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Dear Registered Officer

Campaigning between now and the close of poll

I have received a number of queries from parties regarding the application of section 198 of the *Electoral Act 2004* ('the Act') [Campaigning on polling day], in particular to online advertisements and so called 'wobble boarding'. As you are probably aware this provision prohibits the distribution on polling day of advertisements, 'how to vote' cards, handbills, pamphlets, posters or notices containing any electoral matter.

While as always I recommend that all parties rely upon their own legal advice, I am writing to all parties to provide some guidance as to my position on these matters, so that everyone has the same information:

- In relation to online campaigning on polling day, in my view this provision appears to have been written to primarily refer to the physical action of *distributing* (as opposed to *publishing*) a physical item, and thus would not appear to extend to the *online publication* of advertisements, 'how to vote' cards, handbills, pamphlets, posters or notices containing any electoral matter.
- While as advised in the Candidate Handbook, candidates should not to erect fixed signs on polling day to avoid offending section 198, in my view personally holding a sign or 'wobble board' on polling day is unlikely to be considered 'distributing', as long as no other physical campaign material is handed out to passers-by.

I also take this opportunity to remind you that under section 177 of the Act, campaigning in any form within 100 metres of a polling place is prohibited both at pre-poll polling places, and on polling day at ordinary polling places.

On another matter, further to my letter to you of 15 March, I appreciate the efforts that parties have taken to amend and take down material that may risk offending section 196 of the Act. I fully appreciate the difficulties in assessing the applicability of this section and also section 191 (the requirement for authorisation of electoral matter) to online communications, which has resulted in challenges for participants and this office in terms of compliance and administration.

Over the past few days, I have received a number of complaints regarding videos posted by candidates that do not contain authorisation (on X (formerly Twitter) in particular), and wish to remind parties that under section 191(1)(b), all electoral matter published on the internet between now and the close of polling on Saturday should contain the name and address of the responsible person.

As noted in the Candidate Handbook, for social media platforms such as Twitter and Facebook, we suggest an appropriate place to include authorisation would be in the 'about' section or as part of the profile of a candidate/party. However, promoted videos and advertisements not appearing on a particular page, should be individually authorised.

Please feel free to contact me if you have any queries.

Yours sincerely,

A black rectangular box redacting the signature of Andrew Hawkey.

Andrew Hawkey

ELECTORAL COMMISSIONER

21 March 2024