

Elections and good race relations

Guidance for local authorities in England and Wales
from the Equality and Human Rights Commission

May 2009

**Equality and
Human Rights
Commission**

equalityhumanrights.com

Preface

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006, which took over the responsibilities of the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission.

The Commission is the independent advocate and regulator for equality and human rights in Britain. Under the Act it is given the responsibilities of promoting good relations between people, and human rights.

The Commission's responsibility to promote good relations covers all the seven equality mandates set out in the 2006 Act. However, public bodies are currently only covered by a duty to promote good relations on grounds of race.

A wider duty to foster good relations between different diversity groups is set out in the current Equality Bill but will not come into force before 2011 at the earliest.

The Commission will consult with interested parties in the wake of the elections this summer on how an approach like the one set out in this guidance note might be suitably developed to take account of this wider responsibility for future election campaigns.

INTRODUCTION

The EHRC has produced this briefing in response to requests from local councils, schools, and community organisations for advice on how to maintain and promote good race relations during an election period. The briefing explains the relevant law and suggests some practical steps that councils and community groups might take in three areas:

- challenging false or misleading information;
- use of council premises for meetings; and
- tackling campaigns of racist harassment and abuse

Many councils and community groups already have measures in place and will be working through crime and disorder partnerships or local strategic partnerships. The EHRC's main recommendations are that councils and community groups should:

- plan their strategies in advance;
- think broadly about the laws available to them, and coordinate use of different laws – civil, criminal, human rights and constitutional; and
- collect data and information, which may be used either to rebut misleading claims or as part of the evidence in support of civil or criminal proceedings.

The information in this briefing is not an authoritative statement of the law and should be regarded only as advice on good practice. Councils are strongly urged to seek legal advice if they find themselves in a difficult situation, or if problems arise.

Extracts from the relevant statutory laws are set out in the Appendix.

Further reading:

- Guidance from the Local Government Information Unit and available at

www.lgiu.gov.uk/briefing-detail.jsp?&id=2143&md=0§ion=briefing

CHALLENGING FALSE AND MISLEADING INFORMATION DURING ELECTION PERIODS

During an election period, all kinds of information, statistics, claims and assertions will be thrown at the general public to influence their votes.

Some untruths councils might have to contend with include the following:

- inflated figures for the number of migrants or asylum seekers and refugees, and for the costs to the public;
- claims that people from ethnic minorities, such as Gypsies and Travellers, migrant workers or Black members of a local community, commit more crimes and that the police turn a blind eye to this;
- claims that the police and other public authorities do not treat racist attacks on white people seriously;
- the suggestion that all Muslims support terrorism, and want to impose their culture and religion on others; and
- claims that ethnic minorities receive more favourable treatment than deprived white communities, when public money is being distributed.

The Local Government Act 1986 prohibits local authorities to issue publicity designed to support a political party or persons identified with a political party or publicity which promotes or opposes a point of view on a politically controversial question that is identifiable with the view of one political party and not another.

Councils must also pay attention to the Code of Conduct on Local Government Publicity, drawn up by central government.

Is there anything councils can do about false or misleading information that political parties might be putting about?

Yes. Councils have a broad discretion under the Local Government Act 2000 to take action to improve the welfare of local communities.

Councils also have duties under the Race Relations Act to promote equality of opportunity and good race relations, which they must duly consider when exercising their discretion to improve welfare.

The Code of Conduct on Local Government Publicity also makes it acceptable for councils to respond to events during an election period, as long as their responses are factual and not party political.

In practice, this means councils can, and should, refute any untrue or misleading information circulating in the area that could lead to racial hatred or damage relations between people from different racial groups.

For example, if it appears that election debates in local communities may be influenced by exaggerated, false or misleading statements – such as a claim that an overwhelming number of asylum seekers or migrants will be dispersed to the area – public authorities should act quickly and effectively to rebut them and make the facts clear to the public.

A strategy of instantly publishing refutations of false information – but being careful not to attribute the information to any political party – would help to reduce the mistrust and prejudice that is being sown, and to encourage more open public debate. Councils will need to have relevant facts and figures ready to refute any false claims that might be made during an election.

In exceptional circumstances, where evidence from councils – and community groups – demonstrates that information is deliberately false or misleading, there might be also be evidence of an intention to incite racial hatred, and it might be necessary to refer the information to the police – see the example of incitement to racial hatred below.

The Code of Conduct also permits councils to take steps to promote positive attitudes to equality of opportunity and the EHRC recommends that councils and community groups publicise positive

examples of projects and initiatives that have helped to promote good race relations in the local community. For example, they might:

- publish accurate information about ethnic minority communities in the area, including the true number of any asylum seekers;
- explain what the council is doing to meet the race equality duty in the way it carries out its functions; and
- use local media to publicise initiatives that have brought all sections of the community together and benefited them equally.

Councils should make sure they do not respond to controversial matters in ways that make it possible to identify individuals, or give money to campaigns aimed at winning public support for a particular policy.

The Local Government Information Unit has issued a briefing for councils, *The Right Side of the Law: Campaigning with confidence*, which gives advice on the protocol for publicity in the run-up to local elections.

USE OF COUNCIL PREMISES

The Representation of People Act provides that all candidates who may lawfully stand as candidates in local and general elections have a right to use rooms in schools or publicly-funded premises for public meetings. The rooms must be provided free of charge, but are subject to the conditions listed below.

- The meeting must be open to all members of the public, and not restricted to ticket holders or members only.
- The purpose of the meeting must be to advance the candidate's prospects of victory at the election.
- The room must be suitable.
- The room must be used at reasonable times, not causing any disruption to the activities it is normally used for, and the candidate must give reasonable notice of wishing to use it.
- Candidates must pay for the costs of heating, lighting, and cleaning the room, in preparation for the meeting, and for restoring it to its usual condition after the meeting.
- Candidates must pay for any damage done to the premises.

Can councils refuse candidates permission to use rooms in schools and elsewhere for public meetings during an election?

No. Councils have no discretion to refuse a candidate a room, provided the statutory conditions are met; for example, the room is for a public meeting, the purpose of the meeting is to advance the candidate's prospects of victory, and reasonable notice has been given.

Would a room in an ethnically diverse area be 'suitable' if the candidate is advocating policies that promote racial hatred or unlawful racial discrimination?

In law 'suitability' is determined by the nature of the room as a place for holding public meetings and not by the person who applies to use

the room. 'Suitability' should be assessed when the list of rooms is being drawn up and not when a request is received to use them. If a school is in an area where there have been racial tensions between communities, or racist incidents, the council or LEA may have reasonable grounds for believing that the meeting could cause disruption or offence, and should consult the chief constable of police.

Similarly members of the public or community representatives who fear for their safety should the meeting take place, should report their concerns formally to the police.

What if the meeting is a private rally of supporters and party activists?

It is the candidate who has the right to use rooms, not the political party. If there is no candidate, or if the candidature is not lawful, the council is under no duty to provide a room.

In past years, election meetings held by some political parties were open only to their members and sympathisers; members of the public were excluded. It is a matter of principle that public meetings held in publicly funded spaces should be open to all members of the public, whether or not they agree with the candidate's or party's views. Members of the public should be able to attend a public meeting, question the candidate and reach their own conclusions on the merits of the arguments they have heard.

Meetings of political parties that only allow selected members to attend and otherwise exclude members of the public are not public meetings. The council is under no duty to provide rooms for private meetings or rallies.

Would it not be a breach of the Human Rights Act and the race equality duty to allow rooms to be used by candidates who advocate racial hatred and discrimination?

The starting point must be the RPA, which gives anyone standing lawfully as a candidate in a local or general election the right to use rooms in schools or publicly funded premises for public meetings.

The RPA does not give councils or LEAs discretion to distinguish between candidates, or to refuse rooms to candidates whose political beliefs undermine the rights of others. Provided the candidature is lawful, and the conditions of the RPA are met, the council must provide a room to candidates under the RPA.

Any conflict between the council's duties to protect people from racial hatred and discrimination and its duties to guarantee free speech and the electoral rights of all lawful candidates is resolved by the criminal law. In other words, if a candidate's words or actions are likely to incite racial hatred, or lead to other criminal acts, then his or her rights may be restricted by the police, who may decide that the meeting presents a risk to public order. Councils and the police would not respond just to attempts by others to provoke violence or disorder because of their perception of a candidate's views, but would act in respect of a candidate as a result an objective assessment of that candidate's words and actions.

The race equality duty applies when the council exercises powers or discretion, but not when it must comply with other statutory duties. Since it must provide a suitable room under the RPA upon request to a lawful candidate, the race equality duty does not apply.

GOOD PRACTICE RECOMMENDATIONS

What evidence would be needed to show that the purpose of the meeting might not be to promote the candidate's prospects at the election, or that it might not be genuinely open to the public?

The council is under no duty to provide a room for private meetings or rallies. Councils should gather as much information as possible to ensure the legitimacy of the meeting under the RPA. For example:

- Is the meeting restricted to ticket holders or members only?
- Are party members or sympathisers from outside the area likely to be brought in to fill the meeting? (As they will not be eligible to vote, their presence in large numbers would raise doubts about the real purpose of the meeting.)
- Is there information about the candidate's conduct at previous meetings?

Can permission to use a meeting room include terms and conditions for its use?

Yes. Councils can include terms and conditions in their agreements with candidates and political parties. If they have any concerns about the true purpose of the meeting (see below), or its possible implications for public order, councils may wish to consider the following criteria:

- Candidates or the political party should provide proof of a valid insurance policy for damage to the premises.
- Alternatively, they must put down a (refundable) deposit for the room.
- Candidates or the political party should permit observers, to check for compliance with any conditions, or to monitor speeches. Speech that incites racial hatred may be used as part of the evidence to justify a refusal or restriction by the police under the Public Order Act in the future.

A council's concerns about the true purpose of the meeting may be based on the following evidence:

- the candidate's or party's past conduct at election meetings (or meetings held outside election periods);
- the ethnic and racial composition of the local population;
- if an elected member, the candidate's acts, decisions and conduct while in office, particularly in relation to racial equality;
- racist incidents in the area;
- relations between different sections of the local community;
- experiences that teachers, pupils, parents and community organisations might have had of the candidate or party;
- advice from the local police force; and
- evidence, based on close work with community groups and the police, that the meeting is likely to incite racial hatred or result in other criminal acts – this is most likely to be done through local crime and disorder partnerships or local strategic partnerships

What is the best way of obtaining information about the candidates or their political parties?

Councils should ask applicants to let them know how they intend to publicise the meeting, and who is expected to attend.

Other useful information (though this would need more research) might include:

- the areas where particular political parties are active;
- the kinds of messages they are putting out in leaflets, or through the local press; and
- the issues they are campaigning on, and the effect this is having on relations between communities from different ethnic and racial backgrounds.

Councils may usefully have observers at meetings, to make sure the terms and conditions of the hire of the room are observed. If the

terms are not observed (see above), this could be a reason for imposing conditions in the future or for consulting with the police on fears for public order.

Do the same considerations apply outside an election period?

Councils only have a duty to provide free accommodation during an election period. At other times, different councils have different policies: some hire premises out to political parties for public meetings, others don't.

A blanket ban on the use of premises by a particular party or candidate is likely to be unlawful. Councils should consider each application on its merits, and balance their responsibilities under the different laws. The same considerations will apply as during an election period. For example, is there evidence that the meeting will result in crime or disorder, or that it might undermine the rights of others, such as the right to privacy or freedom of thought, conscience and religion? Have there been any racist incidents in the area? Are there racial tensions between local communities?

Whenever a council considers setting aside a right under the Human Rights Act, it should be able to show, on each occasion, that:

- it has reached its decision after careful consideration;
- the decision is based on evidence;
- the decision is necessary to prevent crime or disorder, or otherwise to protect the rights and freedoms of others; and
- the decision is proportionate.

USING THE CRIMINAL AND CIVIL LAW TO DEAL WITH RACIST ACTIVITIES

Past experience shows that election campaigns which focus on particular issues or groups, such as asylum seekers, migrants, Gypsies and Travellers or Muslims can sometimes lead to racial tensions and hostility in an area, and, in extreme cases, harassment, abuse and a general breakdown in public order.

Incitement to racial hatred is not the only law that may be used to tackle racist behaviour. In some situations other criminal acts may be committed, such as actual or grievous bodily harm, common assault, criminal damage and arson and harassment. Local councils also have powers under the civil law and, in some cases, it might be easier to use these powers than rely on the criminal law, since the criminal law requires proof of an intention or of reckless behaviour, and the standard of proof is higher (beyond reasonable doubt).

However, we recommend the following.

- Civil law should not be used as a substitute for criminal law where an offence has been committed.
- The evidence must be competent and reliable, whichever remedy is pursued. Usually the evidence will come from a victim. However, some victims might choose, for whatever reason, not to complain to the police or make statements. Victims should be given the support they need, and alternative sources of evidence considered.
- Close cooperation between the council, police, CPS and community groups; this will normally be achieved through local crime and disorder partnerships or local strategic partnerships.

What follows is a summary of some the relevant criminal laws. It is not an exhaustive list, though, and does not include the more commonly known offences, such as assault, actual bodily harm,

grievous bodily harm or criminal damage. These offences remain important and should never be overlooked or ignored.

Decisions on whether to prosecute are made by the Crown Prosecution

Service (CPS), after a person has been charged by the police. A complaint commonly made in the past is that the police and CPS refused to prosecute for incitement to racial hatred and fail to pursue other offences. By producing this summary list, it is hoped that councils, but more particularly community groups, will be better able to help the police and the CPS identify the most appropriate charges.

Public Order Act 1986

Riot [section 1]

This offence may be committed when 12 or more people, present together, use or threaten unlawful violence for a common purpose, and their conduct (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety.

The maximum sentence is 10 years' imprisonment.

Violent disorder [section 2]

This offence may be committed when 3 or more people, present together, use or threaten unlawful violence, and their conduct (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety.

The maximum sentence is 5 years' imprisonment.

Affray [section 3]

This offence is committed when a person uses or threatens unlawful violence towards another person, and his or her conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety.

The maximum sentence is 3 years' imprisonment.

Fear or provocation of violence [section 4]

This offence may be committed when a person:

- a. uses threatening, abusive or insulting words or behaviour towards another person, or
- b. distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting.

To be guilty of the offence, a person must intend to cause that other person to believe that immediate unlawful violence will be used against him or another person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Maximum sentence is 6 months' imprisonment or £5000 or both.

Intentional harassment [section 4A]

This offence may be committed when a person:

- a. uses threatening abusive or insulting words or behaviour or disorderly behaviour, or
- b. displays any writing sign or other visible representation which is threatening abusive or insulting.

To be guilty of the offence, a person must intend to, and does, cause another person harassment, alarm or distress.

Note. This section was introduced in 1994 to deal with racial harassment, but race is not mentioned, in order not to present prosecutors with the difficulty of proving beyond reasonable doubt that the motivation was racial.

Maximum sentence is 6 months' imprisonment or £5000 fine or both.

Harassment, alarm or distress [section 5]

This offence may be committed when a person:

- a. uses threatening, abusive or insulting words or behaviour or disorderly behaviour, or
- b. displays any writing, sign or other visible representation which is threatening abusive or insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress.

To be guilty of the offence, a person must intend his or her words or behaviour, or the writing, sign or other visible representation to be threatening abusive or insulting or is aware that it may be threatening abusive or insulting or intends his or her behaviour to be disorderly or is aware that it may be disorderly.

Maximum sentence is £1000 fine.

Unlike incitement to racial hatred, the permission of the Attorney General is not needed to prosecute these offences.

Incitement to racial hatred [sections 17 – 19]

This offence may be committed when a person:

- a. uses threatening, abusive or insulting words or behaviour; or
- b. publishes or distributes or displays threatening, abusive or insulting written material.

To be guilty of the offence, a person must either intend to stir up racial hatred, or having regard to all the circumstances, racial hatred is likely to be stirred up.

Racial hatred is defined as 'hatred against a group of persons defined by reference to colour, race, nationality or ethnic or national origins.'

There is a separate offence of incitement to religious hatred in England and Wales, but Jews and Sikhs are 'racial groups' for the purposes of the Act and so are covered by the provisions dealing with racial hatred as well; Muslims, Rastafarians or Christians are not.

Muslims are increasingly becoming a target of 'hate speech'. In some circumstances, the argument can and should be made that the intention behind the anti-Muslim sentiment is to incite hatred against a particular racial group. See case example below.

A prosecution for incitement to racial hatred may only be brought with the consent of the Attorney General.

Local authorities and community groups may have a significant role to play in providing advice or expertise on the following:

- the effect that the words or behaviour will have in a particular area;
- the state of race relations in a specific locality;
- the susceptibility of a particular community or section of the community to be stirred up by such words or behaviour, especially where the words or behaviour appear to be directed at a religious group; and
- in a specific case, whether certain words were insulting.

Example of incitement to racial hatred

On October 2002 a sheriff in Glasgow found a man guilty of inciting racial hatred by delivering hundreds of leaflets on behalf of the BNP through doors in a predominantly Muslim area of the city. This is an extract from the sheriff's verdict:

The leaflet warned of a deteriorating situation in Pollockshields between white and Muslim members of the community, which situation was said to reflect a violent trend already seen in the northern towns of England.

It was clear from the evidence that the information contained in the leaflet was substantially inaccurate. On the contrary, the evidence was that substantial efforts had been made in Pollockshields by all sectors of the community to promote good race relations. This was the evidence of local people who had lived in Pollockshields for many years; local community councils, the West of Scotland Council for Racial Equality and the Strathclyde Police.

That being so the contents of the leaflet were insulting and abusive towards the community in Pollockshields where a high percentage of the community were Black Muslims of Pakistani origin. The selective distribution in Pollockshields of inaccurate and threatening material containing anti-Muslim sentiment was clearly aimed at provoking ill-feeling and hostility towards the Pakistani community there.

Racial and Religious Hatred Act 2006

This makes it an offence in England and Wales for a person to use, display or broadcast threatening words or behaviour intended to stir up hatred against groups of people defined by their religious belief or lack of religious belief.

There is an exemption for 'expressions of antipathy, dislike, ridicule, insult or abuse of particular religions'.

As with the offence of incitement to racial hatred, those found guilty can be imprisoned for up to 7 years or fined and a prosecution may only be brought with the permission of the Attorney General.

Crime and Disorder Act 1998

Racially or religiously aggravated offences

An offence is racially or religiously aggravated if:

- a. at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim ... hostility based on the victim's membership (or presumed membership) of a racial or religious group; or
- b. the offence is motivated by hostility towards members of a racial or religious group based on their membership of that group

Offences that may be racially or religiously aggravated include:

- Common assault
- Actual bodily harm
- Grievous bodily harm
- Malicious wounding
- Criminal damage
- Fear or provocation of violence (Public Order Act)
- Harassment or alarm
- Harassment (Protection from Harassment Act 1977)

Racially or religiously aggravated offences may be committed if damage or offensive graffiti is caused to places of worship, homes, community buildings, rubbish is dumped (racially or religiously aggravated criminal damage) or individuals are subjected to racist attack (racially or religiously aggravated assault). Sentences may be increased by:

- Common assault – maximum 2 years
- Actual bodily harm – maximum 7 year
- Grievous bodily harm – maximum 7 years
- Malicious wounding – maximum 7 years
- Criminal damage – maximum 14 years
- Fear or provocation of violence – maximum 2 years
- Harassment or alarm – maximum 2 years
- Harassment (Protection from Harassment Act 1977) – maximum 2 years
- Anti-Social Behaviour Order (ASBOs) [section 1]

An ASBO may be obtained by a local authority or the police in respect of a person who has acted in an anti-social manner that caused or was likely to cause harassment, alarm or distress to one or more people not from the same household as himself or herself, and the order is necessary to protect people in the local authority area where the harassment, alarm or distress was caused, or was likely to be caused, from further anti-social acts.

The application is made to a magistrates' court.

ASBOs may be useful in dealing with low level harassment or nuisance; they are increasingly applied for by local authorities and the police, but should not be used as a substitute for other, more serious criminal offences, such as racially or religiously aggravated assault or criminal damage. In some cases the application for an ASBO is parallel with or subsequent to a conviction.

Examples of ASBOs

- A teenager who threatened, racially abused and insulted his victim was sentenced to an ASBO. His second offence of racial abuse was deemed so serious by the magistrate that he took the unusual step of implementing the order without consulting the local authorities or the police. The ASBO, which was made for five years, was given after he was convicted of using threatening, abusive or insulting words or behaviour that

caused racially aggravated harassment, alarm and distress to his female victim. The order banned the teenager, who was also sentenced to three months' detention at a young offenders' institution, from approaching, speaking to or at his victim, or going within 100 metres of her or her family home, until October 30, 2008.

- A 15-year-old youth, was convicted for a racially motivated public order offence, following an incident when he shouted racist abuse at a businessman and his wife, who owned a shop. The victim and his family, who owned a shop, had suffered years' of racist abuse and insults, including taunts, graffiti and criminal damage. The youth was given a six-month supervision order. Following sentence, Northumbria Police and Sunderland Council's ASBO unit jointly applied for an ASBO, to stop the youth from causing alarm, harassment or distress to anyone. The order, which lasts for two years until December 2006, prevents him from taking part, alone or with others, in activities that are likely to cause harassment, alarm or distress.

Protection from Eviction Act 1977

Unlawful harassment of a residential occupier [section 1]

This offence may be committed when a person:

- a. does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
- b. persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence.

A person is guilty of this offence if he or she intends to make the residential occupier leave the premises or to cease communal facilities and services.

This law may be used to tackle racist behaviour, particularly on estates, which is designed to harass and intimidate individuals, but

does not amount to public order offences or to racially or religiously aggravated offences; for example, when people are repeatedly subjected to racist leafleting, abuse, graffiti, dumping of rubbish or noise.

Malicious Communications Act 1988

Sending letters with intent to cause distress [section 1]

This offence is committed when a person sends another person a letter or article containing an indecent or grossly offensive message, a threat or information, which the sender knows to be false.

A person is guilty of the offence if he or she intends to cause distress or anxiety to the recipient. Race hate mail could be prosecuted under this law.

Maximum sentence is £2 500 fine.

Telecommunications Act 1984

Obscene, offensive or annoying telephone calls

This offence may be committed when a person:

- a. Sends by telephone a message or other matter that is grossly offensive or indecent, obscene or menacing in character, or
- b. sends by telephone a message he or she knows to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to another, or persistently makes use of the telephone system for that purpose.

This offence was used to convict a caller from the British National Party (BNP), who made repeated calls of a grossly offensive racist nature to an Asian man.

Maximum sentence is £1000 fine.

The limitation of both these offences is that they can only be invoked when the sender or the caller can be identified.

Dangerous Dogs Act

Dogs are sometimes used to intimidate and harass. Under the Dangerous Dogs Act, a local authority or police may apply to the magistrates' court for the destruction of a dangerous dog.

RECOMMENDATIONS

It is recommended that racial equality councils, community groups and local authorities act proactively to monitor and collect data on increases in racial tensions. In particular, they could work together to make sure that individual victims or residents:

- record details of time, date, and place;
- identify witnesses;
- collect details about the incident, such as who said what, who did what,
- and descriptions;
- report racist incidents to the police; and
- collect centrally all complaints and monitor outcomes, especially when decisions are made not to prosecute.

CIVIL ACTION BY LOCAL COUNCILS

General powers

The Local Government Act 2000 gives local councils a general power to institute proceedings when they ‘consider it expedient for the promotion or protection of the interests of the inhabitants of their area to do so’ (section 222).

Councils also have a power under the Act to ‘do anything which they consider is likely to promote or improve the economic and social wellbeing of their area for the benefit of the whole or any part of a local authority’s area or all or any persons resident or present in a local authority’s area’.

In exercising these, powers councils must have regard to the race equality duty (Race Relations Act, section 71).

Listed below are some of the civil actions local councils might take.

- **Noise nuisance** Local authorities have the power to serve a notice on the perpetrator to refrain from causing further nuisance, and to prosecute him or her for breach of the notice. Injunctions may also be obtained to stop noise or seize equipment. Complaints should be made to the department of environmental health.
- **Dumping of rubbish** Racists might dump rubbish as part of a campaign of harassment and intimidation. The local authority has power to serve notices, to prosecute and/or to seek an injunction.
- **Trespass** Local authorities may exclude perpetrators of harassment and abuse from council premises, with the result that they could only enter as trespassers. In such circumstances the local authority could obtain an injunction to prohibit entry.
- **Dogs** Action may be taken for breach of a byelaw when a dog is kept off a lead. In some situations the conditions in which the dog is kept or used could constitute a public or statutory nuisance and the local authority could use its powers to serve notices, prosecute and/or seek injunctions.

Specific powers

As housing providers, local councils also have specific powers to evict tenants for breach of tenancy conditions not to cause a nuisance or annoyance to neighbours.

Under section 144 of the Housing Act 1996, local councils can apply to the court for an order enabling them to evict a tenant, when the tenant or a person living or visiting the tenant's home has been guilty of conduct causing or likely to cause a nuisance or annoyance to anyone residing, visiting or otherwise lawfully present in the area.

Under section 152 of the Housing Act 1996, local councils may apply to the court for an injunction to prohibit a person from engaging in or threatening to engage in conduct causing or likely to cause nuisance or annoyance to anyone residing in or visiting or otherwise lawfully

present in a council house or flat. The court will only grant an injunction if it is satisfied that the respondent has used or threatened to use violence, and there is a significant risk of harm to a person or persons if the injunction is not granted.

Under section 1 of the Protection from Eviction Act 1977, it is an offence to evict someone unlawfully from residential premises. It is also an offence for someone intent on causing a person to give up all or part of residential premises to do anything that interferes with the peace or comfort of the occupier of the house or flat.

Normally the local authority will initiate prosecution for harassment and unlawful eviction. The maximum sentence for this offence is imprisonment for up to two years or a fine or both.

APPENDIX

LOCAL GOVERNMENT ACT 1986

27 (1) In section 2 of the [1986 c. 10.] Local Government Act 1986 (prohibition of political publicity by local authorities), for subsection (2) (matters to be considered in determining whether material prohibited) there shall be substituted —

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters —

- a. whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;
- b. where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

LOCAL GOVERNMENT ACT 1972 (England & Wales)

222 (1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area-they may prosecute or defend or appear in any legal proceedings and in the case of civil proceedings may institute them in their own name, and

LOCAL GOVERNMENT ACT 2000 (England & Wales)

- 2 (1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects-
- a. the promotion or improvement of the economic well-being of their area,

- b. the promotion or improvement of the social well-being of their area, and
- c. the promotion or improvement of the environmental well-being of their area.

(2) The power under subsection (1) may be exercised in relation to or for the benefit of

- a. the whole or any part of a local authority's area, or
- b. all or any persons resident or present in a local authority's area.

(3) In determining whether or how to exercise the power under subsection (1), a local authority must have regard to their strategy under section 4.

(4) The power under subsection (1) includes power for a local authority to

- a. incur expenditure,
- b. give financial assistance to any person,
- c. enter into arrangements or agreements with any person,
- d. co-operate with, or facilitate or co-ordinate the activities of, any person,
- e. exercise on behalf of any person any functions of that person, and
- f. provide staff, goods, services or accommodation to any person.

(5) The power under subsection (1) includes power for a local authority to do anything in relation to, or for the benefit of, any person or area situated outside their area if they consider that it is likely to achieve any one or more of the objects in that subsection.

REPRESENTATION OF THE PEOPLE ACT 1983

Between the calling of a general or local election and the day before the poll, all candidates have the right to use rooms in schools or publicly-funded premises to hold meetings. The rooms must be provided free of charge, but are subject to the conditions listed below.

- The meeting must be open to all members of the public, and not restricted to ticket holders or members only.
- The purpose of the meeting must be to advance the candidate's prospects of victory at the election.
- The room must be suitable.
- The room must be used at reasonable times, not causing any disruption to the activities it is normally used for, and the candidate must give reasonable notice of wishing to use it.
- Candidates must pay for the costs of heating, lighting, and cleaning the room, in preparation for the meeting, and for restoring it to its usual condition after the meeting.
- Candidates must pay for any damage done to the premises.

The council and the local education authority (LEA) must keep a list of suitable rooms in schools and elsewhere, both inside and outside the electoral area, that candidates are entitled to use. Candidates and their agents should be able to inspect the list at reasonable times.

Any questions as to the use of school rooms or when they can be used will be resolved by the Secretary of State for the Department for Children, Schools and families during general and local elections, and by the LEA during elections for the European Parliament.

RACE RELATIONS ACT 1976

The Act provides protection from less favourable treatment on grounds of race, colour, nationality or ethnic or national origins in

specified areas, for example, employment, provision of services and the exercise of public functions.

Section 71 of the Act gives public authorities, including councils, schools and other educational institutions, a general duty to promote race equality when carrying out of their functions. This means they must pay due regard to the need to:

- eliminate unlawful racial discrimination;
- promote equality of opportunity; and
- encourage good race relations.

Public authorities also have specific duties, to help them to meet the general duty. In particular, public authorities must publish a race equality scheme, which sets out their arrangements for assessing the likely effects of proposed policies on the promotion of race equality, and for monitoring their policies and functions for any adverse effects on particular racial groups, and consulting the public about their policies.

The race equality duty does not override other laws or modify other duties that public authorities are bound by. But the race equality duty does apply where public authorities exercise powers and discretions and they must be able to justify any acts, or any failures to act, that do not meet the duty.

HUMAN RIGHTS ACT 1998

The Human Rights Act 1998, which applies to all public authorities in Britain, sets out fundamental rights and freedoms. With certain limited exceptions, public authorities must make sure their actions are compatible with these rights. Not all the rights protected in the HRA are absolute and, in certain circumstances, councils may have to take positive steps or decisions to prevent disorder or crime.

If there is a potential conflict between a statutory duty that a public authority is bound by and the rights set out in Schedule 1 to the

HRA, then 'so far as possible' the primary and secondary legislation must be 'read and given effect in a way which is compatible with those rights'.

The rights relevant to this briefing are listed below:

Prohibition of inhuman and degrading treatment – Article 3

The European Commission of Human Rights has held that 'publicly to single out a group of persons for differential treatment on the basis of race might in certain circumstances constitute a special form of affront to human dignity and that differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment.' (*East African Asians v UK* (1973) 3 EHRR 76)

Respect for private and family life – Article 8

Permitting conduct that interferes with the ability of particular members of the public to enjoy normal life is likely to engage Article 8 and if such interference is discriminatory in impact, that is, only particular racial groups will be affected, then, unless justified, the interference would be unlawful under Article 14.

Freedom of thought, conscience and religion – Article 9

Freedom of thought conscience and religion is one of the foundations of a democratic society and particular weight is given to it. Public authorities have a positive obligation to ensure the peaceful enjoyment of the rights guaranteed by Article 9.

Freedom of expression – Article 10

This is the most important provision in relation to incitement to racial hatred and other hate speech. Freedom of expression 'constitutes one of the essential foundations of a democratic society and Article 10 protects speech and expression of any kind: speech that offends, shock or disturb is just as protected as ideas that are favourably received, inoffensive or indifferent. However, interference with freedom of expression is permitted under Article 10(2), where

'necessary in a democratic society' to prevent crime and disorder or otherwise protect the rights and freedoms of others.
Any interference must be proportionate.

Freedom of peaceful assembly and association – Article 11

Article 11 provides for another fundamental right in a democratic society. It is confined to peaceful gatherings and an intention that a gathering will result in violence will not be protected. Restrictions on assembly are permitted on the same basis as outlined under article 10(2).

Protection from discrimination – Article 14

The enjoyment of Convention rights shall be secured without discrimination on grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. To comply with article 14 local authorities may find that they have a positive obligation to prevent interferences with other Convention rights as highlighted above in relation to article 8.

Prohibition on the abuse of rights – Article 17

See above. Article 17 is rarely considered but it has particular significance for race hate speech and activity.

Free elections – Article 3 Protocol 1