

**RECOMMENDATIONS FROM THE MEETING OF THE
COMMUNITY SERVICES COMMITTEE HELD ON
27 JUNE 2000**

Minute 207 – Regulation of Pollsters

The Committee considered the report of the Head of Housing Health and Community Care advising Members that the Council had no powers to regulate the activity “pollsters”, persons speaking to members of the public in the street trying to arrange an appointment for a sales person to make a home visit, following a motion considered at Council on 18 April 2000.

Noting the information outlined in the report with regards to the use of street trading controls or the Essex Art Section 11 for the control of such activities, Members considered that Southend-on-Sea Borough Council had successfully removed such persons from their area using the Essex Act. It was further considered that Officers should further investigate the matter with a view to either adoption of Section 11 of the Essex Act, or amendment to existing or introduction of Rochford District Council Byelaws to prevent the activity of pollsters taking place within the District. On a show of hands, it was

Resolved

That Officers investigate further the adoption of Section 11 of the Essex Act, or the amendment of existing or introduction of new Byelaws to prevent the activity of pollsters within the District, with a report being brought to a future Meeting of the Finance and General Purposes Committee on the resource implication. (HHHCC)(HLS)

Note: A report from the Head of Legal Services is attached.

Andrew Smith

Head of Administration and Member Services

For further information please contact Andrew Smith on (01702) 546366

REGULATION OF “POLLSTERS” (Min 133(5)/00)

1 SUMMARY

- 1.1 At the meeting of the Community Services Committee on 27 June 2000 the Committee, at the suggestion of the Head of Legal Services, resolved that Officers look into the possibility of utilising provisions within the Essex Act 1987 as relied on by Southend Borough Council to regulate the activity of “Pollsters” or alternatively the feasibility of introducing byelaws and the financial implications of such measures.
- 1.2 The report details the further consideration given to this matter and concludes that the only course available would be primary legislation and recommends representations are accordingly made to the appropriate Government Department to highlight the Council's concerns on this issue.

2 INTRODUCTION

- 2.1 The issue of “Pollsters” was first highlighted by Councillor V H Leach in a motion to the Council meeting of 18 April 2000, asking that Officers report to the appropriate committee to determine the best way to regulate this activity.
- 2.2 “Pollsters” is a term which describes a form of marketing which involves businesses canvassing people in the street to advertise their products commonly relating to double glazing and other home improvements. Appointments are arranged with interested parties for a subsequent home visit.
- 2.3 This form of marketing is not subject to any regulation under existing legislation, although Southend has indicated that it has used the provisions of the Essex Act in certain circumstances to address this activity.
- 2.4 The police have confirmed that the activity is not an offence and is lawful provided behaviour is not threatening or abusive, and no obstruction or public order offence arises.

3 DISCUSSION

- 3.1 Whilst it might be viewed as a form of street trading it is not trading in the legal sense of the term, as the elements that constitute a sale are not all present in the transaction. Nothing is actually sold at the time the initial contact is made and what takes place is solely the arrangement of an appointment for a possible future sale.

- 3.2 The Essex Act 1987, section 11 contains provisions for Authorities in Essex to control hawking and street trading, however these powers are more limited than the adoptive provisions regulating street trading in the Local Government (Miscellaneous Provisions) Act 1982 which this Council has introduced. The two are mutually exclusive and having adopted the more comprehensive controls and licensing provisions in the Local Government (Miscellaneous Provisions) Act 1982, the Essex Act is not now available to the Council.
- 3.3 However even if the Council had been able to invoke the provisions of section 11 the definition of street trading does not strictly cover the activity of “pollsters” and whilst it would be a matter for the Courts, if action were to be taken under this legislation, it is unlikely to be construed as a crime in the absence of a clear and precise definition of the offence.
- 3.4 The Home Office which has responsibility for local byelaws has been contacted following the last meeting of the Community Services Committee and has confirmed that there are no model byelaws for the regulation of this type of activity and given that any regulation would impinge on existing rights and freedom of communication, it is a matter which should more appropriately be addressed by national legislation, and representations should be made to the appropriate government department for changes to the legislation.

4 LEGAL IMPLICATIONS

- 4.1 As set out in the report

5 FINANCIAL IMPLICATIONS

- 5.1 Reliance on the Section 11 of the Essex Act 1987 would necessitate the deregulation of the Street Trading Licensing Controls adopted by the Council, which would involve costs associated with public notification and the alteration of the Council’s licensing procedures.

6 CONCLUSIONS

6. There are no existing legal mechanisms that the Council can utilise to regulate or control “pollsters” provided their activities do not create any public order offences. Changes in national legislation would be required to regulate this activity and this would need to be pursued by representations through the appropriate Government Department.

7 RECOMMENDED

- 7.1 It is proposed that this Committee **RESOLVES**

FINANCE & GENERAL PURPOSES COMMITTEE - Item 9(2)
13 July 2000

That Representations are made to the appropriate Government Department requesting that legislation is introduced to regulate the activities of Pollsters operating in the highway and in public places.
(HLS)

Head of Legal Services

For further information please contact Albert Bugeja on (01702) 546366