



Local government: publicity code

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Local authorities in England must have regard to a code of recommended practice when making decisions on publicity matters. The code was first issued in 1988 under section 4 of the *Local Government Act 1986* and was revised in 2001. Following concerns about the impact of some publicly-funded council publications on the profitability of local newspapers, the Coalition's *Programme for government* pledged to introduce tougher rules "to stop unfair competition by local authority newspapers". The Government undertook a consultation exercise and a new draft code was debated and approved in both Houses, coming into force on 31 March 2011.

The new code seeks to prevent councils from publishing material which emulates commercial newspapers "in style or content." Coverage should not stray beyond the "business, services and amenities" of the authority. Rather more controversially, publication of any such newsheets should be no more frequent than quarterly. Critics have argued that there is little evidence that council newsheets represent unfair competition and that this level of prescription runs counter to the spirit of localism. Ministers contend that a healthy and critical local press is a vital aspect of localism.

The new code includes a provision relating to the use of lobbyists by local authorities. Other matters, which also featured in earlier versions of the code, include the cost-effectiveness of publicity material and announcements made during periods of heightened sensitivity (for example, the so-called "purdah" period leading up to elections). This note refers to these matters as well as the question of enforceability of the provisions of the code.

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1 Background

Local authorities are required to “have regard” to a statutory *Code of recommended practice on local authority publicity* when coming to any decision on publicity. The code is issued under section 4 of the *Local Government Act 1986*. Publicity is defined in section 6 of that Act as “any communication, in whatever form, addressed to the public at large or to a section of the public”.

The code was originally issued in 1988 and applied to authorities in England, Scotland and Wales. This included not only principal local authorities but also parish and community councils in England and Wales and police and fire authorities. A revised code, which applied just to principal authorities in England (county councils, district councils and London borough councils) was promulgated in 2001. The National Assembly for Wales issued a revised code for Welsh authorities in 2001.¹

Concerns about the possible impact of some publicly-funded council newssheets on the sales and advertising revenue of local newspapers have been aired for some years. The Labour Government had consulted in 2008 over revisions to the code² but no changes were implemented. The Coalition’s *Programme for government*, published in May 2010, included a commitment to “impose tougher rules to stop unfair competition by local authority newspapers.”³ Eric Pickles, Secretary of State for Communities and Local Government, announced the following month that the Government was minded to revise and tighten the code of recommended practice, “toughening up” the rules on council newspapers.⁴ A further announcement in August promised stronger guidance to stop “lobbying on the rates.”⁵

A consultation exercise was launched on 29 September 2010 and run until 10 November 2010.⁶ The Commons Communities and Local Government Committee published a report on the subject in January 2011.⁷ On 11 February, Grant Shapps announced by written statement that the Government was publishing its response to consultation and to the committee’s report⁸, and that a new draft code was being laid before Parliament.⁹ This was debated by the Seventh Delegated Legislation Committee in the Commons on 23 March 2011¹⁰ and subsequently approved in a deferred division on 30 March. The code was debated and approved by the House of Lords on 30 March.¹¹ It came into force on 31 March 2011.

¹ The Welsh Assembly Government has said that this is likely to be updated during 2011. See: <http://wales.gov.uk/publications/accessinfo/dnnewhomepage/governmentdrs/2010/4688466/?lang=en>

² DCLG, *Communities in control: real people, real power: code of recommended practice on local authority publicity: a consultation*, December 2008

³ The Coalition, *Our programme for government*, May 2010, p12

⁴ *Eric Pickles to stop ‘propaganda on the rates’ killing off local newspapers*, DCLG press release, 28 June 2010

⁵ *Eric Pickles: new measures to stop ‘lobbying on the rates’*, DCLG press release, 5 August 2010

⁶ DCLG, *Code of recommended practice on local authority publicity: Consultation*, September 2010

⁷ Communities and Local Government Committee, *Proposed code of recommended practice on local authority publicity*, HC 666 2010-11

⁸ DCLG, *Code of recommended practice on local authority consultation and the Communities and Local Government Select Committee report on the code: Government response*, February 2011

⁹ HC Deb 11 February 2011 c19WS. See also: *New publicity rules for councils*, DCLG press release, 11 February 2011

¹⁰ Seventh Delegated Legislation Committee, *Draft code of recommended practice on local authority publicity*, 23 March 2011

¹¹ HL Deb 30 March 2011 cc1305-1321

2 The new code

The new code can be found on the website of the Department for Communities and Local Government.¹² It replaces the two documents, published in 1988 and 2001 respectively, which applied to different types of authority. The code is built around seven principles. It states:

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.¹³

Two substantive changes were highlighted by ministers. Firstly, there is now specific reference to the **frequency, content and appearance** of local authority newsletters. Paragraph 28 of the code states:

Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.

Additionally, any publicity material must clearly be clearly identified on the front page as a product of the local authority (paragraph 30).

The second substantive change concerned the use of **lobbyists** by local authorities. Paragraph 26 states:

Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.

Robert Neill explained this further in debate:

The simple point is that it is a waste of public money—it is not a proper use of it—for local authorities, which are public bodies, to hire political lobbyists from commercial organisations to contact Ministers and Members of this House to seek to persuade them of a particular view, when in reality they already have rights of access...It is not appropriate that a third party makes a profit, in effect, from the public purse by making

¹² DCLG, *Code of recommended practice on local authority publicity*, 31 March 2011

¹³ *Ibid*, para 4

an approach that could be made directly. That is why we think that that goes beyond what is acceptable.¹⁴

3 Issues

Opposition spokespersons speaking in the Commons and Lords debates on the draft code disputed the assertion that local authority publications provided **unfair competition** to local newspapers. The CLG Committee had concluded that “very scant evidence” had been presented for the claim that local authority publications had contributed significantly to the decline of local newspaper revenue or sales. However, ministers said there was a good case for action to be taken in the light of “consistent representations” from the newspaper industry that certain council newspapers were creating unfair competition.¹⁵

The guidelines on **frequency of publication** caused some controversy. Chris Williamson, Shadow CLG Minister, said “It is not appropriate for the Government to meddle with the frequency with which local authorities distribute their newsletters.”¹⁶ The Government had emphasised in its response to consultation that research had indicated that the most popular frequency for publication of a newsletter was quarterly. In its view, this achieved the right balance between keeping the public informed about services whilst avoiding unfair competition.¹⁷

Critics argued that some of the more prescriptive elements in the code ran counter to the Government’s professed commitment to **localism**. Ministers argued that localism embraced other local institutions including a healthy and critical press.¹⁸

Opposition spokespersons expressed concern that the revised code could drive up the costs for councils of publishing **statutory notices**. Clive Betts, Chairman of the CLG Committee, said:

Statutory notices are a very expensive issue for many local authorities. Some authorities told us that the cost of publishing a fortnightly newspaper was cheaper than paying for statutory notices, so we should ask ourselves whether they are cost-effective. Who reads them? They are published in commercial newspapers and may be a source of revenue for them. In terms of value for money for local authorities, however, who reads about the road closures and the planning notices? We must find a better way to do it.¹⁹

He reiterated the Committee’s view that the publication requirements for statutory notices should be reviewed.

4 Enforcement

The explanatory memorandum to the code of recommended practice states:

¹⁴ Seventh Delegated Legislation Committee, *Draft code of recommended practice on local authority publicity*, 23 March 2011, c8

¹⁵ See, for example, HL Deb 30 March 2011 c1307

¹⁶ Seventh Delegated Legislation Committee, *Draft code of recommended practice on local authority publicity*, 23 March 2011, c11

¹⁷ DCLG, *Code of recommended practice on local authority consultation and the Communities and Local Government Select Committee report on the code: Government response*, February 2011, para 3.28

¹⁸ See, for example, Seventh Delegated Legislation Committee, *Draft code of recommended practice on local authority publicity*, 23 March 2011, cc4-5

¹⁹ , cc16-17

The Department's view is that there is no power in the 1986 Act to provide for any enforcement mechanism in response to any purported breach of the Publicity Code. If members of the public consider that an authority has failed to have regard to the Publicity Code, they should raise their concern with the local authority directly, or contact the authority's auditor.²⁰

The Lords Merits of Statutory Instruments Committee had considered this matter in its report on the draft code.²¹ The Committee quoted from a note by the DCLG on the powers available to an authority's auditors, and to its senior officers, to ensure that the authority acts lawfully. Nevertheless, the Committee expressed concern about the effectiveness or otherwise of such procedures in preventing abuses of the code.²²

Robert Neill, a CLG Minister, commented as follows on the legal status of the code:

It is a code, not an order or a set of regulations, so it does not contain binding requirements. However, because of the obligation to have regard to it, if a council is to not be challenged successfully in the courts or by its auditor on a departure from the code, that departure may be made only if there are reasoned and rational grounds. That is the importance of the status of the document and the reason for drafting the code in that way. That has been the nature of the rules on local authority publicity since 1986, and Governments of all parties have been content to operate in that regime.²³

²⁰ [Explanatory memorandum to the code of recommended practice on local authority publicity](#), para 8.23

²¹ House of Lords Merits of Statutory Instruments Committee, [Draft code of recommended practice on local authority publicity etc](#), HL 105 2010-11, March 2011, para 7

²² *Ibid*, para 8

²³ Seventh Delegated Legislation Committee, [Draft code of recommended practice on local authority publicity](#), 23 March 2011, c3