeking to emulate a commercial newspaper, but there is scope for ambiguity. Presumably the intention is not to exclude the possibility of local authorities commissioning newssheets within a commercial newspaper, but again the wording creates ambiguity.

The wording *‘information for the public about the business, services and amenities of the Council or other local service providers’* is too restrictive. It would seem to prevent, for example, discussing future proposals with which the local authority might become involved which are not currently part of the authority’s business. The wording might also prevent publicity material about community activities (and individuals involved in community activity), or the ecology or geography or geology of the area, which would otherwise fit comfortably with the Big Society agenda. These concerns are expressed particularly by colleagues in national park authorities where such information is key to promoting understanding of the national park in the context of its geographical etc features.

The word ‘council’ in the last line of paragraph 28 should read ‘local authority’.

#### Care during periods of heightened sensitivity

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This heading is ambiguous as the intention is limited to pre election/referendum periods only. Could not the principle simply read 'be issued with care during pre election/referendum periods'? We are concerned that paragraph 34 does not clarify the position of consultations (which generally involve publicity that is integral or additional to the consultation process) during the pre-election period. The position is covered in central government guidance in the case of a Parliamentary General Election.

In paragraph 35, it may be appropriate to make it clearer that the example in the last sentence is limited to a referendum. It would not be appropriate for this example to be applied to an election.

I hope these comments are of assistance in finalising the Code.

Yours Sincerely

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ACSeS