



## Legal Briefing Note 2:

### Street Stalls and Public leafletting

**For Britain encourages its members to campaign within the law and cooperate with the police at all times.** As part of our support to members to do so, this briefing note is issued to help members understand the law as it relates to public demonstrations.

#### Legal Background

A well known maxim of the common law is that *'everything is permitted except that which is prohibited'*. The less well known converse of this applies to those exercising public authority, such as local authorities and the police, namely that *'everything is prohibited except that which is permitted'*.

The result of both of these read together is that a person is entitled to hold a street stall or distribute leaflets, without interference from any public authority, unless that authority can demonstrate that:

- (a) the law is being contravened, and
- (b) it is exercising a specific legal power available to it.

Since 2000, it has been unlawful for any public authority to use its power in a way that contravenes the European Convention on Human Rights (section 6, Human Rights Act 1998). Article 10 of the convention protects the right to *'hold opinions and to receive and impart information and ideas without interference by public authority'* (freedom of expression) and Article 11 *'the right to freedom of peaceful assembly and to freedom of association with others'* (Freedom of assembly and association). Each of these are qualified rights, but a public authority may only interfere with their exercise, even where it has the legal power to do so, if the interference is *'necessary in a democratic society'* for a legitimate aim (such as public safety, the prevention of crime, the protection of health and morals or the protection of the rights and freedoms of others) and the interference is proportionate to the achievement of that aim.

## **Public order**

It is possible that holding a street stall or leafletting may constitute a criminal offence. This may occur if signs, leaflets or speeches, chants etc amount to an incitement to commit a crime, an offence under the Public Order Act 1986 (behaviour likely to cause harassment, alarm or distress) or incitement to racial or religious hatred. This can be a grey area of the law. In **Norwood v DPP (2001)** the High Court found that displaying a poster issued by Britain First in the window of a house saying '*Islam out of Britain*' constituted a religiously aggravated offence under section 5 Public Order Act 1986.

For more on this see ***For Britain Legal Briefing Note #1: Public Order Law and Demonstrations***, and if in doubt about whether a leaflet or sign is appropriate, please seek advice from the party.

Even if the visual and spoken material is of a kind that would be permissible in most settings, setting up a stall or leafletting may amount to harassment if it was carried out in a place that the courts would consider harassment of an individual or group of individuals, if, for example, a stall was deliberately sited outside a person's dwelling or some place where people would have the expectation of being able to go without being confronted - for example a medical facility or place of worship. Public buildings and business premises would not usually be regarded as such a place.

Even if no criminal offence is being committed, the police have a common law power to act to prevent a breach of the peace. In theory the police's first responsibility when faced with a hostile reaction to a street stall should be to protect individual's freedom of speech as made clear in the, now quite famous, speech of Sedley LJ in **Redmond-Bate (1997)**. However, in practice the police will consider the resources available to them and may consider (or say that they consider) that the only way in which they can keep the peace is to require the stall holders or leafleteers to leave the area. Many party members will be familiar with the instance of the Canadian activist Laura Southern who was very quickly told to dismantle a stall, displaying the slogan '*Allah is gay*' in Luton town centre.

## **Private land and bylaws**

As a general rule, a landowner may ban or permit any lawful activity upon their land that they wish. Therefore, it is no right to set up a street stall or leaflet on private land, such as car parks, transport hubs and shopping centres, without the landowner's consent.

In addition, a bylaw may prohibit any political campaigning in specific public places such as parks and areas around royal palaces.

## **The highway**

Most street stalls and public leafletting takes place on major thoroughfares (to reach a large number of people): typically a wide pavement in a town centre or close to a venue where a lot of people are attending.

The most obvious offence to avoid here is that of obstructing the highway (s137 Highways Act 1980). What constitutes an obstruction is a question of fact that the courts may eventually be called to rule on, but it is generally not difficult to erect a trestle table and a small display in a place that other people can easily walk around. However if the stall is likely to attract a crowd, supportive or hostile, for example if an individual were to make a speech, drawing together the crowd may amount to an obstruction of the highway, even if the stall did not by itself do so.

## **Leafletting**

Under 3A of the Environmental Protection Act 1990, as inserted by section 23 of the Clean Neighbourhoods and Environment Act 2005, the 'principal litter authority' for an area (usually the local authority) may designate land, including the highway, as being land where the distribution of free printed matter is prohibited. However, subsection 4 of the 2005 Act excludes from this power, the power to prevent distribution of printed matter distributed on behalf of a registered charity or '*where the distribution is for political purposes or for the purposes of a religion or belief*'.

## **Tell us if something goes wrong**

The For Britain Movement is very alert to any attempt by public authorities to interfere with the exercise of democratic rights. If you encounter any attempt by a public authority to interfere with your rights, to claim a power that it does not have, or to act in a way that you find intimidating, please contact the party immediately.

***Good luck with you campaigns and remain safe and legal.***

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