

Report to the Audit and Governance Committee



**Epping Forest
District Council**

Report reference: AGC-016-2009/10
Date of meeting: 30 November 2009

Portfolio: Leader of the Council

Subject: County and European Parliament Elections – June 2009

Responsible Officer: I Willett (01992 564243)
(Returning Officer)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations:

- (1) To note the report on the outcome of flyposting of election literature on election day; and**
- (2) To note action which will be taken to deal with this situation if it recurs.**

Executive Summary:

This report responds to the request made at the last Committee meeting (minute 22 refers) concerning unauthorised flyposting of election posters at various locations on election day. The report outlines what happened in this case and the action planned to prevent these practices in future.

Reasons for Proposed Decision:

The report is submitted for the information of the Committee.

Other Options for Action:

None.

Report:

1. The Returning Officer was asked at the last meeting to clarify the report contained in the minutes of the Corporate Governance Group meeting on 10 June 2009 (minute 16 refers) concerning election flyposting. The particular point raised was reference to 2 days' notice being required to be given to the person responsible.
2. Due to the considerable number of complaints received by the Returning Officer on election day morning, immediate steps were taken to remove as many of the illegally – posted elections signs as possible. Action was therefore taken by the Council's "Safer, Cleaner, Greener" team to remove these signs where this was possible at short notice. The Highways Authority is understood to have taken similar action.
3. What constitutes flyposting? There are three main types:

- (a) adverts for local events;
- (b) adverts for products and/or services; and
- (c) posters from pressure groups or political bodies.

4. The legislation used for the control of flyposting is the Town & Country Planning Act (TCPA) 1990 and the Highways Act (HA) 1980. The TCPA treats fly-posting as though it were an illegal advertisement and it is therefore an offence to advertise without seeking relevant consent. This is an offence punishable, on conviction, in the Magistrates' Courts. However, rather than taking this protracted approach, the TCPA provides powers for the authority to remove or obliterate the poster subject to:

- (a) the giving of at least two days notice where the identity of the person or organisation who placed the poster is known or can be identified after reasonable enquiry; or
- (b) without such notice where the conditions in (a) above do not apply.

5. There are no powers to recover expenses where this action is taken.

6. The Highways Act 1990 provides similar powers to the local highways authority to either prosecute or immediately remove any poster, advertisement etc which is on the public highway or any equipment related to the highway. There is no requirement in the HA for giving two days notice of the intention to remove.

7. It should be noted that complaints relating to flyposting concerned two political parties. In discussions with one of these political parties, it was alleged that its supporters were not responsible for the flyposting but those of its opponents.

Future Action

8. In future election advice to all agents, a reminder will be issued in an attempt to prevent a recurrence.

9. The two day notice procedure could be implemented in future but it needs to be borne in mind that if flyposting occurs on or shortly before polling day, the offending items will not be removed as quickly as the public might wish. The ability to prosecute may be the most effective deterrent if a responsible person or organisation can be identified as responsible but this may not satisfy the wish of the public to have offending signs removed quickly.

10. On balance, it is considered that the desire of the public to have offending material removed will make it difficult to sustain a position with complainants that they must wait two days before they disappear.

11. In the impending review of delegated authorities within the Council's Constitution, it is proposed to review the authorisation of officers to use the powers available under the TCPA to ensure that all officers whose duties require them to deal with issues such as flyposting and illegal advertising are authorised to use the powers which are available. Discussions will also be held with the County Council as the highways authority with a view to putting into place effective arrangements for them to react to complaints or for the County to authorise this Council's officers to act on their behalf.

Resource Implications:

In the case of immediate or notified removal, all costs are met by the Council. In the main these are already included within existing operational budgets. If a prosecution is successfully mounted then all the Council's costs will be sought.

Legal and Governance Implications:

Incorrectly produced election material is potentially an offence under the Representation of the People Acts. Flyposting is a contravention of The Town & Country Planning Act 1990 and The Highways Act 1980

Safer, Cleaner and Greener Implications:

The Council's neighbourhood Officers and Planning Enforcement Officers should be empowered to use the relevant legislation. The Council's Environment Response Unit and the County Council's Highways Ranger Service are both able to deal with illegal flyposting, providing a rapid solution to any justifiable complaints received.

Consultation Undertaken:

The Returning Officer held discussions with the Police, one election agent and other Councillor's over the flyposting which occurred on election day and with the Director of Environment & Street Scene regarding flyposting policy.

Background Papers:

None.

Impact Assessments:Risk Management

Flyposting of election material does not form part of any electoral risk assessment. The risk to the election process derives from the possibility of corrupt or illegal practices by candidates or agents or through challenges to the actions of the Returning Officer or his staff.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

Advice on flyposting will be issued to all electoral agents, irrespective of any party affiliation.